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Title 3—

The President

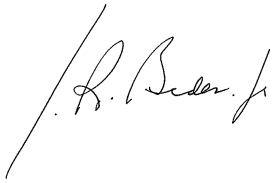
Presidential Determination No. 2022–09 of February 1, 2022

Unexpected Urgent Refugee and Migration Needs

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 2(c)(1) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601(c)(1)) (MRAA), I hereby determine, pursuant to section 2(c)(1) of the MRAA, that it is important to the national interest to furnish assistance under the MRAA in an amount not to exceed $1.2 billion from the United States Emergency Refugee and Migration Assistance Fund for the purpose of meeting unexpected urgent refugee and migration needs to support Operation Allies Welcome and related efforts by the Department of State, including additional relocations of individuals at risk as a result of the situation in Afghanistan and related expenses. Such assistance may be provided on a bilateral or multilateral basis as appropriate, including through contributions to international organizations and through funding to other nongovernmental organizations, governments, and United States Government agencies.

You are authorized and directed to submit this determination to the Congress, along with the accompanying Justification, and to publish this determination in the *Federal Register*.



THE WHITE HOUSE,
Washington, February 1, 2022

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3550

[Docket No. RHS–21–SFH–0025]

RIN 0575–AD14

Direct Single Family Housing Loans and Grants Programs

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or Agency), a Rural Development agency of the United States Department of Agriculture (USDA), is issuing a final rule to amend its Direct Single Family Housing Loans and Grants (DSFHLG) programs regulation. This final rule adopts most changes as presented in the proposed rule published on November 25, 2019, in the **Federal Register**. This final rule also addresses public comments received by the Agency and makes some modifications based on consideration of those comments, including revisions to the refinancing provisions which will help provide relief to homeowners who have difficulty keeping their accounts current (*e.g.,* coming off a payment moratorium), based on the availability of funds and Agency priorities.

DATES: Effective on March 9, 2022.

FOR FURTHER INFORMATION CONTACT: Andrea Birmingham, Finance and Loan Analyst, Single Family Housing Direct Special Programs Branch, USDA Rural Development, STOP 0783, 1400 Independence Ave. SW, Washington, DC 20250–0783, Telephone: (202) 720–1489. Email: *andrea.birmingham@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

USDA's RHS offers a variety of programs to build or improve housing and essential community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single- and multi-family housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, housing for farm laborers and much more. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, State and Federal Government agencies, and local communities.

The purpose of the DSFHLG programs is to assist low-and very-low-income applicants to obtain decent, safe, and sanitary single-family housing in eligible rural areas. Well built, affordable housing is essential to the vitality of communities in rural America. RHS Programs give families and individuals the opportunity to buy, build, repair, or own safe and affordable homes located in rural America. Eligibility for these loans and grants is based on income; and the income limits are based on household size and location.

The DSFHLG programs are authorized by sections 502 and 504 of the Housing Act of 1949, as amended (42 U.S.C. 1472 and 1474). The 7 CFR part 3550 sets forth the requirements of the DSFHLG programs which includes policies regarding both loan and grant origination and servicing. The Section 502 Direct Loan Program provides 100 percent loan financing to assist low- and very low-income applicants obtain modest housing in eligible rural areas and payment assistance to increase an applicant's repayment ability. The Section 504 Loan Program provides one percent interest rate loans to very low-income homeowners in eligible rural areas to repair, improve, or modernize their home or to remove health and safety hazards. The Section 504 Grant Program provides grants to elderly very low-income homeowners in eligible rural areas to remove health and safety hazards, or accessibility barriers from their home, often in conjunction with a section 504 loan.

Changes to the programs will increase program flexibility, allow more borrowers to access affordable loans, better align the programs with best practices and enable the programs to be more responsive to economic conditions and trends.

II. Discussion of Relevant Public Comments

The Agency invited public comments on the proposed rule, which was published on November 25, 2019, in the **Federal Register** (84 FR 64788). The 60-day comment period ended on January 24, 2020. A total of 28 comments were received. Commenters included non-profit housing organizations or associations representing housing providers and private citizens.

(1) Comments on the definition of modest housing (§ 3550.10 Definitions) which currently prohibits in-ground swimming pools.

The Agency received several comments on the definition of modest housing and the prohibition of in-ground swimming pools. Two commenters expressed concern that allowing for the financing of existing modest homes with in-ground swimming pools would create a financial burden on the borrower and borrowers would be unable to maintain and afford the costs of utility bills and pool treatments, which may increase foreclosures.

In contrast, there were two comments in favor of revising the modest housing definition to allow in-ground swimming pools. The commenters both stated there is a lack of affordable housing in rural areas and this amendment would open the market for families looking for an affordable home.

Agency Response: The Agency acknowledges these concerns related to the high utility costs and maintenance expenses of an in-ground swimming pool. However, affordable housing stock is very limited in many rural areas and this unnecessary prohibition may be a barrier to homeownership for applicants and limit access to the program. The revised definition of modest housing will also promote a degree of consistency with the guaranteed SFH loan program (which has no prohibition on in-ground swimming pools). Therefore, the Agency is adopting the proposed definition of modest housing without changes.

(2) Comments on changing references to homeownership education and removing the requirement placed on State Directors to update the list of homeownership education providers annually, per § 3550.11 State Director Assessment of Homeowner Education.

The Agency received a comment that did not support the proposed rule regarding the determination of Agency preference for homeownership education formats. The commenter believes this change seems to signal a move by the Agency, now or in the future, towards a heavier emphasis on internet-enabled homeownership education.

The commenter encourages the Agency to include the addition of ''accessibility to the homebuyer'' and ''quality of education'' as additional factors used to determine Agency preference for homebuyer education formats.

Agency Response: The Agency acknowledges the benefits of in-person training but adds that remote training has many benefits as well (*e.g.,* self-paced, available any time, no travel costs, etc.). The preference factors listed in the proposed § 3550.11(b)—availability and industry practice—are not an exclusive list and the Agency may consider other factors. Explicitly adding ''accessibility to the homebuyer'' or ''quality of education'' is unnecessary since the factors in the proposed § 3550.11(b) are not exclusive, and quality issues are also addressed in § 3550.11(c) and (d). The Agency is adopting the proposal without changes.

(3) Comments on allowing a new borrower to use new loan funds to purchase a dwelling from an existing RHS borrower (§ 3550.52(a)).

The Agency received a comment that supports the use of new loan funds to purchase a dwelling from an existing RHS borrower since self-help housing providers have experienced borrowers having to leave the building group prior to finishing their home. With the change, processing a new loan to a new qualified borrower so they can purchase and finish the home with the building group is more straightforward than processing an assumption with a subsequent loan (if needed).

Agency Response: This revision will allow the Agency to responsibly, effectively, and fully utilize funds appropriated by Congress without the additional steps required to process and close an assumption loan and subsequent loan, thereby reducing loan application processing time. The Agency is adopting the proposal without changes.

(4) Comments on revising the packaging fee requirements (§ 3550.52(d)(6)). One commenter states the processing fee changes seem to be fair and the new process of calculating the fees seem to make more sense. The new rule will take into consideration economy changes and amount of time required in processing loans which was not previously accounted for.

One commenter does not oppose the increases in packaging fees to non-certified packagers represented in the proposed rule but wants to urge caution to the Agency when setting the new fee levels. Theoretically, despite the cap to the fee put in place by the proposed rule, the fee paid to non-certified packagers could exceed the fee paid to certified packagers who submit through an intermediary, or in a less extreme scenario, the fee for non-certified packager could approach or match the fee paid to certified packagers. In either case, the proposed rule could diminish the incentive for packagers to become certified.

Agency Response: The rule change will allow the Agency more flexibility to specify packaging fees under the certified and non-certified loan application process. The Agency is adopting the proposal with changes.

The language in § 3550.52(d)(6) will remove the restrictive $350 fee limit for non-certified packagers, which does not reflect the resources the non-certified loan packager invests in the packaging process. To address the concern regarding the fee level and ensure that the fee paid to a non-certified packager could not equal or exceed the current published fees resulting from the certified loan application packaging process, the Agency lowered the percentage and will determine a limit, not to exceed ''one half percent of the national average area loan limit'' for the non-certified process, rather than a maximum of one percent as was proposed.

The Agency acknowledges the concern that the increased non-certified fee may be a disincentive for packagers to become certified; however, the Agency continues to encourage loans funneled through an Agency-approved intermediary under the certified loan application packaging process by specifying these loans for priority consideration when being selected for processing. In addition, the language in § 3550.52(d)(6) will continue to state, ''The Agency will determine the limit, based on factors such as the level of service provided and the prevailing cost to provide the service, and such cap will not exceed two percent of the national average area loan limit.'' This language allows the Agency to specify a higher limit for certified packaged loans through an intermediary. The certified packager and intermediary will share a portion of the fee, but the higher limit determined by the Agency will allow the parties to negotiate a fee structure that is advantageous to the certified packager and reflective to their experience.

(5) Comments on revising repayment ability ratio thresholds (§ 3550.53(g) Repayment ability) to use the same ratios for both low- and very-low income applicants. Three commenters concur with making the revised principal, interest, taxes, and insurance (PITI) consistent across income categories.

Agency Response: The Agency is adopting the proposal with changes given the portfolio's new loan delinquency trends since November 2019, which nearly doubled by October 2020. While new loan delinquency trends have gradually improved since October 2020, they still exceed November 2019 rates, which has resulted in the need for measured and gradual changes to the underwriting standards. The proposed rule change included repayment ability thresholds for both low- and very-low income applicants not to exceed thirty-five (35) percent for PITI, and forty-three (43) percent for Total Debt (TD) (current maximum thresholds are twenty-nine (29) percent PITI and forty-one (41) percent TD for very-low income applicants, and thirty-three (33) percent PITI and forty-one (41) percent TD for low-income applicants). However, the final rule change will only revise repayment ability thresholds to use the same PITI ratio of thirty-three (33) percent for both low- and very- low income applicants. The final rule retains the current forty-one (41) percent TD maximum threshold for low- and very low- income applicants. Adopting the same PITI ratio threshold for both low- and very low-income applicants will help ensure equal treatment of applicants across the income categories and improve marketability of the program.

(6) Comments on revising introductory text so that application processing priorities are applied on a regular basis, and not just during periods of insufficient funding (§ 3550.55(c)).

One commenter does not agree that applications sent by a certified packager going through an intermediary should be fourth priority, but feels these applications should be given a higher priority and should be processed in conjunction with borrowers who are in need, veterans, or disabled, etc.

One commenter supports making the priorities for processing of applications on a continual basis rather than only during periods of insufficient funding. They are generally supportive of including intermediary loan submittals to the fourth priority pool, however, they would like to encourage self-help

loan submittals be consistently prioritized and ask the full group funding to be a priority during periods of insufficient funding.

One commenter supports allowing the priority processing and funding priority at all times to avoid packaged applications from going stale while awaiting eligibility at RD offices.

Agency Response: The Agency's first, second and third loan application processing priorities are for applicants who have an especially serious need for immediate assistance and allow purchase of inventory properties to move more quickly before the property deteriorates or loses value.

The fourth priority will encourage the participation and interest of intermediaries in the SFH program application process. Intermediaries are valuable to the program by helping attract program applicants, training certified packagers, and performing quality assurance reviews of applications.

If applicants with equivalent priority status apply for assistance on the same day, applicants qualifying for a veteran's preference will receive priority processing, which complies with section 507 of the Housing Act of 1949 (42 U.S.C. 1477) which requires a preference for veterans. Taking into account statutory requirements for preferences, the Agency gives equal consideration to loan applications without regard to race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity.

Therefore, the Agency is adopting the proposal without changes.

(7) Comments on revising the requirement that the value of the site must not exceed 30 percent of the ''as improved'' market value of the property (§ 3550.56(b)(3)). One commenter expressed the removal of the 30 percent rule is a welcome upgrade of the regulations.

One commenter stated this change will better reflect overall market value of the subject property, not just the value of the land and should increase the availability of affordable housing in high-cost areas and throughout rural communities. Limiting the land cost, even when the overall appraised value is considered modest, has been a hinderance to the program.

Agency Response: The Agency agrees with these comments, and the program has other requirements that are better indicators of whether the property is considered modest, such as, area loan limits, appraisals, purchase agreements and construction contracts. Therefore, the Agency is adopting the proposal without changes.

(8) Comment on revising the requirement that the amount of a junior lien, when it is a grant or a forgivable affordable housing product, may not exceed the market value by more than five percent (§ 3550.59(a)(2)). One commenter supports the Agency's increases to the loan-to-value ratio for rehab loans and grants.

Agency Response: The Agency acknowledges the support. This will allow for more partnerships with nonprofits. Grants and forgivable affordable housing products often partially or completely cover the cost of rehabilitation to make the dwelling decent, safe, and sanitary, and a higher loan to value ratio may be tolerated in these instances. Therefore, the Agency is adopting the proposal without changes.

(9) *Comment on revising the requirement for title insurance and a closing agent for certain secured Section 504 loans of $7,500 or greater (§ 3550.108(b)(1)).* One commenter expressed support.

Agency Response: The Agency acknowledges the support. This will significantly reduce loan closing costs incurred by the borrowers, as well as allow the Agency greater responsiveness and flexibility to address changes to average repair costs. Therefore, the Agency is adopting the proposal without changes.

(10) *Comment on revising the Section 504 maximum loan amount of $20,000, so that the sum of all outstanding section 504 loans to one borrower and for one dwelling may not exceed an amount determined by the Agency (§ 3550.112).* One commenter expressed support.

Agency Response: The Agency acknowledges the support. This will allow the Agency greater responsiveness and flexibility to address changes to average repair costs. Therefore, the Agency is adopting the proposal without changes.

(11) *Comments on revising the payment moratorium requirements to require reamortization of each loan coming off a moratorium (§ 3550.207).* One commenter stated that two provisions in 7 CFR 3550.207 continue to impose unnecessary barriers to borrower's eligibility for a payment moratorium. The first is the prohibition on a moratorium for a loan that has been accelerated. Furthermore, the second is the requirement that the borrower's repayment income have fallen by at least 20 percent within the past 12 months.

Agency Response: The Agency acknowledges the recommendation, although the comment is speaking to eligibility for a moratorium and not the proposed reamortization for every loan post-moratorium. However, to address the comment, the Agency clarifies that every borrower whose account is accelerated is/was given written and verbal notice of all servicing actions (including moratoriums) prior to the acceleration process. All servicing actions, for which the borrower may qualify for, are discussed with the borrower in detail prior to acceleration. The Agency then allows each borrower a reasonable amount of time (at least 30 days) to apply for any and all such servicing options. If the borrower does apply for any servicing options, the acceleration action is withdrawn until those requested servicing option(s) are reviewed and a determination on eligibility is provided to the borrower with appeal rights on all denials. In light of this process which occurs before acceleration, allowing a moratorium after acceleration would not provide any meaningful benefit. The Agency believes exploring other loss mitigation efforts after acceleration (*e.g.,* voluntary liquidation) and requiring some type of repayment or conveyance is more helpful.

The Agency acknowledges the recommendation. The Agency will proceed with the existing language as written and will explore the recommendation of modifying the criteria in the future.

(12) *Comment stating RHS needs to update its set of loss mitigation options to incorporate industry standards developments over the past decade; in particular its lack of a flexible loan modification options allowing for interest rate reduction and loan term extension.*

Agency Response: The Agency acknowledges the recommendation. While refinancing and loan modification have some key differences there are also a number of similarities, including the ability to reduce the interest rate and extend the repayment term to create more affordable payments for the borrower. Currently, refinancing Agency debt is only permitted in accordance with § 3550.204 to allow the borrower to receive payment assistance (*e.g.,* borrowers who were not previously eligible for payment assistance because the loan was approved before August 1, 1968, or the loan was made on above-moderate or nonprogram (NP) terms). More importantly, the Agency cannot offer

loan modifications which extend the original loan term past 33 years (or 38 years in very limited circumstances) because the timeframe for the loan is established by statute at section 502(a) of the Housing Act of 1949 (42 U.S.C. 1472(a)).

While the Agency is statutorily prohibited from offering loan modifications that extend the original loan term beyond 33 years (or 38 years in very limited circumstances), the Agency may amend the refinance regulations so that a new loan term could replace the original and does make such amendment with this final rule. The refinancing option adopted with this rule change is particularly important given the large number of borrowers who will be exiting a COVID-related payment moratorium (also referred to as COVID-related forbearances). Some of these moratoria lasted over a year, and a post-moratorium reamortization agreement would not result in affordable monthly payments because the original loan term is limited by statute. In addition, the American Rescue Plan Act of 2021 provided additional budget authority which, given the critical need for flexibility in servicing direct loans, will be best directed towards refinancing and other loss mitigation options. The Agency is amending the regulation to reflect the expansion of refinancing availability (*e.g.,* borrowers exiting a moratorium)—however such refinancing will be subject to the availability of funds and at the discretion of the Agency. In other words, while the final rule amendments will provide critical relief to borrowers in response to COVID and the Agency preserves the ability to provide such refinancing in the future, such refinancing is subject to funding availability and Agency discretion.

In addition, the Agency would like to clarify that borrowers in moratorium status are not delinquent on a nontax federal debt upon expiration of the moratorium for purposes of the Debt Collection Improvement Act (DCIA) (Pub. L. 104–134) and its implementing regulations at 31 CFR part 285, and that a loan may be refinanced with a new loan following a moratorium.

In consideration of comments received and industry practice, the Agency is revising § 3550.52(c) and § 3550.201to allow for broader use of circumstances under which RHS debt may be refinanced, subject to availability of funds and Agency priorities.

(13) *One comment related to § 3550.207(c), Resumption of scheduled payments, suggested that the Agency needs to give borrowers written notices that inform them about the Agency procedures for assessing the forgiveness of interest.*

Agency Response: The Agency acknowledges the recommendation. The Agency already has a meaningful standard in place to determine if interest accrued during the moratorium should be forgiven. Currently, all borrowers requesting a moratorium are sent a Moratorium on Payment (Fact Sheet) outlining the moratorium process, requirements, procedures, and impact on future payments. The Agency will explore expanding this document to include the standard utilized to determine when moratorium interest is forgiven. The standard is whether the borrower can afford the new, reamortized payment without forgiveness of interest. If the borrower can afford a reamortized payment without interest forgiveness, the Agency includes the moratorium interest in the re-amortization process. This standard best supports the borrower's ability to repay the loan and the Agency's fiscal responsibility to the public to carry out the program in a reasonable manner. If the borrower does not have repayment ability when the moratorium interest is included in determining the new payment amount, the moratorium interest is forgiven in the amount required to demonstrate repayment ability. As previously stated, in almost all cases the moratorium interest is forgiven prior to the re-amortization. The Agency does not make any changes in the final rule in response to this comment.

(14) *One comment specific to 7 CFR 3550.207(c), Resumption of scheduled payments, recommends that the Agency must develop meaningful objective standards for evaluating whether all or part of the interest that has accrued during the moratorium may be forgiven.*

Agency Response: The Agency acknowledges the recommendation. Currently, all borrowers requesting a moratorium are sent a Moratorium on Payment (Fact Sheet) outlining the moratorium process, requirements, procedures, and impact on future payments. The Agency will explore expanding this document to include the criteria utilized to determine when moratorium interest is forgiven. However, except for a limited number of cases with demonstrated repayment ability, the Agency does forgive all interest accrued during the moratorium period. The Agency does not make any changes in the final rule in response to this comment.

General comments on matters not within the scope of the proposed rule:

(15) *One commenter would like to see the 502 direct construction programs allow for an initial draw at closing to cover lot costs, site prep, and initial construction costs. Current regulations make it almost impossible for a 502 applicant to build.*

Agency Response: This suggestion is beyond the scope of the proposed rule but will be taken under consideration for future proposed rulemaking.

(16) *One commenter stated they are thankful for the Agency's efforts to bring the Direct and Guaranteed programs more in line with one another's regulations. A consistent issue is that the regulations of one program prevents them from deploying that product in scenarios that the other program's regulations would allow. Increasing the effectiveness of these programs is crucial for their region, where the incomes of entire communities can be depressed and where commercial lending can be difficult to access or entirely absent.*

Agency Response: The Agency acknowledges the need for consistency when appropriate; and acknowledges the need for differences based on the direct SFH programs' targeted audience (low- and very low-income) and unique features (*e.g.,* subsidy). The Agency does not make any changes in the final rule in response to this comment.

III. Summary of Rule Changes

Outlined below is the summary of changes to the 7 CFR part 3550 regulations.

Subpart A—General

§ 3550.10 Definition

The modest housing definition, which currently prohibits in-ground swimming pools, will be revised to allow for the financing of existing modest homes with swimming pools. Existing housing stocks are very limited in many rural areas, and this is an unnecessary prohibition to homeownership when an otherwise modest and affordable home is typical for the area but cannot be financed because of a swimming pool. The change promotes a degree of consistency with the guaranteed SFH loan program, which does not prohibit in-ground swimming pools. In-ground pools with new construction, or with dwellings that are purchased new, will still be prohibited.

The veterans' preference definition will be revised to remove obsolete information and streamline the definition by citing the definitions of a veteran or a family member of a deceased service member in 42 U.S.C. 1477.

A definition for principal residence will be added to this section. The new definition aligns with that used in the guaranteed SFH loan program and the mortgage industry: The primary residence definition will refer to the principal residence definition, and ''principal residence'' is defined as the home domicile physically occupied by the owner on a permanent basis (*i.e.,* lives there for the majority of the year and is the address of record for such activities as Federal income tax reporting, voter registration, occupational licensing, etc.).

The changes noted above are substantively the same as the proposed rule. However, the proposed rule also included two other changes which are not adopted in the final rule. First, the proposed rule included the removal of the definition of national average area loan limit, but the Agency decided to keep this definition as it used as a benchmark for several items (*e.g.,* packaging fees). Second, the proposed rule included a revision to the definition of the PITI ratio to include the homeowner's association (HOA) dues and other recurring housing-related assessments, but the Agency considered the matter further and determined that it cannot adopt this revision due to current automated system limitations. The Agency will explore other possible changes regarding HOA dues in the future.

§ 3550.11 State Director Assessment of Homeownership Education

In this section, paragraphs (a) and (b) will be revised to change references to ''homeowner education'' to ''homeownership education'' for consistency, and remove the requirement placed on State Directors to update the list of homeownership education providers annually. The Agency will require State Directors to update the list on an as-needed basis, but no less frequently than every three years. The Agency will determine preferences for education format (*i.e.,* online, in-person, telephone) based on availability and industry practice. The Agency will publish the education format preferences in a publicly available format, such as the program handbook. These changes are adopted from the proposed rule without change and allow the Agency to be more responsive to changes in homeownership education course delivery and availability.

Subpart B—Section 502 Origination

§ 3550.52 Loan Purposes

In this section, paragraph (a) will be revised to allow a new borrower to use new loan funds to purchase a dwelling from an existing RHS borrower. The current regulation requires the new borrower to assume the existing loan. This is revised so that the Agency will determine if these transactions will be financed using an assumption of the existing RHS indebtedness or new loan funds, depending on funding levels as well as program goals and needs. This revision is adopted from the proposed rule without change and allows the Agency to responsibly, effectively, and fully utilize funds appropriated by Congress without the additional steps required to process and close a loan assumption and subsequent new loan, thereby reducing loan application processing times.

Also, as a result of comments received on the proposed rule and additional consideration of various factors (*e.g.,* the potential need for more flexible refinance options when budget authority and circumstances deemed appropriate by RHS exist), paragraph (c) Refinancing RHS debt will be revised so that depending on the availability of funds and program priorities as determined by RHS, an existing RHS loan may be refinanced in accordance with § 3550.201 to allow refinancing as a special servicing action including, but not limited to, § 3550.207 to allow refinancing, including subsidy recapture, at the end of a moratorium. The Agency may limit the number of direct loans made for refinancing purposes based on the availability of funds and Agency priorities on market conditions and other appropriate factors. This revision provides the Agency with more flexibility pertaining to special servicing actions to reduce the number of borrower failures.

Also, in this section, paragraph (d)(6) will be revised to allow the Agency more flexibility to specify packaging fees for the non-certified loan application process, and to ensure non-certified packaging fees reflect the level of service provided and the prevailing cost to provide the service. This revision is adopted from the proposed rule with the following changes: This final rule will establish the limit as determined by the Agency and will be no greater than one half percent of the national average area loan limit, rather than one percent as was proposed, and the initial limit in the program handbook will be $750.

For the non-certified loan packaging process, the current fee may not exceed $350, but this limit is being revised as it does not necessarily reflect the time a non-certified loan packager invests in the packaging process. The Agency will determine the exact limit within the one-half percent threshold based on factors such as the level of service provided and the prevailing cost to provide the service and will publish the exact limit in a publicly available format such as the program handbook. For example, the current national average area loan limit is approximately $285,000, so the packaging fee for the non-certified loan packaging process could not exceed $1,425. The initial limit in the program handbook will be $750, which is the packaging fee permitted for Section 504 loan applications.

This final rule also amends this paragraph to remove the language regarding a preliminary eligibility determination to streamline the process, and to clarify that the packaging fee is paid only if the loan closes. This revision is adopted from the proposed rule without change.

§ 3550.53 Eligibility Requirements

In this section, paragraph (a) will be revised to clarify income eligibility requirements when refinancing existing RHS debt as a special servicing action, in light of the discussion above and as a change from the proposed rule. When an existing RHS loan is being refinanced as a special servicing action in the limited circumstances provided in the revised § 3550.52 and § 3550.201, the household's adjusted income must not exceed the applicable moderate-income limit for the area at the time of loan approval and closing.

Currently, § 3550.53(a) requires that the household's adjusted income must not exceed the applicable low-income limit for the area at the time of loan approval and must not exceed the applicable moderate-income limit for the area at closing. This means if an existing direct borrower exceeds the low-income limit at the time of loan approval for refinance, the Agency would be unable to approve the loan which limits the borrower's ability to refinance and improve their chance of success post-moratorium. This change provides the Agency with flexibility by recognizing that holding existing borrowers and new applicants to the same standard at time of loan approval is detrimental to the existing borrowers who are having difficulty keeping their accounts current and demonstrate that they may benefit from a refinance at more favorable rates and terms. It would be harmful to the existing borrower and the Agency to deny an opportunity to refinance, and improve the affordability

of the loan, simply because the borrower may exceed the low-income limit at time of approval for the refinance.

The revision of paragraph (c) and removing paragraphs (c)(1) through (3) will remove the overly restrictive primary residence requirements for military personnel and students. These requirements prohibit approving loans for active duty military applicants, unless they will be discharged within a reasonable period; and for fulltime students unless there are reasonable prospects that employment will be available in the area after graduation. Active duty military personnel and full-time students provide valuable service experience, education, and civic and financial contributions to rural areas. Providing these applicants with more opportunity to own modest, decent, safe, and sanitary homes in rural areas will strengthen the fabric of those communities. In addition, removing this overly restrictive language will improve consistency with other Federal housing programs such as the U. S. Department of Housing and Urban Development and the U. S. Department of Veterans Affairs. This revision is adopted from the proposed rule without change.

Also, in this section, paragraphs (g)(1) through (3) will be revised and paragraphs (g)(4) and (5) will be removed. The revisions will align the repayment ability ratio thresholds for both low- and very-low income applicants. The revisions are adopted from the proposed rule with the following changes: The PITI ratio for very-low will increase to thirty-three percent to align with the existing low-income PITI ratio, rather than increasing PITI to thirty-five percent for both income categories as was proposed; and the total debt (TD) ratio will remain at forty-one percent for both income categories, rather than increasing it to forty-three percent for both income categories as was proposed.

This will help to ensure equal treatment of applicants across the income categories and improve the marketability of the program, while being prudent about increasing risk. This change, in conjunction with automated underwriting technology, will address risk layers and reduce the frequent requests for PITI ratio waivers due to compensating factors.

The use of ''homeowner'' under this section in paragraph (i) will be revised by replacing with ''homeownership'' to have consistency within 7 CFR part 3550. This revision is adopted from the proposed rule without change.

§ 3550.55 Applications

In this section, paragraph (c) introductory text and paragraphs (c)(4) and (5) will be revised to allow application processing priorities to be applied on a regular basis, and not just during periods of insufficient funding. Current regulations only trigger priorities in application processing when funding is insufficient. However, applying these priorities on a regular basis, not just during insufficient funding, will provide clear processing priorities for RHS staff. In the case of applications with equivalent priority status that are received on the same day, preference will be extended to applicants qualifying for a veterans' preference.

The change recognizes fluctuation in RHS staff resources, and that complete applications need to be prioritized for processing, as well as for funding when funds are limited. While the goal is to determine an applicant's eligibility for the program within 30 days of receiving a complete application regardless of their priority ranking and the availability of funds, the priority ranking will direct Agency staff how to prioritize their work processes and better meet urgent needs. The amendment also gives fourth priority to applications submitted via an intermediary through the certified application packaging process outlined in § 3550.75. Currently, RHS may temporarily classify these applications as fourth priority when determined appropriate which will make the fourth priority status permanent and applicable at all times.

The change in priority does not impact the priority of any other category and will recognize and encourage the participation and interest of intermediaries in the direct SFH program. Intermediaries are valuable to the program by helping attract program applicants, training certified packagers, and performing quality assurance reviews of applications.

Other priorities remain unchanged including existing customers who request subsequent loans to correct health and safety hazards, loans related to the sale of Real Estate Owned (REO) property or ownership transfer of an existing RHS financed property, hardships including applicants living in deficient housing for more than six months, homeowners in danger of losing property through foreclosure, applicants constructing dwellings in an approved self-help project, and applicants obtaining other funds in an approved leveraging proposal. Veterans' preference also remains a priority in accordance with 42 U.S.C. 1477. To further emphasize these priorities, the Agency will also make funding available in accordance with same priorities as application processing.

These revisions are adopted from the proposed rule without change.

§ 3550.56 Site Requirements

Under this section, make revisions in paragraph (b) and remove (b)(3) to remove the requirement that the value of the site must not exceed 30 percent of the ''as improved'' market value of the property. This change is consistent with the guaranteed SFH loan program, which has no site value limitation. This revision is adopted from the proposed rule without change.

§ 3550.57 Dwelling Requirements

In this section, paragraph (a) will be revised to remove the reference to in-ground swimming pools for existing housing under the Section 502 program, to align the paragraph with the revised modest housing definition in 7 CFR 3550.10 of this rule. This revision is adopted from the proposed rule without change.

§ 3550.59 Security Requirements

In this section, paragraph (a)(2) will be revised to remove the requirement that the amount of a junior lien, when it is a grant or a forgivable affordable housing product, may not exceed the market value by more than five percent (*i.e.,* up to a 105 percent loan to value ratio). This is an overly restrictive requirement as it relates to grants and forgivable affordable housing products as these products often partially or completely cover the cost of rehabilitation to make the dwelling decent, safe, and sanitary, and a higher loan to value ratio may be tolerated in these instances.

Beginning in FY 16, RHS initiated a pilot in a limited number of states to allow the State Office to approve leveraging arrangements where the total loan-to-value was more than the 105% limitation identified in § 3550.59(a)(2), provided:

- RHS is in the senior lien position and the RHS loan is fully secured (with allowable exceptions for the tax service fee, appraisal fee, homebuyer education and initial escrow for taxes and insurance);
- The junior lien is for an authorized loan purpose identified in § 3550.52;
- The junior lien involves a grant or forgivable affordable housing product; and
- The grant or forgivable affordable housing product comes from a recognized grant source such as a

Community Development Block Grant or a HOME Investment Partnerships Program (HOME).

The pilot has been successful because it has:

- Empowered the selected State Offices to make timely decisions on loans with junior liens involving a grant or forgivable affordable housing product, and gave the junior lien holder the discretion to determine a total loan-to-value that could be supported within their own program requirements;
- Generally improved an area's rural housing stock since the grants and forgivable affordable housing products are frequently used for rehabilitation work where the rehab cost is more than the enhanced value;
- Promoted consistency with the guaranteed SFH loan program, which states that junior liens by other parties are permitted if the junior liens do not adversely affect repayment ability or the security for the guaranteed loan; and
- Increased partnerships with nonprofits.

This final rule codifies the positive aspects of the pilot so that the advantages will apply program wide. These revisions are adopted from the proposed rule without change.

§ 3550.67 Repayment Period

In this section, paragraph (c) will be revised to allow more small Section 502 direct loans to be repaid in periods of up to ten years. The portfolio's new loan delinquency nearly doubled between November 2019 to October 2020, and while new loan delinquency trends have gradually improved since October 2020, they still exceed November 2019 rates. This resulted in the need for measured and gradual changes, therefore, the revisions are adopted from the proposed rule with the following change: The threshold for determining a small loan as determined by the Agency will not exceed eight percent of the national average area loan limit, rather than ten percent as was proposed. The eight percent parameter provides a threshold that meets the Agency's current practice and gives the Agency flexibility to increase the unsecured loan level within a reasonable amount in the future.

The current regulation states that only loans of $2,500 or less must not have a repayment period exceeding ten years. In practice, loans of less than $7,500 are generally termed for ten years or less so that the loan can be unsecured (*i.e.,* no mortgage or deed of trust is required) in accordance with the program's guidance.

This revision provides the Agency flexibility in setting the dollar threshold for smaller loans which may have a repayment period that does not exceed ten years. This threshold will be determined by the Agency and published in a publicly available format and will not exceed eight percent of the national average area loan limit. For example, the current national average area loan limit is approximately $285,000, so only loans of $22,800 or less may not have a repayment period exceeding ten years. During Fiscal Years 2019 and 2020, there were approximately 67 loans for less than $23,000, with an average loan amount of $12,240. Of this subset of loans, there was a 22.5 percent increase in the average loan amount from FY 19 ($10,847) to FY 20 ($13,293). This highlights the need for additional flexibility as ever-increasing purchase and repair costs naturally increase what constitutes a ''small'' loan. The Agency will determine the threshold based on factors such as the Agency's level of tolerance for unsecured loans and the performance and collection of unsecured loans in the Agency's portfolio.

Subpart C—Section 504 Origination and Section 306 Water and Waste Disposal Grants

§ 3550.102 Grant and Loan Purposes

In light of the discussion above and as a change from the proposed rule, the revision of paragraph (e)(5) will permit refinancing of existing 504 loans, depending on the availability of funds and program priorities as determined by RHS, in accordance with the revised § 3550.201 to allow refinancing as a special servicing action to reduce the number of borrower failures that result in liquidation including, but not limited to, § 3550.207 to allow refinancing at the end of a moratorium. The Agency may limit the number of direct loans made for refinancing purposes based on the availability of funds and Agency priorities. market conditions and other appropriate factors. This revision provides the Agency with more flexibility pertaining to loss mitigation measures.

§ 3550.103 Eligibility Requirements

Under this section, paragraph (e) will be revised to remove the language in regarding a waiver of the requirement that applicants must be unable to obtain financial assistance at reasonable terms and conditions from non-RHS credit or grant sources and lack the personal resources to meet their needs. The regulation currently provides that this requirement may be waived if the household is experiencing medical expenses more than three percent of the household's income. The revision removes the medical expense and waiver language. The authority to waive regulations on a case-by-case basis already exists in § 3550.8, making the medical expense and waiver language in § 3550.103(e) unnecessary. Furthermore, limiting the waiver of the requirement to only those instances in which medical expenses exceed 3 percent of the household's income is overly restrictive. This revision is adopted from the proposed rule without change.

§ 3550.104 Applications

Paragraph (c) will be revised by replacing ''veterans preference'' with ''veterans' preference.'' This is a grammatical correction only and is adopted from the proposed rule without change.

§ 3550.106 Dwelling Requirements

Paragraph (a) will be revised to remove the reference to in-ground swimming pools for the Section 504 program, to align the paragraph with the revised modest housing definition in 7 CFR 3550.10 of this rule. This revision is adopted from the proposed rule without change.

§ 3550.108 Security Requirements (Loans Only)

Paragraph (b)(1) will be revised to modify the requirement for title insurance and a closing agent for certain secured Section 504 loans of $7,500 and greater. Currently, Section 504 loans less than $7,500 may be closed by the Agency without title insurance and a closing agent; however, loans of $7,500 and greater require title insurance and must be closed by a closing agent.

The cost for title insurance and a closing agent can be unaffordable for very-low income borrowers with loans of $7,500 and greater or can potentially decrease the amount of loan funds available for needed repairs or improvements. This revision removes the specific dollar threshold for loans which require title insurance and a closing agent. Loans where the total section 504 indebtedness does not exceed an amount determined by the Agency, but no greater than 20 percent of the national average area loan limit, may be closed by the Agency without title insurance or a closing agent. Using this parameter gives flexibility to adjust for inflation over time and still results in a loan amount that can be closed by the Agency with minimal risk. The Agency will determine the maximum amount based on factors such as average costs for title insurance and closing agents compared to average housing

repair costs and publish the specific threshold in a publicly available format such as the program handbook. This revision will significantly reduce loan closing costs incurred by the borrowers, by allowing more loans to be closed by the Rural Development office. This revision will also allow for responsiveness and adjustments based on inflationary changes and is adopted from the proposed rule without change.

§ 3550.112 Maximum Loan and Grant

The revision of paragraph (a) will revise the Section 504 maximum loan amount of $20,000, so that the sum of all outstanding section 504 loans to one borrower and for one dwelling may not exceed an amount determined by the Agency, but not greater than twenty percent of the national average area loan limit. This revision is adopted from the proposed rule without change. An initial limit of $40,000 will be used in the program handbook.

The Agency will determine the maximum amount based on factors such as average loan amount and repair costs. Using this parameter gives flexibility to adjust for inflation over time and still results in a total outstanding loan amount that can be acceptable to the Agency. A corresponding change will also be made to § 3550.112(a)(1) to address maximum loan amounts for transferees who assume Section 504 loans and wish to obtain a subsequent loan. The revision allows the Agency greater responsiveness and flexibility to address changes to average repair costs. The current national average area loan limit is $285,000 so the maximum loan assistance could not exceed $57,000; as stated above, an initial limit of $40,000 will be used in the program handbook. The $40,000 limit is currently used under a pilot.

The revision of paragraph (c) will remove the lifetime maximum assistance of $7,500 for a Section 504 grant and replace with a maximum lifetime limit not to exceed ten percent of the national average area loan limit for any one household or one dwelling versus the five percent outlined in the proposed rule. Since the publication of the proposed rule in November 2019, there have been major shifts in the economy. According the National Association of Home Builder's May 2021 survey, building materials costs have on average increased 26.1 percent over the prior 12 months and builders are widely experiencing shortages in material. The higher percentage is needed given current and future conditions. An initial limit of $10,000 (which is currently used under a pilot) will be used in the program handbook. Limiting this to any one household will eliminate applicants from applying separately and receiving double grant assistance per household. In addition to changing the percent used, the statement ''no grant can be awarded when the household has repayment ability for a loan'' that appeared in the proposed rule was removed. It was determined to be confusing given the allowance for loan/grant combinations. This revision was adopted from the proposed rule, with the changes noted above.

§ 3550.113 Rates and Terms (Loans Only)

The revision of paragraph (b) will revise the Section 504 loan term requirements to specify that the loan term will be 20 years. This will make 504 loan terms consistent, increase affordability, and maximize repayment ability. This revision is adopted from the proposed rule without change.

Subpart D—Regular Servicing

§ 3550.162 Recapture

Under this section, revising the recapture requirements in paragraph (b) to specify when Principal Reduction Attributable to Subsidy (PRAS) is, or is not, collected. The direct loan program provides payment assistance (subsidy), which may include PRAS, to help borrowers meet their monthly mortgage loan obligations. At the time of loan payoff, borrowers are required to repay all or a portion of the subsidy they received over the life of the loan. This is known as subsidy recapture. The amount of subsidy recapture to be repaid is based on the borrower's subsidy repayment agreement and a calculation that determines the amount of value appreciation (equity) the borrower has in the property at the time of payoff. The changes to the regulation clarify when PRAS is collected and is consistent with the terms of the subsidy repayment agreements. In cases where the borrower has no equity in the property based on the recapture calculation, PRAS will not be collected. There are no changes to the current subsidy recapture calculation. These revisions are adopted from the proposed rule without change.

Subpart E—Special Servicing

§ 3550.201 Purpose of Special Servicing Actions

In light of the discussion above and as a change from the proposed rule, this paragraph will be revised to include refinancing of RHS debt as a special servicing action to reduce the number of borrower failures that result in liquidation. Borrowers who have difficulty keeping their accounts current may be eligible to refinance as a special servicing option (*e.g.,* exiting a moratorium, reamortization or other options are unaffordable). As with other special servicing options, the refinance special servicing option will be unavailable for accelerated accounts. The refinancing option adopted with this rule change is particularly important given the large number of borrowers who will be exiting a COVID-related payment moratorium (also referred to as COVID-related forbearances). Some of these moratoria lasted over a year, and a post-moratorium reamortization agreement would not result in affordable monthly payments because the original loan term is limited by statute. In addition, the American Rescue Plan Act of 2021 provided additional budget authority which, given the critical need for flexibility in servicing direct loans, will be best directed towards refinancing and other loss mitigation options. The Agency is amending the regulation to reflect the expansion of refinancing availability as a special servicing action to help make payments more affordable (*e.g.,* following a moratorium or reamortization)—however such refinancing will be subject to the availability of funds and at the discretion of the Agency. In other words, while the final rule amendments will provide critical relief to borrower in response to COVID and the Agency preserves the ability to provide such refinancing in the future, such refinancing is not a given due to factors such as budget authority and other Agency priorities.

§ 3550.207 Payment Moratorium

Under this section, revising the payment moratorium requirements to require reamortization of each loan coming off a moratorium. Currently, the regulation stipulates that at the end of a moratorium borrowers are to be provided a re-amortization if the Agency determines they can resume making scheduled payments, based on financial information provided by the borrower. Often these borrowers lack demonstrable repayment ability for the new installment, which then requires the Agency to liquidate the account. However, it should not be unexpected that a borrower may have difficulty demonstrating repayment ability at the end of a moratorium. The very purpose of the moratorium is to provide temporary payment relief to borrowers who have experienced circumstances beyond their control such as the loss of at least 20 percent of their income,

unexpected expenses from illness, injury, death in the family, etc.

In July 2010, due to the recession, the Administrator of RHS issued a decision memorandum approving the re-amortization of all accounts following a moratorium; this decision has been supported by subsequent Administrators. Historical data has shown that borrowers whose loans are re-amortized after a moratorium, regardless of repayment ability, have no greater risk of becoming delinquent when compared to non-moratorium borrowers whose loans were re-amortized.

When comparing the borrower's repayment history 18 months after the moratorium/re-amortization, 81.5 percent of the borrowers made their required monthly payment and avoided foreclosure, making this the best option for the borrower and the Agency. Whereas, if the borrower's repayment ability would have been considered, a large percentage of these successful borrowers would have lost their home without being given a chance to demonstrate their ability to repay their mortgage.

This revision will require re-amortization after a moratorium regardless of repayment ability, which will reduce foreclosures and better serve borrowers. The Agency is also clarifying that all or part of the interest accrued during the moratorium may be forgiven in an amount that balances affordability to the borrower and serving the best interest of the government. These revisions are adopted from the proposed rule without change.

Subpart F—Post-Servicing Actions

§ 3550.251 Property Management and Disposition

In this section, revising paragraphs (c) and (d) to remove obsolete references and clarify the process and priorities in the sale or lease of REO properties. The revision also clarifies the sale or lease process and reservation periods for priority buyers to comply with 42 U.S.C. 11408a.

Under 42 U.S.C. 11408a, RHS must lease or sell program and nonprogram inventory properties to public agencies and nonprofits to provide transitional housing and to provide turnkey housing for tenants of such transitional housing and for eligible families. However, first priority is the sale of REO properties to Section 502 borrowers.

The changes will further align § 3550.251(c) and (d) with 42 U.S.C. 11408a concerning the priority of the sale or lease of REO properties to eligible borrowers and to nonprofit organizations or public bodies providing transitional housing.

This action will incorporate references to 42 U.S.C. 11408a and its more detailed instruction on transitional housing, lease and purchase procedures, and the employment or participation of homeless (or formerly homeless) individuals for the property being leased or acquired. To provide the maximum flexibility, the Agency will reserve program REO properties for no less than 30 days for sale to program eligible borrowers, as well as for sale or lease to a public agency or nonprofit organization for transitional and turnkey housing purposes. Upon receipt of written notification from a public agency or nonprofit organization seeking to purchase or lease REO property, the Agency shall withdraw the property from the market for not more than 30 days for the purpose of negotiations. If negotiations are unsuccessful, the REO property will be relisted and sold in the best interest of the Government.

The expected result of this rulemaking is to allow the maximum use of the REO properties and foster collaboration in working to address a national shortage of transitional housing. These revisions are adopted from the proposed rule without change.

IV. Regulatory Information

Statutory Authority

Section 510(k) of Title V the Housing Act of 1949 (42 U.S.C. 1480(k)), as amended, authorizes the Secretary of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title.

Executive Order 12866

The Office of Management and Budget (OMB) has designated this final rule as not significant under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 must be exhausted.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments, and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, ''Environmental Policies.'' It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, neither an Environmental Assessment nor an Environmental Impact Statement is required.

Executive Order 13132, Federalism

The policies contained in this final rule do not have any substantial direct effect on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the undersigned has determined and certified by signature of this document

that this rule, while affecting small entities, will not have an adverse economic impact on small entities. This rule does not impose any significant new requirements on program recipients, nor does it adversely impact proposed real estate transactions involving program recipients as the buyers.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program/activity is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. (See the document related to 7 CFR part 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

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

Programs Affected

The following programs, which are listed in the Catalog of Federal Domestic Assistance, are affected by this final rule:

Number 10.410, Very Low to Moderate Income Housing Loans (specifically the section 502 direct and guaranteed loans), and Number 10.417, Very Low-Income Housing Repair Loans and Grants (specifically the section 504 direct loans and grants).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection activities associated with this rule are covered under OMB Number: 0575–0172. This final rule contains no new reporting or recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

RHS is committed to complying with the E-Government Act, 44 U.S.C. 3601 *et seq.,* to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

V. Non-Discrimination Policy

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

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

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: OAC@usda.gov.*

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List of Subjects in 7 CFR Part 3550

Administrative practice and procedure, Environmental impact statements, Fair housing, Grant programs-housing and community development, Housing, Loan programs-housing and community development, low- and moderate-income housing, Manufactured homes, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, chapter XXXV, title 7 of the Code of Federal Regulations, is amended as follows:

PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS

■ 1. The authority citation for part 3550 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart A—General

■ 2. Section 3550.10 is amended by revising the definition of ''Modest housing'', adding a definition for ''Principal residence'' in alphabetical order, and revising the definition of ''Veterans' preference'' to read as follows:

§ 3550.10 Definitions.

* * * * *

Modest housing. A property that is considered modest for the area, has a market value that does not exceed the applicable maximum loan limit as established by RHS in accordance with § 3550.63, and is not designed for income producing activities. Existing properties with in-ground pools may be considered modest; however, in-ground pools with new construction or with properties which are purchased new are prohibited.

* * * * *

Principal residence. The home domicile physically occupied by the owner on a permanent basis (*i.e.,* lives there for the majority of the year and is the address of record for such activities as Federal income tax reporting, voter registration, occupational licensing, etc.).

* * * * *

Veterans' preference. A preference extended to a veteran applying for a loan or grant under this part, or the families of deceased servicemen, who meet the criteria in 42 U.S.C. 1477.

■ 3. In § 3550.11, revise paragraphs (a) and (b) to read as follows:

§ 3550.11 State Director assessment of homeownership education.

(a) State Directors will assess the availability of certified homeownership education in their respective states on an as-needed basis but at a minimum every three years and maintain an

updated listing of providers and their reasonable costs.

(b) The order of preference for homeownership education formats will be determined by the Agency based on factors such as industry practice and availability.

* * * * *

Subpart B—Section 502 Origination

■ 4. In § 3550.52, revise paragraphs (a), (c), and (d)(6) to read as follows:

§ 3550.52 Loan Purposes.

* * * * *

(a) *Purchases from existing RHS borrowers.* To purchase a property currently financed by an RHS loan, the new borrower will assume the existing RHS indebtedness or receive new loan funds as determined by the Agency. The Agency will periodically determine whether assumptions or new loans are appropriate on a program wide basis based on the best interest of the government, taking into account factors such as funding availability and staff resources. Regardless of the method, loan funds may be used for eligible costs as defined in paragraph (d) of this section or to permit a remaining borrower to purchase the equity of a departing co-borrower.

* * * * *

(c) *Refinancing RHS debt.* An existing RHS loan may be refinanced in accordance with § 3550.204 to allow the borrower to receive payment assistance. In addition, depending on the availability of funds and program priorities as determined by RHS, an existing RHS loan and the related subsidy recapture may be refinanced as allowed under § 3550.201.

* * * * *

(d) * * *

(6) Packaging fees resulting from the certified loan application packaging process outlined in § 3550.75. The Agency will determine the limit, based on factors such as the level of service provided and the prevailing cost to provide the service, and such cap will not exceed two percent of the national average area loan limit. Nominal packaging fees not resulting from the certified loan application process are an eligible cost provided the fee does not exceed a limit determined by the Agency based on the level and cost of service factors, but no greater than one half percent of the national average area loan limit; the loan application packager is a nonprofit, tax exempt partner that received an exception to all or part of the requirements outlined in § 3550.75 from the applicable Rural Development State Director; and the packager gathers and submits the information needed for the Agency to determine if the applicant is eligible along with a fully completed and signed uniform residential loan application.

* * * * *

■ 5. In § 3550.53, revise paragraphs (a), (c), (g), and (i) to read as follows:

§ 3550.53 Eligibility requirements.

(a) *Income eligibility.* At the time of loan approval, the household's adjusted income must not exceed the applicable low-income limit for the area, and at closing, must not exceed the applicable moderate-income limit for the area (see § 3550.54). When an existing RHS loan is being refinanced as a special servicing action under § 3550.201), the household's adjusted income must not exceed the applicable moderate-income limit for the area at the time of loan approval and closing.

* * * * *

(c) *Principal residence.* Applicants must agree to and have the ability to occupy the dwelling in accordance with the definition found in § 3550.10. If the dwelling is being constructed or renovated, an adult member of the household must be available to make inspections and authorize progress payments as the dwelling is constructed.

* * * * *

(g) *Repayment ability.* Repayment ability means applicants must demonstrate adequate and dependably available income. The determination of income dependability will include consideration of the applicant's history of annual income.

(1) An applicant is considered to have repayment ability when the monthly amount required for payment of principal, interest, taxes, and insurance (PITI), does not exceed thirty-three percent of the applicant's repayment income (PITI ratio). In addition, the monthly amount required to pay PITI plus recurring monthly debts must not exceed forty-one percent of the applicant's repayment income (total debt ratio).

(2) If the applicant's PITI ratio and total debt ratio exceed the percentages specified by the Agency by a minimal amount, compensating factors may be considered. Examples of compensating factors include payment history (if applicant has historically paid a greater share of income for housing with the same income and debt level), savings history, job prospects, and adjustments for nontaxable income.

(3) If an applicant does not meet the repayment ability requirements in this paragraph (g), the applicant can have another party join the application as a cosigner, have other household members join the application, or both.

* * * * *

(i) *Homeownership education.* Applicants who are first-time homebuyers must agree to provide documentation, in the form of a completion certificate or letter from the provider, that a homeownership education course from a certified provider under § 3550.11 has been successfully completed as defined by the provider. Requests for exceptions to the homeownership education requirement in this paragraph (i) will be reviewed and granted on an individual case-by-case basis. The State Director may grant an exception to the homeownership education requirement for individuals in geographic areas within the State where the State Director verifies that certified homeownership education is not reasonably available in the local area in any of the formats listed in § 3550.11(b).

Whether such homeownership education is reasonably available will be determined based on factors including, but not limited to: Distance, travel time, geographic obstacles, and cost. On a case-by-case basis, the State Director also may grant an exception, provided the applicant borrower documents a special need, such as a disability, that would unduly impede completing a homeownership course in a reasonably available format.

■ 6. In § 3550.55, revise paragraphs (c) introductory text and (c)(4) and (5) to read as follows:

§ 3550.55 Applications.

* * * * *

(c) *Selection for processing and funding.* Applications will be selected for processing using the priorities specified in this paragraph (c). Within priority categories, applications will be processed in the order that the completed applications are received. In the case of applications with equivalent priority status that are received on the same day, preference will first be extended to applicants qualifying for a veterans' preference. When funds are limited and eligible applicants will be placed on the waiting list, the priorities specified in this paragraph (c) will be used to determine the selection of applications for available funds.

* * * * *

(4) Fourth priority will be given to applicants seeking loans for the construction of dwellings in an RHS-approved Mutual Self-Help project, loan application packages funneled through an Agency-approved intermediary

under the certified loan application packaging process, and loans that will leverage funding or financing from other sources at a level published in the program handbook.

(5) Applications from applicants who do not qualify for priority consideration in paragraph (c)(1), (2), (3), or (4) of this section will be selected for processing after all applications with priority status have been processed.

* * * * *

■ 7. In § 3550.56, revise paragraphs (b)(1) and (2) and remove paragraph (b)(3).

The revisions read as follows:

§ 3550.56 Site requirements.

* * * * *

(b) * * *

(1) The site must not be large enough to subdivide into more than one site under existing local zoning ordinances and

(2) The site must not include farm service buildings, though small outbuildings such as a storage shed may be included.

■ 8. In § 3550.57, revise paragraph (a) introductory text to read as follows:

§ 3550.57 Dwelling requirements.

(a) *Modest dwelling.* The property must be one that is considered modest for the area, must not be designed for income producing purposes, or have a market value in excess of the applicable maximum area loan limit, in accordance with § 3550.63, unless RHS authorizes an exception under this paragraph (a). An exception may be granted on a case-by-case basis to accommodate the specific needs of an applicant, such as to serve exceptionally large households or to provide reasonable accommodation for a household member with a disability. Any additional loan amount approved must not exceed the amount required to address the specific need. Existing properties with in-ground swimming pools may be considered modest; however, in-ground swimming pools with new construction or with properties which are purchased new are prohibited.

* * * * *

■ 9. In § 3550.59, revise paragraph (a)(2) to read as follows:

§ 3550.59 Security requirements.

* * * * *

(a) * * *

(2) No liens prior to the RHS mortgage exist at the time of closing and no junior liens are likely to be taken immediately after or at the time of closing, unless the other liens are taken as part of a leveraging strategy or the RHS loan is essential for repairs. Any lien senior to the RHS lien must secure an affordable non-RHS loan. Liens junior to the RHS lien may be allowed at loan closing if the junior lien will not interfere with the purpose or repayment of the RHS loan. When the junior lien involves a grant or a forgivable affordable housing product, the total debt may exceed the market value provided:

(i) The RHS loan is fully secured (with allowable exceptions for the tax service fee, appraisal fee, homebuyer education and initial escrow for taxes and insurance);

(ii) The junior lien is for an authorized loan purpose identified in § 3550.52; and

(iii) The grant or forgivable affordable housing product comes from a recognized grant source such as a Community Development Block Grant or a HOME Investment Partnerships Program (HOME).

* * * * *

■ 10. In § 3550.67, revise paragraph (c) to read as follows:

§ 3550.67 Repayment period.

* * * * *

(c) Ten years for loans not exceeding an amount determined by the Agency based on factors such as the performance of unsecured loans in the Agency's portfolio and the Agency's budgetary needs, but not to exceed eight percent of the national average area loan limit.

* * * * *

Subpart C—Section 504 Origination and Section 306C Water and Waste Disposal Grants

■ 11. In § 3550.102, revise paragraph (e)(5) to read as follows:

§ 3550.102 Grant and loan purposes.

* * * * *

(e) * * *

(5) Refinance any debt or obligation of the applicant incurred before the date of application except for the installation and assessment costs of utilities; or subject to the availability of funds and program priorities as determined by RHS, refinance of an existing RHS loan in accordance with § 3550.201 as a special servicing option, including but not limited to refinancing at the end of a moratorium.

* * * * *

■ 12. In § 3550.103, revise paragraph (e) to read as follows:

§ 3550.103 Eligibility requirements.

* * * * *

(e) *Need and use of personal resources.* Applicants must be unable to obtain financial assistance at reasonable terms and conditions from non-RHS credit or grant sources and lack the personal resources to meet their needs. Elderly families must use any net family assets in excess of $20,000 to reduce their section 504 request. Non-elderly families must use any net family assets in excess of $15,000 to reduce their section 504 request. Applicants may contribute assets in excess of the aforementioned amounts to further reduce their request for assistance. The definition of assets for the purpose of this paragraph (e) is net family assets as described in § 3550.54, less the value of the dwelling and a minimum adequate site.

* * * * *

■ 13. In § 3550.104, revise paragraph (c) to read as follows:

§ 3550.104 Applications.

* * * * *

(c) *Processing priorities.* When funding is not sufficient to serve all eligible applicants, applications for assistance to remove health and safety hazards will receive priority for funding. In the case of applications with equivalent priority status that are received on the same day, preference will be extended to applicants qualifying for a veterans' preference. After selection for processing, requests for assistance are funded on a first-come, first-served basis.

■ 14. In § 3550.106, revise paragraph (a) to read as follows:

§ 3550.106 Dwelling requirements.

(a) *Modest dwelling.* The property must be one that is considered modest for the area, must not be designed for income producing purposes, or have a market value in excess of the applicable maximum area loan limit, in accordance with § 3550.63.

* * * * *

■ 15. In § 3550.108, revise paragraph (b)(1) to read as follows:

§ 3550.108 Security requirements (loans only).

* * * * *

(b) * * *

(1) Loans where the total section 504 indebtedness does not exceed an amount determined by the Agency based on factors such as average costs for title insurance and closing agents compared to average housing repair costs, but no greater than twenty percent of the national average area loan limit.

* * * * *

■ 16. In § 3550.112, revise paragraphs (a) introductory text, (a)(1), and (c) to read as follows:

§ 3550.112 Maximum loan and grant.

(a) *Maximum loan permitted.* The sum of all outstanding section 504 loans to one household for one dwelling may not exceed an amount determined by the Agency based on factors such as average loan amounts and repair costs, but no greater than twenty percent of the national average area loan limit.

(1) Transferees who have assumed a section 504 loan and wish to obtain a subsequent section 504 loan are limited to the difference between the unpaid principal balance of the debt assumed and the maximum loan permitted.

* * * * *

(c) *Maximum grant.* The lifetime total of the grant assistance to any one household or one dwelling may not exceed ten percent of the national average area loan limit.

■ 17. In § 3550.113, revise paragraph (b) to read as follows:

§ 3550.113 Rates and terms (loans only).

* * * * *

(b) *Loan term.* The repayment period for all section 504 loans will be 20 years.

Subpart D—Regular Servicing

■ 18. In § 3550.162, revise paragraphs (b)(1) introductory text and (b)(1)(ii) to read as follows:

§ 3550.162 Recapture.

* * * * *

(b) * * *

(1) *General.* The amount to be recaptured is determined by a calculation specified in the borrower's subsidy repayment agreement and is based on the borrower's equity in the property at the time of loan pay off. If there is no equity based on the recapture calculation, the amount of principal reduction attributed to subsidy is not collected. The recapture calculation includes the amount of principal reduction attributed to subsidy plus the lesser of:

* * * * *

(ii) A portion of the value appreciation of the property subject to recapture. In order for the value appreciation to be calculated, the borrower will provide a current appraisal, including an appraisal for any capital improvements, or arm's length sales contract as evidence of market value upon Agency request. Appraisals must meet Agency standards under § 3550.62.

* * * * *

Subpart E—Special Servicing

■ 19. Revise § 3550.201 to read as follows:

§ 3550.201 Purpose of special servicing actions.

The Rural Housing Service (RHS) may approve special servicing actions to reduce the number of borrower failures that result in liquidation. Borrowers who have difficulty keeping their accounts current may be eligible for one or more available servicing options including: Payment assistance; delinquency workout agreements that temporarily modify payment terms; protective advances of funds for taxes, insurance, and other approved costs; and payment moratoriums. Subject to the availability of funds and Agency priorities, refinancing may be available as a special servicing option in accordance with § 3550.52(c).

■ 20. In § 3550.207, revise paragraphs (b)(2) and (c) and remove paragraph (d).

The revisions read as follows:

§ 3550.207 Payment moratorium.

* * * * *

(b) * * *

(2) At least 30 days before the moratorium is scheduled to expire, the borrower must provide financial information needed to process the re-amortization of the loan(s).

(c) *Resumption of scheduled payments.* When the moratorium expires or is cancelled, the loan will be re-amortized to include the amount deferred during the moratorium and the borrower will be required to escrow. If the new monthly payment, after consideration of the maximum amount of payment subsidy available to the borrower, exceeds the borrower's repayment ability, all or part of the interest that has accrued during the moratorium may be forgiven so that the new monthly payment optimizes both affordability to the borrower as well as the best interest of the Government.

Subpart F—Post-Servicing Actions

■ 21. In § 3550.251:

■ a. Revise paragraphs (c)(4) and (5);

■ b. Remove paragraph (c)(6);

■ c. Revise paragraph (d)(2);

■ d. Remove paragraph (d)(3);

■ e. Redesignate paragraph (d)(4) as (d)(3).

The revisions read as follows:

§ 3550.251 Property management and disposition.

* * * * *

(c) * * *

(4) *Sale of program REO properties.* For no less than 30 days after a program REO property is listed for sale, the property will be reserved for sale to eligible direct or guaranteed single family housing very-low, low- or moderate income applicants under this part or part 3555 of this title, and for sale or lease to nonprofit organizations or public bodies providing transitional housing and turnkey housing for tenants of such transitional housing in accordance with 42 U.S.C. 11408a. Offers from eligible direct or guaranteed single family housing applicants are evaluated at the listed price, not the offering price. Priority of offers received the same day from eligible direct or guaranteed single family housing applicants will be given to applicants qualifying for veterans' preference, cash offers from highest to lowest, then credit offers from highest to lowest. Acceptable offers of equal priority received on the same business day are selected by lot. After the expiration of a reservation period, REO properties can be bought by any buyer.

(5) *Sale by sealed bid or auction.* RHS may authorize the sale of an REO property by sealed bid or public auction when it is in the best interest of the Government.

(d) * * *

(2) RHS shall follow the standards and procedures in 42 U.S.C. 11408a for the sale or lease of an REO property to a public agency or nonprofit organization. The terms of the sale and lease, and the entity seeking to purchase or lease the REO property, must meet the requirements in 42 U.S.C. 11408a.

* * * * *

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2022–02470 Filed 2–4–22; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3555

[Docket No. RHS–20–SFH–0025]

RIN 0575–AD21

Single Family Housing Guaranteed Loan Program

AGENCY: Rural Housing Service, U.S. Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or Agency), is implementing changes to Single-Family Housing Guaranteed Loan Program (SFHGLP) to mandate the use of the Guaranteed Underwriting System (GUS) and the

Lender Loan Closing System (LLC) by approved lenders. The Agency's mandated use of GUS in loan originations and the LLC for loan closings will allow the Agency to decrease time-consuming and expensive manual file reviews, improve performance monitoring and reduce program risk of the guaranteed loan portfolio.

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

FOR FURTHER INFORMATION CONTACT: Ticia Weare, Finance and Loan Analyst, Single Family Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, STOP 0784, Room 2250, South Agriculture Building, 1400 Independence Avenue SW, Washington, DC 20250–0784. Telephone: (702) 407–1400 x6001; or email: *ticia.weare@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Rural Housing Service (RHS or Agency) is an agency of the U.S. Department of Agriculture. RHS is issuing a final rule to amend the Single-Family Housing Guaranteed Loan Program (SFHGLP) regulations found in 7 CFR part 3555, subparts C and D, by updating the regulations to align the Agency's program with the mortgage industry expectations in the domain of information technology.

In order to provide efficient and timely delivery of the SFHGLP, it is necessary to streamline the processing of SFHGLP applications using automation initiatives as much as possible. The Agency is revising the regulation to mandate that lenders utilize GUS and the LLC systems for all supported applications and loan closing files. Mandatory use of GUS and the LLC will allow uniformity in application submissions, consistency in the timely processing of loan requests and will save time and administrative costs for both lenders and the Agency by eliminating the requirement for paper file storage, shredding costs, and mail with overnight courier fees.

GUS is compatible with the Loan Origination Systems and Point of Sale vendors that are widely accepted throughout the industry. All SFHGLP loan products are supported by GUS, except for streamlined-assist refinance transactions and select pilot programs. Lenders will continue to submit manually underwritten files for these types of transactions by electronic means approved by the Agency. These loans are different from loans downgraded in GUS for manual underwriting—the downgraded loans will continue to be submitted via GUS for a manual review. Mandatory use of the automated underwriting system not only offers ease to lenders when uploading closing documents and payment of the guarantee and technology fees using the LLC, but efficiently and effectively allows Agency staff the capability to review loan applications, increases lender's ability to transfer loans to program investors, and lessens the timeframe for underwriting and processing loan approvals.

GUS is a robust automated system that processes application requests and provides specific loan closing data to the lender and the Agency. It offers added benefits to the lender's decision-making process by producing underwriting findings reports and reliable credit data for managing borrower risks.[1] Expanded use of the system will maximize the impact of core agency programs and drive innovation that will remove obstacles that delay loan production.

This final rule will change how the agency receives loan requests by mandating the use of GUS for all supported loan type submissions and the LLC for all loan submissions. Currently, the Agency allows approved lenders to submit applications for loan guarantee requests by mail, electronic mail (email) or GUS.

Discussion of Public Comments Received on January 19, 2021 Proposed Rule

On November 17, 2020, RHS published a proposed rule for comments on the mandatory use of GUS for SFHGLP (85 FR 73241). The Agency received comments from eighteen respondents including Banks, Credit Unions, and other interested parties. Specific public comments are addressed below:

Comment: Two respondents' comments were unrelated to the proposed rule. One was an inquiry for small business loan assistance and the other, a business advertisement.

Agency Response: The Agency has determined that no action is required.

Comment: Two respondents commented that the benefit of the proposed rule will improve efficiency and effectiveness; however, they are concerned with the elimination of manual underwriting considering the automated underwriting system may be inadequate for certain credit risk scenarios and want to ensure an accommodation is considered for these scenarios.

Agency Response: The Agency has determined that no action is required, the manual underwriting process remains unchanged for the following GUS recommendations of ''Refer, Refer with Caution''.

Comment: Eight respondents commented they are concerned that the requirement for all lenders to submit requests through GUS would eliminate manual underwriting for submissions that receive a GUS recommendation of ''Refer or Refer with Caution''. In addition, applicants without a credit score may be unable to apply.

Agency Response: The use of alternate credit and the manual underwriting process remains unchanged for the following GUS recommendations: Refer, Refer with Caution. The Agency has provided clarification in § 3555.107(c)(1) and § 3555.107(c)(2), by adding language explaining loans with GUS recommendations of ''Refer and Refer with Caution'' will continue to be manually underwritten. Clarification was added to § 3555.107(i)(4), explaining all closed loans including manual submissions are required to use Rural Development's automated systems.

Comment: Four respondents commented in favor of the proposed rule and indicate the rule will create a positive impact on consistency and efficiency.

Agency Response: The Agency has determined that no action is required.

Comment: Two respondents commented in opposition to the proposed rule, one citing a possible adverse impact on smaller lenders with limited resources who rely on manual submissions and the other cited concerns over accuracy of the data input as well as an economic impact the proposed rule may have.

Agency Response: The Agency has determined that no action is required. The Agency does not anticipate a barrier to program participation and offers two opportunities to participate: (1) Through a connection with the lender's point of sale or loan origination system, (2) entering loan application information directly into GUS. GUS is available to all approved lenders with eAuthentication credentials. The Agency has an established process for lenders to obtain eAuthentication credentials online that is free, easy, and does not create a burden to the lender. It is anticipated that the rule will provide more consistent and timely reviews which will benefit all lenders including small lenders.

[1] GUS is a tool that helps evaluate the credit risk but does not replace the informed judgment of the experienced underwriter's decision and does not serve the sole basis for making a final loan decision. *See* 7 CFR 3555.107(b).

Summary of Changes to Rule

A summary of the changes includes amending 7 CFR 3555.107(b) introductory text and (b)(1), (3),and (6), to reflect that the use of the Agency's automated underwriting system will be required for all supported submissions by alternate means, such as email or hard copy, will not be permitted and therefore the Agency will eliminate references to such submission methods.

This final rule also amends § 3555.107(c) and add paragraphs (c)(1) and (2) to describe the two types of loans that will continue to be manually underwritten. First, loan products not supported by the automated origination system, such as streamlined-assist refinance transactions and select pilot programs, must be manually underwritten and submitted via secure email or other electronic means approved by the Agency. Second, loans downgraded in the Agency's automated origination system require manual underwriting, although lenders will continue to submit the loan documentation via the Agency's automated systems.

Concurrently, § 3555.107(i)(4) will be amended to require all loan closing documentation to be submitted via the Agency's automated systems.

Regulations § 3555.151(h)(2) will also be amended to clarify procedures for manually underwritten loans. The loan files for manually underwritten loans will continue to be submitted through the automated underwriting system but require full documentation review, and credit score validation or compensating factors.

Statutory Authority

Section 510(k) of Title V the Housing Act of 1949 (42 U.S.C. 1480(k)), as amended, authorizes the Secretary of the Department of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title.

Executive Orders and Acts

Executive Order 12866, Classification

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

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) Unless otherwise specifically provided, all state and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, or tribal governments, in the aggregate, or to the private sector, of $100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, and tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Environmental Policy Act

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

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

The final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this final rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program is not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented under USDA's regulations at 7 CFR part 3015.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

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

Programs Affected

The program affected by this final rule is listed in the Assistance Listing Number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

This final rule contains no new reporting or recordkeeping burdens under OMB control number 0575–0179 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Civil Rights Impact Analysis

Rural Development has reviewed this final rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, marital or familial status. Based on the review and analysis of the rule and all available data, issuance of this final rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status.

E-Government Act Compliance

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

USDA Non-Discrimination Policy

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

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.ocio.usda.gov/document/ad-3027,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

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

List of Subjects in 7 CFR Part 3555

Construction, Eligible loan purpose, Home improvement, Loan programs—housing and community development, Loan terms, Mortgage insurance, Mortgages, Rural areas.

For the reasons discussed in the preamble, the Agency is amending 7 CFR part 3555 as follows:

PART 3555—GUARANTEED RURAL HOUSING PROGRAM

■ 1. The authority citation for part 3555 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1471 *et seq.*

Subpart C—Loan Requirements

■ 2. Amend § 3555.107 by revising paragraphs (b) introductory text, (b)(1), (3), and (6), (c), and (i)(4) to read as follows:

§ 3555.107 Applications for and issuance of the loan guarantee.

* * * * *

(b) *Automated underwriting.* Approved lenders are required to process SFHGLP loans using Rural Development's automated systems. The automated underwriting system is a tool to help evaluate credit risk but does not substitute or replace the careful judgment of experienced underwriters and shall not be the exclusive determination on extending credit. The lender must apply for and receive approval from Rural Development to utilize the automated underwriting system. Rural Development reserves the right to terminate the lender's use of the automated underwriting system.

(1) Lenders are responsible for ensuring all data is true and accurately represented in the automated underwriting system.

* * * * *

(3) The use of Rural Development's automated underwriting system subjects the lender to indemnification requirements in accordance with § 3555.108.

* * * * *

(6) Lenders will validate findings based on the output report of the automated underwriting system.

* * * * *

(c) *Manual underwriting.* Loans requiring manual underwriting (manually underwritten loans) are described in paragraphs (c)(1) and (2) of this section. For manually underwritten loans, full documentation, and verification in accordance with subparts C, D, and E of this part will be submitted to Rural Development when requesting a guarantee and maintained in the lender's file. The documentation will confirm the applicant's eligibility, creditworthiness, repayment ability, eligible loan purpose, adequate collateral, and satisfaction of other regulatory requirements. The following types of loans require manual underwriting:

(1) Loans downgraded by Rural Development's automated system. These loans are manually underwritten by the lender and submitted utilizing Rural Development's automated system.

(2) Loans that are not supported by Rural Development's automated systems. These loans are manually underwritten by the lender and submitted by secure email or other electronic means approved by the Agency.

* * * * *

(i)* * *

(4) For all loan submissions, evidence of documentation supporting the properly closed loan will be submitted using Rural Development's automated systems.

* * * * *

Subpart D—Underwriting the Applicant

■ 3. Amend § 3555.151 by revising paragraph (h)(2) introductory text to read as follows:

§ 3555.151 Eligibility requirements.

* * * * *

(h) * * *

(2) The repayment ratio may exceed the percentage in paragraph (h)(1) of this section when certain compensating factors exist. The handbook, HB–1–3555, Appendix I, located at *https://www.rd.usda.gov/sites/default/files/hb-1-3555.pdf,* will provide examples of

when a debt ratio waiver may be granted. The automated underwriting system will consider any compensating factors in determining when the variance is appropriate. Loans downgraded in the automated underwriting system which must be manually underwritten will require the lender to document compensating factors. The presence of compensating factors does not strengthen a ratio exception when multiple layers of risk are present in the application. Acceptable compensating factors, supporting documentation, and maximum ratio thresholds, will be further defined and clarified in the handbook. Compensating factors include but are not limited to:

* * * * *

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2022–02467 Filed 2–4–22; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0791; Project Identifier AD–2021–00716–E; Amendment 39–21881; AD 2021–26–22]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–20–13 for certain General Electric Company (GE) CF6–80A and CF6–80C model turbofan engines. AD 2020–20–13 required ultrasonic inspection (UI) of high-pressure turbine (HPT) stage 1 and stage 2 disks and replacement of any HPT stage 1 or stage 2 disk that fails the inspection. This AD was prompted by an uncontained failure of an HPT stage 2 disk and the manufacturer's subsequent determination to expand the population of affected HPT disks requiring UI inspection. This AD requires UI of HPT stage 1 and stage 2 disks and replacement of any HPT stage 1 or stage 2 disk that fails the inspection. This AD also expands the applicability to include an additional population of affected HPT stage 1 and 2 disks requiring UI inspection. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 14, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 14, 2022.

ADDRESSES: For service information identified in this final rule, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com;* website: *www.ge.com.* You may view this service information at the Airworthiness Products Section, Operational Safety Branch, FAA, 1200 District Avenue, Burlington, MA 01803. 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–2021–0791.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0791; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7241; fax: (781) 238–7199; email: *Sungmo.D.Cho@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–20–13, Amendment 39–21269 (85 FR 63193, October 7, 2020), (AD 2020–20–13). AD 2020–20–13 applied to certain GE CF6–80A, CF6–80A1, CF6–80A2, CF6–80A3, CF6–80C2A1, CF6–80C2A2, CF6–80C2A3, CF6–80C2A5, CF6–80C2A5F, CF6–80C2A8, CF6–80C2B1, CF6–80C2B1F, CF6–80C2B2, CF6–80C2B2F, CF6–80C2B4, CF6–80C2B4F, CF6–80C2B5F, CF6–80C2B6, CF6–80C2B6F, CF6–80C2B6FA, CF6–80C2B7F, CF6–80C2D1F, CF6–80C2L1F, and CF6–80C2K1F model turbofan engines. The NPRM published in the **Federal Register** on October 6, 2021 (86 FR 55545). The NPRM was prompted by an uncontained failure of an HPT stage 2 disk and the manufacturer's determination to expand the population of affected HPT disks requiring UI inspection. After the FAA issued AD 2020–20–13, the manufacturer discovered an error in the service information and determined that the requirement to perform UI of affected HPT stage 1 and 2 disks should be expanded to include an additional population of HPT stage 1 and stage 2 disks. GE, therefore, revised its service information to include the additional affected HPT stage 1 and stage 2 disks. In the NPRM, the FAA proposed to continue to require UI of HPT stage 1 and stage 2 disks and replacement of any HPT stage 1 or stage 2 disk that fails the inspection. In the NPRM, the FAA also proposed to expand the applicability to include an additional population of affected HPT stage 1 and 2 disks.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from two commenters. Commenters included the Air Line Pilots Association, International and FedEx Express. All commenters supported the NPRM without change.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed GE CF6–80C Service Bulletin (SB) 72–1562 R05, dated March 19, 2021. This SB specifies procedures for UI of CF6–80C2 turbofan engine HPT stage 1 and 2 disks. The FAA also reviewed GE CF6–80A SB 72–0869 R03, dated March 19, 2021. This SB specifies procedures for UI of CF6–80A turbofan engine HPT stage 2 disks. These documents are distinct since they apply to different engine models. 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**.

Costs of Compliance

The FAA estimates that this AD affects 1,512 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
UI of HPT stage 1 and stage 2 disks	10 work-hours × $85 per hour = $850	$0	$850	$1,285,200

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the 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
Replace CF6–80C2 HPT stage 1 disk	0.25 work-hours × $85 per hour = $21.25	$799,700	$799,721.25
Replace CF6–80C2 HPT stage 2 disk	0.25 work-hours × $85 per hour = $21.25	364,600	364,621.25
Replace CF6–80A HPT stage 2 disk	0.25 work-hours × $85 per hour = $21.25	344,000	344,021.25

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2020–20–13, Amendment 39–21269 (85 FR 63193, October 7, 2020); and

■ b. Adding the following new airworthiness directive:

2021–26–22 General Electric Company: Amendment 39–21881; Docket No. FAA–2021–0791; Project Identifier AD–2021–00716–E.

(a) Effective Date

This airworthiness directive (AD) is effective March 14, 2022.

(b) Affected ADs

This AD replaces AD 2020–20–13, Amendment 39–21269 (85 FR 63193, October 7, 2020).

(c) Applicability

This AD applies to General Electric Company (GE) CF6–80A, CF6–80A1, CF6–80A2, CF6–80A3, CF6–80C2A1, CF6–80C2A2, CF6–80C2A3, CF6–80C2A5, CF6–80C2A5F, CF6–80C2A8, CF6–80C2B1, CF6–80C2B1F, CF6–80C2B2, CF6–80C2B2F, CF6–80C2B4, CF6–80C2B4F, CF6–80C2B5F, CF6–80C2B6, CF6–80C2B6F, CF6–80C2B6FA, CF6–80C2B7F, CF6–80C2D1F, CF6–80C2L1F, and CF6–80C2K1F model turbofan engines with an installed high-pressure turbine (HPT) disk with a serial number (S/N) listed in Table 1 or 2 of Appendix A, paragraph 4., in GE CF6–80C2 Service Bulletin (SB) 72–1562 R05, dated March 19, 2021 (GE SB 72–1562), and Table 1 of Appendix—A, paragraph 4., in GE CF6–80A SB 72–0869 R03, dated March 19, 2021 (GE SB 72–0869).

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by an uncontained failure of an HPT stage 2 disk and the manufacturer's determination to expand the population of affected HPT disks requiring ultrasonic inspection (UI). The FAA is issuing this AD to prevent failure of the HPT stage 1 disk (CF6–80C2 engines) and the HPT stage 2 disk (CF6–80C2 and CF6–80A engines). The unsafe condition, if not addressed, could result in an uncontained HPT disk release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For CF6–80C2 model turbofan engines, at each piece-part exposure after the effective

date of this AD, perform a UI of affected HPT stage 1 and stage 2 disks using the Accomplishment Instructions, paragraph 3.A.(2), of GE SB 72–1562.

(2) For CF6–80A model turbofan engines, at each piece-part exposure after the effective date of this AD, perform a UI of affected HPT stage 2 disks using the Accomplishment Instructions, paragraph 3.A.(2), of GE SB 72–0869.

(3) If any disk fails the inspection required by paragraph (g)(1) or (2) of this AD, replace the disk with a part eligible for installation before further flight.

(h) No Reporting Requirements

The reporting requirements specified in the Accomplishment Instructions, paragraphs 3.A.(2)(c) and 3.A.(2)(f), of GE SB 72–1562, and paragraph 3.A.(3), of GE SB 72–0869, are not required by this AD.

(i) Definitions

(1) For the purpose of this AD, a ''part eligible for installation'' is an HPT stage 1 or stage 2 disk:

(i) That has been inspected in accordance with paragraph (g)(1) or (2) of this AD and a rejectable indication was not found; or

(ii) With an S/N not listed in Table 1 or 2 of Appendix A, paragraph 4., in GE SB 72–1562, or Table 1 of Appendix—A, paragraph 4., in GE SB 72–0869.

(2) For the purpose of this AD, ''piece-part exposure'' of the HPT stage 1 or stage 2 disk is the separation of that HPT disk from its mating rotor parts within the HPT rotor module (thermal shield and HPT stage 1 and stage 2 disk, respectively).

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO 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 (k) of this AD. Information may be emailed to: *ANE-AD-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 Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7241; fax: (781) 238–7199; email: *Sungmo.D.Cho@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) GE CF6–80C Service Bulletin (SB) 72–1562 R05, dated March 19, 2021.

(ii) GE CF6–80A SB 72–0869 R03, dated March 19, 2021.

(3) For GE service information identified in this AD, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com;* website: *www.ge.com.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on December 16, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–02455 Filed 2–4–22; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0541; FRL–9418–01–OCSPP]

2-Isobutyl-2-methyl-1,3-dioxolane-4-methanol; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol (CAS Reg. No. 5660–53–7) when used as an inert ingredient (solvent/cosolvent) on growing crops and raw agricultural commodities after harvest, and in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils. SciReg, Inc., on behalf of Solvay USA Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol, when used in accordance with the terms of those exemptions.

DATES: This regulation is effective February 7, 2022. Objections and requests for hearings must be received on or before April 8, 2022, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0541, 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 concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, 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. General Information

A. Does this action apply to me?

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

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

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0541 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before April 8, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0541, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of December 15, 2017 (82 FR 59604) (FRL–9970–50), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11066) by SciReg Inc., 12733 Director's Loop, Woodbridge, VA, 22192 on behalf of Solvay USA Inc., 504 Carnegie Center, Princeton, NJ, 08540. The petition requested that 40 CFR 180.910 and 180.940(a) be amended by establishing an exemption from the requirement of a tolerance for residues of 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol (CAS Reg. No. 5660–53–7) when used as an inert ingredient (solvent/co-solvent) in pesticide formulations applied to growing crops or raw agricultural commodities after harvest under 40 CFR 180.910 and when used in antimicrobial formulations (food-contact surface sanitizing solutions) applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils under 40 CFR 180.940(a). That document referenced a summary of the petition prepared by SciReg, Inc., on behalf of Solvay USA Inc., the petitioner, which is available in the docket, *https://www.regulations.gov.* There were no relevant comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. When making a safety determination for an exemption for the requirement of a tolerance FFDCA section 408(c)(2)(B) directs EPA to consider the considerations in section 408(b)(2)(C) and (D). Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . . '' Section 408(b)(2)(D) lists other factors for EPA consideration making safety determinations, *e.g.,* the validity, completeness, and reliability of available data, nature of toxic effects, available information concerning the cumulative effects of the pesticide chemical and other substances with a common mechanism of toxicity, and available information concerning aggregate exposure levels to the pesticide chemical and other related substances, among others.

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for 2-isobutyl-2-

methyl-1,3-dioxolane-4-methanol including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies

The toxicological database of 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol is supported by data regarding 2,2-dimethyl-1,3-dioxolane-4-methanol. EPA has determined that it is appropriate to bridge 2,2-dimethyl-1,3-dioxolane-4-methanol data due to similarities in the manufacturing processes, functional groups/structure, composition, and physical/chemical properties, and among the available human health toxicity and ecological toxicity data of the two substances.

2-Isobutyl-2-methyl-1,3-dioxolane-4-methanol exhibits low levels of acute toxicity via the oral, dermal, and inhalation routes of exposure. In the rat, the oral LD_{50} 7,000 mg/kg, the dermal LD_{50} > 2,000 mg/kg, and the inhalation LC_{50} is > 5.11 mg/L. It is not irritating to the rabbit skin. It is irritating to the rabbit eye. It is not a dermal sensitizer, it is negative for mutagenicity and the DEREK analysis indicates it is unlikely to pose a carcinogenic risk to humans. In a 6-week, repeat-dose toxicity study with reproduction/developmental screening, the maternal, offspring and reproduction NOAELs were 1,000 mg/kg/day.

There were no studies/data directly related to the possible neurotoxicity of 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol. However, evidence of potential neurotoxicity was not observed in functional observation battery (FOB) performed in the developmental study in the rat. Therefore, 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol is not expected to be neurotoxic.

There were no studies/data directly related the immunotoxic potential of 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol. There were no indications of possible immunotoxicity from the data that are available.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www.epa.gov/pesticides/factsheets/riskassess.html.*

The hazard profile of 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol is adequately defined. Overall, 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol is of low acute, subchronic, and developmental toxicity. No systemic toxicity is observed up to 1,000 mg/kg/day. Since signs of toxicity were not observed, no endpoint of concern was identified. Therefore, a qualitative risk assessment for 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol was conducted.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol in food as follows:

Dietary exposure (food and drinking water) to 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol may occur following ingestion of foods with residues from their use in accordance with this exemption. However, a quantitative dietary exposure assessment was not conducted since a toxicological endpoint for risk assessment was not identified.

2. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

2-Isobutyl-2-methyl-1,3-dioxolane-4-methanol may be used in pesticide products and non-pesticide products that may be used in and around the home. Based on the discussion above regarding the low toxicity of the 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol, a quantitative residential exposure assessment was not conducted.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Based on the lack of toxicity in the available data, 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol and its metabolites are not expected to share a common mechanism of toxicity with other chemicals; therefore, section 408(b)(2)(D)(v) does not apply.

D. Safety Factor for Infants and Children

In general. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Because there are no threshold effects associated with 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol, EPA conducted a qualitative assessment. As part of that assessment, the Agency did not use safety factors for assessing risk, and no

additional safety factor is needed for assessing risk to infants and children. Based on an assessment of 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol, EPA has concluded that there are no toxicological endpoints of concern for the U.S. population, including infants and children.

E. Aggregate Risks and Determination of Safety

Because no toxicological endpoints of concern were identified, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol residues.

V. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

VI. Conclusions

Therefore, exemptions from the requirement of a tolerance is established for residues of 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol (CAS Reg. No. 5660–53–7) when used as an inert ingredient (solvent/co-solvent) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest under 40 CFR 180.910 and when used in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils under 40 CFR 180.940(a).

VII. Statutory and Executive Order Reviews

This action establishes exemptions from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemptions in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. 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 amending 40 CFR chapter I 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 § 180.910, amend Table 1 to 180.910 by adding, in alphabetical order, an entry for ''2-Isobutyl-2-methyl-1,3-dioxolane-4-methanol (CAS Reg. No. 5660–53–7)'' to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO 180.910

Inert ingredients	Limits	Uses
* * * * *	*	*
2-Isobutyl-2-methyl-1,3-dioxolane-4-methanol (CAS Reg. No. 5660–53–7)		Solvent/Co-solvent.
* * * * *	*	*

■ 3. In § 180.940, amend Table 1 to Paragraph (a) by adding, in alphabetical order, an entry for ''2-Isobutyl-2-methyl-1,3-dioxolane-4-methanol'' to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Inert ingredients	CAS Reg. No.	Limits
* * * * *	*	*
2-Isobutyl-2-methyl-1,3-dioxolane-4-methanol	5660–53–7	
* * * * *	*	**

* * * * *

[FR Doc. 2022–02495 Filed 2–4–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 659

[Docket No. FTA–2022–0003]

RIN 2132–AB39

Rail Fixed Guideway Systems; State Safety Oversight; Rescission

AGENCY: Federal Transit Administration (FTA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rulemaking rescinds an FTA regulation for State Safety Oversight requirements. The statutory basis for this regulation was rescinded by legislation in 2012.

DATES: This final rule is effective on February 7, 2022.

FOR FURTHER INFORMATION CONTACT: Emily Jessup, Office of Chief Counsel, (202) 366–8907 or *Emily.Jessup@dot.gov.* Office hours are from 9 a.m. to 5:30 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document is viewable online through the Federal eRulemaking portal at *http://www.regulations.gov.* Retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days a year. An electronic copy of this document is available for download from the Office of the Federal Register home page at: *http://www.ofr.gov* and the Government Publishing Office web page at: *http://www.gpo.gov.*

Background

Part 659 in title 49 of the Code of Federal Regulations contains State Safety Oversight (SSO) requirements for rail fixed guideway systems. These regulations were authorized by 49 U.S.C. 5330, State Safety Oversight, which was repealed by Section 20030(e) of the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141). In 2016, FTA replaced 49 CFR part 659 with a new SSO final rule, codified at 49 CFR part 674 (81 FR 14230). 49 CFR 674.9(b) provides that FTA will rescind the regulations codified at Part 659 no later than April 15, 2019.

Discussion of the Changes

This action rescinds 49 CFR part 659, State Safety Oversight (SSO) requirements for rail fixed guideway systems, because the statutory basis for these regulations was repealed by MAP–21. These regulations were replaced with a new SSO final rule, codified at 49 CFR part 674. The regulations at part 674 are intended to carry out several explicit statutory mandates to strengthen the States' oversight of the safety of their Rail Transit Agencies (RTAs) enacted through Section 20021 of MAP–21 and codified at 49 U.S.C. 5329. 49 CFR 674.9(b) provides that FTA will rescind the regulations codified at part 659 no later than April 15, 2019, three years following the effective date of Part 674. The three-year delayed rescission permitted RTAs to have a part 659 System Safety Program Plan in place until the Public Transportation Agency Safety Plan (PTASP) regulation deadline (See 49 CFR 673.11(e)). FTA delayed the rescission, in part due to the deferred enforcement of the PTASP regulation deadline. FTA's most recent PTASP notice of enforcement discretion expired on July 20, 2021 and all applicable RTAs have certified their compliance with the PTASP regulation. Therefore, it is now timely to rescind the part 659 regulations.

Good Cause for Dispensing With Notice and Comment and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the normal notice and comment procedure if it finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest. Additionally, 5 U.S.C. 553(d) provides that an agency may waive the 30-day delayed effective date upon finding of good cause.

FTA finds good cause that notice and comment for this rule is unnecessary due to the nature of the revisions (*i.e.,* the rule simply carries out the statutory repeal included in MAP–21). The statutory language does not require regulatory interpretation to carry out its intent, and comments cannot alter the regulation given that the statute abrogated its purpose. Further, the delayed effective date is unnecessary because the removal of these safety regulations was already made effective by MAP–21 and the publication of new safety regulations at 49 CFR part 674. Accordingly, FTA finds good cause under 5 U.S.C. 553(b)(3)(B) and (d)(3) to waive notice and opportunity for comment and the delayed effective date.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Department of Transportation (DOT) Regulatory Policies and Procedures

FTA has determined that this rulemaking is not a significant regulatory action within the meaning of Executive Order 12866, and within the meaning of DOT regulatory policies and procedures. This action complies with Executive Orders 12866 and 13563 to improve regulation.

Regulatory Flexibility Act

Because FTA finds good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) do not apply. FTA evaluated the effects of this action on small entities and determined the action would not have a significant economic impact on a substantial number of small entities. FTA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

FTA has determined that this rule does not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule does not include a Federal mandate that may result in expenditures of $155.1 million or more in any 1 year (when adjusted for inflation) in 2012 dollars for either State, local, and tribal governments in the aggregate, or by the private sector. Additionally, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal Transit Act permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and FTA determined this action will not have a substantial direct effect or sufficient federalism implications on the States. FTA also determined this action will not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FTA has analyzed this rule under the Paperwork Reduction Act and believes that it does not impose additional information collection requirements for the purposes of the Act above and beyond existing information collection clearances from OMB.

National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) Those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This rule qualifies for categorical exclusions under 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction). FTA has evaluated whether the rule will involve unusual or extraordinary circumstances and has determined that it will not.

Executive Order 12630 (Taking of Private Property)

FTA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FTA does not believe this rule affects a taking of private property or otherwise has taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FTA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this action will not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this rule under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12898 (Environmental Justice)

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012) (available online at *http://www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/order_56102a/index.cf*) require DOT agencies to achieve Environmental Justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and low-income populations. All DOT agencies must address compliance with Executive Order 12898 and the DOT Order in all rulemaking activities. On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities (available online at *http://www.fta.dot.gov/documents/FTA_EJ_Circular_7.14-12_FINAL.pdf*).

FTA has evaluated this action under the Executive Order, the DOT Order, and the FTA Circular and FTA has determined that this action will not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this rule with the Unified Agenda.

List of Subjects in 49 CFR Part 659

Grant programs—Transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Security, Transportation.

Nuria I. Fernandez,

Administrator.

PART 659—[REMOVED AND RESERVED]

In consideration of the foregoing, and under the authority of 49 U.S.C. 5329, Public Law 112–141, and 49 CFR 1.91, FTA amends 49 CFR chapter VI by removing and reserving part 659.

[FR Doc. 2022–02489 Filed 2–4–22; 8:45 am]

BILLING CODE P

Proposed Rules

Federal Register
Vol. 87, No. 25
Monday, February 7, 2022

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2021–BT–DET–0034]

Energy Conservation Program: Proposed Determination of Miscellaneous Gas Products as a Covered Consumer Product

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

ACTION: Notification of proposed determination and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'') has tentatively determined that miscellaneous gas products, which are comprised of decorative hearths and outdoor heaters, qualify as covered products under Part A of Title III of the Energy Policy and Conservation Act, as amended (''EPCA''). DOE has tentatively determined that coverage of miscellaneous gas products is necessary and appropriate to carry out the purposes of EPCA, and that the average U.S. household energy use for miscellaneous gas products is likely to exceed 100 kilowatt-hours per year.

DATES: Written comments, data, and information are requested and will be accepted on or before April 8, 2022.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2021–BT–DET–0034, via email to *CoveredGasProducts2021DET0034@ee.doe.gov.* Include docket number EERE–2021–BT–DET–0034 in the subject line of the message.

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

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing coronavirus 2019 (''COVID–19'') pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

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

The docket web page can be found at *www.regulations.gov/docket/EERE-2021-BT-DET-0034.*

The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VI, ''Public Participation,'' for further information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

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

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

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I. Statutory Authority

EPCA [1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain

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

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

consumer products, referred to generally as ''covered products.'' [3] In addition to specifying a list of consumer products that are covered products, EPCA authorizes the Secretary of Energy to classify additional types of consumer products as covered products. EPCA defines a ''consumer product'' in relevant part as any article (other than an automobile) of a type—(A) which in operation consumes, or is designed to consume, energy; and (B) which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual.[4] (42 U.S.C. 6291(a)(1)) For a given consumer product to be classified as a covered product, the Secretary must determine that:

(1) Classifying the product as a covered product is necessary or appropriate to carry out the purposes of EPCA; and

(2) The average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours (''kWh'') (or its British thermal unit (''Btu'') equivalent) per year. (42 U.S.C. 6292(b)(1)) [5]

When attempting to cover additional consumer product types, DOE must first determine whether these criteria from 42 U.S.C. 6292(b)(1) are met. Once a determination is made, the Secretary may prescribe test procedures to measure the energy efficiency or energy use of such product. (42 U.S.C. 6293(a)(1)(B)) Furthermore, once a product is determined to be a covered product, the Secretary may set standards for such product, subject to the provisions in 42 U.S.C. 6295(o) and (p), provided that DOE determines that four additional criteria at 42 U.S.C. 6295(*l*) have been met. Specifically, 42 U.S.C. 6295(*l*) requires the Secretary to determine that:

(1) The average household energy use of the products has exceeded 150 kWh per household for a 12-month period;

(2) The aggregate 12-month energy use of the products has exceeded 4,200 gigawatt-hours;

(3) Substantial improvement in energy efficiency of products of such type is technologically feasible; and

(4) Application of a labeling rule under 42 U.S.C. 6294 is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) that achieve the maximum energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(l)(1))

II. Rulemaking History

A. April 2010 Final Rule

On April 16, 2010, DOE published a final rule in the **Federal Register**, which, in relevant part, promulgated definitions and energy conservation standards for certain direct heating equipment, *i.e.,* vented gas hearth products. 75 FR 20111 (''April 2010 final rule'').[6] In the April 2010 final rule, DOE concluded that vented hearth products—which were described as including gas-fired products such as fireplaces, fireplace inserts, stoves, and log sets that typically include aesthetic features and that provide space heating—meet the definition of ''vented home heating equipment.'' *Id.* 75 FR 20128. In the April 2010 final rule, DOE also adopted a definition of ''vented hearth heater'' as a vented appliance which simulates a solid fuel fireplace and is designed to furnish warm air, with or without duct connections, to the space in which it is installed. The circulation of heated room air may be by gravity or mechanical means. A vented hearth heater may be freestanding, recessed, zero clearance, or a gas fireplace insert or stove. Those heaters with a maximum input capacity less than or equal to 9,000 British thermal units per hour (''Btu/h''), as measured using DOE's test procedure for vented home heating equipment (10 CFR part 430, subpart B, appendix O), are considered purely decorative and are excluded from DOE's regulations. *Id.* 75 FR 20130.

B. November 2011 Final Rule

On November 18, 2011, DOE published a final rule that amended the definition of vented hearth heater, in relevant part, by removing the maximum capacity threshold to distinguish vented hearth heaters from purely decorative heaters and adding other criteria in its place to determine such differentiation. 76 FR 71836 (''November 2011 final rule''). These criteria included specific types of hearth products, safety standard certifications, labeling, and prescriptive elements (*i.e.,* sold without a thermostat and without a standing pilot light). *Id.* 76 FR 71859. The November 2011 final rule defined a vented hearth heater as a vented appliance which simulates a solid fuel fireplace and is designed to furnish warm air, with or without duct connections, to the space in which it is installed. The circulation of heated room air may be by gravity or mechanical means. A vented hearth heater may be freestanding, recessed, zero clearance, or a gas fireplace insert or stove. The following products are not subject to the energy conservation standards for vented hearth heaters:

- Vented gas log sets; and
- Vented gas hearth products that meet all of the following four criteria:
  - ○ Certified to American National Standards Institute (''ANSI'') Z21.50,[7] but not to ANSI Z21.88; [8]
  - ○ Sold without a thermostat and with a warranty provision expressly voiding all manufacturer warranties in the event the product is used with a thermostat;
  - ○ Expressly and conspicuously identified on its rating plate and in all manufacturer's advertising and product literature as a ''Decorative Product: Not for use as a Heating Appliance''; and
  - ○ With respect to products sold after January 1, 2015, not equipped with a standing pilot light or other continuously-burning ignition source.

Id. at 76 FR 71859.

C. February 2013 Court Decision

The Hearth, Patio & Barbecue Association (''HPBA'') sued DOE in the United States Court of Appeals for the District of Columbia Circuit (''D.C. Circuit'') to invalidate the April 2010 final rule and November 2011 final rule as those rules pertained to vented gas hearth products. *Statement of Issues to Be Raised, Hearth, Patio & Barbecue Association* v. *Department of Energy, et*

[3] The enumerated list of covered products is at 42 U.S.C. 6292(a)(1)–(19).

[4] As such, in considering the potential scope of coverage, DOE does not consider whether an individual product is distributed in commerce for residential or commercial use, but whether it is *of a type* of product distributed in commerce for residential use.

[5] DOE has defined ''household'' to mean an entity consisting of either an individual, a family, or a group of unrelated individuals, who reside in a particular housing unit. For the purpose of the definition:

- Group quarters means living quarters that are occupied by an institutional group of 10 or more unrelated persons, such as a nursing home, military barracks, halfway house, college dormitory, fraternity or sorority house, convent, shelter, jail or correctional institution.
- Housing unit means a house, an apartment, a group of rooms, or a single room occupied as separate living quarters, but does not include group quarters.
- Separate living quarters means living quarters:
  - ○ To which the occupants have access either:
    - ▪ Directly from outside of the building; or
    - ▪ Through a common hall that is accessible to other living quarters and that does not go through someone else's living quarters; and
  - ○ Occupied by one or more persons who live and eat separately from occupant(s) of other living quarters, if any, in the same building. 10 CFR 430.2.

[6] A correction to the April 2010 final rule was published on April 27, 2010, to correct a date that is not relevant to this discussion. 75 FR 21981.

[7] ANSI Z21.50/CSA 2.22, ''Vented Decorative Gas Appliances'' is available at: *webstore.ansi.org/standards/csa/ansiz21502016csa22.*

[8] ANSI Z21.88/CSA 2.33, ''Vented Gas Fireplace Heaters'' is available at: *webstore.ansi.org/Standards/CSA/CSAANSIZ218819332019.*

al., No. 10–1113 (D.C. Cir. filed July 1, 2010). On February 8, 2013, the D.C. Circuit issued its opinion in the HPBA case and ordered that the definition of ''vented hearth heater'' adopted by DOE be vacated, and remanded the matter to DOE to interpret the challenged provisions in accordance with the Court's opinion. *Hearth, Patio & Barbecue Association* v. *Department of Energy, et al.,* 706 F.3d 499 (D.C .Cir. 2013). The Court held that the phrase ''vented hearth heater'' did not encompass decorative fireplaces as that term is traditionally understood, vacated the entire statutory definition of ''vented hearth heater,'' and remanded for DOE to interpret the challenged provisions consistent with the court's opinion. *Id.* at 509. On July 29, 2014, DOE published a final rule amending the relevant portions of its regulation to reflect the Court's decision to vacate the regulatory definition of ''vented hearth heater'' (and by implication, the associated energy conservation standards). 79 FR 43927.

D. December 2013 Coverage Determination

On December 31, 2013, DOE published a proposed determination of coverage for hearth products. 78 FR 79638 (''December 2013 NOPD''). DOE described hearth products as gas-fired equipment that provide space heating and/or provide an aesthetic appeal to the living space. *Id.* 78 FR 79639. DOE proposed to define ''hearth product'' as a gas-fired appliance that simulates a solid-fueled fireplace or presents a flame patterns (for aesthetics or other purpose) and that may provide space heating directly to the space in which it is installed, and provided examples of products meeting this definition, including vented decorative hearth products, vented heater hearth products, vented gas logs, gas stoves, outdoor hearth products, and ventless hearth products. *Id.* 78 FR 79640. DOE stated it had not previously conducted an energy conservation standards rulemaking for hearth products with the exception of the vented hearth heaters, which are no longer covered products as a result of the Court ruling. Id. On February 9, 2015, DOE published a NOPR proposing energy conservation standards for hearth products. 80 FR 7082 (''February 2015 NOPR''). On March 31, 2017, DOE withdrew the December 2013 NOPD [9] in the bi-annual publication of the DOE Regulatory Agenda.[10]

On further consideration of the Court's opinion, DOE believes that DOE was overly broad in discussion of the Court's holding in the context of vented hearth heaters in the withdrawn December 2013 NOPD. In that vented hearth heaters provide space heating, classifying vented hearth heaters as vented home heating equipment would be consistent with the Court's opinion. (*See* the Court's explanation that decorative fireplaces are outside the scope of direct heating equipment and that the phrase ''vented hearth heater'' did not encompass decorative fireplaces as that term is traditionally understood. (706 F.3d 499, 505, 509)) Therefore, although there are not currently energy conservation standards for vented hearth heaters, these products are appropriately covered as vented home heating equipment (and direct heating equipment (''DHE'')). Because vented hearth heaters are already covered as vented home heating equipment under EPCA, such products are not part of this proposed coverage determination. To the extent DOE considers energy conservation standards for venter hearth heaters, it will do so in a separate rulemaking.

III. Current Rulemaking Process

This proposed determination of coverage addresses miscellaneous gas products, which are consumer products comprising: (1) Those hearth products that are not DHE (*i.e.,* those hearth products that are indoor or outdoor decorative hearth products) and (2) outdoor heaters. If, after public comment, DOE issues a final determination of coverage for miscellaneous gas products, DOE may prescribe both test procedures and energy conservation standards for these products. DOE will publish a final decision on coverage as a separate notice, an action that will be completed prior to the initiation of any test procedure or energy conservation standards rulemaking. 10 CFR part 430, subpart C, appendix A, section 5(c). If DOE determines that coverage is warranted, DOE will proceed with its typical rulemaking process for both test procedures and standards. *Id.* DOE is not proposing test procedures or energy conservation standards as part of this proposed determination. If DOE proceeds with a rulemaking to establish energy conservation standards, DOE would determine if miscellaneous gas products satisfy the provisions of 42 U.S.C. 6295(*l*)(1) during the course of that rulemaking.

IV. Scope of Coverage

Miscellaneous gas products as considered in this NOPD are comprised of decorative hearth products and outdoor heaters.

For the purpose of this analysis, DOE evaluated decorative hearth products that are gas-fired products that simulate a solid-fuel fireplace and/or present an aesthetic flame pattern, and that are not designed to heat the space in which they are used. A wide range of decorative hearth products are available on the market, including, for example, gas log sets, gas fire pits, gas stoves, and gas fireplace inserts. Decorative hearth products may be used indoors or outdoors.

For the purpose of this analysis, DOE evaluated outdoor heaters that are gas-fired products that heat the area proximate to the heater and that are designed to be used outdoors.

A. Existing Classifications in ANSI Standards

To help inform its proposed scope of coverage, DOE reviewed existing classifications of miscellaneous gas products (*i.e.,* hearth products and outdoor heaters) in various ANSI standards. Table III.1 presents the ANSI standards that DOE identified which cover the various types of decorative hearth products and outdoor heaters on the market.

TABLE III.1—ANSI STANDARDS COVERING THE VARIOUS TYPES OF MISCELLANEOUS GAS PRODUCTS

ANSI standard	Title
Z21.50	Vented Decorative Gas Appliances.
Z21.60	Decorative Gas Appliances for Installation in Solid-Fuel Burning Fireplaces.
Z21.84	Standard for Manually Lighted, Natural Gas, Decorative Gas Appliances for Installation in Solid-Fuel Burning Fireplaces.

[9] Withdrawal of the December 2013 NOPD also resulted in the withdrawal of the February 2015 NOPR.

[10] Past publications of DOE's Regulatory Agenda can be found at: *resources.regulations.gov/public/component/main.*

TABLE III.1—ANSI STANDARDS COVERING THE VARIOUS TYPES OF MISCELLANEOUS GAS PRODUCTS—Continued

ANSI standard	Title
Z21.97	Outdoor Decorative Gas Appliances.
Z83.26	Gas-Fired Outdoor Infrared Patio Heaters.

Issue 1: DOE requests comment on whether there are other industry standards that should be reviewed for this coverage determination for decorative hearth products and outdoor heaters.

ANSI Z21.50 covers vented decorative gas appliances with input ratings up to 400,000 Btu/h, that do not have a thermostat and are not a source of heat. In covering vented decorative gas appliances, ANSI Z21.50 provides the following definitions relevant to defining the scope of a decorative appliance:

Decorative gas appliance—an appliance whose only function lies in the aesthetic effect of the flame. A vented *decorative* gas appliance may be freestanding, recessed, zero clearance, or a gas fireplace insert, and is further defined as:

Direct vent decorative gas appliance—a system consisting of (1) an appliance for indoor installation that allows the view of flames and provides the simulation of a solid fuel fireplace; (2) combustion air connections between the appliance and the vent-air intake terminal; (3) flue gas connections between the appliance and the vent-air intake terminal; and (4) a vent-air intake terminal for installation outdoors, constructed such that all air for combustion is obtained from the outdoor atmosphere and all flue gases are discharged to the outdoor atmosphere. All of these components are supplied by the manufacturer.

Fan type vented decorative gas appliance—a vented decorative gas appliance equipped with an integral circulating air fan, the operation of which is necessary for satisfactory appliance performance.

Gas fireplace insert—a vented decorative gas appliance designed to be fully or partially installed in a solid-fuel burning fireplace.

Gravity vented decorative gas appliance—a vented decorative gas appliance consisting of an appliance constructed so all air for combustion is obtained from the room in which the appliance is installed and all flue gases are discharged to the outdoor atmosphere. The discharge of flue gases is by gravity forces.

Power vented decorative gas appliance—a vented decorative gas appliance consisting of an appliance constructed so all air for combustion is obtained from the room in which it is installed and all flue gases are discharged to the outdoor atmosphere. The discharge of flue gases is by mechanical means.

Gas stove—a vented gas appliance designed to be freestanding.

ANSI Z21.60 covers decorative gas appliances for installation in solid-fuel burning fireplaces with input ratings up to 400,000 Btu/h that do not have a thermostat. ANSI Z21.60 provides the following definitions relevant to defining the scope of decorative gas appliances for installation in solid-fuel burning fireplaces:

Decorative gas appliance—a self-contained, free-standing, gas-burning appliance designed for installation only in a solid-fuel burning fireplace and whose primary function lies in the aesthetic effect of the flame.

Coal basket—an open-flame type appliance consisting of a metal basket filled with simulated coals, which gives the appearance of a coal fire when in operation.

Gas log—an open-flame type appliance consisting of a metal frame or base supporting simulated logs.

ANSI Z21.84 covers manually lighted, natural gas, decorative gas appliances for installation in solid-fuel burning fireplaces, that are not thermostatically controlled, and with input ratings up to 90,000 Btu/h. These appliances do not incorporate a pilot burner or an automatic gas ignition system. The main burner(s) is intended to be lighted by hand each time the appliance is used. ANSI Z21.84 provides the following definitions relevant to defining the scope of manually lit decorative gas appliances for installation in solid-fuel burning fireplaces:

Decorative appliance—a self-contained, freestanding, gas-burning appliance designed for installation only in a solid-fuel burning fireplace and whose function primarily lies in the aesthetic effect of the flame.

Coal basket—an open flame type appliance consisting of a metal basket filled with simulated coals, which gives the appearance of a coal fire when in operation.

Gas log—an open flame type appliance consisting of a metal frame or base supporting simulated logs.

ANSI Z21.97 covers decorative gas appliances for outdoor installation and are classified as one of the following: Portable, stationary, or built-in. Thermostatically controlled appliances are not within the scope of ANSI Z21.97. ANSI Z21.97 provides the following definitions relevant to defining the scope of decorative gas appliances for outdoor installation:

Built-in—appliances that are mounted or attached to a permanent structure and not intended to be moved.

Outdoor decorative gas appliance—an appliance for use in outdoor spaces only, which does not incorporate a venting system, and whose primary function lies in the aesthetic effect of the flame.

Outdoor spaces—an appliance is considered to be outdoors if installed with shelter no more inclusive than:

(a) With walls on all sides, but with no overhead cover;

(b) within a partial enclosure that includes an overhead cover and no more than two sidewalls. The sidewalls may be parallel, as in a breezeway, or at right angles to each other; or

(c) within a partial enclosure that includes an overhead cover and three sidewalls, as long as 30 percent or more of the horizontal periphery of the enclosure is permanently open.

Stationary—appliances that are not equipped with wheels, casters, or other means of easy movement. These appliances are only moved by lifting and carrying.

ANSI Z83.26 covers gas-fired outdoor infrared patio heaters intended for installation in and heating of residential or non-residential spaces. Infrared patio heaters may be suspended overhead, angle-mounted overhead, wall-mounted, floor-mounted, or for tabletop use. ANSI Z83.26 provides the following definitions relevant to defining the scope of infrared patio heaters:

Infrared patio heater—a heater which directs a substantial amount of its energy output in the form of infrared energy into the outdoor area to be heated.

Outdoor spaces—for the purpose of this Standard, an appliance is considered to be outdoors if installed with shelter no more inclusive than:

(a) With walls on all sides, but with no overhead cover;

(b) within a partial enclosure that includes an overhead cover and no more than two sidewalls. The sidewalls may be parallel, as in a breezeway, or at right angles to each other.

(c) within a partial enclosure that includes an overhead cover and three sidewalls, as long as 30 percent or more of the horizontal periphery of the enclosure is permanently open.

Portable infrared patio heater—a free standing, infrared heater designed with the intent of being moved from one outdoor location to another.

B. Proposed Scope of Coverage

As discussed, DOE is proposing coverage of miscellaneous gas products, which are comprised of decorative hearth products and outdoor heaters.

In considering the scope of ''decorative hearth product,'' DOE considered the identified ANSI standards (*i.e.,* ANSI Z21.50, ANSI Z21.60, ANSI Z21.84, ANSI Z21.97, and ANSI Z83.24), as well as DOE's previously adopted and proposed definitions related to hearth products. The considered scope of ''decorative hearth product'' presented below combines pertinent elements of the previously proposed definition for ''hearth product'' included in the December 2013 NOPD and the February 2015 NOPR, and the definition of a ''decorative gas appliance'' in ANSI Z21.50 to describe a decorative hearth product for the purposes of coverage in this NOPD. DOE considered decorative hearth products to include indoor and outdoor products.

DOE notes that the scopes of the relevant ANSI standards for decorative products exclude products that are equipped with a thermostat. Consistent with the industry standards, DOE has tentatively determined that the presence of a thermostat indicates that a product is designed to provide heat rather than being purely decorative. Thus, the proposed scope of decorative hearth products excludes those products equipped with a thermostat.

The proposed definition for a ''decorative hearth product'' would be a gas-fired appliance that:

- Simulates a solid-fueled fireplace or presents a flame pattern;
- Includes products designed for indoor use, outdoor use, or either indoor or outdoor use;
- Is not designed to be operated with a thermostat;
- For products designed for indoor use, is not designed to provide space heating to the space in which it is installed; and
- For products designed for outdoor use, is not designed to provide heat proximate to the unit.

Issue 2: DOE requests comment on whether the presence of a thermostat would indicate that a hearth product is intended to provide heat to the space in which it is installed rather than being purely decorative.

DOE also considered inclusion of outdoor heaters in the proposed scope of the coverage determination. DOE understands outdoor heaters to be products that are used for heating outdoor areas. DOE proposes to define an outdoor heater as a gas-fired appliance designed for use in outdoor spaces only, and which is designed to provide heat proximate to the unit.

Issue 3: DOE seeks feedback from interested parties on its proposed definition for ''outdoor heater.''

Issue 4: DOE requests comment on whether outdoor hearth products exist that are designed to provide a large amount of heat as their primary function, and thus would meet the definition of outdoor heater.

Issue 5: DOE seeks feedback from interested parties on it proposed scope of coverage of miscellaneous gas products, which would include decorative hearth products and outdoor heaters.

As evaluated in this proposed coverage determination DOE considers miscellaneous gas products to include products using natural gas or liquified petroleum gas (''propane''). As propane is a type of gas, DOE tentatively determined it is appropriate to include propane products in the scope of this proposed coverage determination.[11] Were DOE to finalize the coverage determination as proposed, DOE would consider whether propane fueled products warrant different treatment under test procedures and energy conservation standards, should such test procedures and standards be established.

Issue 6: DOE requests comment on whether propane-fueled decorative hearth products and outdoor heaters should be within the scope of this coverage determination.

DOE was not able to identify an ANSI standard which addresses decorative unvented gas hearth products.

DOE requests comment on whether unvented hearth products designed for indoor installation exist that are designed to be purely decorative, or if an unvented hearth product would always provide enough heat to the space in which it is installed to be classified as an unvented heater.[12] If such products exist, DOE seeks information on the features or characteristics that differentiate them from unvented heaters.

V. Evaluation of Miscellaneous Gas Products as a Covered Product Subject to Energy Conservation Standards

As an initial step, DOE evaluated whether miscellaneous gas products, which are comprised of decorative hearth products and outdoor heaters, are ''consumer products'' under EPCA. As discussed in section I of this document, a consumer product is any article (other than an automobile) of a type—(A) which in operation consumes, or is designed to consume energy; and (B) which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual. (42 U.S.C. 6291(a)(1)) Miscellaneous gas products consume energy during operation and are distributed in commerce for personal use by individuals. Therefore, DOE has determined that miscellaneous gas products are consumer products.

The following sections describe DOE's preliminary evaluation of whether miscellaneous gas products fulfill the criteria for being added as covered products pursuant to 42 U.S.C. 6292(b)(1). As stated previously, DOE may classify a consumer product as a covered product if:

(1) Classifying products of such type as covered products is necessary or appropriate to carry out the purposes of EPCA; and

(2) The average annual per-household energy use by products of such type is likely to exceed 100 kWh (or its Btu equivalent) per year.

A. Coverage Necessary or Appropriate To Carry Out Purposes of EPCA

DOE has preliminarily determined that coverage of miscellaneous gas products is necessary or appropriate to carry out the purposes of EPCA, which include:

(1) To conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses; and

(2) To provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products. (42 U.S.C. 6291(4)–(5))

DOE estimates that annual shipments of miscellaneous gas products have averaged approximately 190,000 units per year from 2016 to 2020.[13] DOE estimates that the aggregate national

[11] DOE defines the term ''gas'' to mean either natural gas or propane. 10 CFR 430.2.

[12] DOE defines an ''unvented gas heater'' as an unvented, self-contained, free-standing, nonrecessed gas-burning appliance which furnishes warm air by gravity or fan circulation. 10 CFR 430.2. An unvented gas heater is a type of unvented home heating equipment and covered as direct heating equipment.

[13] This estimate was developed by scaling the hearth product shipments found on page 9–2 of Chapter 9 in the February 2015 NOPR Technical Support Document to the total gas appliance shipments from 2016 through 2020 from HPBA (*www.hpba.org/Resources/Annual-Historical-Hearth-Shipments*). Manufacturer interviews conducted for the February 2015 NOPR analysis were used to develop the market share of decorative hearths (39%) and outdoor heaters (3%) from total shipments. The market shares were assumed to remain constant from 2016–2020.

energy use of decorative hearth products is 0.0135 quadrillion British thermal units (''quads'') (4.0 Terawatt-hours (''TWh'')),[14] and that the aggregate national energy use of outdoor heaters is estimated to be 0.0007 quads (0.2 TWh).[15] DOE estimates that the aggregate national energy use of decorative hearth products and outdoor heaters, comprising miscellaneous gas products, is 0.0143 quads (4.2 TWh). Coverage of miscellaneous gas products would further the conservation of energy supplies through the regulation of energy efficiency. Therefore, DOE has tentatively determined that coverage of miscellaneous gas products is necessary and appropriate to carrying out the purposes of EPCA, thereby satisfying the provisions of 42 U.S.C. 6292(b)(1)(A).

B. Average Annual Per-Household Energy Use

DOE estimated average per-household energy use for decorative hearth products based on a 2017 survey by the Lawrence Berkeley National Laboratory (''2017 hearth survey'')[16] [17] and the technical support document from the February 2015 NOPR.[18] In the 2017 hearth survey, products that were identified as ''decorative only'' represented 6 percent of the surveyed installations, with the main burner operating for 17 hours per year and the standing pilot operating for 4,919 hours per year. Products identified as ''mostly decorative'' represented 32 percent of installations, with the main burner operating for 50 hours per year and the standing pilot operating for 3,500 hours per year.[19] The identification of a product as ''decorative only'' or ''mostly decorative'' was based on the respondents' answer to a survey question about whether the product was for decorative or heating purposes; it did not necessarily reflect the manufacturer's design.[20]

For this NOPD, DOE assumed that the operating characteristics of ''decorative only'' and ''mostly decorative'' products from the 2017 survey would represent the market for decorative hearth products as proposed to be defined. Ignition systems in hearth products are typically either standing pilots, where the pilot flame is continuously lit unless turned off by the user; intermittent systems, where the pilot is lit using an electric starter only when there is a need for a flame; or match lit, when the main burner is lit by a match. To account for the energy use of the various ignition systems of decorative hearths, DOE relied on market share data of the ignition systems for gas fireplaces and gas log sets from the 2017 hearth survey: 71 percent of fireplaces and log sets use a standing pilot, 18 percent use intermittent ignition, and 12 percent are match lit.[21] In the February 2015 NOPR, DOE used an input capacity of 35,000 Btu/h to represent decorative fireplace main burners and 1,000 Btu/h to represent standing pilot light input capacity, and calculated annual national intermittent ignition electricity use to be 29 kWh/yr.[22] For this NOPD, DOE calculated the per-household weighted average ignition energy use to be 2.7 million British thermal units per year (''MMBtu/yr'')[23] and the weighted main burner energy use to be 1.5 MMBtu/yr, for a total decorative hearth energy use per household of 4.2 MMBtu/yr (1,230 kWh/yr).

The 2017 hearth survey did not provide the operating characteristics of outdoor heaters and DOE was unable to find other data sources for the operating characteristics of outdoor heaters. In lieu of such data, DOE estimates that the burner operating hours for outdoor heaters would be the same as those for decorative hearths (both indoor and outdoor).[24] DOE notes that in the December 2013 coverage determination, the burner operating hours were the same for indoor decorative products and outdoor decorative products and outdoor heaters. 78 FR 79638, 79640.

Issue 7: DOE requests comment on the assumption that burner operating hours for outdoor heaters are similar to the main burner operating hours of decorative hearths. In addition, DOE requests any data available regarding the operating hours of outdoor heaters.

The 2017 hearth survey provided a breakdown of the ignition systems used in outdoor units, as well as the breakdown of standing pilot operation: 48 percent use a standing pilot, 15 percent use intermittent ignition, and 37 percent are match lit. Of the standing pilots, 54 percent remain on all-year, 5 percent are turned off throughout the summer, and 41 percent are turned off when not in use.

As outdoor heaters are different products than outdoor decorative hearths, DOE assumed that there would be less standing pilot use for outdoor heaters. An outdoor heater is likely used only in colder weather to provide warmth to people outside rather than across all seasons like a decorative outdoor hearth; therefore, DOE reduced the share of standing pilots as well as the amount of time a standing pilot would operate in a year. DOE adjusted the above percentages so that standing pilot usage in heaters was 50 percent that of outdoor units in the 2017 hearth survey. The breakdown of outdoor heater ignition systems was calculated to be 24 percent standing pilot, 29 percent intermittent ignition, and 47 percent match lit. DOE also reduced the amount of standing pilots that operate

[14] The aggregate national energy use of decorative hearths is based on energy use estimates developed in section V.B, along with historical shipments from HPBA (*www.hpba.org/Resources/Annual-Historical-Hearth-Shipments*) and the 2015 NOPR National Impact Analysis, of which 39 percent are assumed to be decorative hearths, and a 15-year hearth lifetime which was used for all products in the 2015 Hearth Products NOPR (U.S. Department of Energy. Technical Support Document: Energy Conservation Programs for Consumer Products, Energy Conservation Standards for Hearth Products. Chapter 8: Life-Cycle-Cost Analysis. January 30, 2015. Available at: *www.regulations.gov/document/EERE-2014-BT-STD-0036-0002*).

[15] The aggregate national energy use of outdoor heaters is based on energy use estimates developed in section V.B of this document, along with historical shipments from the 2015 NOPR National Impact Analysis, which assumed that ratio of patio heaters shipments to HPBA hearth shipments was 3 percent, and a 15-year hearth lifetime which was used for all products in the 2015 Hearth Products NOPR (U.S. Department of Energy. Technical Support Document: Energy Conservation Programs for Consumer Products, Energy Conservation Standards for Hearth Products. Chapter 8: Life-Cycle-Cost Analysis. January 30, 2015. Available at: *www.regulations.gov/document/EERE-2014-BT-STD-0036-0002.*)

[16] Siap, David. Willem, Henry. Price, Sarah. Yang, Hung-Chia. Lekov, Alex. Survey of Hearth Products in U.S. Homes. Energy Analysis and Environmental Impacts Division, Lawrence Berkeley National Laboratory. June 2017. *eta.lbl.gov/publications/survey-hearth-products-us-homes.*

[17] In the 2017 Hearth Survey, hearths were defined as: Gas or electric fireplaces, gas log sets, stoves, and outdoor units. DOE assumed the substantive majority of outdoor units were ''outdoor decorative hearths'' as proposed to be defined in section IV.B of this document.

[18] U.S. Department of Energy. Technical Support Document: Energy Conservation Programs for Consumer Products, Energy Conservation Standards for Hearth Products. Chapter 7: Energy Use Analysis. January 30, 2015. *www.regulations.gov/document/EERE-2014-BT-STD-0036-0002.*

[19] Siap, David. Willem, Henry. Price, Sarah. Yang, Hung-Chia. Lekov, Alex. Survey of Hearth Products in U.S. Homes. Energy Analysis and Environmental Impacts Division, Lawrence Berkeley National Laboratory. June 2017. *eta.lbl.gov/publications/survey-hearth-products-us-homes.*

[20] The decorative only and mostly decorative product categories include both indoor and outdoor units.

[21] Siap, David. Willem, Henry. Price, Sarah. Yang, Hung-Chia. Lekov, Alex. Survey of Hearth Products in U.S. Homes. Energy Analysis and Environmental Impacts Division, Lawrence Berkeley National Laboratory. June 2017. *eta.lbl.gov/publications/survey-hearth-products-us-homes.*

[22] U.S. Department of Energy. Technical Support Document: Energy Conservation Programs for Consumer Products, Energy Conservation Standards for Hearth Products. Chapter 7: Energy Use Analysis. January 30, 2015. *www.regulations.gov/document/EERE-2014-BT-STD-0036-0002.*

[23] Decorative hearths with match lit ignition were assumed to use zero ignition energy.

[24] The 2017 survey did provide the operating characteristics for hearth heaters; however, DOE believes the outdoor heaters would not operate in the same manner as indoor units providing primary or secondary space heating.

all year by 50 percent for outdoor heaters. Of the standing pilots for outdoor heaters, DOE estimated 27 percent remain on all year, 11 percent are turned off throughout the summer, and 62 percent are off when not in use.

Issue 8: DOE requests feedback on the breakdown of ignition systems for outdoor heaters as well as any data on standing pilot operating hours for outdoor heaters.

In the February 2015 NOPR, DOE used an input capacity of 50,000 Btu/h to represent the main burners of outdoor products [25] and 1,000 Btu/h to represent the standing pilots, and calculated annual national intermittent ignition electricity use to be 29 kWh/yr.[26] For this NOPD, DOE calculated the per-household weighted average ignition energy of use of outdoor heaters to be 0.7 MMBtu/yr and the weighted burner energy use to be 2.2 MMBtu/yr, for total outdoor heater household energy use of 2.9 MMBtu/yr (859 kWh/yr). While DOE recognizes that the operation of outdoor heaters may vary from that of decorative and outdoor units from the 2017 hearth survey and outdoor products in the February 2015 NOPR, the conservative energy use estimate for outdoor heaters is well above the coverage threshold.

DOE estimates that decorative hearths account for 93 percent of the miscellaneous gas product market and that outdoor heaters account for 7 percent. DOE calculated the weighted average per-household energy use of a miscellaneous gas product to be 4.1 MMBtu/yr (1,211 kWh/yr). Therefore, DOE has tentatively determined that the average annual per-household energy use for miscellaneous gas products is likely to exceed 100 kWh/yr, thereby satisfying the provisions of 42 U.S.C. 6292(b)(1)(B).

Based on the above, DOE has tentatively determined that miscellaneous gas products (comprised of decorative hearth products and outdoor heaters) qualify as a covered product under Part A of Title III of EPCA, as amended.

C. Proposed Determination

Based on the foregoing, DOE has tentatively determined that classifying miscellaneous gas products, which are comprised of decorative hearths and outdoor heaters, as proposed to be defined in section IV.B of this document, is necessary and appropriate to carry out the purposes of EPCA; and the average annual per-household energy use is likely to exceed 100 kWh (or its Btu equivalent) per year for miscellaneous gas products. As such, DOE is proposing to determine to classify miscellaneous gas products as a covered product under Part A of Title III of EPCA, as amended.

Issue 9: DOE requests comment on whether classifying miscellaneous gas products as a covered product is necessary or appropriate to carry out the purposes of EPCA.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This proposed determination has been determined to be not significant for purposes of Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). As a result, the Office of Management and Budget (''OMB'') did not review this proposed determination.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impact of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*energy.gov/gc/office-general-counsel*).

This proposed determination would not establish test procedures or energy conservation standards for miscellaneous gas products. If adopted, the proposed determination would only positively determine that future standards may be warranted and should be explored in an energy conservation standards and test procedure rulemaking. Economic impacts on small entities would be considered in the context of such rulemakings. Therefore, DOE initially concludes that the impacts of the proposed determination would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an IRFA is not warranted. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

Manufacturers of covered products must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. (*See generally* 10 CFR part 429) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. As noted previously, this proposed determination, if made final, would not establish any testing requirements or energy conservation standards for miscellaneous gas products.

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed determination in accordance with the National Environmental Policy Act (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings that are strictly procedural. 10 CFR part 1021, subpart D, appendix A6. DOE anticipates that this rulemaking qualifies for categorical exclusion A6 because it is a strictly procedural rulemaking and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR

[25] The outdoor products addressed in the February 2015 NOPR were outdoor fireplaces, outdoor fireplace inserts, outdoor fire pits, outdoor gas lamps, and patio heaters.

[26] U.S. Department of Energy. Technical Support Document: Energy Conservation Programs for Consumer Products, Energy Conservation Standards for Hearth Products. Chapter 7: Energy Use Analysis. January 30, 2015. *www.regulations.gov/document/EERE-2014-BT-STD-0036-0002.*

1021.410. DOE will complete its NEPA review before issuing the final determination.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt state law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed determination and has tentatively determined that it would not have a 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed determination. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by E.O. 13132.

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

DOE examined this proposed determination according to UMRA and its statement of policy and determined that the proposed determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

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

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

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

Section 515 of the Treasury and General Government Appropriation Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this NOPD under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (''OIRA'') at OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to

promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor Executive Order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This proposed regulatory action to classify miscellaneous gas products as covered products is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator of OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. DOE has determined that the analyses conducted for this rulemaking do not constitute ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2667 (Jan. 14, 2005). The analyses were subject to pre-dissemination review prior to issuance of this rulemaking.

VII. Public Participation

A. Submission of Comments

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

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

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

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

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

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

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

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

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

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

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

B. Issues on Which DOE Seeks Comments

DOE welcomes comments on all aspects of this proposed determination. DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

Issue 1: DOE requests comment on whether there are other industry standards that should be reviewed for this coverage determination for decorative hearth products and outdoor heaters.

Issue 2: DOE requests comment on whether the presence of a thermostat would indicate that a hearth product is intended to provide heat to the space in which it is installed rather than being purely decorative.

Issue 3: DOE seeks feedback from interested parties on its proposed definition for ''outdoor heater.''

Issue 4: DOE requests comment on whether outdoor hearth products exist that are designed to provide a large amount of heat as their primary function, and thus would meet the definition of outdoor heater.

Issue 5: DOE seeks feedback from interested parties on it proposed scope of coverage of miscellaneous gas products, which would include decorative hearth products and outdoor heaters.

Issue 6: DOE requests comment on whether propane-fueled decorative hearth products and outdoor heaters should be within the scope of this coverage determination.

Issue 7: DOE requests comment on whether unvented hearth products designed for indoor installation exist that are designed to be purely decorative, or if an unvented hearth product would always provide enough heat to the space in which it is installed to be classified as an unvented heater. If such products exist, DOE seeks information on the features or characteristics that differentiate them from unvented heaters.

Issue 8: DOE requests comment on the assumption that burner operating hours for outdoor heaters are similar to the main burner operating hours of decorative hearths. In addition, DOE requests any data available regarding the operating hours of outdoor heaters.

Issue 9: DOE requests feedback on the breakdown of ignition systems for outdoor heaters as well as any data on standing pilot operating hours for outdoor heaters.

Issue 10: DOE requests comment on whether classifying miscellaneous gas products as a covered product is necessary or appropriate to carry out the purposes of EPCA.

DOE is interested in receiving views concerning other relevant issues that participants believe would affect its ability to establish test procedures and energy conservation standards for miscellaneous gas products, which include decorative hearths and outdoor heaters.

After the expiration of the period for submitting written statements, DOE will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a final determination.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of proposed determination.

Signing Authority

This document of the Department of Energy was signed on January 31, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 1, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–02386 Filed 2–4–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0089; Project Identifier MCAI–2021–01027–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–14–17, which applies to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2021–14–17 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2021–14–17, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. 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 24, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0089.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0089; 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. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@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–2022–0089; Project Identifier MCAI–2021–01027–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@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.

Discussion

The FAA issued AD 2021–14–17, Amendment 39–21644 (86 FR 37891, July 19, 2021) (AD 2021–14–17) for certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2021–14–17 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2021–14–17 to address reduced structural integrity of the airplane.

Actions Since AD 2021–14–17 Was Issued

Since the FAA issued AD 2021–14–17, the FAA has determined that new or more restrictive airworthiness limitations are necessary.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0207, dated September 15, 2021 (EASA AD 2021–0207) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after June 30, 2021, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address reduced structural integrity of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0207 describes new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This AD would also require EASA AD 2020–0210, dated October 5, 2020, which the Director of the Federal Register approved for incorporation by reference as of August 23, 2021 (86 FR 37891, July 19, 2021).

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

FAA's Determination and Requirements of This Proposed AD

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

Proposed AD Requirements

This proposed AD would retain the requirements of AD 2021–14–17. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2021–0207 described previously, as incorporated by reference. Any differences with EASA AD 2021–0207 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (m)(1) of this proposed 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, the FAA proposes to incorporate EASA AD 2021–0207 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0207 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0207 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 2021–0207. Service information required by EASA AD 2021–0207 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No.

FAA–2022–0089 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in the AMOCs paragraph under ''Other FAA Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

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

The FAA estimates the total cost per operator for the retained actions from AD 2021–14–17 to be $7,650 (90 work-hours × $85 per work-hour).

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

The FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this 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) 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 Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–14–17, Amendment 39–21644 (86 FR 37891, July 19, 2021); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2022–0089; Project Identifier MCAI–2021–01027–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 24, 2022.

(b) Affected ADs

This AD replaces AD 2021–14–17, Amendment 39–21644 (86 FR 37891, July 19, 2021) (AD 2021–14–17).

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 30, 2021.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2021–14–17, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before May 29, 2020: Except as specified in paragraph (h) of this AD, comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0210, dated October 5, 2020 (EASA AD 2020–0210). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2020–0210, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2021–14–17, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before May 29, 2020:

(1) Where EASA AD 2020–0210 refers to its effective date, this AD requires using August 23, 2021 (the effective date of AD 2021–14–17).

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0210 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2020–0210 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after August 23, 2021 (the effective date of AD 2021–14–17).

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA 2020–0210 is at the ''applicable thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2020–0210, or within 90 days after August 23, 2021 (the effective date of AD 2021–14–17), whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2020–0210 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2020–0210 does not apply to this AD.

(i) Retained Provisions for Alternative Actions or Intervals, With a New Exception

This paragraph restates the requirements of paragraph (i) of AD 2021–14–17, with a new exception. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before May 29, 2020: Except as required by paragraph (j) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0210.

(j) New Maintenance or Inspection Program Revision

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0207, dated September 15, 2021 (EASA AD 2021–0207). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2021–0207

(1) Where EASA AD 2021–0207 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0207 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0207 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0207 is at the applicable ''thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0207, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0207 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0207 does not apply to this AD.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0207.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (n)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Related Information

(1) For information about EASA AD 2020–0210 and AD 2021–0207, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0089.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

Issued on January 31, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–02320 Filed 2–4–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0087; Project Identifier MCAI–2021–01025–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2020–21–06, which applies to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2020–21–06 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2020–21–06, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would revise the applicability by adding airplanes and require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. 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 24, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE,

Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0087; 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. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@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–2022–0087; Project Identifier MCAI–2021–01025–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@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 2020–21–06, Amendment 39–21279 (85 FR 64961, October 14, 2020) (AD 2020–21–06), for certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2020–21–06 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2020–21–06 to address the potential failure of certain life-limited parts, which could result in reduced structural integrity of the airplane.

Actions Since AD 2020–21–06 Was Issued

Since the FAA issued AD 2020–21–06, the FAA has determined that new or more restrictive airworthiness limitations are necessary for airplane structures and safe life limits.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0206, dated September 15, 2021 (EASA AD 2021–0206) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after June 30, 2021, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address the potential failure of certain life-limited parts, which could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0206 describes new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This AD would also require EASA AD 2020–0091, dated April 22, 2020, which the Director of the Federal Register approved for incorporation by reference as of November 18, 2020 (85 FR 64961, October 14, 2020).

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

FAA's Determination and Requirements of This Proposed AD

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

Proposed AD Requirements

This proposed AD would retain the requirements of AD 2020–21–06. This proposed AD would revise the applicability by adding airplanes and also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2021–0206 described previously, as

incorporated by reference. Any differences with EASA AD 2021–0206 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (m)(1) of this proposed 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, the FAA proposes to incorporate EASA AD 2021–0206 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0206 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0206 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 2021–0206. Service information required by EASA AD 2021–0206 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0087 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in the AMOCs paragraph under ''Other FAA Provisions.'' This new format includes a ''New Provisions for Alternative Actions or Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request approval of an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this proposed AD affects 24 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2020–21–06 to be $7,650 (90 work-hours × $85 per work-hour).

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

The FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this 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) 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 Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2020–21–06, Amendment 39–21279 (85 FR 64961, October 14, 2020); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2022–0087; Project Identifier MCAI–2021–01025–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 24, 2022.

(b) Affected ADs

This AD replaces AD 2020–21–06, Amendment 39–21279 (85 FR 64961, October 14, 2020) (AD 2020–21–06).

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 30, 2021.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the potential failure of certain life-limited parts, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2020–21–06, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 7, 2019: Except as specified in paragraph (h) of this AD, comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0091, dated April 22, 2020 (EASA AD 2020–0091). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2020–0091, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2020–21–06, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 7, 2019:

(1) The requirements specified in paragraph (1) of EASA AD 2020–0091 do not apply to this AD.

(2) Paragraph (2) of EASA AD 2020–0091 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''limitations'' specified in paragraph (2) of EASA AD 2020–0091 within 90 days after November 18, 2020 (the effective date of AD 2020–21–06).

(3) The initial compliance time for complying with the limitations specified in paragraph (2) of EASA AD 2020–0091 is at the applicable ''limitations'' specified in paragraph (2) of EASA AD 2020–0091, or within 90 days after November 18, 2020 (the effective date of AD 2020–21–06), whichever occurs later.

(4) The provisions specified in paragraphs (3) and (4) of EASA AD 2020–0091 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2020–0091 does not apply to this AD.

(i) Retained Provisions for Alternative Actions and Intervals, With a New Exception

This paragraph restates the requirements of paragraph (i) of AD 2020–21–06, with a new exception. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 7, 2019: Except as required by paragraph (j) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0091.

(j) New Maintenance or Inspection Program Revision

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0206, dated September 15, 2021 (EASA AD 2021–0206). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2021–0206

(1) Where EASA AD 2021–0206 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirement specified in paragraph (1) of EASA AD 2021–0206 does not apply to this AD.

(3) Paragraph (2) of EASA AD 2021–0206 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (2) of EASA 2021–0206 is at the applicable ''limitations'' as incorporated by the requirements of paragraph (2) of EASA AD 2021–0206, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraph (3) and (4) of EASA AD 2021–0206 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0206 does not apply to this AD.

(l) New Provisions for Alternative Actions and Intervals

After the revision of the existing maintenance or inspection program has been accomplished as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0206.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (n)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Related Information

(1) For information about EASA AD 2020–0091 and AD 2021–0206, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0087.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

Issued on January 31, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–02319 Filed 2–4–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0217; Project Identifier MCAI–2020–01486–A]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited (Type Certificate Previously Held by Bombardier Inc. and de Havilland, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Viking Air Limited (type certificate previously held by Bombardier Inc. and de Havilland, Inc.) Model DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300, and DHC–6–400 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as loose quadrants on the rudder pedal torque tube and signs of loose rivets or rivet joint wear due to inadequate manufacturing tolerances. This proposed AD would require inspecting the rudder pedal torque tube quadrant for looseness and taking corrective action as necessary. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 24, 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 Viking Air Ltd., 1959 de Havilland Way, Sidney British Columbia, Canada V8L 5V5; phone: (800) 663–8444; email: *continuing.airworthiness@vikingair.com;* website: *https://www.vikingair.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.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0217; 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 MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Deep Gaurav, Aviation Safety Engineer, New York ACO Branch, FAA, 1515 Stewart Avenue, Westbury, NY 11590; phone: (516) 228–7300; email: *deep.gaurav@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–2021–0217; Project Identifier MCAI–2020–01486–A'' 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 Deep Gaurav, Aviation Safety Engineer, New York ACO Branch, FAA, 1515 Stewart Avenue, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2020–45R1, dated April 16, 2021 (referred to after this as ''the MCAI''), to correct an unsafe condition for Viking Air Limited Model DHC–6 series 1, DHC–6 series 100, DHC–6 series 110, DHC–6 series 200, DHC–6 series 210, DHC–6 series 300, DHC–6 series 310, DHC–6 series 320 and DHC–6 series 400 airplanes, serial numbers 001 through 987. The MCAI states:

> There have been in-service reports of loose quadrants on the rudder pedal torque tube and signs of loose rivets or rivet joint wear, such as dark areas or streaks around the rivet heads and quadrant to torque tube interface. Viking Air Ltd. has determined that inadequate manufacturing tolerances may result in this condition. This defect, if not detected and corrected, could result in the affected parts deteriorating until the rivets fail, leading to loss of control of the rudder and possible loss of control of the aeroplane.
>
> To detect and correct this condition, [Transport Canada] AD CF–2020–45 mandated a one-time detailed inspection of the rudder pedal torque tube quadrant assembly, and rectification, as required, of the affected parts.
>
> Viking Air Ltd. had published Service Bulletin (SB) V6/0067, Revision NC, dated 16 July 2020, providing Accomplishment Instructions for the one-time detailed inspection for looseness of the affected parts. Since [Transport Canada] AD CF–2020–45 was issued, Viking Air Ltd. has introduced a new rudder pedal torque tube assembly in production that is not subject to the unsafe condition of this [Transport Canada] AD. As a result, Viking Air Ltd. has revised the SB V6/0067 at Revision A, dated 26 January 2021 (referred to as ''the SB'' in this [Transport Canada] AD) to update the aeroplane serial number applicability.
>
> This [Transport Canada] AD revision, CF–2020–45R1, is issued to modify the aeroplane serial number applicability in accordance with the SB.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for

and locating Docket No. FAA–2021–0217.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Viking DHC–6 Twin Otter Service Bulletin V6/0067, Revision A, dated January 26, 2021. This service information specifies procedures for inspecting the rudder pedal torque tube quadrant for looseness and performing a detailed visual inspection of the rudder torque tube assembly for signs of loose rivets or rivet joint wear. 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.

Other Related Service Information

The FAA also reviewed Viking DHC–6 Twin Otter Service Bulletin V6/0067, Revision NC, dated July 16, 2020. This service information specifies procedures for inspecting the rudder pedal torque tube quadrant for looseness and visually inspecting for signs of loose or smoking rivets.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with 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 is issuing this NPRM after determining the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except as discussed under ''Differences Between This NPRM and the MCAI.''

Differences Between This NPRM and the MCAI

The MCAI applies to Viking Air Limited Model DHC–6 series 110, DHC–6 series 210, DHC–6 series 310, and DHC–6 series 320, and this proposed AD would not because these models do not have an FAA type certificate. Transport Canada Models DHC–6 series 1, DHC–6 series 100, DHC–6 series 200, DHC–6 series 300, and DHC–6 series 400 airplanes correspond to FAA Model DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300, and DHC–6–400 airplanes, respectively.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 33 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 airplane	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85	Not Applicable	$85	$2,805

The FAA estimates the following costs to replace the rudder pedal torque tube quadrant assembly based on the results of the proposed inspection. The agency has no way of determining the number of airplanes that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per airplane
Rudder pedal torque tube quadrant assembly replacement.	10 work-hours × $85 per hour = $850	$9,256	$10,106

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:

Viking Air Limited (Type Certificate Previously Held by Bombardier Inc. and de Havilland, Inc.): Docket No. FAA–2021–0217; Project Identifier MCAI–2020–01486–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 24, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Viking Air Limited (type certificate previously held by Bombardier Inc. and de Havilland, Inc.) Model DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300, and DHC–6–400 airplanes, serial numbers 001 through 987, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2700, Flight Control System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as loose quadrants on the rudder pedal torque tube and signs of loose rivets or rivet joint wear due to inadequate manufacturing tolerances. The FAA is issuing this AD to detect and correct loose rivets or rivet joint wear and signs of loose or smoking rivets. The unsafe condition, if not addressed, could result in the rudder pedal torque tube quadrant assembly deteriorating until the rivets fail, leading to loss of rudder control with consequent loss of airplane control.

(f) Compliance

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

(g) Action

Within 3 months after the effective date of this AD, inspect the rudder pedal torque tube quadrant assembly for looseness and, if there is any looseness of the rudder pedal torque tube quadrant assembly, a loose rivet, any rivet joint wear, or a smoking rivet, before further flight, repair or replace the rudder pedal torque tube or quadrant assembly. Do these actions by following the Accomplishment Instructions, steps A.1. through A.9., in Viking DHC–6 Twin Otter Service Bulletin No. V6/0067, Revision A, dated January 26, 2021, except for any requirement to obtain repair instructions from Viking Customer Support, the repair must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; Transport Canada; or Viking Air Limited's Transport Canada Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(h) Credit for Previous Actions

You may take credit for the actions required by paragraph (g) of this AD if you performed those actions before the effective date of this AD using Viking DHC–6 Twin Otter Service Bulletin V6/0067, Revision NC, dated July 16, 2020.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or 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 address identified in paragraph (j)(1) of this AD.

(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 Deep Gaurav, Aviation Safety Engineer, New York ACO Branch, FAA, 1515 Stewart Avenue, Westbury, NY 11590; phone: (516) 228–7300; email: *deep.gaurav@faa.gov.*

(2) Refer to Transport Canada AD CF–2020–45R1, dated April 16, 2021, for more information. You may examine the Transport Canada AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0217.

(3) For service information identified in this AD, contact Viking Air Ltd., 1959 de Havilland Way, Sidney British Columbia, Canada V8L 5V5; phone: (800) 663–8444; email: *continuing.airworthiness@vikingair.com;* website: *https://www.vikingair.com.* You may review this referenced 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.

Issued on January 28, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–02413 Filed 2–4–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0030; Airspace Docket No. 21–AAL–54]

RIN 2120–AA66

Proposed Modification of Class E Airspace; Sitka Rocky Gutierrez Airport, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace, designated as a surface area. The Class E2 airspace to the northwest of the airport requires modification to properly contain instrument flight rules (IFR) aircraft descending below 1,000 feet above the surface of the earth. Additionally, this action proposes to remove Class E airspace, designated as an extension to a Class D or Class E2 surface area. Lastly, this action proposes to modify Class E airspace extending upward from 700 feet above the surface of the earth at Sitka Rocky Gutierrez Airport, AK. This action would ensure the safety and management of IFR operations at the airport.

DATES: Comments must be received on or before March 24, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0030; Airspace Docket No. 21–AAL–54, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email *fr.inspection@nara.gov* or go to *https://*

www.archives.gov/federal-register/cfr/ibr-locations.html.

FOR FURTHER INFORMATION CONTACT: Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–0030; Airspace Docket No. 21–AAL–54''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by modifying the Class E airspace designated as a surface area at Sitka Rocky Gutierrez Airport, AK. The Class E surface airspace area northwest of the airport requires modification to properly contain IFR aircraft descending below 1,000 feet above the surface of the earth. The LDA/DME RWY 11 approach procedure turn area currently extends 28.3 miles to the northwest, but the area should be reduced due to the proposed elimination of the LDA/DME RWY 11 approach procedure turn. This reduction would require additional Class E surface area airspace in the northwest to appropriately contain IFR aircraft descending below 1,000 feet above the surface of the earth. Furthermore, the Class E surface airspace area southeast of the airport requires modification to the area. The proposed increase would properly contain IFR departures until reaching 700 feet above the surface of the earth. Finally, the Class E surface area airspace requires a reduction northeast of the airport. Circling approaches are not applicable on the northeast side of the airport and the airspace in that area is not necessary.

This action also proposes to remove the Class E airspace, designated as an extension to a Class D or Class E surface area. This airspace is no longer required due to the proposed removal of the LDA/DME RWY 11 approach procedure turn.

Lastly, this action proposes to modify the Class E airspace extending upward from 700 feet above the surface of the earth. The area northwest of the airport should be extended to the northwest, and the area southwest of the airport requires minor adjustment to more appropriately contain arriving IFR aircraft descending below 1,500 feet above the surface of the earth and departing IFR aircraft until reaching 1,200 feet above the surface of the earth. Additionally, the Class E airspace extending upward from 700 feet above the surface of the earth requires a reduction northeast of the airport. Circling approaches are not applicable on the northeast side of the airport and the airspace in that area is not necessary.

Class E2, Class E4, and Class E5 airspace designations are published in paragraphs 6002, 6004, and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

AAL AK E2 Sitka, AK [Amended]

Sitka Rocky Gutierrez Airport, AK
(Lat. 57°02′49″ N, long. 135°21′40″ W)

That airspace extending upward from the surface within a 4.1-mile radius of the airport beginning at the 105° bearing from the airport clockwise to the 337° bearing from the airport, then to the point of beginning 4.1 miles east of the airport, and within 2.7 miles each side of the 150° bearing from the airport extending from the 4.1-mile radius to 6.6 miles southeast of the airport, and within 1.5 miles each side of the 209° bearing from the airport extending from the 4.1-mile radius to 4.4 miles southwest of the airport, and within 1.2 miles each side of the 314° bearing from the airport extending from the 4.1-mile radius to 6 miles northwest of the airport, and within 1.1 miles each side of the 320° bearing from the airport extending from the 4.1-mile radius to 5.2 miles northwest of the airport.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E2 Surface Area.

* * * * *

AAL AK E4 Sitka, AK [Removed]

Sitka Rocky Gutierrez Airport, AK
(Lat. 57°02′49″ N, long. 135°21′40″ W)

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

* * * * *

AAL AK E5 Sitka, AK [Amended]

Sitka Rocky Gutierrez Airport, AK
(Lat. 57°02′49″ N, long. 135°21′40″ W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the airport beginning at the 102° bearing from the airport clockwise to the 357° bearing from the airport, then to the point of beginning 7.3 miles east of the airport, and within 4.6 miles each side of the 212° bearing from the airport, extending from the 7.3-mile radius to 25.2 miles southwest of the airport, and within 4.5 miles each side of the 316° bearing from the airport extending from the 7.3-mile radius to 9.8 miles northwest of the airport; excluding that airspace that extends beyond 12 miles from the coast.

Issued in Des Moines, Washington, on February 1, 2022.

B.G. Chew,

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

[FR Doc. 2022–02454 Filed 2–4–22; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2021–0885; FRL–9523–01–R5]

Air Plan Approval; Wisconsin; Redesignation of the Wisconsin Portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin Area to Attainment of the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to find that the Wisconsin portion of the Chicago-Naperville, IL-IN-WI area (Chicago area) is attaining the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard) and to act in accordance with a request from the Wisconsin Department of Natural Resources (Wisconsin or the State) to redesignate the Wisconsin portion of the area to attainment for the 2008 ozone NAAQS, because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). The Wisconsin portion of the Chicago 2008 ozone area consists of the portion of Kenosha County bounded by the I–94 corridor and the area east to Lake Michigan (Kenosha portion). Wisconsin submitted this request on December 3, 2021. EPA is proposing to approve, as a revision to the Wisconsin State Implementation Plan (SIP), the State's plan for maintaining the 2008 ozone NAAQS through 2035 in the Chicago area. EPA also finds adequate and is proposing to approve Wisconsin's 2025 and 2030 volatile organic compound (VOC) and oxides of nitrogen (NO_X) Motor Vehicle Emission Budgets (MVEBs) for the Kenosha portion. Finally, pursuant to section 110 and part D of the CAA, EPA is proposing to approve the enhanced Inspection/Maintenance (I/M) program performance modeling analysis included in Wisconsin's December 3, 2021 submittals, because it satisfies the serious enhanced I/M requirements for the Kenosha portion.

DATES: Comments must be received on or before March 9, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2021–0885 at *https://www.regulations.gov* or via email to *blakley.pamela@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680, *leslie.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is EPA proposing?
II. What is the background for these actions?
III. What are the criteria for redesignation?
IV. What is EPA's analysis of Wisconsin's redesignation request?
V. Has the state adopted approvable motor vehicle emission budgets?
VI. Enhanced I/M in the Kenosha Portion
VII. Proposed Actions
VIII. Statutory and Executive Order Reviews

I. What is EPA proposing?

EPA is proposing to take several related actions. EPA is proposing to determine that the Wisconsin portion of the Chicago nonattainment area is attaining the 2008 ozone NAAQS, based on quality-assured and certified monitoring data for 2019–2021 for the entire Chicago area, and that the Kenosha portion has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the legal designation of the Kenosha portion from nonattainment to attainment for the 2008 ozone NAAQS. EPA is also proposing to approve, as a revision to the Wisconsin SIP, the State's maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status) for the Kenosha portion. The maintenance plan is designed to keep the Chicago area in attainment of the 2008 ozone NAAQS through 2030. EPA also finds adequate and is proposing to approve the newly-established 2030 and 2035 MVEBs for the Kenosha portion. Finally, EPA is proposing to approve the enhanced I/M program performance modeling analysis included in Wisconsin's December 3, 2021 submittals, because it satisfies the serious enhanced I/M requirements for the Kenosha portion.

II. What is the background for these actions?

EPA has determined that ground-level ozone is detrimental to human health. On March 27, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR part 50, the 2008 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.075 ppm, when truncated after the thousandth decimal place, at all ozone monitoring sites in the area. *See* 40 CFR 50.19 and appendix U to 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most recent three years of quality assured ozone monitoring data. The Chicago area was originally designated as a marginal nonattainment area for the 2008 ozone NAAQS on June 11, 2012 (77 FR 34221), effective July 20, 2012. EPA reclassified the Chicago area from marginal to moderate nonattainment on May 4, 2016 (81 FR 26697), effective June 3, 2016. The Chicago area was again reclassified to serious on August 23, 2019 (84 FR 44238), effective September 23, 2019.

III. What are the criteria for redesignation?

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) The Administrator (EPA) determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for the purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498) and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the ''Calcagni Memorandum'');
5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. ''Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What is EPA's analysis of Wisconsin's redesignation request?

A. Has the Chicago-Naperville, IL-IN-WI area attained the 2008 ozone NAAQS?

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the entire Chicago area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area is attaining the 2008 ozone NAAQS as determined in accordance with 40 CFR 50.15 and appendix P of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the NAAQS, the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.075 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). Ambient air

quality monitoring data for the 3-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90 percent of the days within the ozone monitoring seasons,[1] on average, for the 3-year period, with a minimum data completeness of 75 percent during the ozone monitoring season of any year during the 3-year period. *See* section 4 of appendix U to 40 CFR part 50.

EPA has reviewed the available ozone monitoring data from monitoring sites in the Chicago area for the 2019–2021 period. These data have been quality assured, are recorded in the AQS, and have been certified. These data demonstrate that the Chicago area is attaining the 2008 ozone NAAQS. The annual fourth-highest 8-hour ozone concentrations and the 3-year average of these concentrations (monitoring site ozone design values) for each monitoring site are summarized in Table 1.

TABLE 1—ANNUAL FOURTH HIGHEST DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND 3-YEAR AVERAGE OF THE FOURTH HIGHEST DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR THE CHICAGO-NAPERVILLE, IL-IN-WI 2008 OZONE AREA (ppm)

Site	County	Year			Average
		2019	2020	2021	2019–2021
Wisconsin					
55–059–0019	Kenosha	0.067	0.078	0.079	0.074
55–059–0025	Kenosha	0.066	0.078	0.072	0.072
Illinois					
17–031–0001	Cook	0.070	0.076	0.068	0.071
17–031–0032	Cook	0.070	0.077	0.077	0.075
17–031–0076	Cook	0.065	0.068	0.070	0.067
17–031–1003	Cook	0.069	0.077	0.068	0.071
17–031–1601	Cook	0.068	0.078	0.072	0.072
17–031–3103	Cook	0.064	0.068	0.067	0.064
17–031–4002	Cook	0.064	0.079	0.067	0.070
17–031–4007	Cook	0.066	0.072	0.069	0.069
17–031–4201	Cook	0.069	0.079	0.075	0.074
17–031–7002	Cook	0.069	0.074	0.078	0.073
17–043–6001	DuPage	0.062	0.073	0.069	0.070
17–089–0005	Kane	0.071	0.073	0.068	0.070
17–097–1007	Lake	0.065	0.076	0.077	0.073
17–111–0001	McHenry	0.068	0.076	0.069	0.071
17–197–1011	Will	0.060	0.067	0.065	0.064
Indiana					
18–089–0022	Lake	0.065	0.074	0.070	0.069
18–089–2008	Lake	0.065	0.071	0.068	0.068
18–127–0024	Porter	0.068	0.076	0.072	0.072
18–127–0026	Porter	0.071	0.067	0.066	0.068

The Chicago area's 3-year ozone design value for 2019–2021 is 0.075 ppm,[2] which meets the 2008 ozone NAAQS. Therefore, in today's action, EPA proposes to determine that the Wisconsin portion of the Chicago area is attaining the 2008 ozone NAAQS.

EPA will not take final action to determine that the Wisconsin portion of the Chicago area is attaining the NAAQS nor to approve the redesignation of the Kenosha portion of the Chicago area if the design value of a monitoring site in the area violates the NAAQS after proposal but prior to final approval of the redesignation. As discussed in section IV.D.3. below, Wisconsin has committed to continue monitoring ozone in this area to verify maintenance of the 2008 ozone NAAQS.

B. Has Wisconsin met all applicable requirements of section 110 and part D of the CAA for the Kenosha portion, and does Wisconsin have a fully approved SIP for the Kenosha portion under section 110(k) of the CAA?

As criteria for redesignation of an area from nonattainment to attainment of a NAAQS, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (*see* section 107(d)(3)(E)(v) of the CAA) and that the state has a fully approved SIP under section 110(k) of the CAA (*see* section 107(d)(3)(E)(ii) of the CAA). EPA finds that Wisconsin has met all applicable SIP requirements, for purposes of redesignation, under section 110 and part D of title I of the CAA (requirements specific to nonattainment areas for the 2008 ozone NAAQS). Additionally, with the exception of the enhanced I/M requirements of section 182(c)(3) of the CAA, EPA finds that all applicable requirements of the Wisconsin SIP for the area have been fully approved under section 110(k) of the CAA. As discussed below, in this action EPA is proposing to approve Wisconsin's enhanced I/M performance modeling analysis as meeting the serious I/M requirements of section 182(c)(3) of the CAA for the Kenosha portion of the Chicago area under the 2008 ozone NAAQS.

In making these determinations, EPA ascertained which CAA requirements are applicable to the Kenosha portion

[1] The ozone season is defined by state in 40 CFR 58, appendix D. The ozone season for Wisconsin is March–October 15th. *See* 80 FR 65292, 65466–67 (October 26, 2015).

[2] The monitor ozone design value for the monitor with the highest 3-year averaged concentration.

and the Wisconsin SIP and, if applicable, whether the required Wisconsin SIP elements are fully approved under section 110(k) and part D of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to current applicable requirements of the CAA.

The September 4, 1992, Calcagni memorandum (*see* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. *See also* the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. *See* section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also* 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

EPA is proposing to determine that the Chicago area has attained the 2008 ozone standard, under 40 CFR 51.918. If that determination is finalized, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the reasonably available control measures (RACM) requirement of section 172(c)(1) of the CAA, the reasonable further progress (RFP) and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA would not be applicable to the area as long as it continues to attain the NAAQS and would cease to apply upon redesignation. In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble EPA stated that:

The section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. ''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990,'' (General Preamble) 57 FR 13498, 13564 (April 16, 1992).

See also Calcagni memorandum at 6 (''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.'').

1. Wisconsin Has Met All Applicable Requirements of Section 110 and Part D of the CAA Applicable to the Kenosha Portion for Purposes of Redesignation

a. Section 110 General Requirements for Implementation Plans

Section 110(a)(2) of the CAA delineates the general requirements for a SIP. Section 110(a)(2) provides that the SIP must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it must: (1) Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (4) include provisions for the implementation of part C prevention of significant deterioration (PSD) and part D new source review (NSR) permit programs; (5) include provisions for stationary source emission control measures, monitoring, and reporting; (6) include provisions for air quality modeling; and, (7) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of certain air pollutants, *e.g.,* NO_X SIP call, the Clean Air Interstate Rule (CAIR), Cross State Air Pollution Rule (CSAPR). However, like many of the 110(a)(2) requirements, the section 110(a)(2)(D) SIP requirements are not linked to a particular area's ozone designation and classification. EPA concludes that the SIP requirements linked with the area's ozone designation and classification are the relevant measures to evaluate when reviewing a redesignation request for the area. The section 110(a)(2)(D) requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area within the state. Thus, we believe these requirements are not applicable requirements for purposes of redesignation. *See* 65 FR 37890 (June 15, 2000), 66 FR 50399 (October 19, 2001), 68 FR 25418, 25426–27 (May 13, 2003).

In addition, EPA believes that other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's ozone attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated to attainment of the 2008 ozone NAAQS. The section 110 and part D requirements that are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania proposed and final rulemakings, 61 FR 53174–53176 (October 10, 1996) and 62 FR 24826 (May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking, 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking, 60 FR 62748 (December 7, 1995). *See also* the discussion of this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Wisconsin's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for purposes of redesignation.[3]

b. Part D Requirements

Section 172(c) of the CAA sets forth the basic requirements of air quality

[3] EPA has previously approved provisions of the Wisconsin SIP addressing section 110 elements under the 2008 ozone NAAQS; 80 FR 54725 (September 11, 2015), 79 FR 60064 (October 6, 2014), 82 FR 9515 (February 7, 2017), 81 FR 74504 (October 26, 2016), and 81 FR 3334 (January 21, 2016).

plans for states with nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications.

The Chicago area is classified as serious under subpart 2 for the 2008 ozone NAAQS. As such, the area is subject to the subpart 1 requirements contained in section 172(c) and section 176. Similarly, the area is subject to the subpart 2 requirements contained in sections 182(a), (b), and (c) (marginal, moderate, and serious nonattainment area requirements). A thorough discussion of the requirements contained in section 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

i. Subpart 1 Section 172 Requirements

CAA Section 172(b) requires states to submit SIPs meeting the requirements of section 172(c) no later than three years from the date of the nonattainment designation.

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and to provide for attainment of the primary NAAQS. Under this requirement, a state must consider all available control measures, including reductions that are available from adopting RACT on existing sources. Because attainment has been reached in the Chicago area, no additional measures are needed to provide for attainment and section 172(c)(1) requirements are no longer considered to be applicable, as long as the area continues to attain the standard until redesignation. *See* 40 CFR 51.918.

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. EPA approved Wisconsin's RFP plan and RFP contingency measures on February 13, 2019 (84 FR 3701).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. This requirement was superseded by the inventory requirement in section 182(a)(1) discussed below.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has previously approved Wisconsin's NSR program on October 6, 2014 (79 FR 160064) and February 7, 2017 (82 FR 9515). However, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that the NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Wisconsin has demonstrated that the Kenosha portion will be able to maintain the 2008 ozone NAAQS without part D NSR in effect; therefore, EPA concludes that the state need not have a fully approved part D NSR program prior to approval of the redesignation request. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Wisconsin's PSD program will become effective in the Kenosha portion upon redesignation to attainment. EPA approved Wisconsin's PSD program on January 22, 2003 (68 FR 2909) and February 25, 2010 (75 FR 8496).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Wisconsin SIP meets the requirements of section 110(a)(2) for purposes of redesignation.

Section 172(c)(9) requires the SIP to provide for the implementation of contingency measures if the area fails to make RFP or to attain the NAAQS by the attainment deadline. As noted previously, EPA approved Wisconsin's contingency measures for purposes of RFP on February 13, 2019 (84 FR 3701). With respect to contingency measures for failure to attain the NAAQS by the attainment deadline, this requirement is not relevant for purposes of redesignation because the Chicago area has demonstrated monitored attainment of the 2008 ozone NAAQS. (General Preamble, 57 FR 13564). *See also* 40 CFR 51.918.

ii. Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity), as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements [4] as not applying for purposes of evaluating a redesignation request under section 107(d), because state conformity rules are still required after redesignation and Federal conformity rules apply where state conformity rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Nonetheless, Wisconsin has an approved conformity SIP for the Kenosha portion. *See* 79 FR 10995 (February 27, 2014).

iii. Subpart 2 Section 182(a), (b), and (c) Requirements

Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NO_X emitted within the boundaries of the ozone nonattainment area. EPA approved Wisconsin's base year emissions inventory for the Kenosha portion on March 7, 2016 (81 FR 11673) and February 13, 2019, (84 FR 3701).

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC RACT rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. The Kenosha portion is not subject to the

[4] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from SIPs requiring the development of MVEBs, such as control strategy SIPs and maintenance plans.

section 182(a)(2) RACT ''fix up'' requirement for the 2008 ozone NAAQS because it was designated as nonattainment for this standard after the enactment of the 1990 CAA amendments and because Wisconsin complied with this requirement for the Kenosha portion under the prior 1-hour ozone NAAQS. *See* 59 FR 41709 (August 15, 1994) and 60 FR 20643 (April 27, 1995).

Section 182(a)(2)(B) requires each state, with a marginal ozone nonattainment area that implemented or was required to implement an I/M, program prior to the 1990 CAA amendments, to submit a SIP revision for an I/M program no less stringent than that required prior to the 1990 CAA amendments or already in the SIP at the time of the CAA amendments, whichever is more stringent. For the purposes of the 2008 ozone standard and the consideration of Wisconsin's redesignation request for this standard, the Kenosha portion is not subject to the section 182(a)(2)(B) requirement, because the area was designated as nonattainment for the 2008 ozone standard after the enactment of the 1990 CAA amendments and because Wisconsin complied with this requirement for the Kenosha portion under the prior 1-hour ozone NAAQS.

Section 182(a)(3)(B) requires the submission of an emission statement SIP. EPA approved Wisconsin's emission statement SIP for the Kenosha portion for the 2008 ozone NAAQS on February 13, 2019 (84 FR 3701).

Section 182(b)(1) requires the submission of an attainment demonstration and RFP plan. Wisconsin submitted an attainment demonstration and RFP plan for the Kenosha portion on December 1, 2020. EPA approved Wisconsin's RFP plan and RFP contingency measures for the Kenosha portion for the 2008 ozone NAAQS on February 13, 2019 (84 FR 3701). Because attainment has been reached, section 182(b)(1) requirements are no longer considered to be applicable, as long as the area continues to attain the standard. If EPA finalizes approval of the redesignation of the area, EPA will take no further action on the attainment demonstration submitted by Wisconsin.

Section 182(b)(2) requires states with moderate nonattainment areas to implement VOC RACT with respect to each of the following: (1) All sources covered by a Control Technology Guideline (CTG) document issued between November 15, 1990, and the date of attainment; (2) all sources covered by a CTG issued prior to November 15, 1990; and (3) all other major non-CTG stationary sources. EPA approved Wisconsin's VOC RACT program for the Kenosha portion for the 2008 ozone NAAQS on September 16, 2020 (85 FR 57729).

Section 182(b)(3) requires states to adopt Stage II gasoline vapor recovery regulations. On May 16, 2012 (77 FR 28772), EPA determined that the use of onboard vapor recovery technology for capturing gasoline vapor when gasoline-powered vehicles are refueled is in widespread use throughout the highway motor vehicle fleet and waived the requirement that current and former ozone nonattainment areas implement Stage II vapor recovery systems on gasoline pumps. EPA approved a revision to Wisconsin's Stage II program on November 4, 2013 (78 FR 65875) because the State has demonstrated that onboard refueling vapor recovery systems will be in widespread use in southeast Wisconsin by 2016, making Stage II redundant.

Section 182(b)(4) requires an I/M program for each state with a moderate ozone nonattainment area. EPA approved Wisconsin's I/M program on August 16, 2001 (66 FR 42949) and approved revisions to the program on September 19, 2013 (78 FR 57501). EPA approved Wisconsin's I/M program certification for the Kenosha portion for the 2008 ozone NAAQS on February 13, 2019 (84 FR 3701).

Regarding the source permitting and offset requirements of sections 182(a)(2)(C), 182(a)(4), and 182(b)(5), Wisconsin currently has a fully-approved part D NSR program in place. EPA approved Wisconsin's NSR SIP on January 18, 1995 (60 FR 3538) and February 7, 2017 (82 FR 9515). Further, EPA approved Wisconsin's SIP revision addressing the NSR requirements for the 2008 ozone NAAQS on May 3, 2019 (84 FR 18989). In addition, EPA approved Wisconsin's PSD program on October 6, 2014 (79 FR 60064). The State's PSD program will become effective in the Kenosha portion upon redesignation of the area to attainment. Section 182(f) requires states with moderate nonattainment areas to implement NO_X RACT. EPA approved Wisconsin's NO_X RACT SIP on October 19, 2010 (75 FR 64155). EPA proposed approval of Wisconsin's certification that its current NO_X RACT SIP meets the serious NO_X RACT requirements for the Kenosha portion for the 2008 ozone NAAQS on December 7, 2022 (86 FR 69207). The public comment period for this proposed rule ended on January 6, 2022. EPA received no comments on the proposal. EPA will not finalize this redesignation until we've approved the NO_X RACT program.

Section 182(c)(1) of the CAA requires states with nonattainment areas classified serious or higher to adopt and implement a program to improve air monitoring for ambient concentrations of ozone, NO_X and VOC. EPA initiated the Photochemical Assessment Monitoring Stations (PAMS) program in February 1993. The PAMS program required the establishment of an enhanced monitoring network in all ozone nonattainment areas classified as serious, severe, or extreme. On March 18, 1994 (59 FR 6021), EPA approved Wisconsin's SIP revision establishing an enhanced monitoring program (EMP). EPA proposed approval of Wisconsin's certification that its current EMP meets the serious requirements for the Kenosha portion for the 2008 ozone NAAQS on December 7, 2022 (86 FR 69207). The public comment period for this proposed rule ended on January 6, 2022. EPA received no comments on the proposal. EPA will not finalize this redesignation until it has approved the EMP program.

CAA section 182(c)(3) requires states with ozone nonattainment areas classified as serious or higher to adopt and implement a program for an enhanced I/M program. Wisconsin submitted an enhanced I/M performance modeling analysis on December 3, 2021. For the reasons discussed in section VI., below, EPA is proposing to approve the performance modeling analysis submitted by Wisconsin as meeting the section 182(c)(3) serious enhanced I/M requirements for the Kenosha portion under the 2008 ozone NAAQS.

CAA section 182(c)(4) requires states with ozone nonattainment areas classified as serious or higher to submit a SIP revision describing implementation of a Clean Fuel Vehicle Program (CFVP), as described in CAA title II part C (40 CFR 88). EPA approved Wisconsin's CFVP on March 11, 1996 (61 FR 9641). EPA issued a memorandum on July 21, 2005, which found that then-current emission standards for vehicles (regulated under 40 CFR 86) were as or more stringent than the emission standards specified in 40 CFR 88 for the CFVP. EPA proposed approval of Wisconsin's certification that its current CFVP meets the serious CFVP requirements for the Kenosha portion for the 2008 ozone NAAQS on December 7, 2022 (86 FR 69207). The public comment period for this proposed rule ended on January 6, 2021. EPA received no comments on the proposal. EPA will not finalize this redesignation until we've approved the CFVP program.

The remaining Section 182(c) requirements for areas classified as serious include: An attainment demonstration, RFP, RFP contingency measures, transportation conformity motor vehicle emissions budgets, and a transportation control demonstration. These elements are not needed to redesignate the Kenosha portion because the area has attained of the 2008 ozone NAAQS. This rationale is outlined in 40 CFR 51.918, the general preamble, and the Calcagni memorandum at 6 (''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.'') EPA believes that it is reasonable to interpret these provisions so as not to require areas that are meeting the ozone standard to make the SIP submissions to EPA described in the provisions as long as the areas continue to meet the standard. If such an area were to monitor a violation of the standard prior to being redesignated to attainment, however, the area would have to address the pertinent requirements and submit the SIP revisions described in those provisions to EPA.

Thus, as discussed above, with approval of Wisconsin's section 182(c)(3) enhanced I/M SIP, EPA finds that the Kenosha portion will satisfy all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

2. The Kenosha Portion Has a Fully Approved SIP for Purposes of Redesignation Under Section 110(k) of the CAA

At various times, Wisconsin has adopted and submitted, and EPA has approved, provisions addressing the various SIP elements applicable for the ozone NAAQS. As discussed above, if EPA finalizes approval of Wisconsin's enhanced I/M performance modeling analysis as meeting the requirements of section 182(c)(3) of the CAA, EPA will have fully approved the Wisconsin SIP for the Kenosha portion under section 110(k) for all requirements applicable for purposes of redesignation under the 2008 ozone NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request (*see* the Calcagni memorandum at page 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA*, 265 F.3d 426). Additional measures may also be approved in conjunction with a redesignation action (see 68 FR 25426 (May 12, 2003) and citations therein).

C. Are the air quality improvements in the Chicago area due to permanent and enforceable emission reductions?

To redesignate an area from nonattainment to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from the implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable emission reductions. EPA has determined that Wisconsin has demonstrated that the observed ozone air quality improvement in the Chicago area is due to permanent and enforceable reductions in VOC and NO_X emissions resulting from state measures adopted into the SIP and Federal measures.

In making this demonstration, the State has calculated the change in emissions between 2011 and 2019. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to several regulatory control measures that the Chicago area and upwind areas have implemented in recent years. In addition, Wisconsin provided an analysis to demonstrate that the improvement in air quality was not due to unusually favorable meteorology. Based on the information summarized below, EPA finds that Wisconsin has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

1. Permanent and Enforceable Emission Controls Implemented

a. Regional NO_X Controls

Clean Air Interstate Rule (CAIR)/Cross State Air Pollution Rule (CSAPR). Under the ''good neighbor provision'' of CAA section 110(a)(2)(D)(i)(I), states are required to address interstate transport of air pollution. Specifically, the good neighbor provision provides that each state's SIP must contain provisions prohibiting emissions from within that state which will contribute significantly to nonattainment of the NAAQS, or interfere with maintenance of the NAAQS, in any other state.

On May 12, 2005, EPA published CAIR, which required eastern states, including Wisconsin, to prohibit emissions consistent with annual and ozone season NO_X budgets and annual sulfur dioxide (SO_2) budgets (70 FR 25152). CAIR addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter ($PM_{2.5}$) NAAQS and was designed to mitigate the impact of transported NO_X emissions, a precursor of both ozone and $PM_{2.5}$, as well as transported SO_2 emissions, another precursor of $PM_{2.5}$. The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded CAIR to EPA for replacement in 2008. *North Carolina* v. *EPA,* 531 F.3d 896, *modified,* 550 F.3d 1176 (2008). While EPA worked on developing a replacement rule, implementation of the CAIR program continued as planned with the NO_X annual and ozone season programs beginning in 2009 and the SO_2 annual program beginning in 2010.

On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA published CSAPR to replace CAIR and to address the good neighbor provision for the 1997 ozone NAAQS, the 1997 $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS.[5] Through Federal Implementation Plans, CSAPR required electric generating units (EGUs) in eastern states, including Wisconsin, to meet annual and ozone season NO_X budgets and annual SO_2 budgets implemented through new trading programs. After delays caused by litigation, EPA started implementing the CSAPR trading programs in 2015, simultaneously discontinuing administration of the CAIR trading programs. On October 26, 2016, EPA published the CSAPR Update, which established, starting in 2017, a new ozone season NO_X trading program for EGUs in eastern states, including Wisconsin, to address the good neighbor provision for the 2008 ozone NAAQS (81 FR 74504). The CSAPR Update is estimated to result in a 20 percent reduction in ozone season NO_X emissions from EGUs in the eastern United States, a reduction of 80,000 tons in 2017 compared to 2015 levels. The reduction in NO_X emissions from the implementation of CAIR and then CSAPR occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

b. Wisconsin Point Source NO_X Reductions

The NO_X emission units at We Energies—Pleasant Prairie Power Plant (FID #230006260) include two coal fired boilers (B20 and B21), two auxiliary natural gas fired boilers (B22 and B23), and four emergency generators (P30–P33). Boilers B20 and B21 are subject to

[5] In a December 27, 2011 rulemaking, EPA included Wisconsin in the ozone season NO_X program, addressing the 1997 ozone NAAQS (76 FR 80760).

the NO_X RACT requirements in s. NR 428.22(1)(a)1.a., Wis. Adm. Code, and shall comply with the NO_X emission limit of 0.1 pounds per million British thermal units (lbs/MMBtu), based on a 30-day rolling average, by May 1, 2009. Pursuant to a consent decree (Civil Action No. 03–C–0371), Boilers B20 and B21 became subject to the NO_X emission limit of 0.08 lbs/MMBtu, based on a 12-month rolling average, by December 31, 2006 and December 31, 2003, respectively. As noted in the source's construction permit #18-RAB–05–ERC, issued on September 7, 2018, boilers B20–B23 were permanently shut down on or around April 10, 2018.

c. Federal Emission Control Measures

Reductions in VOC and NO_X emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following:

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. On February 10, 2000 (65 FR 6698), EPA promulgated Tier 2 motor vehicle emission standards and gasoline sulfur control requirements. These emission control requirements result in lower VOC and NO_X emissions from new cars and light duty trucks, including sport utility vehicles. With respect to fuels, this rule required refiners and importers of gasoline to meet lower standards for sulfur in gasoline, which were phased in between 2004 and 2006. By 2006, refiners were required to meet a 30 ppm average sulfur level, with a maximum cap of 80 ppm. This reduction in fuel sulfur content ensures the effectiveness of low emission-control technologies. The Tier 2 tailpipe standards established in this rule were phased in for new vehicles between 2004 and 2009. EPA estimated that this rule will cut NO_X and VOC emissions from light-duty vehicles and light-duty trucks by approximately 76 percent and 28 percent, respectively. NO_X and VOC reductions from medium-duty passenger vehicles included as part of the Tier 2 vehicle program are estimated to be approximately 37,000 and 9,500 tons per year, respectively, when fully implemented. As projected by these estimates and demonstrated in the on-road emission modeling for the Kenosha portion, as shown in tables 2 and 3 below, the majority of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as remaining older vehicles are replaced with newer, compliant model years.

Tier 3 Emission Standards for Vehicles and Gasoline Sulfur Standards. On April 28, 2014 (79 FR 23414), EPA promulgated Tier 3 motor vehicle emission and fuel standards to reduce both tailpipe and evaporative emissions and to further reduce the sulfur content in fuels. The rule is being phased in between 2017 and 2025. Tier 3 sets new tailpipe standards for the sum of VOC and NO_X and for particulate matter. The VOC and NO_X tailpipe standards for light-duty vehicles represent approximately an 80 percent reduction from today's fleet average and a 70 percent reduction in per-vehicle particulate matter (PM) standards. Heavy-duty tailpipe standards represent about a 60 percent reduction in both fleet average VOC and NO_X and per-vehicle PM standards. The evaporative emissions requirements in the rule will result in approximately a 50 percent reduction from current standards and apply to all light-duty and on-road gasoline-powered heavy-duty vehicles. Finally, the rule lowered the sulfur content of gasoline to an annual average of 10 ppm by January 2017. As projected by these estimates and demonstrated in the on-road emission modeling for the Kenosha portion, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Heavy-Duty Diesel Engine Rules. In July 2000, EPA issued a rule for on-road heavy-duty diesel engines that includes standards limiting the sulfur content of diesel fuel. Emissions standards for NO_X, VOC and PM were phased in between model years 2007 and 2010. In addition, the rule reduced the highway diesel fuel sulfur content to 15 parts per million by 2007, leading to additional reductions in combustion NO_X and VOC emissions. EPA has estimated future year emission reductions due to implementation of this rule. Nationally, EPA estimated that by 2015 NO_X and VOC emissions would decrease by 1,260,000 tons and 54,000 tons, respectively. Nationally, EPA estimated that by 2030 NO_X and VOC emissions will decrease by 2,570,000 tons and 115,000 tons, respectively. As projected by these estimates and demonstrated in the on-road emission modeling for the Kenosha portion, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Non-road Diesel Rule. On June 29, 2004 (69 FR 38958), EPA issued a rule adopting emissions standards for non-road diesel engines and sulfur reductions in non-road diesel fuel. This rule applies to diesel engines used primarily in construction, agricultural, and industrial applications. Emission standards were phased in for the 2008 through 2015 model years based on engine size. The SO_2 limits for non-road diesel fuels were phased in from 2007 through 2012. EPA estimated that compliance with this rule will cut NO_X emissions from these non-road diesel engines by approximately 90 percent. As projected by these estimates and demonstrated in the non-road emission modeling for the Kenosha portion, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Non-road Spark-Ignition Engines and Recreational Engine Standards. On November 8, 2002 (67 FR 68242), EPA adopted emission standards for large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. These emission standards were phased in from model year 2004 through 2012. EPA estimated an overall 72 percent reduction in VOC emissions from these engines and an 80 percent reduction in NO_X emissions. As projected by these estimates and demonstrated in the non-road emission modeling for the Kenosha portion, as shown in tables 2 and 3 below, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Category 3 Marine Diesel Engine Standards. On April 30, 2010 (75 FR 22896), EPA issued emission standards for marine compression-ignition engines at or above 30 liters per cylinder. Tier 2 emission standards applied beginning in 2011 and are expected to result in a 15 to 25 percent reduction in NO_X emissions from these engines. Final Tier 3 emission standards applied beginning in 2016 and are expected to result in approximately an 80 percent reduction in NO_X from these engines. As projected by these estimates and demonstrated in the non-road emission modeling for the Kenosha portion, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

2. Emission Reductions

Wisconsin is using a 2011 emissions inventory as the nonattainment year. This is appropriate because it was one of the years used to designate the Chicago area as nonattainment. Wisconsin is using 2019 as the attainment year, which is appropriate because it is one of the years in the 2019–2021 period used to demonstrate attainment.

Wisconsin created the point source emission inventory using annually reported point source emissions, the EPA's Clean Air Markets Division database and approved EPA techniques for emissions calculation (*e.g.,* emission factors) for 2011 and 2019 point source emissions from state inventory databases.

There is one EGU point source facility located in the Kenosha portion. For this facility, Wisconsin used the ozone season NO_X emissions divided by the days of reported operation during the ozone season to represent summer day emissions. The VOC summer day emissions were derived by multiplying the facility's ozone season heat input by an average VOC emission rate.

Wisconsin tabulated the 2011 and 2019 emissions inventories for non-EGU point sources using the emissions data reported annually by each facility operator to the Wisconsin air emissions inventory (AEI). The AEI calculates emissions for each individual emissions unit or process line by multiplying fuel or process throughput by the appropriate emission factor that is derived from mass balance analysis, stack testing, continuous emissions monitoring, engineering analysis, or EPA's Factor Information Retrieval database. The emission calculations in the AEI also account for any operating control equipment.

For the area sources, emissions inventory estimates were based on the 2011 NEI version 2, except for the residential and commercial portable fuel containers and Stage II refueling categories as described below. Emission calculation methodologies used in developing 2011 nonpoint emissions inventory are available in the EPA's 2011 NEI, version 2 Technical Support Document.

For the 2019 attainment year, area source emissions inventory estimates were based on the data interpolation between the 2016 base year and the 2023 projection year of EPA's 2016 version 1 emissions modeling platform. Methodologies used to develop 2016 and 2023 emissions modeling data are available in the EPA's National Emissions Inventory Collaborative Wiki v1 release page (*https://views.cira.colostate.edu/wiki/wiki/10202*).

On-road mobile source emissions were developed in conjunction with the Southeastern Wisconsin Regional Planning Commission (SEWRPC), the Metropolitan Planning Organization for the Kenosha portion. On-road mobile sources are motorized mobile equipment that are primarily used on public roadways. Examples of on-road mobile sources include cars, trucks, buses and road motorcycles. Wisconsin used the Motor Vehicle Emission Simulator (MOVES), the EPA's recommended mobile source model, to develop on-road emissions rates. The version used was MOVES3.

The modeling inputs to MOVES include detailed transportation data (*e.g.,* vehicle-miles of travel by vehicle class, road class and hour of day, and average speed distributions), which were provided by SEWRPC.

The methodology for the 2011 and 2019 non-road emissions categories were developed using the EPA's MOVES3 model, using the same summer day temperatures used for the on-road modeling. The model was run for Kenosha County for the months of June, July and August. Summer day emissions were calculated by dividing the total emissions over these three months by 92 (the number of days in the three months). Emissions were then allocated from the full county to the eastern Kenosha County area based on surrogates such as population, land area and water area, depending on the category.

For commercial marine, aircraft and rail locomotive (MAR) categories, the annual emissions estimates used for Kenosha County are those in the EPA's 2011 NEI version 2.

For the year 2019, the annual emissions estimates used for Kenosha County were obtained by linearly interpolating between the 2016 and 2023 values in the EPA's 2016 emissions modeling platform, version 1.

Summer day emissions for these MAR categories were estimated by dividing the annual emissions by 365. This same value was used in the EPA's 2011 version 6.3 emissions modeling platform. The allocation of the full county emissions to the eastern Kenosha County area is based on surrogates, such as population, land area and water area, depending on the MAR category.

Emissions for Illinois and Indiana were based on inventories developed by those states in 2016 for an earlier round of redesignation requests. For the current document, 2011 and 2030 emissions are directly taken from these earlier inventories, whereas 2019 and 2035 emissions were determined by interpolation from these inventories. The original inventories are in Wisconsin's 2016 redesignation request.

Using the inventories described above, Wisconsin's submittal documents the change in VOC and NO_X emissions from 2011 to 2019 for the Kenosha portion. Emissions data are shown in Tables 2 and 3.

TABLE 2—EMISSIONS REDUCTION OF NO_X EMISSIONS FOR THE ILLINOIS, INDIANA AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2011–2019 (tons/day)

Sector	2011 Nonattainment year	2019 Attainment year	Emissions reduction
Illinois			
EGU Point	67.41	35.23	32.18
Non-EGU	52.57	47.55	5.02
Area	32.03	34.63	−2.6
On-Road	285.34	134.38	150.96
Non-road	176.60	121.63	54.97
Total	613.96	373.42	240.53
Indiana			
EGU Point	24.04	4.29	19.75

TABLE 2—EMISSIONS REDUCTION OF NO_X EMISSIONS FOR THE ILLINOIS, INDIANA AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2011–2019 (tons/day)—Continued

Sector	2011 Nonattainment year	2019 Attainment year	Emissions reduction
Non-EGU	70.77	59.91	10.86
Area	9.39	0.91	8.48
On-road	24.70	14.91	9.79
Non-road	15.84	13.43	2.41
Total	144.74	93.45	51.29
Wisconsin			
EGU Point	8.71	0.00	8.71
Non-EGU	0.09	0.08	0.01
Area	1.20	1.12	0.08
On-Road	4.82	1.81	3.01
Non-road	2.25	1.64	0.61
Total	17.07	4.65	12.42
Chicago-Naperville, IL-IN-WI 2008 Ozone Area			
Illinois	613.96	373.42	240.53
Indiana	144.74	93.45	51.29
Wisconsin	17.07	4.65	12.42
Total	775.77	471.52	304.24

TABLE 3—EMISSIONS REDUCTION OF VOC EMISSIONS FOR THE ILLINOIS, INDIANA AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2011–2019 (tons/day)

Sector	2011	2019	Emissions reduction
Illinois			
EGU Point	0.62	0.97	−0.35
Non-EGU	47.63	45.35	2.28
Area	215.15	232.00	−16.85
On-Road	72.43	66.45	5.98
Non-road	101.83	67.67	34.16
Total	437.66	412.44	25.22
Indiana			
EGU Point	0.54	0.47	0.07
Non-EGU	17.22	10.83	6.39
Area	18.26	17.00	1.26
On-road	9.58	6.80	2.78
Non-road	21.43	5.53	15.90
Total	67.03	40.63	26.40
Wisconsin			
EGU Point	0.38	0.00	0.38
Non-EGU	0.24	0.19	0.05
Area	4.10	3.58	0.52
On-Road	1.90	0.89	1.01
Non-road	1.14	0.70	0.44
Total	7.76	5.36	2.40
Chicago-Naperville, IL-IN-WI 2008 Ozone Area			
Illinois	437.66	412.44	25.22
Indiana	67.03	40.63	26.40
Wisconsin	7.76	5.36	2.40
Total	512.45	458.43	54.02

As shown in Tables 2 and 3, NO_X and VOC emissions in the Kenosha portion declined by 12.42 tons/day and 2.40 tons/day, respectively, between 2011 and 2017. NO_X and VOC emissions throughout the entire Chicago area declined by 304.24 tons/day and 54.02 tons/day, respectively, between 2011 and 2019.

3. Meteorology

Wisconsin included an analysis to further support its demonstration that the improvement in air quality between the nonattainment year violations and the attainment year is due to permanent and enforceable emission reductions and not unusually favorable meteorology. Wisconsin analyzed the maximum fourth-highest 8-hour ozone values for May, June, July, August, and September, for years 2000 to 2021.

First, the maximum 8-hour ozone concentration at each monitor in the Kenosha portion was compared to the number of days where the maximum temperature was greater than or equal to 80 °F. While there is a clear trend in decreasing ozone concentrations at all monitors, there is no such trend in the temperature data.

Wisconsin also examined the relationship between the average summer temperature for each year of the 2000–2021 period and the fourth-highest 8-hour ozone concentration. Given the similarity of ozone concentrations observed at each monitor and the regional nature of ozone formation, Wisconsin conducted this analysis using the average fourth-highest 8-hour ozone concentration from all monitors in the Kenosha portion. While there is some correlation between average summer temperatures and ozone concentrations, this correlation does not exist over the study period. The linear regression lines for each data set demonstrate that the average summer temperatures have increased over the 2000 to 2021 period, while average ozone concentrations have decreased. Because the correlation between temperature and ozone formation is well established, these data suggest that reductions in precursors are responsible for the reductions in ozone concentrations in the Kenosha portion, and not unusually favorable summer temperatures.

Finally, Wisconsin analyzed the relationship between average summertime relative humidity and average fourth-highest 8-hour ozone concentrations. The data did not show a correlation between relative humidity and ozone concentrations.

As discussed above, Wisconsin identified numerous Federal rules that resulted in the reduction of VOC and NO_X emissions from 2011 to 2021. In addition, Wisconsin's analyses of meteorological variables associated with ozone formation demonstrate that the improvement in air quality in the Kenosha portion between the year violations occurred and the year attainment was achieved is not due to unusually favorable meteorology. Therefore, EPA finds that Wisconsin has shown that the air quality improvements in the Chicago area are due to permanent and enforceable emissions reductions.

D. Does Wisconsin have a fully approvable ozone maintenance plan for the Kenosha portion?

As one of the criteria for redesignation to attainment section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue for an additional 10 years beyond the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to ensure prompt correction of the future NAAQS violation.

The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emission inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan. In conjunction with its request to redesignate the Kenosha portion to attainment for the 2008 ozone NAAQS, Wisconsin submitted a SIP revision to provide for maintenance of the 2008 ozone NAAQS through 2030, more than 10 years after the expected effective date of the redesignation to attainment. As discussed below, EPA proposes to find that Wisconsin's ozone maintenance plan includes the necessary components and to approve the maintenance plan as a revision of the Wisconsin SIP.

1. Attainment Inventory

EPA is proposing to determine that Wisconsin portion of the Chicago area has attained the 2008 ozone NAAQS based on monitoring data for the period of 2019–2021. Wisconsin selected 2019 as the attainment emissions inventory year to establish attainment emission levels for VOC and NO_X. The attainment emissions inventory identifies the levels of emissions in the Kenosha portion that are consistent to attainment of the 2008 ozone NAAQS. The derivation of the attainment year emissions is discussed above in section IV.C.2. of this proposed rule. The attainment level emissions, by source category, are summarized in Tables 2 and 3 above.

2. Has the state documented maintenance of the ozone standard in the Kenosha portion?

Wisconsin has demonstrated maintenance of the 2008 ozone NAAQS through 2030 by ensuring that current and future emissions of VOC and NO_X for the Kenosha portion remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Wisconsin is using emissions inventories for the years 2030 and 2035 to demonstrate maintenance. 2035 is more than 10 years after the expected effective date of the redesignation to attainment and 2030 was selected to demonstrate that emissions are not expected to spike in the interim between the attainment year and the final maintenance year. The emissions inventories were developed as described below.

Wisconsin estimated the future year point source emissions by applying growth factors to the 2019 attainment year emissions inventory. Wisconsin's 2030 and 2035 area source emissions were estimated primarily by extrapolating EPA's 2023 and 2028 modeling inventories.

The methodology for the 2030 and 2035 projected non-road emissions categories were developed using the EPA's MOVES3 model, using the same summer day temperatures used for the on-road modeling. The model was run for Kenosha County for the months of June, July and August. Summer day emissions were calculated by dividing the total emissions over these three months by 92 (the number of days in the three months). Emissions were then allocated from the full county to the

eastern Kenosha County area based on surrogates such as population, land area and water area, depending on the category.

For all source categories except commercial MAR, the MOVES3 model was run for Kenosha County at summer day temperatures, assuming the model's default growth projections.

For the three MAR categories, the 2030 and 2035 emissions were calculated by extrapolating from the 2023 and 2028 values from EPA's 2016 Emissions Modeling Platform, Version 1. To avoid underestimating projected emissions, if the extrapolated emissions for 2030 or 2035 were less than those for 2028, the emissions were set equal to those for 2028.

On-road mobile source emissions were developed in conjunction with the SEWRPC and were calculated from emission factors produced by EPA's MOVES3 model and data extracted from the region's travel-demand model.

Projected emissions data are shown in Tables 4 through 5 below.

TABLE 4—PROJECTED EMISSIONS OF NO_X EMISSIONS FOR THE ILLINOIS, INDIANA, AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2030 AND 2035 (tons/day)

Sector	2019 Attainment year	2030 Interim year	2035 Maintenance year	Emissions reduction 2019–2035
Illinois				
EGU Point	35.23	43.59	40.97	−5.74
Non-EGU	47.55	48.56	49.28	−1.73
Area	34.63	34.97	35.04	−0.41
On-Road	134.38	55.94	48.81	85.57
Non-road	121.63	106.80	108.27	13.36
Total	373.42	289.86	282.37	91.05
Indiana				
EGU Point	4.29	1.44	0.42	3.87
Non-EGU	59.91	60.79	61.51	−1.60
Area	0.91	0.88	0.87	0.04
On-road	14.91	6.62	5.51	9.40
Non-road	13.43	10.25	8.49	4.94
Total	93.45	79.98	76.80	16.65
Wisconsin				
EGU Point	0.00	0.00	0.00	0.00
Non-EGU	0.08	0.12	0.12	−0.04
Area	1.12	0.95	0.96	0.16
On-Road	1.81	0.85	0.75	1.06
Non-road	1.64	1.21	1.21	0.43
EGU Emission credit		7.22	7.22	7.22
Total	4.65	3.13	3.04	1.61
Chicago-Naperville, IL-IN-WI 2008 Ozone Area				
Illinois	373.42	289.86	282.37	91.05
Indiana	93.45	79.98	76.80	16.65
Wisconsin	4.65	3.13	3.04	1.61
Total	471.52	372.97	362.21	109.31

TABLE 5—PROJECTED EMISSIONS OF VOC EMISSIONS FOR THE ILLINOIS, INDIANA, AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2025 AND 2030 (tons/day)

Sector	2019 Attainment year	2030 Interim year	2035 Maintenance year	Emissions reduction 2019–2035
Illinois				
EGU Point	0.97	2.52	2.80	−1.83
Non-EGU	45.35	44.71	44.54	0.81
Area	232.00	225.11	225.11	6.89
On-Road	66.45	37.42	34.27	32.18
Non-road	67.67	66.41	67.37	0.30
Total	412.44	376.17	374.09	38.35

TABLE 5—PROJECTED EMISSIONS OF VOC EMISSIONS FOR THE ILLINOIS, INDIANA, AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2025 AND 2030 (tons/day)—Continued

Sector	2019 Attainment year	2030 Interim year	2035 Maintenance year	Emissions reduction 2019–2035
Indiana				
EGU Point	0.47	0.56	0.68	−0.21
Non-EGU	10.83	10.84	10.90	−0.07
Area	17.00	17.58	17.85	−0.85
On-road	6.80	3.77	2.93	3.87
Non-road	5.53	4.80	4.35	1.18
Total	40.63	37.55	36.71	3.92
Wisconsin				
EGU Point	0.00	0.00	0.00	0.00
Non-EGU	0.19	0.26	0.26	−0.07
Area	3.58	3.49	3.56	0.02
On-Road	0.89	0.54	0.47	0.42
Non-road	0.70	0.63	0.62	0.08
EGU Emission credit		0.37	0.37	0.37
Total	5.36	4.92	4.91	0.45
Chicago-Naperville, IL-IN-WI 2008 Ozone Area				
Illinois	412.44	376.17	374.09	38.35
Indiana	40.63	37.55	36.71	3.92
Wisconsin	5.36	4.92	4.91	0.45
Total	458.43	418.64	415.71	42.72

In summary, Wisconsin's maintenance demonstration for the Kenosha portion shows maintenance of the 2008 ozone NAAQS by providing emissions information to support the demonstration that future emissions of NO_X and VOC will remain at or below 2019 emission levels when considering both future source growth and implementation of future controls. As shown in Tables 4 and 5, emissions in the Kenosha portion are projected to decrease by 1.61 tons/day and 0.45 tons/day, respectively, between 2019 and 2035. NO_X and VOC emissions in the entire Chicago area are projected to decrease by 109.31 tons/day and 42.72 tons/day, respectively, between 2019 and 2035.

3. Continued Air Quality Monitoring

Wisconsin has committed to continue to operate the ozone monitors listed in Table 1 above. Wisconsin has committed to consult with EPA prior to making changes to the existing monitoring network should changes become necessary in the future. Wisconsin remains obligated to meet monitoring requirements, to continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into the Air Quality System (AQS) in accordance with Federal guidelines.

4. Verification of Continued Attainment

Wisconsin has confirmed that it has the legal authority to enforce and implement the requirements of the maintenance plan for the Kenosha portion. This includes the authority to adopt, implement, and enforce any subsequent emission control measures determined to be necessary to correct future ozone attainment problems.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of the area's emissions inventory. Wisconsin will continue to operate the current ozone monitors located in the Kenosha portion. There are no plans to discontinue operation, relocate, or otherwise change the existing ozone monitoring network other than through revisions in the network approved by the EPA.

In addition, to track future levels of emissions, Wisconsin will continue to develop and submit to EPA updated emission inventories for all source categories at least once every three years, consistent with the requirements of 40 CFR part 51, subpart A, and 40 CFR 51.122. The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002 (67 FR 39602). The CERR was replaced by the Annual Emissions Reporting Requirements on December 17, 2008 (73 FR 76539). The most recent triennial inventory for Wisconsin was compiled for 2014. Point source facilities covered by Wisconsin's emission statement rule, Wisconsin Administrative Code NR 438, will continue to submit VOC and NO_X emissions on an annual basis.

5. What is the contingency plan for the Kenosha portion?

Section 175A of the CAA requires that the state adopt a maintenance plan, as a SIP revision, that includes such contingency measures as EPA deems necessary to ensure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The maintenance plan must identify: The contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented. The maintenance plan must include a commitment that the state will implement all measures with respect to the control of the pollutant that were

contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d) of the CAA.

As required by section 175A of the CAA, Wisconsin has adopted a contingency plan for the Kenosha portion to address possible future ozone air quality violations. The contingency plan adopted by Wisconsin has two levels of response, a warning level response and an action level response.

In Wisconsin's plan, a warning level response will be triggered when an annual fourth highest monitored value of 0.075 ppm or higher is monitored within the maintenance area. A warning level response will require Wisconsin to conduct a study. The study would include the two elements. The first element would assess whether actual emissions have deviated significantly from the emissions projections contained in this maintenance plan for the Kenosha portion, along with an evaluation of which sectors and states are responsible for any emissions increases. Second, Wisconsin would investigate whether unusual meteorological conditions during the high ozone year led to the high monitored ozone concentrations. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The study will consider ease and timing of implementation as well as economic and social impacts and will be completed no later than May 1st of the next season. Implementation of necessary controls in response to a warning level response trigger will take place no later than 18 months from the completion of the study.

In Wisconsin's plan, an action level response would be triggered if a three-year design value exceeds the level of the 2008 ozone NAAQS (0.075 ppm). When an action level response is triggered, Wisconsin will determine what additional control measures are needed to ensure future attainment of the 2008 ozone NAAQS. Control measures selected will be adopted and implemented within 18 months from the close of the ozone season that prompted the action level. Wisconsin may also consider if significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and would thus constitute an adequate contingency measure response.

Wisconsin included the following list of potential contingency measures in its maintenance plan. However, Wisconsin is not limited to the measures on this list:

1. Anti-idling control program for mobile sources, targeting diesel vehicles
2. Diesel exhaust retrofits
3. Traffic flow improvements
4. Park and ride facilities
5. Rideshare/carpool program
6. Expansion of the vehicle emissions testing program

To qualify as a contingency measure, emissions reductions from that measure must not be factored into the emissions projections used in the maintenance plan. Wisconsin notes that because it is not possible to determine what control measures will be appropriate in the future, the list is not comprehensive.

EPA has concluded that Wisconsin's maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. In addition, as required by section 175A(b) of the CAA, Wisconsin has committed to submit to EPA an updated ozone maintenance plan eight years after redesignation of the Kenosha portion to cover an additional ten years beyond the initial 10-year maintenance period. Thus, EPA finds that the maintenance plan SIP revision submitted by Wisconsin for the Kenosha portion meets the requirements of section 175A of the CAA, and EPA proposes to approve it as a revision to the Wisconsin SIP.

V. Has the state adopted approvable motor vehicle emission budgets?

A. Motor Vehicle Emission Budgets

Under section 176(c) of the CAA, new transportation plans, programs or projects that receive Federal funding or support, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality problems, or delay timely attainment of the NAAQS or interim air quality milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS, but that have been redesignated to attainment with an approved maintenance plan for the NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas. *See* the SIP requirements for the 2008 ozone NAAQS in EPA's December 6, 2018 implementation rule (83 FR 62998). These control strategy SIPs (including reasonable further progress plans and attainment plans) and maintenance plans must include MVEBs for criteria pollutants, including ozone and their precursor pollutants (VOC and NO_X) to address pollution from on-road transportation sources. The MVEBs are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. *See* 40 CFR 93.101.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment must be established, at minimum, for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB, if needed, after it is established in the SIP.

As discussed earlier, Wisconsin's maintenance plan includes NO_X and VOC MVEBs for the Kenosha for 2030 and 2025, the last year of the maintenance period and an interim year. The MVEBs were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The MVEBs were clearly identified and precisely quantified. These MVEBs, when considered together with all other emissions sources, are consistent with maintenance of the 2008 ozone NAAQS.

TABLE 6—MVEBS FOR THE KENOSHA 2008 OZONE MAINTENANCE PLAN (tons/day)

Pollutant	2030 MVEB	2035 MVEB
NO_X	0.85	0.75
VOC	0.54	0.47

EPA is proposing to approve the MVEBs for use to determine transportation conformity in the Kenosha portion of the Chicago area, because EPA has determined that the area can maintain attainment of the 2008 ozone NAAQS for the relevant

maintenance period with mobile source emissions at the levels of the MVEBs.

B. What is a safety margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Tables 4 and 5 above, the emissions in the Kenosha portion are projected to have safety margins of 1.61 tons/day for NO_X and 0.45 tons/day for VOC in 2035 (the difference between the attainment year, 2019, emissions and the projected 2030 emissions for all sources in the Kenosha portion. Similarly, there is a safety margin of 1.52 tons/day for NO_X and 0.44 tons/day for VOC in 2030. Even if emissions exceeded projected levels by the full amount of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

Wisconsin is not allocating any of the safety margin to the mobile source sector. Wisconsin can request an allocation to the MVEBs of the available safety margins reflected in the demonstration of maintenance in a future SIP revision.

VI. Enhanced I/M in the Kenosha Portion

CAA section 182(c)(3) requires states with ozone nonattainment areas classified as serious or higher to implement an enhanced vehicle I/M program. The general purpose of motor vehicle I/M programs is to reduce emissions from in-use motor vehicles in need of repairs and thereby contribute to state and local efforts to improve air quality and to attain the NAAQS. Wisconsin's I/M program has been in operation since 1984. It was originally implemented in accordance with the 1977 CAA Amendments and operated in the six counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha. Sheboygan County was added to the program in July 1993, resulting in a seven-county program area that has remained to the present. Vehicles were originally tested by measuring tailpipe emissions using a steady-state idle test. Tampering inspections were added in 1989. The I/M program is jointly administered by WDNR and the Wisconsin Department of Transportation.

The 1990 CAA Amendments set additional requirements for I/M programs. For moderate areas, a ''basic'' program was required under section 182(b)(4). For serious or worse areas, an ''enhanced'' program was required under section 182(c)(3). EPA's requirements for basic and enhanced I/M programs are found in 40 CFR part 51, subpart S.

Wisconsin's I/M program transitioned to an enhanced program in December 1995. The major enhancement involved adding new test procedures to more effectively identify high-emitting vehicles. These new test procedures included a transient emissions test in which tailpipe emissions were measured while the vehicle was driven on a dynamometer (a treadmill-type Attainment Plan for the Partial Kenosha County 2008 Ozone NAAQS Serious Nonattainment Area 50 device). Improving repairs and public convenience were also major focuses of the enhancement effort.

Since July of 2001, all model year (MY) 1996 and later cars and light trucks have been inspected by scanning the vehicle's computerized second-generation on-board diagnostic (OBDII) system instead of measuring tailpipe emissions. As of July 2008, the program dropped tailpipe testing entirely and has inspected all vehicles by scanning the OBDII system. This change was the result of statutory changes in the State's 2007–2009 biennial budget which exempted model years of vehicles not federally required to be equipped with the OBDII technology (MY 1995 and earlier cars and light trucks and MY 2006 and earlier heavy trucks). To help offset the emissions reductions lost from exempting the pre-OBDII vehicles, the program increased the testable fleet for MYs 2007 and later by adding gasoline-powered vehicles between 10,001 to 14,000 pounds gross vehicle weight rating (GVWR) and diesel-powered vehicles of all weights up to 14,000 pounds GVWR.

EPA fully approved Wisconsin's enhanced I/M program on August 16, 2001 (66 FR 42949), including the program's legal authority and administrative requirements in the Wisconsin Statutes and Wisconsin Administrative Code. On June 7, 2012, WDNR submitted a SIP revision to EPA covering all the changes to the program since EPA approved the program in 2001. This submittal included a demonstration under section 110(l) of the CAA addressing lost emission reductions associated with the program changes. The EPA approved this SIP revision on September 19, 2013 (78 FR 57501).

The legal authority and administrative requirements for the Wisconsin I/M program are found in sections 110.20 and 285.30 of the Wisconsin Statutes and Chapters NR 485 and Trans 131 of the Wisconsin Administrative Code.

To fully address CAA section 182(c)(3) for the 2008 standard, Wisconsin performed a performance modeling analysis that their current I/M program meets the requirements of EPA's enhanced performance standard for areas designated and classified under the 8-hour ozone standard, as specified in 40 CFR 51.351(i). Wisconsin used the most recent version of EPA's mobile source emissions model, MOVES3.0.2, released in September 2021 for the analysis. This modeling was conducted in accordance with the EPA's technical guidance: Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model, EPA–420–B–14–006, January 2014, and MOVES3 Technical Guidance: Using MOVES to Prepare Emission Inventories for State Implementation Plans and Transportation Conformity, EPA–420–B–20–052, November 2020.

The performance modeling analysis involves a comparison of emission reductions from the EPA's model program specified in 40 CFR 51.351(i) and Wisconsin's actual program in the six reformulated gasoline counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha; and the single conventional gasoline county of Sheboygan. In addition, Wisconsin did a demonstration for the subject area of this redesignation request, the Kenosha portion.

To demonstrate that an enhanced I/M program meets the performance standard, the emission reductions from the actual I/M program are within the 0.02 gram per mile (gm/mi) buffer of the emission reductions from the EPA model program under 40 CFR 51.351(i) as defined in EPA's guidance referenced above. Wisconsin's actual I/M program are within the 0.02 gm/mi buffer of the emission reductions from the EPA model program under 40 CFR 51.351(i) for all areas. The 6 county Southeast Wisconsin reformulated gasoline area buffer was 0.0010 gm/mi for NO_X and 0.0047 gm/mi for VOC. The Sheboygan conventional gasoline area buffer was 0.0012 gm/mi for NO_X and 0.0049 gm/mi for VOC. The Kenosha portion area buffer was 0.0011 gm/mi for NO_X and 0.0046 gm/mi for VOC. Therefore, Wisconsin's current I/M program meets the applicable enhanced I/M performance requirements in 40 CFR 51.351 in all areas in which the program is implemented, including the Kenosha portion serious nonattainment area for the 2008 ozone NAAQS.

VII. Proposed Actions

EPA is proposing to determine that the Chicago area is attaining the 2008 ozone NAAQS, based on quality-assured and certified monitoring data for 2019–2021. EPA is proposing to determine that upon final approval of Wisconsin's enhanced I/M performance modeling analysis as part of the SIP, the Kenosha portion will have met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the legal designation of the Kenosha portion of the Chicago-Naperville, IL-IN-WI area from nonattainment to attainment for the 2008 ozone NAAQS. EPA is also proposing to approve, as a revision to the Wisconsin SIP, the State's maintenance plan for the area. The maintenance plan is designed to keep the Kenosha portion in attainment of the 2008 ozone NAAQS through 2035. EPA finds adequate and is proposing to approve the newly-established 2030 and 2035 MVEBs for the Kenosha portion. Finally, EPA is proposing to approve the enhanced I/M performance modeling analysis included in Wisconsin's December 3, 2021 submittals, because they satisfy the serious enhanced I/M requirements for the Kenosha portion.

VIII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, 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 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 1, 2022.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2022–02425 Filed 2–4–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 171

[EPA–HQ–OPP–2021–0831; FRL–9134.1–01–OCSPP]

RIN 2070–AL01

Pesticides; Certification of Pesticide Applicators; Further Extension to Expiration Date of Certification Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to extend the deadline by which Federal, State, territory, and tribal certifying authorities with existing certification plans are required to revise their existing certification plans to conform with the updated Federal standards for the certification of applicators of restricted use pesticides (RUPs) up to but not longer than November 4, 2024. Federal, State, territory, and tribal certifying authorities with existing certification plans are required to revise their existing certification plans to conform with the updated Federal standards for the certification of applicators of RUPs and the regulations established the deadline by which the existing plans are set to expire unless the revised plans are approved by the Agency. EPA is proposing this extension to allow additional time for proposed certification plan modifications to continue being reviewed and approved by EPA without interruption to Federal, State, territory, and tribal certification programs or to those who are certified to use RUPs under those programs.

DATES: Comments must be received on or before March 9, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2021–0831, using the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI)

or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is 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: Carolyn Schroeder, Pesticide Re-Evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2376; email address: *schroeder.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you are a Federal, State, territory, or tribal agency who administers a certification program for pesticides applicators. You many also be potentially affected by this action if you are: A registrant of RUP products; a person who applies RUPs, including those under the direct supervision of a certified applicator; a person who relies upon the availability of RUPs; someone who hires a certified applicator to apply an RUP; a pesticide safety educator; or other person who provides pesticide safety training for pesticide applicator certification or recertification. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Agricultural Establishments (Crop Production) (NAICS code 111);
- Nursery and Tree Production (NAICS code 111421);
- Agricultural Pest Control and Pesticide Handling on Farms (NAICS code 115112);
- Crop Advisors (NAICS codes 115112, 541690, 541712);
- Agricultural (Animal) Pest Control (Livestock Spraying) (NAICS code 115210);
- Forestry Pest Control (NAICS code 115310);
- Wood Preservation Pest Control (NAICS code 321114);
- Pesticide Registrants (NAICS code 325320);
- Pesticide Dealers (NAICS codes 424690, 424910, 444220);
- Industrial, Institutional, Structural & Health Related Pest Control (NAICS code 561710);
- Ornamental & Turf, Rights-of-Way Pest Control (NAICS code 561730);
- Environmental Protection Program Administrators (NAICS code 924110); and
- Governmental Pest Control Programs (NAICS code 926140).

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

This action is issued under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136–136y, particularly sections 136a(d), 136i, and 136w.

C. What action is the Agency taking?

This action proposes to extend the expiration date for existing certification plans at 40 CFR 171.5(c) for up to but not longer than 2-years. No other changes to the certification standards and requirements specified in 40 CFR part 171 are being proposed in this rulemaking.

D. Why is the Agency taking this action?

Without the proposed deadline extension, Federal, State, territory, and tribal certification programs will expire if their revised certification plans are not approved by the recently modified regulatory deadline of November 4, 2022 (Ref. 1). Applicators formerly certified under such plans will no longer be allowed to use RUPs. While EPA anticipates that all plans will have been reviewed and returned to the certifying authorities for further revision by February 2022, the recent extension of eight months (which extended the original deadline of March 4, 2022 to November 4, 2022) may not be sufficient time for all certifying authorities to respond to EPA comments and complete approvable certification plans, or for EPA to work closely with the certifying authorities to assure that their proposed certification plan modifications meet current Federal standards.

EPA expects that some plans will be approved in early 2022, with more to follow by November 2022. Although significant progress has been made in the development of revised plans and EPA's subsequent reviews, COVID–19 resource constraints have impacted the time certifying authorities have had to respond to EPA's comments and the Agency's ability to work with certifying authorities to assure that their plans are approvable by the regulatory deadline. Further collaboration may still be needed between EPA and the certifying authorities to finalize and approve all plans. EPA intends to work expeditiously toward approving and supporting the implementation of plans that meet the current Federal standards during the extension and intends to provide periodic notifications to the public when those approvals have occurred. No other changes to the certification standards and requirements specified in 40 CFR part 171 are being made in this rulemaking.

EPA finds that an additional extension of the deadline will likely be needed to assure that certified applicators in some parts of the country will continue to be authorized to use RUPs without interruption and to provide certifying authorities with adequate time to review and respond to EPA comments on their plans. The proposed extension will also provide additional time that was initially lost due to COVID–19 for EPA to work more closely with the certifying authorities to address any remaining feedback and work toward approving their certification plans.

E. What are the incremental impacts of this action?

Incremental impacts of the proposed extension of the regulatory deadline are generally positive because the extension provides certifying entities and EPA with more time to ensure that modified plans meeting the minimum Federal requirements are in place, while failure to extend the regulatory deadline would likely have significant adverse impacts on the certifying authorities, the economy, public health, and the environment (see discussion in Unit III.B.).

EPA uses information from the 2017 certification rule (Ref. 2), which mandates the expiration of existing certification plans unless EPA approves revised certification plans, to assess the incremental economic impacts of this proposed rule to extend the recently modified deadline of November 4, 2022 (Ref. 1), up to November 4, 2024. The impacts of the proposed extension are that the implementation costs borne by the certifying authorities will be expended over an additional period of time and some of the costs to commercial and private applicators may be delayed. Some of the benefits of the rule (*e.g.,* reduction in acute illnesses from pesticide poisoning) are foregone as the implementation of some plans may be delayed while EPA works with the certifying authorities toward approval of their revised certification plans.

1. *Cost to certifying authorities.* The 2017 rule provided a compliance period for certifying authorities to develop, obtain approval, and implement any new procedures, regulations, or statutes to meet the new Federal standards. The 2017 rule further provided that existing plans could remain in effect after March 4, 2022, which was recently extended to November 4, 2022 (Ref. 1), only to the extent specified in EPA's approval of a modified certification plan; EPA did not explicitly set a date for full implementation of the new programs. Certifying authorities can begin implementing their revisions to their programs when they are approved by EPA; portions of revised certification programs may be implemented in advance of plan approvals when in compliance with the 2017 rule requirements. All certifying authorities submitted their draft revised certification plans to EPA by the March 2020 deadline and the draft plans are undergoing review at EPA. Shortly after the March 2020 deadline, the COVID–19 public health emergency disrupted the expected schedule of the EPA's review and approval of the draft plans. EPA and certifying authorities could not put the amount of effort into this part of the rule implementation that was originally anticipated, as they had to divert their resources to address pandemic-related issues. Thus, only part of the cost to certifying authorities estimated in the 2017 rule has presently been incurred and some of the cost will be expended during the additional extension period. Therefore, this proposed rule is not expected to significantly change the costs to certifying authorities estimated in the 2017 Economic Analysis (EA) (Ref. 3).

2. *Cost to certified applicators.* The other sectors affected by the 2017 rule (*e.g.,* commercial and private applicators) do not incur any costs until revised certification plans take effect. Once the revised plans take effect, the 2017 EA estimated that commercial applicators and private applicators would incur annualized costs of $16.2 million and $8.6 million, respectively, to meet the new certification standards. Some of these costs could be delayed as some of the revised plans are approved and implemented over a longer period of time. Not all costs to certified applicators will be delayed, as EPA expects that some plans will be approved in early 2022, with more to follow by November 2022. Moreover, some certifying authorities have or will be able to start implementing changes conforming to the 2017 rule before their plan's approval.

3. *Potentially delayed benefits of the 2017 rule.* The delay in the approval of revised certification plans may also delay some benefits that would have otherwise accrued if certification plans were approved and implemented by the deadline established in the 2017 rule, as assessed in the 2017 EA. In 2017, EPA estimated that implementing the new Federal certification requirements would reduce acute illness caused by exposure to RUPs, based on an analysis of pesticide incidents assuming that about 20% of poisonings are reported (a plausible estimate based on the available literature regarding occupational injuries or chemical poisoning incidents). Incidents may result in harms to applicators, persons in the vicinity, and the environment. Reported incidents most commonly cite exposure to the applicator or farmworkers in adjacent areas. Based on avoided medical costs and lost wages, the annualized benefits of the rule were estimated to be between $51.1 and $94.4 million. In addition, EPA expected that improved training would also reduce chronic illness among applicators from repeated RUP exposure and would benefit the public from better protections from RUP exposure when occupying treated buildings or outdoor spaces, consuming treated food products, and reducing the impact on non-target plants and animals. To the extent that this rule delays implementation of the 2017 rule, it will delay accrual of some of those benefits.

Not all the benefits of certification plan revisions will be delayed for a period of time up to November 4, 2024, however, since some programs have been or will be able to start implementing changes sooner. Certifying authorities can begin implementing their revisions to their programs as soon as they are approved by EPA. Plan approvals are anticipated to begin in early 2022 and will continue on a rolling basis through the recently extended November 2022 date while this action goes through standard rulemaking procedures. In some jurisdictions, portions of revised certification programs are presently being implemented and in compliance with or exceeding the 2017 rule requirements, such as imposing minimum age requirements and updating manuals and exam administration procedures, so some benefits are already being realized in advance of full plan approvals. Additionally, some certifying authorities were forced to make changes to their existing certification programs to accommodate COVID–19 protocols, all of which were required to meet or exceed the new requirements and standards established in the 2017 rule.

Without the extension, however, benefits of the 2017 rule would not be fully realized. The impact of plans expiring absent EPA's approval of modified plans has far-reaching implications across many business sectors, including but not limited to the agricultural sector, importation and exportation business, and structural pest control (*e.g.,* termite control), and could potentially impact all communities and populations throughout the U.S. in various ways as discussed in Unit I.E.4. In addition to the potential delay of benefits that would result from this extension, EPA and certifying authorities have already invested significant resources in the preparation and review of plan modification that would fully implement the 2017 rule. It is EPA's considered judgement that the sunk cost of these investments, taken together with the significant costs of not extending the deadline as discussed in Unit I.E.4., outweigh the delayed benefits. EPA will continue to work expeditiously with certifying authorities to review and approve plans on a rolling basis. EPA's ongoing collaboration with the certifying authorities, which was significantly impacted by the COVID–19 pandemic, will result in modified plans that are protective of the environment and human health, including the health of certified pesticide applicators and those under their direct supervision, and will ensure that certified applicators are trained to prevent bystander and worker exposures as contemplated in the 2017 rule.

4. *Costs of not extending the deadline.* If the existing regulatory deadline is not extended further, it is likely that EPA will be unable to approve some of the State, territory, tribal, and other Federal agency certification plans that may still need additional work and/or coordination beyond the recently revised November 4, 2022 deadline, resulting in termination of these plans. EPA would have to take responsibility for administering certification programs for a portion of the country. A gap in coverage will likely exist between when certification plans expire and when EPA can fully implement EPA-administered certification programs, resulting in RUPs being unavailable for use in many places during the 2023 growing season and potentially through the end of 2023 or longer. It is also unlikely that EPA's certification programs would offer the same availability and convenience as those offered by State, territorial, and tribal certifying authorities, so some applicators could face higher costs or be

unable to obtain certification to apply RUPs. Once the EPA-administered certification plans are in place, they may in some cases be less protective than State plans would be, as many State plans include requirements that are more protective than the EPA minimum requirements and these benefits will be lost if the deadline is not extended, and EPA takes over parts of the country's certification programs.

Furthermore, the expiration of certification plans could lead to confusion and potential enforcement issues when certifications that were formerly valid suddenly expire. It is also unlikely that EPA's certification programs could offer the depth of specialization found in many State, territorial and tribal certifying programs, which may be tailored to the particular pest control and human health needs commonly found in these localities. Thus, applicators certified under EPA programs would only be assessed for competency at the minimum Federal standards and may not receive the specialized training that State, territorial, and tribal certifying authorities often provide. In addition, many States require professional applicators to be trained and licensed to apply general use pesticides and it is unclear to what extent States would be able to support those programs if they were to lose authority to certify RUP applicators.

Additionally, EPA would be compelled to expend time and resources in establishing the infrastructure to administer these certification programs, which would further delay coordination with certifying authorities whose plans were either approved and would be in the process of being implemented or are awaiting approval. This is likely to cause significant disruption for agricultural, commercial, and governmental users of RUPs, and could have consequences for pest control in a broad variety of areas, including but not limited to the control of public health pests (*e.g.,* mosquito control programs), pests that impact agriculture and livestock operations, structural pests (*e.g.,* termite control), pests that threaten State and national forests, and pests in containerized cargo. Applicators who use RUPs could lose work and income as a result.

F. Request for Comments

While EPA expects a significant amount of progress to be made leading up to the recently revised expiration date of November 4, 2022, EPA anticipates that additional time may be needed for some certifying authorities to revise their plans based on EPA's feedback and for EPA to approve those plans. This proposed rule provides an opportunity for stakeholders to submit comments on an additional extension to the expiration date for existing plans, and to include in their comments specific information detailing the necessity for or concerns over such an extension. EPA is proposing an extension up to but not longer than November 4, 2024, but the Agency is interested in receiving information on the appropriate length of time to approve revised certification plans. During this comment period, EPA expects that certifying authorities and other interested stakeholders will be able to provide more information on the efforts, issues, and concerns within each certifying authority's jurisdiction, the potential impacts of delayed certification plans, and the consequences of existing plans expiring without a new certification plan in effect. Any comments submitted in response to the interim final rule that previously extended the deadline (Ref. 1) will also be considered in the development of this rulemaking.

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

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

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

II. Background

On December 20, 2021, EPA issued an interim final rule that extended the original expiration date from March 4, 2022 to November 4, 2022 (Ref. 1). Unit II. of the interim final rule's preamble provides a summary of the 2017 Certification of Pesticide Applicators final rule and related background, as well as a robust discussion of the various circumstances that prompted the extension and the rationale the Agency cited for issuing the interim final rule.

The interim final rule extended the expiration date an additional 8 months beyond the original regulatory deadline of March 4, 2022. This time-limited extension was intended to give all certifying authorities additional time to respond to reviews and feedback provided by EPA that had been delayed and impacted by the COVID–19 public health emergency. All of the plans are expected to have been returned to the certifying authorities by February 2022. The extension also provided more time for EPA and certifying authorities to work together to address any remaining issues and for EPA to ultimately approve the certifying authorities' plans. EPA's 8-month extension was necessary to provide EPA with sufficient time to make as much progress toward approving modified certification plans while the Agency simultaneously developed rulemaking for public comment on the need for and appropriate length of a longer extension, taking into account both APA and FIFRA rulemaking requirements. The additional 8 months also provides EPA with an opportunity to assess the status of plan approvals once all plans have been returned to the certifying authorities in February 2022 up to the revised expiration date of November 4, 2022. The existing certifications plans are set to expire on November 4, 2022, unless the modified plans are approved by EPA and the approved plans specify the time needed to fully implement the revisions identified, or alternatively, if EPA issues another extension based on the need and results of the public comment period for this rulemaking.

III. Provisions of This Proposed Rule

A. Proposed New Deadline for Certification Plan Approvals

EPA is proposing that the deadline for amended certification plans to be approved without interruption to the existing certification plans, as provided in 40 CFR 171.5(c), be changed up to but not longer than November 4, 2024. Additional time is likely necessary to assure that all the certifying authorities have had enough time to present approvable certification plans, and for EPA to work more closely with the Federal, State, territory, and tribal agencies on necessary modifications, and ultimately approve the certification plans. As some certifying authorities are close to completing their revisions and receiving EPA approval on their plans, EPA anticipates that certification plan approvals will begin in early 2022 and will continue on a rolling basis through

the recently extended November 2022 date while this action goes through notice-and-comment rulemaking procedures. EPA anticipates that notice of certification plan approvals will be periodically provided to the public in batched notices in the **Federal Register** and on EPA's website as they are approved. However, EPA is proposing this additional extension up to but not longer than November 4, 2024, because some certifying authorities and EPA may need more time to collaborate on and address issues raised during EPA's review of the plans.

B. Need for Extending the Existing Plans' Expiration Date

An extension of the expiration date for existing certification plans is likely needed to ensure that Federal, State, territory, and tribal agencies have sufficient time to revise their certification plans in response to EPA's feedback on their draft certification plans. On December 20, 2021, EPA issued an interim final rule that extended the original expiration date of existing plans from March 4, 2022, to November 4, 2022 (Ref. 1). However, absent an additional extension of this deadline, State, territory, tribal, and other Federal agency certification programs without an approved revised plan could terminate, causing severe disruption for agricultural, commercial, and governmental users of RUPs.

While Unit II. of the preamble in the interim final rule (Ref. 1) included a robust discussion of the circumstances necessitating the extension of the expiration date of existing plans from March 2022 to November 2022, there may not be sufficient time to ensure that all modified plans submitted to EPA are able to obtain approval prior to the expiration of existing plans (Ref. 1). EPA's process for approving modified plans involves extensive coordination between certifying authorities, EPA regional offices, and EPA Headquarters. Many of the States, territories, and tribes that have submitted modified plans for EPA approval are required to make statutory and regulatory changes that often involve a long and complex legislative process and public comment procedures. Many of these plans also contain State, territory, or tribal-specific issues that require individualized attention and coordination with EPA. Further, many certifying authorities have proposed implementation timelines that account for changes in the infrastructure of existing certification programs, such as revisions to current RUP applicator certification exam standards and training manuals. As explained in the interim final rule, the COVID–19 public health emergency delayed or impeded the process of EPA's coordination with certifying authorities on these changes, thereby necessitating an extension of the deadline for expiration of existing plans (Ref. 1). Failure to extend the regulatory deadline to provide enough time for certifying authorities to respond to EPA's feedback and for EPA to approve those revisions would result in the expiration of certification programs without approved plans, which would significantly limit access to certification and would thereby limit access to RUPs that are necessary for various industries that rely upon pest control.

If EPA is unable to further extend the regulatory deadline for approved certification plans as needed, any existing certification plans that remain in effect pending EPA's approval of submitted certification plan modifications will expire on November 4, 2022, in which case 7 U.S.C. 136i(a) requires that EPA provide RUP applicator certification programs in States (including territories) where a State certification plan is not approved. If EPA were to take on the burden of administering certification programs for parts of the country, it would draw resources away from other important Agency priorities, including implementation support of certification plans that are approved before the November 4, 2022 deadline. In addition, it would take significant time and resources to set up the infrastructure for such Federal certification programs and to train, test, and certify applicators, which would likely result in RUP use being curtailed in affected parts of the country. Moreover, once EPA-administered certification programs are established, it is unlikely that they would operate at the same capacity as existing programs, but rather, would provide fewer and less localized opportunities for applicators to satisfy certification requirements. As a result, significant adverse effects are expected on the pest control industry if current plans expire, as existing certifications will no longer be valid and will need to be replaced with Federal certifications. This could create economic and public health ramifications in a wide range of sectors such as agricultural commodity production, public health pest control, and industrial, institutional, and structural pest control. For agriculture, it is unlikely that EPA would be able to establish these Federal certification programs before the start of the 2023 growing season, which would have potentially devastating impacts on the agricultural sector in parts of the country. RUP access in this scenario would be minimal for most, if not all, of the 2023 growing season, and significant disruptions could extend even further.

IV. References

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

1. EPA. Pesticides; Certification of Pesticide Applicators; Extension to Expiration Date of Certification Plans; Interim Final Rule. **Federal Register**. 86 FR 71831, December 20, 2021 (FRL 9134–02–OCSPP).
2. EPA. Pesticides; Certification of Pesticide Applicators; Final Rule. **Federal Register**. 82 FR 952, January 4, 2017 (FRL–9956–70).
3. EPA. Economic Analysis of the Final Amendments to 40 CFR part 171: Certification of Pesticide Applicators [RIN 2070–AJ20]. December 6, 2016. Docket ID No. EPA–HQ–OPP–2011–0183–0807.
4. EPA. Pesticides; Certification of Pesticide Applicators; Further Extension to Expiration Date of Certification Plans; Submission to the Secretary of Agriculture. **Federal Register**. 87 FR 3738, January 25, 2022 (FRL–9134.1–02–OCSPP).

V. FIFRA Review Requirements

In accordance with FIFRA section 25(a), EPA submitted a draft of this proposed rule to the United States Department of Agriculture (USDA) (Ref. 4) and to the appropriate Congressional Committees.

USDA responded without comments. The FIFRA Scientific Advisory Panel (SAP) waived review of this proposed rule, concluding that the proposed rule does not contain issues that warrant scientific review by the SAP.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action under Executive Order 12866 (58

FR 51735, October 4, 1993) and was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been reflected in the docket for this action.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection activities or burden subject to OMB review and approval under the PRA, 44 U.S.C. 3501 *et seq.* Burden is defined in 5 CFR 1320.3(b). OMB has previously approved the information collection activities contained in the existing regulations and associated burden under OMB Control Numbers 2070–0029 (EPA ICR No. 0155) and 2070–0196 (EPA ICR No. 2499). An agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities. This rulemaking primarily affects Federal, State, territory, and tribal agencies who administer a certification program for pesticides applicators, which do not qualify as small entities under the RFA. In addition, this rulemaking may potentially affect other entities that may qualify as a small entity under the RFA, *e.g.,* companies that are registrants of RUP products; a person who applies RUPs, including those under the direct supervision of a certified applicator; a person who relies upon the availability of RUPs; someone who hires a certified applicator to apply an RUP; a pesticide safety educator; or other persons who provides pesticide safety training for pesticide applicator certification or recertification.

The Agency is certifying that this rulemaking will not have a significant economic impact on a substantial number of small entities because the rule would relieve regulatory burden for potentially affected small entities. Without the proposed deadline extension, modified certification programs that are not approved by the recently modified regulatory deadline of November 4, 2022, will expire, and applicators formerly certified under such plans will no longer be allowed to use RUPs. This action proposes to extend the expiration date for existing certification plans to allow more time for certifying authorities to respond to EPA comments and for EPA to work with the certifying authorities to assure that their proposed certification plan modifications meet current Federal standards. EPA has therefore concluded that this action would relieve regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045, because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards. As such, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14008: Tackling the Climate Crisis at Home and Abroad

In accordance with Executive Order 12898 (59 FR 7629, February 16, 1994) and Executive Order 14008 (86 FR 7619, January 27, 2021), EPA finds that this action will not result in disproportionately high and adverse human health, environmental, climate-related, or other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts during this administrative action to extend the expiration date. This extension will provide EPA and the certifying authorities an opportunity to finalize the revised certification plans, ensuring that the increased protections identified in the 2017 rule are realized for all affected populations. EPA will continue to work expeditiously with certification authorities to review and approve plans on a rolling basis. This engagement, which was impacted by the COVID–19 public health emergency, will ensure the modified plans are appropriately protective of certified pesticide applicators and those under their direct supervision, and will ensure that certified applicators are trained to prevent bystander and worker exposures.

List of Subjects in 40 CFR Part 171

Environmental protection, Applicator competency, Agricultural worker safety, Certified applicator, Pesticide safety

training, Pesticide worker safety, Pesticides and pests, Restricted use pesticides.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons set forth in the preamble, EPA proposes to amend 40 CFR chapter I as follows:

PART 171—CERTIFICATION OF PESTICIDE APPLICATORS

■ 1. The authority citation for part 171 is revised to read as follows:

Authority: 7 U.S.C. 136–136y.

§ 171.5 Effective Date.

■ 2. Amend § 171.5 by revising paragraph (c) to read as follows:

* * * * *

(c) *Extension of an existing plan during EPA review of proposed revisions.* If by March 4, 2020, a certifying authority has submitted to EPA a proposed modification of its certification plan pursuant to subpart D of this part, its certification plan approved by EPA before March 6, 2017 will remain in effect until EPA has approved or rejected the modified plan pursuant to § 171.309(a)(4) or November 4, 2024, whichever is earlier, except as provided in paragraph (d) of this section and § 171.309(b).

* * * * *

[FR Doc. 2022–02543 Filed 2–4–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 8

[CG Docket No. 22–2; FCC 22–7; FR ID 69891]

Empowering Broadband Consumers Through Transparency

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes measures to implement certain provisions of the Infrastructure Investment and Jobs Act (Infrastructure Act). Specifically, the Commission proposes to require that broadband internet access service providers (ISPs) display, at the point of sale, labels to disclose to consumers certain information about prices, introductory rates, data allowances, broadband speeds, and management practices, among other things.

DATES: Comments are due on or before March 9, 2022, and reply comments are due on or before March 24, 2022.

ADDRESSES: You may submit comments, identified by CG Docket No. 22–2, by any of the following methods:

• *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://apps.fcc.gov/ecfs/.*

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

• Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. In the event that the Commission announces the lifting of COVID–19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis, MD 20701. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon of the Consumer and Governmental Affairs Bureau at (202) 418–0346 or *Erica.McMahon@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), in CG Docket No. 22–2, FCC 22–7, adopted and released on January 27, 2022. The full text of the document is available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice).

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 through 1.1216. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Initial Paperwork Reduction Act of 1995 Analysis

The *NPRM* proposes rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Public Law 104–13; 44 U.S.C. 3501–3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Public Law 107–198; 44 U.S.C. 3506(c)(4).

Synopsis

1. In 2021, Congress enacted and the President signed the Infrastructure Act, which, in relevant part, directs the Commission ''[n]ot later than 1 year after the date of enactment of th[e] Act, to promulgate regulations to require the display of broadband consumer labels, as described in the Public Notice of the Commission issued on April 4, 2016 (DA 16–357), to disclose to consumers information regarding broadband internet access service plans.'' *See* Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, section 60504(a) (2021) (Infrastructure Act). Further, the Infrastructure Act requires that any broadband consumer label adopted by the Commission ''shall include information regarding whether

the offered price is an introductory rate and, if so, the price the consumer will be required to pay following the introductory period.''

2. The Infrastructure Act also directs the Commission to conduct a series of public hearings to assess: (1) How consumers evaluate broadband internet access service plans; and (2) whether disclosures to consumers of information regarding broadband internet access service plans, including the disclosures required under 47 CFR 8.1, are available, effective, and sufficient. The Commission will announce the dates of such hearings, which will inform the Commission's conclusions in this proceeding, in a forthcoming Public Notice and will provide notice of the hearings separately in the **Federal Register** as soon as such dates are determined.

3. In this *NPRM,* the Commission initiates a proceeding to implement section 60504 of the Infrastructure Act, and proposes to require ISPs to display the labels approved in 2016 as part of a safe harbor, with any necessary modifications. The Commission seeks comment on the extent to which the Infrastructure Act requires or permits the Commission to depart from the labels described in its 2016 Public Notice. *See Consumer and Governmental Affairs, Wireline Competition, and Wireless Telecommunications Bureaus Approve Open Internet Broadband Consumer Labels,* GN Docket No. 14–28, Public Notice, 31 FCC Rcd 3358 (CGB/WCB/WTB 2016).

A. Proposed Broadband Consumer Labels

4. In the *NPRM,* the Commission proposes to adopt the 2016 labels subject to appropriate modifications and asks whether anything has changed since the Consumer Advisory Committee (CAC) developed the labels in 2016 that suggests the Commission should consider updating the labels in terms of content and format, and providing new guidance about where ISPs must display such labels. The Commission also seeks comment on how consumers evaluate broadband service plans and whether the 2016 labels will assist consumers with the purchase process. Should the Commission consider updating the labels to assist consumers with: (1) Selecting a broadband provider; (2) selecting a broadband service plan; (3) managing use of a broadband service plan; and (4) deciding whether and when to switch an existing broadband provider or plan? The Commission also seeks comment on how ISPs currently disclose information about their broadband services. How should their current practices inform the Commission's decisions about the labels adopted going forward? Additionally, the Commission seeks comment on the scope of broadband service plans to which the labels requirement should apply. For example, how should providers treat plans that are not currently available for purchase by consumers, such as legacy or grandfathered plans?

Content

5. The Commission proposes to adopt the content of the 2016 labels, both for fixed and mobile broadband services, with appropriate modifications. As reflected below, the 2016 labels for fixed broadband service include the following content: (1) Pricing; (2) monthly data allowance; (3) overage charges; (4) equipment fees; (5) other monthly fees; (6) one-time fees; and (7) early termination fees. The 2016 labels also include information on performance (speed, latency, and packet loss) and on network management practices. The 2016 labels for mobile broadband service include information on: (1) Pricing; (2) when you exceed data allowance; (3) other included services/features; (4) other monthly fees; (5) one-time fees; (6) service contract terms; (7) early termination fees; and (8) ''bring your own device'' information. The mobile broadband labels also include performance information (speed, latency, and other services on the network) and network management practices. Both the fixed and mobile broadband labels include a link to the provider's privacy policy and a link to how to file complaints and inquiries. The Commission seeks comment on whether the 2016 labels' content sufficiently includes all the information consumers need to make informed decisions. Conversely, is there information contained in the 2016 labels that is no longer necessary to serve the goals of the Infrastructure Act or the Commission, or might overwhelm consumers with too much information? For example, in regard to mobile broadband, do reporting obligations related to packet loss provide enough consumer benefit relative to any reporting costs?

6. *Introductory Rates.* The Commission seeks comment on whether the 2016 labels satisfy the Infrastructure Act's requirement that any label make clear whether the price offered is an introductory rate and what the price will be when the introductory period ends. Further, is the information related to introductory rates and subscription rates contained in the labels readily available to consumers and easy to understand?

7. *Service Levels and Bundles.* The Commission recognizes that broadband service offerings can include numerous characteristics based on differing service levels, features, add-ons, consumer location, and other factors. Is flexibility in the labels' content necessary or wise to avoid the possibility that consumers could be overwhelmed with information? Should labels include services bundled with broadband such as video, telephony, or mobile services? Should such information include any information about the quality of the bundled services, *e.g.,* whether video is limited to 480i or allows 1080p or 4K quality?

8. *Additional Content.* Is there additional content the Commission should consider, given changes in the broadband marketplace, that providers were not required to include in the 2016 labels? For example, in 2017, the Commission required broadband providers to disclose whether they engage in blocking, throttling, or paid prioritization. Should the labels include information about whether there are any limitations when consumers use multiple devices on the same broadband plan? Should the labels make clear when the offered rate is contingent on consumer consent to particular restrictions, *e.g.,* paperless billing, electronic payment, rental of equipment, and/or enrollment in related services? The Commission seeks comment on whether such information or other content should be added to the broadband consumer labels and, if so, how and where it should be presented.

9. *Affordable Connectivity Program.* The Commission seeks comment on whether and how to include information about the Affordable Connectivity Program (ACP) in the broadband labels. The Infrastructure Act requires providers to notify consumers about the existence of the ACP and how to enroll in the program ''when a customer subscribes to, or renews a subscription to, an internet service offering of a participating provider.'' In the ACP Public Notice, the Wireline Competition Bureau asked for comment on the type of disclosures the Commission should require providers to make regarding the ACP to consumers. *See FCC Seeks Comment on the New Affordable Connectivity Program,* WC Docket No. 21–450, Public Notice, DA 21–1453 (WCB 2021). Should the Commission require that the broadband labels include information about the ACP? To what extent can broadband labels be used to promote awareness of

the ACP and how to enroll? How might those disclosures be presented on the labels?

10. *Direct Notification of Term Changes.* Should the Commission adopt a ''direct notification'' requirement for changes to terms in the labels? If so, how should providers notify consumers directly of any changes in terms of service or of any other changes to the information contained in the labels displayed to consumers when they purchased service? Should the Commission adopt a timeframe within which providers must make such notifications? Should the Commission require that the notifications be sent in advance of the changes taking affect? If so, how far in advance? The Commission also seeks comment on the costs and benefits of a direct notification requirement and any alternative approaches that should be considered.

Format

11. The Commission also proposes to adopt the format of the 2016 labels, which resemble the nutrition labels the United States Food and Drug Administration (FDA) has prescribed for food products, and seeks comment on whether the format sufficiently displays information to consumers in an effective and helpful way. The Commission seeks comment on this proposal. Are there any changes the Commission should consider to the format? Should the Commission allow ISPs any flexibility in displaying the label contents to reflect the variety of formats consumers use to learn about and subscribe to broadband services? How can the Commission provide this flexibility without weakening the effectiveness of the preferred format of the 2016 labels? How can the Commission ensure that any such flexibility would not undermine consumers' ability to comparison shop between services and providers? Should the Commission require that the labels be provided in a machine-readable format with standard, labeled fields to ensure that third parties and consumers can more readily compare across multiple providers? The term ''machine-readable,'' when used with respect to data, means ''data in a format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost.'' *See* 44 U.S.C. 3502(18).

12. The Commission will be undertaking a separate rulemaking to implement section 60502(c) of the Infrastructure Act, which requires the Commission to conduct an ''annual collection . . . of data relating to the price and subscription rates of each internet service offering of a participating provider under the Affordable Connectivity Program.'' *See* Infrastructure Act, section 60502(c)(1). The Infrastructure Act further requires that the Commission ''shall rely on the price information displayed on the broadband consumer label . . . for any collection of data . . . under section 60502(c)'' *See* Infrastructure Act, section 60504(b)(2). In order to rely on such data, the Commission will need a means by which to associate the broadband-label information with the data collected under section 60502(c). One means of making that association would be for the Commission to collect all the broadband-label data, with each plan having a unique identifier that could be referenced in the section 60502(c) data collection. Another approach would be for the Commission to require all ISPs to make information about each plan available in a machine-readable format via an Application Program Interface (API) so that the Commission could access the broadband-label information for any plan included in the ISP's submission to the section 60502(c) collection. The Commission seeks comment on these two alternative approaches and their relative burdens on ISPs. The Commission also seeks comment on other approaches that should be considered to fulfill the statutory requirements of section 60502(c).

Display Location

13. The Commission proposes to require ISPs to display the labels at the point of sale. Specifically, the Commission proposes to require providers to prominently display the labels in a manner that is easily accessible to consumers and in the format prescribed by the Commission. The Commission proposes to require providers, at a minimum, to disclose the labels of any broadband service presented to consumers on an ISP's website when a consumer browses service options. The Commission seeks comment on this proposal. In addition, the Commission asks for comments on exactly how the labels should be disclosed on ISPs' websites. For instance, is including a link to the label sufficient? If so, how should the link be presented to consumers? Where else on the ISP's website should the labels be displayed and/or disclosed and how should ISPs' websites be configured for search engine optimization? The Commission also seeks comment on how the labels should be displayed at other points of sale, such as at retail locations, on apps, on online platforms, on other digital locations, and on telemarketing calls. Should ISPs provide hardcopies of the labels in retail locations? Should their telemarketing representatives email, or otherwise make available to, consumers labels before consumers make a purchase? Are there other marketing channels the Commission should consider in developing this requirement? Should these be included in bills or other communications about changes in service?

Accessibility

14. In 2015, the Commission stipulated that ISPs that wished to avail themselves of the transparency safe harbor needed to ensure that the broadband consumer label was accessible to persons with disabilities. The CAC determined that participating ISPs can best ensure accessibility to printed and online information by relying on well-established legal requirements included in the Americans with Disabilities Act and by following the guidance developed by the Web Accessibility Initiative. The CAC found that relying on these guidelines provides the best likelihood of ensuring that consumers with disabilities will be able to access necessary information about broadband services. The Commission seeks comment on whether such guidelines remain accurate today and how best to ensure that any required labels are accessible to persons with disabilities.

B. Relationship to Transparency Rule

15. The Commission seeks comment on the interplay between the existing transparency rule and the proposed broadband labels. *See* 47 CFR 8.1. There may be differences between the information required by the transparency rule and the proposed broadband labels. The Commission therefore seeks comment on the interplay between the two. Should display of the proposed labels fully satisfy the current transparency rule? In what ways does the transparency rule require disclosures beyond those in the proposed labels? Alternatively, do the broadband consumer labels require disclosures beyond the scope of the existing transparency rule? Will the broadband consumer labels' requirements necessitate further changes to the Commission's transparency rule? If so, how should the Commission resolve potential inconsistencies? The draft proposed rule reflects the view that display of the broadband labels would be necessary for compliance with the general transparency rule. The Commission nevertheless seeks comment on alternative rule formulations that would

reflect different possible approaches to the relationship between the two and that sufficiently satisfy the objectives outlined in this *NPRM.*

C. Enforcement Issues

16. The Commission seeks comment on issues related to enforcement of the proposed broadband labels. What is the extent of the Commission's authority under the Infrastructure Act to enforce the broadband consumer labels as an entirely separate requirement from the transparency rule, or as an adjunct of the transparency rule, which was promulgated pursuant to the Commission's authority under the Communications Act? The Commission asks that commenters address the scope of the Commission's enforcement authority, particularly in light of Commission precedent in this area. Should the Commission adopt rules specifically governing enforcement of the broadband label requirement, or should the Commission employ the same enforcement rules and requirements that it relies on in other contexts?

17. The Commission seeks comment on how to evaluate and enforce the accuracy of the information presented in the broadband consumer labels. How can the Commission verify the accuracy of the information that a broadband provider uses in a broadband consumer label? How best can the Commission confirm that any variance between the disclosed performance metrics and actual performance as experienced by individual consumers is or is not consistent with normal network variation? How should the Commission enforce against inaccuracies in the provided information?

D. Implementation and Other Issues

18. The Commission seeks comment on the best ways for providers to implement the proposed labels, including the timelines within which they should implement them. The Commission expects providers to develop and implement procedures reasonably designed to ensure compliance with the proposed labels' requirements and, as part of that process, to notify employees, sub-contractors, agents or other persons acting on behalf of the provider in marketing the provider's services of these disclosure requirements. The Commission proposes to adopt rules in that regard, including specifying that the provider will bear the burden to demonstrate that it has made all reasonable efforts to ensure compliance should a complaint arise or other information is brought to the Commission's attention regarding the label disclosure practices of a third party acting on the provider's behalf. The Commission seeks comment on that proposal and on any alternatives.

19. In order to allow sufficient time for providers to implement the measures necessary to comply with these requirements, the Commission proposes to make these rules effective six months following publication in the **Federal Register** of the Office of Management and Budget's (OMB's) approval of the adopted rules. Is six months sufficient for both large and smaller providers? Should the Commission adopt a different implementation timeline or temporary exemption for smaller providers to allow them more time to come into compliance with the labels' requirements, and does the Commission have the discretion to do so? The Commission seeks comment on the proposed implementation period(s) generally. Finally, the Commission seeks comment on whether there are alternative ways, other than different implementation timeframes, to minimize the economic impact on smaller service providers while achieving the Commission's transparency objectives.

20. As part of the Commission's continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, the Commission invites comment on how any broadband consumer labels can advance equity in the provision of and access to digital communications services and products for all people of the United States, without discrimination on the basis of race, color, religion, national origin, sex, or disability. *See* 47 U.S.C. 151. Specifically, the Commission seeks comment on how the *NPRM's* proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

21. The Commission also seeks comment on whether and how the broadband consumer labels can be used to facilitate equal access to broadband internet access services. Are there particular label requirements that would support Commission efforts in this regard? In implementing the broadband consumer labels requirement, the Commission seeks comment on the cost effectiveness of the proposals viewed as a whole. Are the costs to ISPs of adding extra information to labels at the point of sale relatively small, when considered against the benefits additional labeling would provide consumers? What are the most cost-effective ways of making labels available to consumers?

E. Legal Authority

22. The Commission believes the Infrastructure Act affords the Commission legal authority to adopt the proposed labels' requirements for ISPs. In addition, the Commission notes that the D.C. Circuit severed and upheld the Commission's 2010 transparency rule in *Verizon* v. *FCC. See Verizon* v. *FCC*, 740 F.3d 623 (D.C. Cir. 2014). While the majority did not expressly opine on the legal authority for the Commission's prior transparency rule, the Commission believes that, like the 2010 transparency rule, the labels proposed fall well within multiple, independent sources of the Commission's authority. The D.C. Circuit also affirmed the Commission's reliance on statutory authority under prior section 257 of the Communications Act (now moved in part to section 13 of the Act) for the transparency rule adopted there. The Commission also seeks comment on the use of Title III authority, insofar as the broadband label requirements apply to wireless licensees. Do the proposed broadband labeling requirements also advance other statutory goals? If so, what are those?

23. When the Commission has adopted disclosure requirements in the past, such as the transparency rule and its truth-in-billing requirements, it has evaluated its approach to ensure it was consistent with the First Amendment. The Commission thus likewise seeks comment on any First Amendment considerations relevant here. The Infrastructure Act directs the Commission to promulgate rules to require the display of broadband consumer labels, and the Commission's other statutory obligations include protecting consumers from unjust or unreasonable charges and practices. *See* 47 U.S.C. 201(b). The Commission believes the proposed regulations are designed to directly advance the government's substantial interest by providing consumers with the basic tools necessary to understand the broadband services they are purchasing and the prices for those services. In addition, they are designed to protect consumers from contracting for service where the terms of service are either unexplained or presented in a confusing manner. The Commission encourages parties to address First Amendment issues in their comments, particularly with respect to the specific labels proposed. Parties are asked to address

how the proposed regulation in the area of consumer disclosures meets the requirements of *Zauderer* and the three prongs of the *Central Hudson* test. *See Zauderer* v. *Office of Disciplinary Counsel,* 471 U.S. 626 (1985); *Cent. Hudson Gas & Elec. Corp.* v. *Pub. Serv. Comm'n of New York,* 447 U.S. 557 (1980). Parties should address specifically how the proposals harmonize with Commission precedent in this area and relevant case law.

Initial Regulatory Flexibility Analysis

24. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *NPRM.* Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided.

A. Need for, and Objectives of, the Proposed Rules

25. The *NPRM* proposes rules to implement section 60504 of the Infrastructure Act to ensure that consumers have an easy way to understand ISPs' prices, performance, and network practices in a simple-to-understand format that does not overwhelm consumers with too much information.

26. The *NPRM* proposes rules to meet its statutory obligations under section 60504 of the Infrastructure Act. Specifically, the *NPRM* proposes to amend 47 CFR 8.1(a) of the Commission's rules to require ISPs to display labels at the point of sale to disclose to consumers certain information about prices, introductory rates, data allowances, broadband speeds, and management practices, among other things. The labels proposed are modified versions of those recommended by the Commission's Consumer Advisory Committee (CAC) in 2015, which are similar to the nutrition labels required by the United States Food and Drug Administration (FDA) on food products, and which the Commission incorporated as part of a safe harbor from the transparency requirements in 2016.

27. The *NPRM* proposes broadband consumer labels that contain, at a minimum, the same content contained in the 2016 labels, both for fixed and mobile broadband services. To ensure that broadband consumers have the information they need to make informed decisions, the *NPRM* proposes to adopt the content of the 2016 labels, both for fixed and mobile broadband services, with appropriate modifications. The 2016 labels for fixed broadband service include the following content: (1) Pricing; (2) monthly data allowance; (3) overage charges; (4) equipment fees; (5) other monthly fees; (6) one-time fees; and 7) early termination fees. In addition, the 2016 labels also include information on performance (speed, latency, and packet loss) and on network management practices. The 2016 labels for mobile broadband service include information on: (1) Pricing; (2) when you exceed data allowance; (3) other included services/features; (4) other monthly fees; (5) one-time fees; 6) service contract terms; (7) early termination fees; and (8) ''bring your own device'' information. The mobile broadband labels also include performance information (speed, latency, and other services on the network) and network management practices. Both the fixed and mobile broadband labels include a link to the provider's privacy policy and a link to how to file complaints and inquiries.

28. The *NPRM* seeks comment on whether there is other content beyond what is in the 2016 labels that should be considered. For example, should the labels include information about whether there are any limitations when consumers use multiple devices on the same broadband plan? Should the labels make clear when the offered rate is contingent on consumer consent to particular restrictions, *e.g.,* paperless billing, electronic payment, rental of equipment, and/or enrollment in related services?

29. The *NPRM* proposes to adopt the format of the 2016 labels and require it for broadband consumer labels based on its success as a nutrition label format and the considerable work the CAC did in adapting the format to broadband service. In addition, the *NPRM* proposes to require ISPs to display the labels at the point of sale. This means disclosing the labels of any broadband service presented to consumers on an ISP's website when a consumer browses service options. Finally, the *NPRM* proposes to ensure that any required labels are accessible to persons with disabilities and that any broadband consumer label advances equity in the provision of and access to digital communications services and products for all people of the United States, without discrimination on the basis of race, color, religion, national origin, sex, or disability.

B. Legal Basis

30. The proposed rules are authorized under sections 4(i), 4(j), 13, 201(b), 257, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 163, 201(b), 257, 303(r), and section 60504 of the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429.

C. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

31. The *NPRM* proposes to require ISPs to disclose, through a label similar in format to the required FDA-approved nutrition labels, certain information about the provider's performance characteristics, network practices, and commercial terms.

32. The *NPRM* proposes to adopt the content of the Commission's 2016 safe harbor labels, both for fixed and mobile broadband services, and to make any appropriate modifications to the labels so that they ''include information regarding whether the offered price is an introductory rate and, if so, the price the consumer will be required to pay following the introductory period,'' as required by the Infrastructure Act.

33. The Commission proposes that the labels be provided at the point of sale and that, at a minimum, the ISPs should disclose the label on any website an ISP uses to market broadband internet access services. The *NPRM* also seeks comment on how the labels should be displayed at other points of sale, such as retail locations, on apps, on online platforms, on other digital locations, and on telemarketing calls and asks whether providers should provide hardcopies of the labels in retail locations. In addition, the *NPRM* considers whether a provider's telemarketing representative should email, or otherwise make available to, consumers labels before consumers make a purchase and whether there are other marketing channels to consider in developing this point-of-sale requirement. The Commission also considers whether the labels should be provided in a machine-readable format with standard, labeled fields to ensure that third parties and consumers can more readily compare across multiple providers. Further, the *NPRM* seeks comment on whether ISPs should be required to make direct notifications to consumers if any terms of service change after the labels are provided to consumers at the time of purchase.

D. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

35. The *NPRM* specifically considers the impact of the proposed label requirements on smaller broadband service providers. To address any concerns about compliance with the proposed rules by smaller broadband providers, the *NPRM* seeks comment on appropriate timeframes for smaller providers to implement the new requirements and asks whether there are any alternative ways, other than different implementation timeframes, to minimize the economic impact on smaller service providers while achieving the objectives set forth in the *NPRM.*

36. The Commission will evaluate the economic impact on small entities, as identified in comments filed in response to the *NPRM* and this IRFA, in reaching its final conclusions and taking action in this proceeding.

E. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

37. None.

List of Subjects in 47 CFR Part 8

Cable Television, Common Carriers, Communications common carriers, Reporting and recordkeeping requirements, Satellites, Telecommunications, Telephone, Radio.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 8 as follows:

PART 8—INTERNET FREEDOM

■ 1. The authority citation for part 8 is revised to read as follows:

Authority: 47 U.S.C. 154, 201(b), 257, 303(r), and the Infrastructure Investment and Jobs Act, Pub. L. 117–58 (2021).

■ 2. Amend § 8.1 by revising paragraph (a) to read as follows:

§ 8.1 Transparency.

(a) Any person providing broadband internet access service shall publicly disclose accurate information regarding the network management practices, performance characteristics, and commercial terms of its broadband internet access services sufficient to enable consumers to make informed choices regarding the purchase and use of such services and entrepreneurs and other small businesses to develop, market, and maintain internet offerings. Such disclosure shall be made via a broadband consumer label that is prominently displayed, publicly available, and easily accessible at the point of sale in the format prescribed by the Commission:

(1) For fixed broadband, as described in ''Fixed Broadband Consumer Disclosure Label'';

(2) For mobile broadband, as described in ''Mobile Broadband Consumer Disclosure Label.''

BILLING CODE 67112–01–P

Fixed Broadband Consumer Disclosure Label From the *2016 Public Notice*

Broadband Facts

Fixed broadband consumer disclosure

Choose Your Service Data Plan for [*provide name of speed tier offered*]	
Monthly charge for month-to-month plan *[provide non-promotional price of stand-alone broadband service on a month-to-month basis]*	***$[ ]***
Monthly charge for *[ ]* contract plan *[identify length of available long-term contracts – provide one row for each available option; provide price of stand-alone broadband service available under each long-term contract option]*	***$[ ]***
Click here for other pricing options including promotions and options bundled with other services, like cable television and wireless services.	

Other Charges and Terms	
Data included with monthly charge *[if applicable, identify the monthly data allowance associated with this plan]*	***[ ]GB***
Charges for additional data usage – *[provide increment of additional data, e.g., "each additional 50GB"; if applicable, identify additional charges if the monthly data allowance is exceeded]*	***$[ ]***
Optional modem or gateway lease – Customers may use their own modem or gateway; click here for our policy *[at underlined language provide a link to the company's policy with respect to customers using their own equipment; provide the monthly rental fee for any equipment available for rent]*	***$[ ]/ month***
Other monthly fees *[identify any monthly fees that the company chooses to impose in connection with the purchase of broadband service, e.g., regulatory recovery fees]*	
One-time fees *[identify any one-time fees that the company chooses to impose in connection with the purchase of broadband service, e.g., installation fees and activation fees. if applicable, identify any fees that will be imposed if the customer cancels broadband service before the end of a long-term contract and provide a link to a full explanation of when such fees would be triggered; if applicable, include a statement that a deposit may be required based on credit history or other factors]*	
[provide name of and amount of each one-time fee on a row]	***$[ ]***
Government Taxes and Other Government-Related Fees May Apply: Varies by location	

[provide this disclaimer using this language to notify consumers that additional taxes and fees mandated by, or attributable to, government programs will be imposed – specific taxes and fees need not be identified]

Other services on network

[if applicable, in this section provide a brief description of any non-BIAS services offered by the company that might cause the customer to experience reduced performance of their broadband service; at underlined language provide a link to a full explanation of when such a situation would occur and details regarding the anticipated effect on broadband performance]

Performance - Individual experience may vary

[at underlined language provide a link to a full discussion of network performance metrics]

Typical speed downstream *[identify typical peak usage period download speeds for this tier of service, consistent with the Open Internet Orders and FCC guidance]*	*[ ]* ***Mbps***
Typical speed upstream *[identify typical peak usage period upload speeds for this tier of service, consistent with the Open Internet Orders and FCC guidance]*	*[ ]* ***Mbps***
Typical latency *[identify typical peak usage period latency for this tier of service, consistent with the Open Internet Orders and FCC guidance]*	*[ ]* ***milliseconds***
Typical packet loss *[identify typical peak usage period packet loss for this tier of service, consistent with the Open Internet Orders and FCC guidance]*	*[ ]%*

Network Management

Application-specific network management practices? *[answer yes or no; if yes, provide a brief description and a link to a full discussion that identifies application-specific network management practices, when such practices are triggered, and the effect such practices could have on performance]*	***Yes/ No***
Subscriber-triggered network management practices? *[answer yes or no; if yes, provide a brief description and a link to a full discussion that identifies subscriber-triggered network management practices, when such practices are triggered, and the effect such practices could have on performance]*	***Yes/ No***

More details on network management.

[at underlined language provide a link to the company's full disclosure of network management practices]

Privacy

[provide a link to the company's privacy policy for broadband services] See our privacy policy

Complaints or Inquiries

[at underlined language provide a link to the primary customer service web page; provide a phone number for the company's customer service center] **To contact us: online/(123)456-7890;**

[at underlined language provide a link to the FCC's complaint center; provide the phone number for the FCC's complaint center]

To submit complaints to the FCC:
online/(888)225-5322

Learn more about the terms used on this form and other relevant information at the FCC's website.

[at underlined language provide a link to the FCC's glossary web page]

Mobile Broadband Consumer Disclosure Label From the *2016 Public Notice*

Broadband Facts

Mobile broadband consumer disclosure

Device Compatibility

If you want to use your existing device, learn more about compatibility.

[at underlined language provide a link regarding compatibility of devices if the customer brings their own device.]

If you want to obtain a device, learn more about prices and other options.

[at underlined language provide a link to prices and other options for customers who wish to obtain a device from the provider]

Choose Your Data Plan - These prices do not include costs for obtaining a device from us.

	High Speed Data allowance per month		
	[ ]GB *[identify the monthly high speed data allowance associated with one of your most popular plans]*	*[ ]GB* *[identify the monthly high speed data allowance associated with one of your most popular plans]*	*[ ]GB* *[identify the monthly high speed data allowance associated with one of your most popular plans]*
Monthly charge	*$[ ]* *[provide non-promotional price of the plan with this data allowance on a month-to-month basis]*	*$[ ]* *[provide non-promotional price of the plan with this data allowance on a month-to-month basis]*	*$[ ]* *[provide non-promotional price of the plan with this data allowance on a month-to-month basis]*
When you exceed the data allowance	*[ ]* *[if applicable, identify additional charges or other outcomes if the monthly data allowance for this plan is exceeded]*	*[ ]* *[if applicable, identify additional charges or other outcomes if the monthly data allowance for this plan is exceeded]*	*[ ]* *[if applicable, identify additional charges or other outcomes if the monthly data allowance for this plan is exceeded]*

Learn more about other included services/features.

[if applicable, at underlined language provide a link to description of other included services and features such as voice and text or tethering and hot spots.]

Additional pricing options, plans and promotions can be found here.

[at underlined language provide a link to additional mobile broadband offerings, including promotional offers and plans that bundle broadband with other services]

Coverage Map

[at underlined language provide a link to coverage map]

Charges and Terms Common to All Plans

Monthly fees

[identify any monthly fees that the company chooses to impose in connection with the customer's plan (e.g., a regulatory recovery fee or administrative fee) and for which all customers are charged the same fixed amount.]

[provide name of and amount of each monthly fee on a row]	*$[ ]*

One-time fees

[identify any one-time fees that the company chooses to impose in connection with the purchase of broadband service, e.g., activation fees; if applicable, identify any fees that will be imposed if the customer cancels broadband service before the end of a long-term contract and provide a link to a full explanation of when such fees would be triggered]

[provide name of and amount of each one-time fee on a row]	*$[ ]*

Government Taxes and Fees, and Other Carrier Surcharges May Also Apply: Varies by location

Performance - Individual experience may vary

[at underlined language provide a link to a full discussion of network performance metrics]

[ ]G *[identify the primary network technology for the plan (e.g., 4G, 3G)]*		*[ ]G* *[identify other network technologies for the plan (e.g., 4G, 3G)]*
Typical speed *[ ] Mbps downstream /* *[ ] Mbps upstream* *[identify typical peak usage period download and upload speeds for this network technology, consistent with the Open Internet Orders and FCC guidance]*	•	**Typical Speed** *[ ] Mbps downstream /* *[ ] Mbps upstream* *[identify typical peak usage period download and upload speeds for this network technology, consistent with the Open Internet Orders and FCC guidance]*
Typical latency *Less than [ ] milliseconds* *[identify typical peak usage period latency for this network technology, consistent with the Open Internet Orders and FCC guidance]*	•	**Typical latency** *Less than [ ] milliseconds* *[identify typical peak usage period latency for this network technology, consistent with the Open Internet Orders and FCC guidance]*
Typical Packet Loss *[ ] %* *[identify typical peak usage period packet loss for this network technology consistent with the Open Internet Orders and FCC guidance]*	•	**Typical Packet Loss** *[ ] %* *[identify typical peak usage period packet loss for this network technology consistent with the Open Internet Orders and FCC guidance]*

Network Management

Application-specific network management practices? *[answer yes or no; if yes, provide a brief description and a link to a full discussion that identifies application-specific network management practices, when such practices are triggered, and the effect such practices could have on performance]*	***Yes/No***
Subscriber-triggered network management practices? *[answer yes or no; if yes, provide a brief description and a link to a full discussion that identifies subscriber-triggered network management practices, when such practices are triggered, and the effect such practices could have on performance]*	***Yes/No***

More details on network management

[at underlined language provide a link to the company's full disclosure of network management practices]

Privacy

[at underlined language provide a link to the company's privacy policy for broadband services]

See our privacy policy

Complaints or Inquiries

[at underlined language provide a link to the primary customer service web page; provide the phone number for the company's customer service center and]

[at underlined language provide a link to the FCC's complaint center; provide the phone number for the FCC's complaint center]

To contact us: online/(123)456-7890;

To submit complaints to the FCC: online/(888)225-5322

Learn more about the terms used on this form and other relevant information at the FCC's website.

[at underlined language provide a link to the FCC's glossary web page]

[FR Doc. 2022–02483 Filed 2–4–22; 8:45 am]

BILLING CODE 6712–01–C

Notices

Federal Register

Vol. 87, No. 25

Monday, February 7, 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

Agricultural Marketing Service

[Doc. No. AMS–NOP–21–85]

National Organic Program; Notice of Public Listening Session With Request for Comment

AGENCY: Agricultural Marketing Service.

ACTION: Notice of public meeting.

SUMMARY: The U.S Department of Agriculture (USDA), Agricultural Marketing Service (AMS), National Organic Program (NOP), is announcing a public listening session, with request for comment, regarding upcoming standards development activities, including feedback about specific recommendations received from the National Organic Standards Board (NOSB). AMS intends to use the information received from public comments to prioritize future rulemaking and standards development activities. This Notice also includes a summary of NOP rulemaking currently in progress, for which the NOP is not accepting comments.

DATES: AMS will host a virtual meeting on March 21, 2022, from 1:00 p.m. to approximately 3:00 p.m. Eastern Time (ET). The deadline to sign up to make oral comments during the meeting is February 28, 2022. The deadline to submit written comments is March 30, 2022.

ADDRESSES: The virtual meeting can be accessed via the internet and/or phone. Access information will be available on the AMS website prior to each event. Detailed information can be found at *https://www.ams.usda.gov/event/national-organic-program-priorities-listening-session.*

FOR FURTHER INFORMATION CONTACT: Erin Healy, Director, Standards Division, National Organic Program, Telephone: (202) 617–4942; Email: *erin.healy@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary

This Notice seeks input from stakeholders on upcoming standards development activities by AMS NOP, including feedback about specific recommendations from the NOSB. The NOP's mission is to protect the integrity of USDA organic products and the organic seal and to develop and grow the organic market by supporting organic farms, businesses, and those exploring the organic market. NOP develops the market and protects organic integrity by establishing clear standards that create a level playing field, providing oversight of third-party certifying agents, and enforcing the regulations. The NOSB is a Federal advisory committee established by the Organic Foods Production Act (OFPA). The NOSB's mission is ''to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of [OFPA].'' (7 U.S.C. 6518(a))

The USDA is committed to transparently sharing the status, priorities, decision criteria, and current positions on NOSB recommendations. As such, in response to stakeholder interest in organic standards development and in the status of outstanding NOSB recommendations, AMS is hosting a listening session with request for public comment. AMS intends to use information received from public comments to guide the prioritization of organic standards development. Stakeholders that may be affected by future actions on this topic includes certified organic operations, certifying agents, operations transitioning (or seeking to transition) to organic, consumers, and other interested parties.

The listening session will be recorded, and a transcript will be posted following the session on the NOP website at *https://www.ams.usda.gov/event/national-organic-program-priorities-listening-session.*

Oral Comments: Individuals that want to present oral comments during the virtual listening session must pre-register by 11:59 p.m. ET, February 28, 2022. Each commenter will be allotted one 3-minute speaking slot during the virtual listening session. Instructions for registering to present oral comments can be found at *https://www.ams.usda.gov/event/national-organic-program-priorities-listening-session.*

Written Comments: Interested persons are invited to submit written comments on NOP rulemaking priorities and development activities. Written comments must be submitted on or before March 30, 2022, via *http://www.regulations.gov.* All written comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this Notice will be included in the record and the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above. AMS, Specialty Crops Program, strongly prefers that comments be submitted electronically. However, written comments may also be submitted (*i.e.,* postmarked) via mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by or before the deadline.

Meeting Accommodations: If you are a person requiring a reasonable accommodation, please make requests in advance for sign language interpretation or other reasonable accommodation to the person listed under **FOR FURTHER INFORMATION CONTACT**. Determinations for a reasonable accommodation will be made on a case-by-case basis.

Background

The NOP's mission is to protect the integrity of USDA organic products and the organic seal. AMS protects organic integrity by establishing clear standards that create a level playing field and then enforcing those standards. AMS also develops and grows the organic market by supporting organic farms and businesses and those exploring the organic market. The program also oversees third-party certifying agents in their implementation of the organic standards with organic operations and develops training to support standards implementation and oversight.

AMS also supports the work of the NOSB, an Advisory Board with a mission to assist USDA in the development of standards for substances used in organic production and to advise the Secretary on other aspects of implementation of OFPA. The NOSB has specific statutory authorities with respect to the National List, found in the OFPA and the USDA organic

regulations. The Board's activities include analyzing petitions, Technical Reports, and other documents to make recommendations for certain materials to be included in or excluded from the National List. Beyond its National List responsibilities, the Board also has and exercises authority to make recommendations on other topics related to organic agriculture and food production, including new standards, clarification of existing standards, or the role of organic in broader policy issues such as climate-smart agriculture or creating a more resilient and equitable agriculture system. Some of these work agenda topics are AMS-initiated (import oversight, human capital); others are proposed by NOSB members and approved by AMS. NOP and NOSB members collaborate to develop work plan items and meeting agendas.

For all of its work, the Board develops and reviews discussion papers and proposals, and also considers stakeholder input through oral and written comment. If a NOSB proposal passes with a ''decisive vote'' (⅔ of the vote), it becomes a recommendation to the USDA for consideration. An NOSB recommendation is not USDA policy. USDA reviews the recommendation to determine whether to advance it through the standards development process.

The NOSB and the NOP both operate under the authority of the OFPA, and standards developed by the program must align with OFPA provisions. In addition to the OFPA, the NOSB is also governed by the Federal Advisory Committee Act (FACA). The NOP establishes standards, including conducting rulemaking and developing policies, in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* and the Office of Management and Budget (OMB) rules and policies. The NOSB and NOP evaluate policy using overlapping, but distinct regulatory criteria. For example, where the NOSB focuses on the OFPA criteria and stakeholder input to develop its proposals and recommendations, the NOP must also consider other factors including the regulatory impact, including costs and benefits, to regulated entities.

As of October 2021, the NOSB has made 678 recommendations to USDA AMS related to organic production and substances since the NOSB was first chartered in 1992. USDA AMS has reviewed and implemented 87 percent (592) of the Board's total recommendations and 80 percent of the NOSB's recommendations specific to practice (non-materials-related) standards. Not all recommendations have required rulemaking; AMS has implemented many NOSB recommendations through guidance, instructions and letters to certifiers, training, and policy statements.

AMS NOP Current Rulemaking Priorities

AMS has a number of rulemaking priorities in progress. This section summarizes these rules; however, AMS is not accepting comments on these rules in this listening session. Rather, they are included here to provide the status of ongoing regulatory priorities. AMS will be accepting comments on these four rules once they are published in the **Federal Register**.

Strengthening Organic Enforcement (SOE) Final Rule

In August 2020, AMS published the Strengthening Organic Enforcement (SOE) proposed rule to strengthen the oversight and enforcement of organic control systems. This was needed to respond to the increasing complexity of organic supply chains and market growth. The proposed rule includes provisions related to handler certifications, import certificates, and certifier oversight. The proposed rule would implement the requirements from the 2018 Farm Bill, other provisions informed by program experience, and several recommendations from the NOSB, including:

- Calculating Percentage Organic in Multi-ingredient Products (April 2013);
- Establishing Criteria for Certification of Grower Groups (October 2002);
- Certifying Operations with Multiple Production Units, Sites and Facilities Under the National Organic Program (November 2008);
- Clarifying the Limitations of Uncertified Handlers under § 205.101(b) (October 2010);
- Strengthening Inspector Qualifications and Training (May 2018);
- Publishing Guidance on Unannounced Inspections (December 2011);
- Information on Certificates of Organic Operation (March 2005);
- Using Expiration Dates on Certificates of Organic Operation (November 2006); and
- Standardized Certificates (November 2007).

AMS has written the SOE final rule and it is under review. We expect the final rule to be published in 2022.

Origin of Livestock (OOL) Final Rule

In 2015, the NOP published the Origin of Livestock (OOL) proposed rule to clarify requirements for the transition of dairy animals into organic production. The OOL rulemaking is to implement previous NOSB recommendations. The final rule has been written and, as of December 2021, was under review at the Office of Management and Budget (OMB).

Organic Livestock and Poultry Standards (OLPS)

The Organic Livestock and Poultry Practices (OLPP) final rule was originally published under Secretary Vilsack in 2017 and withdrawn under Secretary Perdue in 2018. A new proposed rule—Organic Livestock and Poultry Standards (OLPS)—has been written and, as of December 2021, was under review at OMB.

Inert Ingredients in Pesticides for Organic Production

Materials and ingredients that support organic crop and livestock production and organic processors are vital for the day-to-day work of organic farms and businesses. In addition to periodic rules and notices (2–6 per year) to maintain and change the National List to respond to NOSB recommendations, AMS is finalizing an Advanced Notice of Proposed Rulemaking to address the use in organic production of ''inert'' substances, which is currently based on Environmental Protection Agency (EPA) regulatory reference lists that have expired. Future rulemaking is needed to update the National List to resolve the references to the expired EPA reference lists, to provide market certainty, and to maintain industry confidence in the National List process.

Overview of Program Structure

Standards development is one of many activities conducted by the NOP. The NOP is made up of six groups: Accreditation Division, Compliance and Enforcement Division, International Activities Division, Trade Systems Division, Standards Division, and the Office of the Deputy Administrator. The Accreditation Division and Compliance and Enforcement Division conducts audits of certifying agents and their satellite offices, prepares noncompliance and evaluates corrective actions; considers reinstatement requests from suspended operations; reviews certifier records and reports; investigates complaints; conducts surveillance of operations and regions or countries based on market growth and risk; conducts the program's livestock compliance program; conducts focused import oversight investigations; and develops and delivers training for certifiers and operations.

The International Activities Division monitors existing organic trade arrangements and leads technical negotiations for new arrangements. The Trade Systems Division is responsible for all technology development and data dashboard development for the program, including leading the development of the import certificate reporting system required by the 2018 Farm Bill. The team also leads the Interagency Organic Import Oversight Working Group. The Office of the Deputy Administrator houses the NOP appeals function, quality management, communications, Organic Integrity Learning Center development, the human capital initiative, special projects, and general customer service and organizational management.

The Standards Division develops organic rules and policies; provides technical and administrative support to the NOSB; and evaluates materials conflicts from certifiers. The Division also serves as USDA's authority on interpreting the organic standards and provides critical input to NOP and other USDA officials concerning USDA policy positions on organic production, handling, processing, and labeling.

AMS believes that the current structure of the Program appropriately supports the Program's mission. AMS invites public comments on this structure.

Outstanding NOSB Recommendations: Practice Standards

Experience has shown that organic rulemaking is most successful when it addresses the needs with the most cross-community support, when the economic benefits are clear, and when rulemaking resolves known market inconsistencies. Below, AMS outlines what it believes to be the current outstanding NOSB recommendations, focusing on practice standards. Some NOSB recommendations were passed very early in the life of the program, before there was an active NOP Standards Division. Some recommendations have been addressed through training, guidance, or instructions for certifiers. NOSB recommendations referenced above as being addressed by current rulemaking priorities are not repeated here.

Organic Apiculture Production Standards (October 2010)

NOP drafted a proposed rule that would establish organic apiculture standards during the Obama Administration; however, the rule was not published. AMS invites comments on whether to prioritize this rulemaking.

Organic Pet Food Product Standards (November 2008)

NOP drafted a proposed rule that would establish organic pet food product standards during the Obama Administration; however, the rule was not published. AMS invites comments on whether to prioritize this rulemaking.

Organic Mushroom Production Standards (October 2001)

NOP has completed preliminary research for this standards development work. Producers are currently certifying mushrooms under the organic crop standard. AMS invites comments on whether to prioritize this rulemaking.

Organic Aquaculture Production Standards (March 2007)

NOP drafted a proposed rule that would establish organic aquaculture standards during the Obama Administration. The rule was placed on hold at the end of the Administration due to interagency concerns during OMB review; agencies with interest in the rule included the National Oceanic and Atmospheric Administration (NOAA), Small Business Administration (SBA), and Office of the United States Trade Representative (USTR). The rule would require interagency coordination to advance. The NOP currently permits the sale of organic aquaculture products that are certified under other government organic standards (*e.g.,* European Union). AMS invites comments on whether to prioritize this rulemaking.

Hydroponic/Aeroponic Production and Create Greenhouse and Container Production Standards (April 2010; November 2017—Prohibit Aeroponics)

The certification of hydroponic production systems as organic is currently allowed by AMS if the producer can demonstrate compliance with the USDA organic regulations; there are certified organic hydroponic operations in the U.S. at this time. While the NOSB recommended a rulemaking that would prohibit organic certification for those operations, AMS does not to intend to propose the prohibition of these production systems. However, AMS agrees that there are currently inconsistencies among certifiers with respect to the certification of greenhouses and container systems. AMS invites comments as to whether standards should be established for these specific production environments.

Clarification of Emergency Synthetic Parasiticide Use With Organic Livestock (October 2018)

NOP has not made this recommendation a regulatory priority and believes it should continue to be a low regulatory priority, as there has not yet been a demonstrated need or justification for advancing this recommendation. There are no known situations where parasiticides have been used in a manner inconsistent with the National List, nor have certifiers reported having issues determining what is considered ''emergency use.'' AMS invites comments on this prioritization.

Eliminate Incentive To Convert Native Ecosystems to Organic Production (April 2018)

NOP has not made this recommendation a regulatory priority. Provisions within this recommendation appear to contradict the wild crop standard which allows product harvested from unmanaged land to be certified as organic. Before proceeding with this recommendation, NOP would like to see significant support by the organic industry and Congressional action may be needed. AMS invites comments on this prioritization, including whether increased utilization of existing USDA programs could help meet some of the goals of this recommendation.

Establish Standard Criteria for Commercial Availability Determinations—Agricultural Ingredients in Processed Products Standards (November 2007)

NOP has not made this recommendation a regulatory priority because the Accredited Certifiers Association (ACA) has issued Best Practices documents for commercial availability that are currently in use among the industry. Certifiers have not communicated a strong need for this recommendation to move forward. AMS invites comments on this prioritization.

Require Increased Use of Organic Seeds (April 2019)

NOP has not made this recommendation a regulatory priority because NOP believes the recommendation is already addressed by USDA organic regulations for commercial availability related to seeds and planting stock. Therefore, additional rulemaking is not needed. The NOP has completed training on organic seed sourcing as a practical, high-impact step; the training is available in the Organic Integrity Learning Center. The ACA has also

published a Best Practice Document for certifiers to increase consistency. AMS invites comments on this prioritization.

Recommendations Related to Genetic Engineering and Excluded Methods (Multiple)

NOSB has made a number of recommendations related to genetic engineering and included methods. For example, ''*Require Genetic Integrity for Transparency of Seed Grown on Organic Land—Instructions to Certifiers*'' (October 2019) and ''*Guidance of GMO Prevention Strategies*'' (October 2015) both recommend establishing thresholds for addressing the presence of genetic material contamination, with significant cost implications for testing and monitoring. The NOP has not prioritized these two recommendations given the significant implementation requirements and likely costs involved. AMS invites comments on this prioritization.

The NOSB has also recommended developing ''*Guidance for Determining which New Technologies are Considered Excluded Methods*'' (October 2019). NOP has not made this recommendation a priority because it believes the current definition of Excluded Methods in the USDA organic regulations is sufficiently broad to cover a large range of new technologies. Augmenting this regulatory definition with a long list of prohibited technologies may cause confusion and could lead to an implied ''allowance by omission'' for technologies not listed. We believe the intent of this recommendation could be achieved by communicating the program's position on excluded methods (that they are not allowed) more directly and investing resources into communicating with certifiers about NOP's expectations for oversight. AMS invites comments on this prioritization.

Develop Organic Personal Care Product Standards (December 2009)

NOP has not made this recommendation a regulatory priority. This rulemaking would be very complex and would require a significant expansion of existing regulations. NOP has published two items: ''Policy Memo: ''Organic Personal Care/Cosmetics'' and ''Fact Sheet—Personal Care Products'' that have allowed certifiers and operations to find a path to certification for these products within the existing rules and standards. Other private standards have been developed that are specific to organic cosmetic certification. Regulatory action in this area would require significant interagency cooperation and review, as it would need to harmonize with current Food and Drug Administration (FDA) regulations regarding ingredient statements on cosmetics and personal care products. AMS invites comments on this prioritization.

Restrict the Use of Livestock Vaccines Made From Excluded Methods (October 2019)

NOP has not made this recommendation a regulatory priority. There has not been a strong justification or demonstrated need for this rulemaking. The organic livestock industry is not large enough to support the development, testing, and deployment of non-genetically modified (GMO) vaccines. Rulemaking would involve adding the non-GMO commercial availability as an annotation to § 205.603(a)(4). AMS invites comments on this prioritization.

NOP Handbook Updates

Along with the OFPA and the USDA organic regulations, the NOP Handbook, titled, *The Program Handbook: Guidance and Instructions for Accredited Certifying Agents and Certified Operations* provides those who own, manage, or certify organic operations with guidance, instructions, and policy memos that can assist them in complying with the USDA organic regulations. The Handbook is consistent with OMB's Bulletin on Agency Good Guidance Practices (GGPs) published January 25, 2007 (72 FR 3432–3440). The purpose of the OMB's GGPs is to help ensure that program guidance documents are developed with adequate public participation, are readily available to the public, and are not applied as binding requirements.

The NOP Handbook is an important tool for organic operations and for certifying agents. There are a number of guidance, instructions, and policy memos that are part of the NOP Handbook that will need to be updated as a result of SOE; several also need updates to align with current NOP policy (*e.g.,* label use-ups when certifiers exit the organic program; accreditation process updates based on NOP's increased staffing and capabilities; and references to conservation tools administered by other USDA agencies). AMS invites public comments with respect to which NOP Handbook documents need updates from the organic community's perspective.

Request for Public Comments

AMS seeks comments on the prioritization of outstanding NOSB recommendations and NOP Handbook updates (specifically, comments on whether issues not currently included should be considered for regulatory action) as it considers future rulemaking and policy development activities. AMS welcomes input about whether current resources should be allocated in a different manner to support standards development, or other program priorities. Comments received in response to this notice will inform future regulatory and policy development activities.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–02429 Filed 2–4–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–888]

Certain Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea: Final Results and Partial Recission of Countervailing Duty Administrative Review; 2019

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

SUMMARY: The Department of Commerce (Commerce) determines that POSCO and certain other producers/exporters of certain carbon and alloy steel cut-to-length plate (CTL plate) from the Republic of Korea (Korea) received *de minimis* net countervailable subsidies during the period of review (POR), January 1, 2019, through December 31, 2019.

DATES: Applicable February 7, 2022.

FOR FURTHER INFORMATION CONTACT: Faris Montgomery or George Ayache, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1537 or (202) 482–2623.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 2021, Commerce published the *Preliminary Results* of this review.[1] On November 2, 2021,

[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, and Intent to Rescind Review, in Part; 2019,* 86 FR 42788 (August 5, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

Commerce extended the deadline for the final results of this review to no later than February 1, 2022.[2] Subsequently, on December 2, 2021, Commerce issued its post-preliminary analysis.[3] For a complete description of the events that followed the *Preliminary Results, see* the Issues and Decision Memorandum.[4]

Scope of the Order [5]

The merchandise covered by the *Order* is CTL plate. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in interested parties' briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed is attached to this notice at Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Change Since the Preliminary Results

Based on our analysis of the case and rebuttal briefs and the evidence on the record, we made one change from the *Preliminary Results* and post-preliminary analysis. This change is explained in the Issues and Decision Memorandum.

Partial Rescission of Administrative Review

As noted in the *Preliminary Results,* Commerce timely received a no-shipment certification from Hyundai Steel Company (Hyundai). We inquired with U.S. Customs and Border Protection (CBP) whether Hyundai had shipped merchandise to the United States during the POR, and CBP provided no evidence to contradict the claims of no shipment made by Hyundai. Accordingly, in the *Preliminary Results,* Commerce stated its intention to rescind the review with respect to Hyundai in the final results. No party commented on this aspect of the *Preliminary Results.* Because there is no evidence on the record to indicate that Hyundai had shipments of subject merchandise to the United States during the POR, we are rescinding the administrative review of Hyundai, pursuant to 19 CFR 351.213(d)(3).[6]

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits in examination in an administrative review pursuant to section 777(A)(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. We also note that section 777A(e)(2) of the Act provides that ''the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5) {of the Act}.'' Section 705(c)(5)(A)(i) of the Act states that, in general, for companies not investigated, we will determine an all-others rate by using the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding zero and *de minimis* rates or any rates based solely on the facts available. Additionally, section 705(c)(5)(A)(ii) provides that when the countervailable subsidy rates established for all exporters and producers individually investigated are zero or *de minimis* rates, or based solely on facts available, Commerce may use any reasonable method to establish a rate for the companies not individually investigated, including averaging the weighted-average countervailable subsidy rates determined for the exporters and producers individually investigated.

In the final results of this review, we calculated a *de minimis* net countervailable subsidy rate for POSCO, the sole mandatory respondent. As a result, for the reasons discussed in the Issues and Decision Memorandum, we have determined that it is appropriate to assign to the companies subject to the review, but not selected for individual examination, the *de minimis* net countervailable subsidy rate calculated for POSCO in this review. For a list of the 40 companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent, *see* Appendix II to this notice.

Final Results of Administrative Review

In accordance with 19 CFR 351.221(b)(5), we calculated an individual net countervailable subsidy rate for POSCO. Commerce determines that, during the POR, the net countervailable subsidy rates for the producers/exporters under review are as follows:

Company	Subsidy rate (percent *ad valorem*)
POSCO: [7]	*0.42
Non-Selected Companies Under Review: [8]	*0.42

* (*De minimis*).

Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**.[9]

Assessment Rate

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication). Because we have calculated a *de minimis* countervailable subsidy rate for the companies under review, we will

[2] *See* Memorandum, ''Extension of Deadline for Final Results,'' dated November 2, 2021.

[3] *See* Memorandum, ''Post-Preliminary Analysis of the Countervailing Duty Administrative Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea,'' dated December 2, 2021 (Post-Preliminary Analysis Memorandum).

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Countervailing Duty Administrative Review: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea; 2019,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Countervailing Duty Order,* 82 FR 24103 (May 25, 2017) (*Order*).

[6] *See* Issues and Decision Memorandum for complete discussion.

[7] As discussed in the *Preliminary Results,* Commerce found the following companies to be cross-owned with POSCO: Pohang Scrap Recycling Distribution Center Co. Ltd.; POSCO Chemical; POSCO M-Tech; POSCO Nippon Steel RHF Joint Venture Co., Ltd.; and POSCO Terminal. No party commented on Commerce's preliminary cross-ownership determination and there is no information on the record which warrants reconsideration of this determination. Therefore, for these final results, Commerce continues to find the above-referenced companies are cross-owned with POSCO. Accordingly, POSCO's subsidy rate applies to each of its cross-owned companies.

[8] *See* Appendix II.

[9] *See* 19 CFR 351.224(b).

instruct CBP to liquidate shipments of subject merchandise produced and/or exported by the companies listed above, entered, or withdrawn from warehouse for consumption, from January 1, 2019, through December 31, 2019, without regard to countervailing duties in accordance with 19 CFR 351.212(b)(2) and 19 CFR 351.106(c). For the company for which this review is rescinded, countervailing duties will be assessed at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2019, through December 31, 2019.

Cash Deposit Rates

In accordance with section 751(a)(2)(C) of the Act, Commerce intends to instruct CBP to continue to suspend liquidation but not to collect cash deposits of estimated countervailing duties on shipments of subject merchandise by the companies under review entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms subject to the *Order,* we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific rate or the all-others rate (4.31 percent), as appropriate.[10] These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notice to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

[10] *See Order,* 82 FR at 24104.

Dated: January 31, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Partial Rescission of Administrative Review
IV. Scope of the *Order*
V. Rate for Non-Examined Companies
VI. Subsidies Valuation Information
VII. Analysis of Programs
VIII. Discussion of Comments
  Comment 1: Whether Electricity Is Subsidized by the Government of Korea
  Comment 2: Whether Commerce Should Modify the Methodology for Attributing POSCO International's Subsidies to POSCO
  Comment 3: Whether the Korea Emissions Trading System (K–ETS) Is Countervailable
  Comment 4: Whether Commerce Should Modify the Benchmark Used in the Electricity for More Than Adequate Remuneration (MTAR) Program
  Comment 5: Whether Commerce Should Exclude Quota Tariff Import Duty Exemptions Received on Certain Items Used To Produce Non-Subject Merchandise
IX. Recommendation

Appendix II

Non-Selected Companies Under Review

1. BDP International
2. Blue Track Equipment
3. Boxco
4. Bukook Steel Co., Ltd.
5. Buma CE Co., Ltd.
6. China Chengdu International Techno-Economic Cooperation Co., Ltd.
7. Daehan I.M. Co., Ltd.
8. Daehan Tex Co., Ltd.
9. Daelim Industrial Co., Ltd.
10. Daesam Industrial Co., Ltd.
11. Daesin Lighting Co., Ltd.
12. Daewoo International Corp.
13. Dong Yang Steel Pipe
14. Dongbu Steel Co., Ltd.
15. Dongkuk Industries Co., Ltd.
16. Dongkuk Steel Mill Co., Ltd.
17. EAE Automotive Equipment
18. EEW KHPC Co., Ltd.
19. Eplus Expo Inc.
20. GS Global Corp.
21. Haem Co., Ltd.
22. Han Young Industries
23. Hyosung Corp.
24. Jinmyung Frictech Co., Ltd.
25. Khana Marine Ltd.
26. Kindus Inc.
27. Korean Iron and Steel Co., Ltd.
28. Kyoungil Precision Co., Ltd.
29. Menics
30. Qian'an Rentai Metal Products Co., Ltd.
31. Samsun C&T Corp.
32. Shinko
33. Shipping Imperial Co., Ltd.
34. Sinchang Eng Co., Ltd.
35. SK Networks Co., Ltd.
36. SNP Ltd.
37. Steel N People Ltd.
38. Summit Industry
39. Sungjin Co., Ltd.
40. Young Sun Steel

[FR Doc. 2022–02490 Filed 2–4–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–084, C–570–085]

Quartz Surface Products From the People's Republic of China: Initiation of Scope and Circumvention Inquiries of the Antidumping Duty and Countervailing Duty Orders

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

SUMMARY: The Department of Commerce (Commerce) is self-initiating a scope inquiry, pursuant to U.S. trade remedy laws, to determine whether imports of quartz surface products (QSP), completed in Malaysia using inputs manufactured in the People's Republic of China (China), are covered by the antidumping duty (AD) and countervailing duty (CVD) orders on QSP from China (collectively, the *Orders*). In addition, in accordance with our regulations, Commerce is also self-initiating a country-wide circumvention inquiry to determine whether imports of QSP, if not covered by the scope of the *Orders,* are nonetheless circumventing the *Orders,* and is aligning both scope and circumvention inquiries in accordance with our regulations.

DATES: Applicable February 7, 2022.

FOR FURTHER INFORMATION CONTACT: Ajay Menon at (202) 482–0208, AD/CVD Operations, Office II or Barb Rawdon at (202) 482–0474, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 2018, Cambria Company LLC filed petitions seeking the imposition of AD and CVD duties on imports of QSP from China.[1] Following Commerce's affirmative determinations of dumping and countervailable

[1] *See Certain Quartz Surface Products from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 83 FR 22613 (May 16, 2018); *Certain Quartz Surface Products from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 83 FR 22618 (May 16, 2018).

subsidies,[2] and the U.S. International Trade Commission (ITC)'s finding of material injury,[3] Commerce issued the *Orders.*[4]

Scope of the Orders

The products covered by the *Orders* are certain QSP from China, whether finished or unfinished. Such products ''consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (*e.g.,* quartz, quartz powder, cristobalite) as well as a resin binder (*e.g.,* an unsaturated polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the *Orders.* However, the scope of the *Orders* only includes products where the silica content is greater than any other single material, by actual weight.'' For a full description of the scope of the *Orders, see* the ''Scope of the *Orders,*'' in the appendix to this notice.

Statutory and Regulatory Requirements To Initiate Scope and Circumvention Inquiries

Pursuant to 19 CFR 351.225(b), if Commerce ''determines from available information that an inquiry is warranted to determine whether a product is covered by the scope of an order,'' then Commerce ''may initiate a scope inquiry and publish a notice of initiation in the **Federal Register**.''

Furthermore, section 351.226(b) of Commerce's regulations states that if Commerce ''determines from available information that an inquiry is warranted into the question of whether the elements necessary for a circumvention determination under section 781 of the Act exist,'' Commerce ''may initiate a circumvention inquiry and publish a notice of initiation in the **Federal Register**.'' Section 781(b)(1) of the Act provides that Commerce may find circumvention of an AD or CVD order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting circumvention inquiries, under section 781(b)(1) of the Act, Commerce relies on the following criteria: (A) Merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an antidumping or countervailing duty order or finding, (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or merchandise which is produced in the foreign country that is subject to the order, (C) the process of assembly or completion in the foreign country referred to in section (B) is minor or insignificant, (D) the value of the merchandise produced in the foreign country to which the AD or CVD order applies is a significant portion of the total value of the merchandise exported to the United States, and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding.

In determining whether or not the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider: (A) The level of investment in the foreign country, (B) the level of research and development in the foreign country, (C) the nature of the production process in the foreign country, (D) the extent of production facilities in the foreign country, and (E) whether or not the value of processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in a third country is minor or insignificant.[5] Accordingly, it is Commerce's practice to evaluate each of these five factors as they exist in the third country, depending on the totality of the circumstances of the particular circumvention inquiry.[6]

In addition, section 781(b)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in a third country within the scope of an antidumping and/or countervailing duty order. Specifically, Commerce shall take into account such factors as: (A) The pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise is affiliated with the person who, in the third country, uses the merchandise to complete or assemble the merchandise which is subsequently imported into the United States; and (C) whether imports of the merchandise into the third country have increased after the initiation of the investigation that resulted in the issuance of such order or finding.

As described below, Commerce is self-initiating concurrent scope and circumvention inquiries.

Merchandise Subject to the Scope and Circumvention Inquiries

Commerce has placed information on the administrative record, as attachments to its Initiation Memo, that indicates that certain QSP or QSP inputs produced in China undergo further processing in Malaysia before being exported to the United States.[7] That QSP exported from Malaysia to the United States is the merchandise at issue in both the scope and circumvention inquiry initiations.

(1) Available Information Supports Initiation of a Scope Inquiry

The scope covers merchandise which ''has been finished, packaged, or otherwise fabricated in a third country, including by cutting, polishing, curing, edging, thermoforming, attaching to, or packaging with another product, or any other finishing, packaging, or fabrication that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the quartz surface products.'' Accordingly, Commerce is self-initiating this scope inquiry to determine if QSP or QSP inputs produced in China and further processed in Malaysia before being exported to the United States meet this description. We are seeking to determine whether in-scope QSP or QSP inputs leave China and undergo minor processing in Malaysia before being

[2] *See Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances,* 84 FR 23767 (May 23, 2019); *Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances,* 84 FR 23760 (May 23, 2019).

[3] *See Quartz Surface Products from China; Determinations,* 84 FR 32216 (July 5, 2019); *see also Quartz Surface Products from China,* Inv Nos. 701–TA–606 and 731–TA–1416, USITC Pub. 4913 (Final).

[4] *See Certain Quartz Surface Products from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 84 FR 33053 (July 11, 2019) (*Orders*).

[5] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. No. 103–316 (1994) at 893.

[6] *See Uncovered Innerspring Units from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order,* 83 FR 65626 (December 21, 2018), and accompanying Issues and Decision Memorandum at 4.

[7] *See* Memorandum, ''Certain Quartz Surface Products from the People's Republic of China: Initiation of Scope and Circumvention Inquiries of the Antidumping Duty and Countervailing Duty Orders (Initiation Memo). This memo is a public document dated concurrently with, and hereby adopted by, this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

exported to the United States. If the Chinese-origin, in-scope merchandise that undergoes minor processing in Malaysia results in merchandise that still corresponds to the description of in-scope merchandise outlined in the *Orders,* Commerce will find that the merchandise meeting the scope description is covered by the *Orders.* For those products for which Commerce finds that the merchandise is covered by the *Orders,* Commerce may rescind the circumvention inquiry, pursuant to 19 CFR 351.226(f)(6).

(2) Available Information Also Supports Initiation of a Circumvention Inquiry

Based on available information, we also determine the initiation of a circumvention inquiry is warranted to determine whether certain imports of QSP, completed in Malaysia using certain QSP inputs manufactured in China, are circumventing the *Orders.*[8] Commerce has made this determination in accordance with its analysis of the factors set forth in section 781(b) of the Act and 19 CFR 351.226(i).[9]

Commerce has determined that it is appropriate to first determine whether the merchandise is covered by the scope of the *Orders* through a scope inquiry, before considering whether the merchandise is circumventing the *Orders.* Accordingly, Commerce will initially conduct its scope inquiry of the merchandise at issue, and then once it has made a determination as to the scope coverage status of the merchandise, it will determine whether to continue with the circumvention inquiry. If Commerce determines QSP or QSP inputs leaving China that are not covered by the scope of the *Orders* undergo further processing in Malaysia and this further processing consequently results in the production of in-scope merchandise, this merchandise would be subject to the scope of the *Orders.* Under that scenario, Commerce may apply its scope determination, in accordance with 19 CFR 351.225(m)(1), on a producer-specific, exporter-specific, or importer-specific basis, or on country-wide basis, regardless of the producer, exporter or importer of the products being exported from Malaysia to the United States.

If Commerce determines that QSP or QSP inputs completed in Malaysia and exported to the United States are not covered by the scope of the *Orders,* in whole or in part, Commerce may then determine to immediately continue with the circumvention inquiry of that merchandise. If as a result of a circumvention inquiry Commerce determines that the products subject to the inquiry are circumventing the *Orders,* then in accordance with 19 CFR 351.226(m)(1), Commerce may apply its determination on a producer-specific, exporter-specific, or importer specific basis, or on a country-wide basis, regardless of the producer, exporter or importer of the products being exported from Malaysia to the United States.

Pursuant to 19 CFR 351.226(f)(7), Commerce may ''alter or extend'' time limits under the circumvention inquiry as necessary to make certain all parties to each or both segments of the proceeding are able to file comments and factual information, as necessary.

Suspension of Liquidation

(1) Scope Inquiry

Pursuant to 19 CFR 351.225(l)(1), when Commerce self-initiates a scope inquiry under 19 CFR 351.225(b), Commerce will notify CBP of the initiation and direct CBP to continue the suspension of liquidation of entries of products subject to the scope inquiry that were already subject to the suspension of liquidation, and to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the order. Accordingly, Commerce will notify CBP of the initiation of the scope inquiry and direct CBP to continue to suspend (unliquidated) entries of the products subject to the scope inquiry that were already subject to the suspension of liquidation. In addition, Commerce will direct CBP to apply the cash deposit rate that would be applicable if the products were determined to be covered by the scope of the *Orders.*

Should Commerce issue preliminary or final scope rulings, Commerce will follow the suspension of liquidation rules under 19 CFR 351.225(l)(2)–(4). In the event that Commerce issues preliminary or final scope rulings that the products are covered by the scope of the *Orders,* Commerce will instruct CBP to continue the suspension of liquidation of previously suspended entries and to apply the applicable cash deposit rate. Commerce will also instruct CBP to begin the suspension of liquidation and application of cash deposits for any unliquidated entries not yet suspended, entered, or withdrawn from warehouse, for consumption, on or after the date of initiation of the scope inquiry pursuant to paragraphs (l)(2)(ii) and (l)(3)(ii). In addition, pursuant to paragraphs (l)(2)(iii)(A) and (l)(3)(iii)(A), Commerce normally will instruct CBP to begin the suspension of liquidation and application of cash deposits for any unliquidated entries not yet suspended, entered, or withdrawn from warehouse, for consumption, prior to the date of initiation of the scope inquiry, but not for such entries prior to November 4, 2021, the effective date of these provisions in the *Final Rule.*[10] These rules will not affect CBP's authority to take any additional action with respect to the suspension of liquidation or related measures for these entries, as stated in 19 CFR 351.225(l)(5).

(2) Circumvention Inquiry

Pursuant to 19 CFR 351.226(l)(1), when Commerce self-initiates a circumvention inquiry under 19 CFR 351.226(b), Commerce will notify CBP of the initiation and direct CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiry that were already subject to the suspension of liquidation, and to apply the cash deposit rate that would be applicable if the product were determined to be circumventing the order. Accordingly, Commerce will notify CBP of the initiation of the circumvention inquiry and direct CBP to continue to suspend (unliquidated) entries of the products subject to the circumvention inquiry that were already subject to the suspension of liquidation. In addition, Commerce will direct CBP to apply the cash deposit rate that would be applicable if the products

[8] *See* Initiation Memo. As explained in the Initiation Memo, the available information supports initiating this circumvention inquiry on a country-wide basis. Commerce has taken this approach in prior circumvention inquiries, where the facts supported initiation on a country-wide basis. *See, e.g., Oil Country Tubular Goods from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping and Countervailing Duty Orders,* 85 FR 71877, 71878–79 (November 12, 2020)*; Stainless Steel Sheet and Strip from the People's Republic of China: Initiation of Anti-Circumvention and Scope Inquiries on the Antidumping and Countervailing Duty Orders,* 85 FR 29401, 29402 (May 15, 2020); *Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders,* 84 FR 43585 (August 21, 2019); *see also Steel Butt-Weld Pipe Fittings from the People's Republic of China: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty Order,* 82 FR 40556, 40560 (August 25, 2017) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted); *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders,* 81 FR 79454, 79458 (November 14, 2016) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted).

[9] *See* Initiation Memo.

[10] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300, 52327 (September 20, 2021) (*Final Rule*).

were determined to be circumventing the *Orders.*

Should Commerce issue preliminary or final circumvention determinations, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)–(4). In the event that Commerce issues affirmative preliminary or final circumvention determinations that the products are circumventing the *Orders,* Commerce will instruct CBP to continue the suspension of liquidation of previously suspended entries and to apply the applicable cash deposit rate. Commerce will also instruct CBP to begin the suspension of liquidation and application of cash deposits for any unliquidated entries not yet suspended, entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the notice of initiation of the circumvention inquiry pursuant to paragraphs (l)(2)(ii) and (l)(3)(ii). In addition, pursuant to paragraphs (l)(2)(iii)(A) and (l)(3)(iii)(A), Commerce may instruct CBP to begin the suspension of liquidation and application of cash deposits for any unliquidated entries not yet suspended, entered, or withdrawn from warehouse, for consumption, prior to the date of initiation of the circumvention inquiry, but not for such entries prior to November 4, 2021, the effective date of these provisions in the *Final Rule.*[11] These rules will not affect CBP's authority to take any additional action with respect to the suspension of liquidation or related measures for these entries, as stated in 19 CFR 351.226(l)(5).

Notification to Interested Parties

In accordance with sections 19 CFR 351.225(b) and 351.226(b), and 781(b) of the Act, Commerce determines that available information supports initiating both scope and circumvention inquiries to determine whether certain imports of QSP, completed in and exported from Malaysia using certain QSP inputs manufactured in China, are subject to or circumventing the *Orders.* Accordingly, Commerce is notifying all interested parties of the initiation of scope and circumvention inquiries. In addition, we have included a description of the products that are the subject of these inquiries, and an explanation of the reasons for Commerce's decision to initiate these inquiries as provided above and in the accompanying Initiation Memo. Pursuant to 19 CFR 351.225(e)(3) and 351.226(e)(3), due to the interrelated nature of the scope and circumvention inquiries, Commerce is aligning the deadlines for the scope inquiry with the circumvention inquiry and will conduct the scope inquiry first for the reasons explained above.

Pursuant to 19 CFR 351.225(f)(1), interested parties have until March 2, 2022, to submit one set of comments and factual information addressing the self-initiation of the scope inquiry. Under 19 CFR 351.225(l)(2)(iii)(B) and (l)(3)(iii)(B), interested parties may timely request that Commerce adopt an alternative date to begin the suspension of liquidation and application of cash deposits under paragraphs (l)(2)(ii)(A) and (l)(3)(iii)(A). A request for Commerce to adopt an alternative date must be based on a specific argument supported by evidence establishing the appropriateness of that alternative date.[12] If parties wish to make such a request, that request must be included with the set of comments and factual information submitted to Commerce pursuant to 19 CFR 351.225(f)(1).

Interested parties will then have until March 16, 2022 to submit comments and factual information to rebut, clarify, or correct factual information submitted by the other interested parties (including rebuttal in response to any requests made under 19 CFR 351.225(l)(2)(iii)(B) and (l)(3)(iii)(B)). At this time, we are not soliciting or accepting comments on the self-initiation of the circumvention inquiry. Should Commerce determine to proceed with the circumvention inquiry after finalizing its scope determination, Commerce will notify interested parties on the segment-specific service list of an opportunity to comment.

In accordance with section 19 CFR 351.225(e), unless the scope inquiry is rescinded, in whole or in part, Commerce intends to issue its final scope ruling within 120 days after the date on which the scope inquiry was initiated. Furthermore, in accordance with section 781(f) of the Act and 19 CFR 351.226(e)(2), unless the circumvention inquiry is rescinded, in whole or in part, Commerce intends to issue its final circumvention determination within 300 days from the date of publication of the notice of initiation of a circumvention inquiry in the **Federal Register**.

This notice is published in accordance with 19 CFR 351.225(b) and 351.226(b) and section 781(b) of the Act.

Dated: January 31, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Orders

The scope of the orders covers certain quartz surface products. Quartz surface products consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (*e.g.,* quartz, quartz powder, cristobalite) as well as a resin binder (*e.g.,* an unsaturated polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the orders. However, the scope of the orders only includes products where the silica content is greater than any other single material, by actual weight.

Quartz surface products are typically sold as rectangular slabs with a total surface area of approximately 45 to 60 square feet and a nominal thickness of one, two, or three centimeters. However, the scope of the orders includes surface products of all other sizes, thicknesses, and shapes. In addition to slabs, the scope of the orders includes, but is not limited to, other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles. Certain quartz surface products are covered by the orders whether polished or unpolished, cut or uncut, fabricated or not fabricated, cured or uncured, edged or not edged, finished or unfinished, thermoformed or not thermoformed, packaged or unpackaged, and regardless of the type of surface finish.

In addition, quartz surface products are covered by the orders whether or not they are imported attached to, or in conjunction with, non-subject merchandise such as sinks, sink bowls, vanities, cabinets, and furniture. If quartz surface products are imported attached to, or in conjunction with, such non-subject merchandise, only the quartz surface product is covered by the scope. Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise fabricated in a third country, including by cutting, polishing, curing, edging, thermoforming, attaching to, or packaging with another product, or any other finishing, packaging, or fabrication that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the quartz surface products.

The scope of the orders does not cover quarried stone surface products, such as granite, marble, soapstone, or quartzite. Specifically excluded from the scope of the orders are crushed glass surface products. Crushed glass surface products must meet each of the following criteria to qualify for this exclusion: (1) The crushed glass content is greater than any other single material, by actual weight; (2) there are pieces of crushed glass visible across the surface of the product; (3) at least some of the individual pieces of crushed glass that are visible across the surface are larger than one centimeter wide as measured at their widest cross-section (glass pieces); and (4) the distance between

[11] *Id.,* 86 FR at 52345.

[12] *See Final Rule,* 86 FR 52326–29, for further information.

any single glass piece and the closest separate glass piece does not exceed three inches.

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheading: 6810.99.0010. Subject merchandise may also enter under subheadings 6810.11.0010, 6810.11.0070, 6810.19.1200, 6810.19.1400, 6810.19.5000, 6810.91.0000, 6810.99.0080, 6815.99.4070, 2506.10.0010, 2506.10.0050, 2506.20.0010, 2506.20.0080, and 7016.90.10. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the orders is dispositive.

If we determine that all relevant QSP is subject to the China Orders, then further analysis under section 781(b) of the Act may be unnecessary and the circumvention inquiry may be rescinded.

[FR Doc. 2022–02488 Filed 2–4–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–804]

Certain Steel Nails From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) determines that sales of certain steel nails (steel nails) from the United Arab Emirates (UAE) were made at less than normal value during the period of review (POR) May 1, 2019, through April 30, 2020.

DATES: Applicable February 7, 2022.

FOR FURTHER INFORMATION CONTACT: Brittany Bauer or Kelsie Hohenberger, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: (202) 482–2312 or (202) 482–2517.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2021, Commerce published the preliminary results of the 2019–2020 administrative review of the antidumping duty order on certain steel nails from the UAE.[1] On November 30, 2021, Commerce extended the deadline for the final results by 60 days, until February 2, 2022.[2] A full description of the events since the *Preliminary Results* is contained in the Issues and Decision Memorandum.[3]

Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by this order are steel nails from the UAE. For a full description of the scope, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

In the Issues and Decision Memorandum, we address the sole issue raised in case and rebuttal briefs submitted by interested parties as reflected in the list of topics provided in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties, and for the reasons explained in the Issues and Decision Memorandum, we made certain changes to the *Preliminary Results.*

Final Results of the Review

Commerce determines that the following weighted-average dumping margins exist for the period May 1, 2019, through April 30, 2020.

Producer/exporter	Weighted-average dumping margin (percent)
Middle East Manufacturing Steel LLC	3.47
Rich Well Steel Industries LLC	4.90

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with the final results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review. We calculated importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). If an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), Commerce will instruct CBP to liquidate that importer's entries of subject merchandise without regard to antidumping duties.

For entries of subject merchandise during the POR produced by Middle East Manufacturing Steel LLC and Rich Well Steel Industries LLC for which they did not know the merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate companies involved in the transaction.[4]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for each company

[1] *See Certain Steel Nails from the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,* 86 FR 43177 (August 6, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Certain Steel Nails from the United Arab Emirates: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated November 30, 2021.

[3] *See* Memorandum, ''Certain Steel Nails from the United Arab Emirates: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review, 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

listed above will be equal to the weighted-average dumping margins established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review, but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which they were examined; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation but the producer is, then the cash deposit rate will be the rate established for the most recently-completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 4.30 percent, the all-others rate established in the LTFV investigation.[5] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

[5] *See Certain Steel Nails from the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 77 FR 27421 (May 10, 2012).

Dated: February 1, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes Since the *Preliminary Results*
V. Discussion of the Issues
  Comment 1: Universe of Sales for Margin Calculation and Assessment
VI. Recommendation

[FR Doc. 2022–02487 Filed 2–4–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Marine Recreational Information Program, Access-Point Angler Intercept Survey (APAIS)

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 April 8, 2022.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0659 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 John Foster, Chief, Recreational Fisheries Statistics Branch, Fisheries Statistics Division, 301–427–8130, *john.foster@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

Marine recreational anglers are surveyed to collect catch and effort data, fish biology data, and angler socioeconomic characteristics. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), as amended, regarding conservation and management of fishery resources.

Marine recreational fishing catch and effort data are collected through a combination of mail surveys, telephone surveys and on-site intercept surveys with recreational anglers. Amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) require the development of an improved data collection program for recreational fisheries. To partially meet these requirements, NOAA Fisheries designed and implemented a new Access-Point Angler Intercept Survey (APAIS) in 2013 to ensure better coverage and representation of recreational fishing activity.

The APAIS intercepts marine recreational fishers at public-access sites in coastal counties from Maine to Mississippi, Hawaii, and Puerto Rico to obtain information about the just-completed day's fishing activity. Respondents are asked about the time and type of fishing, the angler's avidity and residence location, and details of any catch of finfish. Species identification, number, and size are collected for any available landed catch. Data collected from the APAIS are used to estimate the catch per angler of recreational saltwater fishers. These APAIS estimates are combined with estimates derived from independent but complementary surveys of fishing effort, the Fishing Effort Survey and the For-Hire Survey, to estimate total, state-level fishing catch, by species, and participation. These estimates are used in the development, implementation, and monitoring of fishery management programs by the NMFS, regional fishery management councils, interstate marine fisheries commissions, and state fishery agencies.

II. Method of Collection

Information will be collected through onsite in-person interviews.

III. Data

OMB Control Number: 0648–0659.
Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 100,000.

Estimated Time per Response: 5 minutes for intercepted anglers.

Estimated Total Annual Burden Hours: 8,333.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

Respondent's Obligation: Voluntary.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *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. 2022–02471 Filed 2–4–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Review of Nomination for St. George Unangan Heritage National Marine Sanctuary

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: On November 17, 2021, the Office of National Marine Sanctuaries of the National Oceanic and Atmospheric Administration requested written comments to facilitate the ONMS five-year review of the nomination for St. George Unangan Heritage National Marine Sanctuary (NMS). NOAA requested relevant information as it pertains to its 11 evaluation criteria for the nomination to remain in the inventory. NOAA has synthesized the information gathered through the public process, completed an internal analysis, and the ONMS Director has made a final determination that the St. George Unangan Heritage NMS nomination will remain in the inventory beyond the January 27, 2022 expiration date.

DATES: This determination took effect on January 27, 2022.

ADDRESSES: Paul Michel, Regional Policy Coordinator, NOAA Sanctuaries West Coast Region, 99 Pacific Street, Bldg. 100F, Monterey, CA 93940, or at *Paul.Michel@noaa.gov,* or 831–241–4217.

FOR FURTHER INFORMATION CONTACT: Paul Michel, Regional Policy Coordinator, NOAA Sanctuaries West Coast Region, 99 Pacific Street, Bldg. 100F, Monterey, CA 93940, or at *Paul.Michel@noaa.gov,* or 831–241–4217.

SUPPLEMENTARY INFORMATION:

Background Information

In 2014, NOAA issued a final rule establishing the sanctuary nomination process (SNP), a process by which communities may submit nominations of areas of the marine and Great Lakes environment for NOAA to consider for designation as a national marine sanctuary (79 FR 33851). The final rule establishing the SNP included a five-year limit on any nomination added to the inventory that NOAA does not advance for designation. The nomination for St. George Unangan Heritage NMS was accepted to the national inventory on January 27, 2017, and was scheduled to expire in January 2022.

In November 2019, NOAA issued a notice (84 FR 61546) to clarify procedures for evaluating and updating a nomination as it approaches the five-year mark on the inventory of areas that could be considered for national marine sanctuary designation. This notice explained that if a nomination remains responsive to the 11 evaluation criteria for inclusion on the inventory, it may be appropriate to allow the nomination to remain on the inventory for another five years. The notice also established a process for NOAA to consider the continuing viability of nominations nearing the five-year expiration mark. The 11 evaluation criteria can be found at *https://nominate.noaa.gov.*

On November 17, 2021, NOAA issued a request for public comments on this nomination (86 FR 64190). NOAA requested relevant information pertaining to the 11 evaluation criteria that NOAA applied to evaluate the St. George Unangan Heritage NMS nomination for inclusion in the national inventory of areas that NOAA may consider for future designation as a national marine sanctuary. During the comment period, 32 public comments were received, and the nominator provided additional information as well, which NOAA has used in evaluating the nomination. Comments can be found at *regulations.gov* (search for Docket Number NOAA–NOS–2021–0094). In analyzing this material, particular attention was given to new scientific information about the national significance of natural and cultural resources, as well as increases or decreases in the threats to resources originally proposed for protection, and changes to the management framework of the area. NOAA also assessed the level of community-based support for the nomination from a broad range of interests.

Following NOAA's review of information provided regarding the nomination's merit for remaining on the inventory after five years, it was determined that new information shows: There are still significant threats to the area; it is still an area of national significance; and, there is still broad community support for the nomination remaining on the inventory of possible designations, among other criteria that the nomination still continues to meet. Therefore, the ONMS Director has determined the nomination for the St. George Unangan Heritage NMS should remain on the inventory. NOAA is not proposing to designate St. George Unangan Heritage NMS or any other new national marine sanctuary with this action. This notice serves to inform the

public of this decision to extend the nomination on the inventory.

Authority: 16 U.S.C. 1431 *et seq.*

John Armor,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–02473 Filed 2–4–22; 8:45 am]

BILLING CODE 3510–NK–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0008]

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 (CFPB or Bureau) requests the extension of the Office of Management and Budget's (OMB's) approval of the existing information collection titled ''Certification of Vaccination'' approved under OMB Control Number 3170–0075.

DATES: Written comments are encouraged and must be received on or before March 9, 2022 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, Paperwork Reduction Act Officer, at (202) 841–0544, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Certification of Vaccination.

OMB Control Number: 3170–0075.

Type of Review: Extension of a currently approved information collection.

Affected Public: Individuals.

Estimated Number of Respondents: 1,500.

Estimated Total Annual Burden Hours: 125.

Abstract: This information collection (*i.e.,* the Certification of Vaccination form) will ascertain individuals' vaccination statuses to the Bureau to comply with Executive Order 13991 titled ''Protecting the Federal Workforce and Requiring Mask-Wearing.'' In compliance with guidance from the Centers for Disease Control and Prevention (CDC) and the Safer Federal Workforce Task Force, the Bureau is collecting this information from fully vaccinated individuals so that they can comply with Bureau safety guidelines. The Bureau is also collecting this information from partially or unvaccinated individuals so that that other measures can be implemented to enforce Bureau safety guidelines (*e.g.,* wearing masks, physical/social distancing, regular testing, adherence to applicable travel requirements). The Bureau collects these data to promote the safety of Federal buildings, the Federal workforce, and others on site at agency facilities consistent with the COVID–19 Workplace Safety: Agency Model Safety Principles established by the Safer Federal Workforce Task Force and guidance from the CDC and the Occupational Safety and Health Administration. Specifically, Bureau staff will use these data for implementing and enforcing workplace safety protocols.

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. 2022–02440 Filed 2–4–22; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, February 9, 2022, 10–11 a.m.

PLACE: This meeting will be held remotely.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED: Briefing Matter: Performance Requirements for Residential Gas Furnaces and Boilers.

All attendees and participants should pre-register online for the Commission meeting at: *https://attendee.gotowebinar.com/register/61653617 2932974863.* To pre-register online for the Meeting, please visit: and fill in the information. After registering you will receive a confirmation email containing information about joining the webinar.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, 301–504–7479 (Office) or 240–863–8938 (Cell).

Dated: February 2, 2022.

Alberta E. Mills,

Commission Secretary.

[FR Doc. 2022–02556 Filed 2–3–22; 11:15 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for AmeriCorps Member Application, Enrollment and Exit Form

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service (operating as AmeriCorps) has submitted a public information collection request (ICR) entitled AmeriCorps Member Application, Enrollment and Exit Form

for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by March 9, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling AmeriCorps, Sharron Tendai, at 202–606–3904 or by email to *stendai@cns.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on December 2, 2021 at Vol. 86 FR 68487. This comment period ended January 31, 2022. Zero (0) public comments were received from this Notice.

Title of Collection: AmeriCorps Member Application, Enrollment and Exit Form.

OMB Control Number: 3045–0054. Type of Review: Renewal.

Respondents/Affected Public: Businesses and Organizations and State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 521,000.

Total Estimated Number of Annual Burden Hours: 386,833.

Abstract: AmeriCorps is soliciting comments concerning its proposed new AmeriCorps Member Application, Enrollment, and Exit Form. Applicants will respond to the questions included in this information collection tool to apply to serve as AmeriCorps members, enroll in the National Service Trust, and exit their term of service. AmeriCorps also seeks to continue using a currently approved information collection until the new information collection is approved by OMB. The currently approved information collections are due to expire on February 28, 2022 and July 31, 2024.

Dated: January 31, 2022.

Erin Dahlin,

Deputy Chief of Program Operations.

[FR Doc. 2022–02507 Filed 2–4–22; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Deputy Secretary of Defense, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Business Board (''the Board'') will take place.

DATES: Open to the public Tuesday, February 22, 2022 from 11:00 a.m. to 1:00 p.m. Eastern time.

ADDRESSES: Due to the current guidance on combating the Coronavirus, the meeting will be conducted virtually or by teleconference only. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Hill, Designated Federal Officer of the Board in writing at Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155; or by email at *jennifer.s.hill4.civ@mail.mil;* or by phone at 571–342–0070.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The mission of the Board is to examine and advise the Secretary of Defense on overall DoD management and governance. The Board provides independent advice reflecting an outside private sector perspective on proven and effective best business practices that can be applied to DoD.

Agenda: The Board meeting will begin February 22, 2022 at 11:00 a.m. Eastern time with opening remarks by Jennifer Hill, the Designated Federal Officer. The Board will then receive remarks by the Board Chair. The Board will then receive a presentation on the DBB Assessment of DoD Mentor Protégé Program. The Board members will deliberate and vote on the proposed findings, observations, and recommendations from the study. If time permits, the Chair may receive comments from the public. The meeting will conclude with closing remarks by the Board Chair and Designated Federal Officer. The latest version of the agenda will be available upon publication of the **Federal Register** on the Board's website at: *https://dbb.defense.gov/Meetings/Meeting-February22-2022/.*

Meeting Accessibility: Pursuant to the FACA and 41 CFR 102–3.140, the meeting on February 22, 2022 from 11:00 a.m. to 1:00 p.m. is open to the public. Persons desiring to participate in the public session are required to register. Public attendance will be by teleconference only. To attend the public session, submit your name, affiliation/organization, telephone number, and email contact information to the Board at *osd.pentagon.odam.mbx.defense-business-board@mail.mil.*

Requests to attend the public meeting must be received no later than 3:00 p.m. Eastern time, on Friday, February 18, 2022. Upon receipt of this information, a teleconference line number will be sent to the email address provided which will allow teleconference attendance to the event. (The DBB will be unable to provide technical assistance to any user experiencing technical difficulties during the meeting.)

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the Board in response to the stated agenda of the meeting or in regard to the Board's mission in general. Written comments or statements should be submitted to Ms. Jennifer Hill, the Designated Federal Officer, via electronic mail (the preferred mode of submission) at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or

affiliation, address, and daytime phone number. The Designated Federal Officer must receive written comments or statements being submitted in response to the agenda set forth in this notice by February 15, 2022 to be considered by the Board. The Designated Federal Officer will review all timely submitted written comments or statements with the Board Chair, and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next scheduled meeting. Pursuant to 41 CFR 102–3.140d, the Board is not obligated to allow any member of the public to speak or otherwise address the Board during the meeting. Members of the public will be permitted to make verbal comments during the meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the Designated Federal Officer, via electronic mail (the preferred mode of submission) at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The Designated Federal Officer will log each request, in the order received, and in consultation with the Board Chair determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in the public meeting. Members of the public who have requested to make a comment and whose comments have been deemed relevant under the process described above will be invited to speak in the order in which the Designated Federal Officer received their requests. The Board Chair may allot a specific amount of time for comments. Please note that all submitted comments and statements will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's website.

Dated: February 2, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–02486 Filed 2–4–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0098]

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: 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 March 9, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Non-combatant Tracking System and Evacuation Tracking and Accountability System; OMB Control Number 0704–NCTS.

Type of Request: New.

Number of Respondents: 50,000.

Responses per Respondent: 1.

Annual Responses: 50,000.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 4,167 hours.

Needs and Uses: This information collection is necessary to document the movement of an evacuee from a foreign country to an announced safe haven and to assist the evacuee in meeting their needs. In addition, this information collection is needed to ensure that federal and state agencies receive the proper reimbursement for costs incurred during these expensive operations. The primary purpose of this information collection is personnel accountability of evacuees who have been repatriated through designated processing sites. By identifying what services have been provided to respective evacuees during initial processing and where they have gone, federal agencies may ensure that their personnel receive safe haven entitlements and notification of change in status.

Affected Public: Individuals or households.

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: February 1, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–02481 Filed 2–4–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0017]

Proposed Collection; Comment Request

AGENCY: The Office of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness 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 April 8, 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 Defense Human Resources Activity, 4800 Mark Center Drive, Suite 08F05, Alexandria, VA 22350, LaTarsha Yeargins, 571–372–2089.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Enlisted Retention and Promotion Barrier Analysis; OMB Control Number 0704–ERPB.

Needs and Uses: The Fiscal Year 2021 National Defense Authorization Act (NDAA) (Section 551) requires DoD to conduct a barrier analysis to review demographic diversity patterns across the military life cycle, starting with enlistment or accession into the Armed Forces in order to: (i) Identify barriers to increasing diversity; (ii) develop and implement plans and processes to resolve or eliminate any barriers to diversity; and (iii) review the progress of the Armed Forces in implementing previous plans and processes to resolve or eliminate barriers to diversity. DoD's Office for Diversity, Equity, and Inclusion will carry out the NDAA requirement by completing the information collection (*i.e.,* Enlisted Retention and Promotion Barrier Analysis Study). Additionally, the DoD Board on Diversity and Inclusion, in its December 2020 report, recommended DoD address barriers confronted by minority members in the workplace.

Affected Public: Individuals or households.

Annual Burden Hours: 499 hours.

Number of Respondents: 340.

Responses per Respondent: 1.

Annual Responses: 340.

Average Burden per Response: 88 minutes.

Frequency: On occasion.

Dated: February 1, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–02482 Filed 2–4–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0117]

Submission for OMB Review; Comment Request

AGENCY: The Office of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), 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 March 9, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Military OneSource Case Management System—Intake; OMB Control Number 0704–0528.

Type of Request: Revision.

Number of Respondents: 219,723.

Responses per Respondent: 1.

Annual Responses: 219,723.

Average Burden per Response: 1 hour.

Annual Burden Hours: 219,723 hours.

Needs and Uses: The Military OneSource program fulfills the requirement established in 10 U.S.C. 1781 ''Establishment of Online Resources to provide Information About Benefits and Services Available to Members of the Armed Forces and Their Families'', and establishes an internet outreach website for the purpose of providing comprehensive information to members of the Armed Forces and their families about the benefits and services available to them. The Military OneSource Business Operations Information System drives the technological capabilities that deliver the full ecosystem of Military OneSource web-based services and capabilities that supports service members and families throughout their military life.

Affected Public: Individuals or households.

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: February 1, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–02480 Filed 2–4–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0013]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Grants Under the Upward Bound Math and Science Program

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement with change of a previously approved collection.

DATES: Interested persons are invited to submit comments on or before March 9, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Tanja Lark, (202) 453–7819.

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: Application for Grants under the Upward Bound Math and Science Program.

OMB Control Number: 1840–0824.

Type of Review: Reinstatement with change of a previously approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 620.

Total Estimated Number of Annual Burden Hours: 20,440.

Abstract: The Department of Education is requesting a reinstatement with change of the application for grants under the Upward Bound Math and Science (UBMS) Program. The Department is requesting a reinstatement with change because the previous UBMS application expired in December 2019 and the application will be needed for a Fiscal Year (FY) 2022 competition for new awards. The Department expects an increase in respondents for the FY 2022 competition. The FY 2022 application incorporates three competitive preference priorities.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: February 1, 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. 2022–02457 Filed 2–4–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Reopening; Eligibility Designations and Applications for Waiving Eligibility Requirements; Programs Under Parts A and F of Title III and Programs Under Title V of the Higher Education Act of 1965, as Amended (HEA)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: On December 16, 2021, we published in the **Federal Register** a notice inviting applications for the waiver of eligibility requirements for fiscal year (FY) 2022 (Eligibility NIA) for programs authorized by Parts A and F of Title III and by Title V of the HEA. This notice reopens the Deadline for Transmittal of Applications. All other requirements and conditions in the notice remain the same.

DATES: The reopening is applicable February 7, 2022.

FOR FURTHER INFORMATION CONTACT: Jason Cottrell, Ph.D., U.S. Department of Education, 400 Maryland Avenue SW, Room 250–50, Washington, DC 20202. Telephone: (202) 453–7530. Email: *Jason.Cottrell@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On December 16, 2021, we published in the **Federal Register** the Eligibility NIA (86 FR 71470). Under the Eligibility NIA, applications were due on January 21, 2022. This notice reopens the deadline for transmittal of applications until February 18, 2022. All other requirements and conditions in the notice remain the same.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit

your search to documents published by the Department.

Michelle Asha Cooper,

Deputy Assistant Secretary for Higher Education Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 2022–02514 Filed 2–4–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2790–074]

Boott Hydropower, LLC; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2790–074.

c. *Date Filed:* April 30, 2021.

d. *Applicant:* Boott Hydropower, LLC (Boott).

e. *Name of Project:* Lowell Hydroelectric Project (project).

f. *Location:* On the Merrimack River, in Middlesex County, Massachusetts and Hillsborough County, New Hampshire. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Kevin Webb, Licensing Manager, Boott Hydropower, LLC, 670 N Commercial Street, Suite 204, Manchester, NH 03101; Telephone (978) 935–6039; or email at *kwebb@centralriverspower.com.*

i. *FERC Contact:* Amy Chang at (202) 502–8250, or *amy.chang@ferc.gov.*

j. *Deadline for filing scoping comments:* March 3, 2022.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Lowell Hydroelectric Project (P–2790–074).

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The application is not ready for environmental analysis at this time.

l. The existing project consists of: (1) The 1,093-foot-long, 15-foot-high Pawtucket Dam; (2) a 720-acre impoundment with a normal maximum water surface elevation of 92.2 feet National Geodetic Vertical Datum of 1929 (NGVD); (3) the 5.5-mile-long Northern and Pawtucket Canal System that includes several small dams and gatehouses; (4) generating facilities, including: (a) One powerhouse facility located on the mainstem of the Merrimack River (E.L. Field Powerhouse), with a total authorized installed capacity of 15.012 MW and a 440-foot-long tailrace to the Merrimack River; and (b) four power stations located along the canal system (Hamilton Power Station, Assets Power Station, Bridge Street Power Station, and John Street Power Station), with a total combined authorized capacity of 5.152 MW; (5) an approximately 2-mile-long, 13.8-kilovolt submarine transmission line that connects the project generating facilities to the regional electric grid; (6) upstream and downstream fish passage facilities; (7) a visitor center; and (8) appurtenant facilities.

The project bypasses approximately two miles of the Merrimack River, including a 0.7-mile-long bypassed reach from the Pawtucket Dam to the E.L. Field Powerhouse tailrace and an approximately 1.3-mile-long bypassed reach from the E.L. Field Powerhouse tailrace to the confluence of the Merrimack and Concord Rivers.

The current license requires Boott to release an instantaneous minimum flow of 1,990 cfs or inflow, whichever is less, downstream of the project. Boott provides the minimum flow through spillage over the Pawtucket Dam, discharge from the project turbines, and the fish passage facilities.

In the relicense application, Boott proposes to decommission the four power stations located along the Lowell downtown canal system (Hamilton Power Station, Assets Power Station, Bridge Street Power Station, and John Street Power Station). In addition, Boott proposes to remove the canal system from the project boundary, except for a 2,200-foot-long section of the Northern Canal; and a 1,600-foot-long portion of the Pawtucket Canal.

Boott proposes to continue to operate the project in run-of-river mode using an automatic pond level control system. Boott proposes to provide a minimum flow of 500 cfs to the bypassed reach via the Pawtucket Dam fish ladder during the fish passage season (typically May 1–July 15), and 100 cfs outside of the fish passage season. Boott also proposes to replace the existing fish lift at the E.L. Field Powerhouse with a fish ladder to pass migratory fish from the E.L. Field Powerhouse tailrace to the bypassed reach, which would provide fish with access to the existing fish ladder in the bypassed reach that is used to pass fish over the Pawtucket Dam. Boott proposes to continue to operate the gates at the Guard Lock and Gates facility to provide flows to the Lowell downtown canal system. Boott proposes to continue to maintain canal structures and facilities, canal water levels, and flows in line with current agreements with NPS and other stakeholders. Finally, Boot proposes to develop several plans, including a fishway operation and management plan, a gaging plan, a recreation access and facilities management plan, a historic properties management plan, and a decommissioning plan for each of the four downtown power stations.

m. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659.

n. You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or

other pending projects. For assistance, contact FERC Online Support.

o. Scoping Process.

Commission staff will prepare either an environmental assessment (EA) or an Environmental Impact Statement (EIS) that describes and evaluates the probable effects, if any, of the licensee's proposed action and alternatives. The EA or EIS will consider environmental impacts and reasonable alternatives to the proposed action. The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission prepares an EA or an EIS. At this time, we do not anticipate holding on-site scoping meetings. Instead, we are soliciting written comments and suggestions on our updated list of issues and alternatives to be addressed in the NEPA document, as described in scoping document 3 (SD3), issued February 1, 2022.

Copies of the SD3 outlining the subject areas to be addressed in the NEPA document were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of SD3 may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: February 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–02503 Filed 2–4–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
1. CP16–9–011, CP16–9–012	1–20–2022	FERC Staff.[1]
2. CP16–9–011, CP16–9–012, RP21–1001–000, RP21–1001–001, CP18–46–004, CP15–490–002.	1–20–2022	FERC Staff.[2]
3. CP16–9–011, CP16–9–012	1–20–2022	FERC Staff.[3]
4. CP16–9–011, CP16–9–012, RP21–1001–000, RP21–1001–001, CP18–46–004, CP15–490–002.	1–20–2022	FERC Staff.[4]
5. CP16–9–011, CP16–9–012, RP21–1001–000, RP21–1001–001, CP18–46–004, CP15–490–002.	1–20–2022	FERC Staff.[5]
6. CP16–9–011, CP16–9–012, RP21–1001–000, RP21–1001–001, CP18–46–004, CP15–490–002.	1–20–2022	FERC Staff.[6]
7. CP16–9–011, CP16–9–012	1–20–2022	FERC Staff.[7]
8. CP16–9–011, CP16–9–012	1–20–2022	FERC Staff.[8]
9. CP16–9–011, CP16–9–012	1–21–2022	FERC Staff.[9]
10. CP16–9–011, CP16–9–012	1–21–2022	FERC Staff.[10]
11. CP16–9–011, CP16–9–012, RP21–1001–000, RP21–1001–001, CP18–46–004, CP15–490–002.	1–21–2022	FERC Staff.[11]
12. CP16–9–011, CP16–9–012, RP21–1001–000, RP21–1001–001, CP18–46–004, CP15–490–002.	1–26–2022	FERC Staff.[12]
13. CP16–9–011, CP16–9–012	1–26–2022	FERC Staff.[13]
14. CP16–9–011, CP16–9–012	1–26–2022	FERC Staff.[14]
15. CP22–17–000	1–27–2022	Molly Smith.
16. CP16–9–011, CP16–9–012, RP21–1001–000, RP21–1001–001, CP18–46–004, CP15–490–002.	1–27–2022	FERC Staff.[15]
17. CP16–9–011, CP16–9–012, RP21–1001–000, RP21–1001–001, CP18–46–004, CP15–490–002.	1–27–2022	FERC Staff.[16]
18. CP16–9–011, CP16–9–012	1–27–2022	FERC Staff.[17]

Docket Nos.	File date	Presenter or requester
19. CP16–9–011, CP16–9–012	1–27–2022	FERC Staff.[18]
20. CP16–9–011, CP16–9–012, RP21–1001–000, RP21–1001–001, CP18–46–004, CP15–490–002.	1–27–2022	FERC Staff.[19]
Exempt:		
CP16–9–000, CP16–9–012	1–27–2022	U.S. Representative Stephen F. Lynch.

[1] Emailed comments dated 1/19/2022 from Mary Brady and 2 other individuals.
[2] Emailed comments dated 1/19/2022 from Ashley Sells and 3 other individuals.
[3] Emailed comments dated 1/19/2022 from Marian Glasgow and 4 other individuals.
[4] Emailed comments dated 1/19/2022 from Stephanie Ulmer.
[5] Emailed comments dated 1/19/2022 from Stephanie Ulmer and 7 other individuals.
[6] Emailed comments dated 1/19/2022 from Miriam Kurland and 10 other individuals.
[7] Emailed comments dated 1/19/2022 from Linda Haley and 4 other individuals.
[8] Emailed comments dated 1/19/2022 from Leann Canty and 1 other individual.
[9] Emailed comments dated 1/20/2022 from Carolyn Shadid Lewis.
[10] Emailed comments dated 1/20/2022 from Virginia Marcotte.
[11] Emailed comments dated 1/20/2022 from Blaze Bhence.
[12] Emailed comments dated 1/19/2022 from Lois Markham and 9 other individuals.
[13] Emailed comments dated 1/19/2022 from Mary Brady and 8 other individuals.
[14] Emailed comments dated 1/19/2022 from Jeanette Fariborz.
[15] Emailed comments dated 1/20/2022 from Cory Alperstein.
[16] Emailed comments dated 1/19/2022 from Stephanie Ulmer.
[17] Emailed comments dated 1/19/2022 from Jeanette Fairborz.
[18] Emailed comments dated 1/19/2022 from Judith Brorschek and 7 other individuals.
[19] Emailed comments dated 1/19/2022 from Aaron Rubin and 18 other individuals.

Dated: February 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–02501 Filed 2–4–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–16–000]

Georgia-Pacific Consumer Operations LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Georgia-Pacific Consumer Pipeline Abandonment Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Georgia-Pacific Consumer Operations LLC (GPC) Pipeline Abandonment Project (Project) involving abandonment and removal of interstate natural gas transmission facilities by GPC in Louisiana and Arkansas. The Commission will use this environmental document in its decision-making process.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of an authorization. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on March 3, 2022.

Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on November 16, 2021, you will need to file those comments in Docket No. CP22–16–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of workspace needed to abandon the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Georgia-Pacific provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website

(*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP22–16–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project

GPC proposes to abandon in-place approximately 19.5 miles of eight-inch-diameter natural gas transmission pipeline and auxiliary facilities that originate from the out-of-service DCP Midstream (DCPM) Transfer Station in Union Parish, Louisiana to a point approximately one mile east of GPC's Crossett Facility in Ashley County, Arkansas. Additionally, GPC proposes to abandon by removal all aboveground features associated with the 19.5 miles of pipeline.

The GPC Pipeline has been disconnected from all gas pipeline sources. GPC proposes to permanently abandon the pipeline by purging the pipeline, and filling it with inert gas or flowable fill, consistent with federal pipeline safety abandonment regulations at 49 CFR 192.727, and any other required federal, state, or local requirements.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

The total surface disturbance associated with the Project is expected to be 2.8 acres; of this 2.2 acres are associated with the road and railroad crossings and 0.65 acres are associated with the removal of the aboveground structures. All of the land disturbing activities would be temporary. The areas where soils are disturbed will be stabilized as soon as practicable and seeded with native grasses. GPC intends to retain its existing right-of-way easement.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- environmental justice;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will prepare an Environmental Assessment (EA). The EA will present Commission staff's independent analysis of the issues. A *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. Any EA will be available in electronic format in the public record through eLibrary[2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4]

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.8.

[4] The Advisory Council on Historic Preservation's regulations are at title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included

Continued

The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP22–16–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: February 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–02499 Filed 2–4–22; 8:45 am]

BILLING CODE 6717–01–P

in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22–23–000]

Citizens S-Line Transmission LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On January 28, 2022, the Commission issued an order in Docket No. EL22–23–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Citizens S-Line Transmission LLC's proposed rates in Docket No. ER21–2082–000 are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Citizens S-Line Transmission LLC,* 178 FERC ¶ 61,067 (2021).

The refund effective date in Docket No. EL22–23–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–23–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: February 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–02498 Filed 2–4–22; 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–519) Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

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 FERC–519, (Application under Federal Power Act Section 203), which will be submitted to the Office of Management and Budget (OMB) for review.

DATES: Comments on the collection of information are due March 9, 2022.

ADDRESSES: Send written comments on FERC–519 to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0082) 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–519, Application under Federal Power Act Section 203.[1]

OMB Control No.: 1902–0082.

Type of Request: Three-year extension of the FERC–519 information collection requirements with no changes to the current reporting requirements. The Commission issued a 60-day notice on November 15, 2021 (86 FR 63010) requesting public comments; no comments were received.

Abstract: The Commission requires that public utility officers must seek authorization under amended section 203(a)(1)(B) of the Federal Power Act (FPA) to merge or consolidate, directly or indirectly, its facilities subject to the jurisdiction of the Commission, or any part thereof, with the facilities of any other person, or any part thereof, that are subject to the jurisdiction of the Commission and have a value in excess of $10 million, by any means whatsoever. In addition, as required by the Act, the Commission establishes a requirement to submit a notification filing for mergers or consolidations by a public utility if the facilities to be acquired have a value in excess of $1 million and such public utility is not required to secure Commission authorization under amended section 203(a)(1)(B). The information collected under the FERC–519 enables the Commission to meet its statutory responsibilities regarding public utility disposition, merger, consolidation of facilities, purchase, or acquisition oversight and enforcement in accordance with the FPA as referenced above. The required information includes descriptions of corporate attributes of the party or parties to the proposed transaction (*e.g.,* a sale, lease, or other disposition, merger, or consolidation of facilities, or purchase of other acquisition of the securities of a public utility and the facilities or other property involved in the transaction), statements about effect of the transaction, and the applicant's proof that the transaction will be consistent with the public interest. It will enable the Commission to meet its statutory responsibilities regarding its FPA section 203 oversight of public utility dispositions, mergers, or consolidation of facilities, and associated oversight and enforcement responsibilities under the FPA as referenced above. The required information to be collected in the notification filing (established by the addition of 18 CFR part 33.12) for certain transactions includes descriptions of corporate attributes of the party or parties to the transaction and the facilities involved. FPA section 203 requires a filing on the occasion that a public utility proposes to dispose of jurisdictional facilities, merge such facilities, or acquire the securities of another public utility. Public Utilities consist of:

- Corporate;
- Information Technology Management;
- General Accounting;
- Personnel and Payroll;
- Transportation;
- Tariffs and Rates;
- Insurance;
- Operations and Maintenance;
- Plant and Depreciation;
- Purchase and Stores;
- Revenue Accounting and Collection;
- Tax;
- Treasury; and
- Miscellaneous.

Type of Respondents: Public utility officers regulated by the FPA.

Estimate of Annual Burden:[2] The Commission estimates the total annual burden and cost[3] for this information collection as follows:

[1] 16 U.S.C. 824b.

[2] ''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.

[3] Commission staff estimates that the industry's skill set and cost (for wages and benefits) for FERC–519 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).

FERC–519: APPLICATION UNDER FEDERAL POWER ACT SECTION 203

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response (4)	Total annual burden hours (total annual cost) (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
FERC–519 (FPA Section 203 Filings)[4]	134	1	134	324.43 hr.[5]; $28,225.41.	43,473.62 hrs.; $3,782,204.94.	$28,225.41

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: February 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–02504 Filed 2–4–22; 8:45 am]

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[4] Commission staff estimates that approximately 26 section 203 filings will change from full section 203 filings to the notification filing described above and will take one burden hour to complete. The number of respondents and responses is based on Commission staff's estimate that 13 percent of the approximately 200 section 203 filings received will be affected. This represents a significant reduction in burden hours.

[5] With this amendment each of the 26 affected entities and their related filings (*i.e.,* the entities that now only have to file the section 203 notification filings) is reduced to 1 hour.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–115–000; Docket No. CP15–115–001]

National Fuel Gas Supply Corporation Empire Pipeline, Inc.; Notice of Request for Extension of Time

Take notice that on January 28, 2021, National Fuel Gas Supply Corporation (National Fuel) and Empire Pipeline, Inc. (Empire) (collectively, Applicants), requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until December 31, 2024, to complete construction of the Northern Access Project (Project) and make the Project available for service, as authorized in the February 3, 2017 Order Granting Abandonment and Issuing Certificates (Certificate Order).[1]

The Project consists of approximately 99 miles of new pipeline, primarily 24-inches in diameter, to be constructed in McKean County, Pennsylvania, and Allegany, Cattaraugus, Erie, and Niagara Counties, New York; a new compressor station along Empire's system in Niagara County, New York; and additional compression at National Fuel's existing Porterville Compressor Station in Erie County, New York, as well as new pipeline interconnects and various auxiliary and appurtenant facilities. The Certificate Order required Applicants to complete construction of the Project facilities and make them available for service by February 3, 2019.[2] In January 2019, the Commission granted Applicants' request for a three-year extension, until February 3, 2022, to complete construction and place the Project facilities into service.[3] Due to legal, regulatory, and procurement delays, Applicants now request an additional 34-month extension of time, until December 31, 2024, to complete construction of the Project and place it into service.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on National Fuel and Empire's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[4] the Commission will aim to issue an order acting on the request within 45 days.[5] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[6] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[7] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[8] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this

[1] *Nat'l Fuel Gas Supply Corp.,* 158 FERC ¶ 61,145 (2017) (Certificate Order), *order on reh'g and motion for waiver determination under Section 401 of the Clean Water Act,* 164 FERC ¶ 61,084 (2018) (Rehearing Order), *order denying reh'g,* 167 FERC ¶ 61,007 (2019) (Order Denying Rehearing), *pet. for review denied sub nom., N.Y. State Dep't of Env't Conservation* v. *FERC,* 991 F.3d 439 (2d Cir. 2021).

[2] Certificate Order, 158 FERC ¶ 61,145 at ordering para. (C)(1).

[3] Letter Order to National Fuel Gas Supply Corp. and Empire Pipeline, Inc., Docket No. CP15–115–000 (issued Jan. 31, 2019) (National Fuel Letter Order).

[4] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[5] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

[6] *Id.* at P 40.

[7] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[8] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

time, the Commission has suspended access to Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on February 16, 2022.

Dated: February 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–02500 Filed 2–4–22; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0718; FR ID 70187]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 8, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0718.

Title: Part 101 Rule Sections Governing the Terrestrial Microwave Fixed Radio Service.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local, or tribal government.

Number of Respondents: 9,500 respondents; 33,914 responses.

Estimated Time per Response: 0.25–2.85 hours.

Frequency of Response: On occasion and every 10 year reporting requirements, third party disclosure requirement, and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 301, 303(f), 303(g), 303(r), 307, 308, 309, 310, and 316.

Total Annual Burden: 39,096 hours.

Total Annual Cost: $3,884,100.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget for a three-year extension of OMB Control Number 3060–0718. Part 101 rule sections require respondents to report or disclose information to the Commission or third parties, respectively, and to maintain records. These requirements are necessary for the Commission staff to carry out its duties to determine technical, legal and other qualifications of applicants to operate and remain licensed to operate a station(s) in the common carrier and/or private fixed microwave services. In addition, the information is used to determine whether the public interest, convenience, and necessity are being served as required by 47 U.S.C. 309 and to ensure that applicants and licenses comply with ownership and transfer restrictions imposed by 47 US.C. 310. Without this information, the Commission would not be able to carry out its statutory responsibilities.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2022–02496 Filed 2–4–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0084; FR ID 70085]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the

PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 8, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0084.

Title: Ownership Report for Noncommercial Educational Broadcast Stations, FCC Form 323–E; Section 73.3615, Ownership Reports.

Form Number: FCC Form 323–E.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 2,636 respondents; 2,636 responses.

Estimated Time per Response: 1 to 1.5 hours.

Frequency of Response: On occasion reporting requirement; biennial reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections are contained in 47 U.S.C. 151, 152(a), 154(i), 257, 303(r), 307, 308, 309, and 310.

Total Annual Burden: 3,867 hours.

Total Annual Cost: $2,319,900.

Needs and Uses: Licensees of noncommercial educational AM, FM, and television broadcast stations must file FCC Form 323–E every two years. Biennial Ownership Reports shall provide information accurate as of October 1 of the year in which the Report is filed. Form 323–E shall be filed by December 1 in all odd-numbered years.

In addition, Licensees and Permittees of noncommercial educational AM, FM, and television broadcast stations must file Form 323–E following the consummation of a transfer of control or an assignment of a noncommercial educational AM, FM, or television broadcast station license or construction permit; a Permittee of a new noncommercial educational AM, FM, or television broadcast station must file Form 323–E within 30 days after the grant of the construction permit; and a Permittee of a new noncommercial educational AM, FM, or television broadcast station must file Form 323–E to update the initial report or to certify the continuing accuracy and completeness of the previously filed report on the date that the Permittee applies for a license to cover the construction permit.

In the case of organizational structures that include holding companies or other forms of indirect ownership, a separate Form 323–E must be filed for each entity in the organizational structure that has an attributable interest in the Licensee or Permittee.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2022–02511 Filed 2–4–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0995; FR ID 70084]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 8, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0995.

Title: Section 1.2105(c), Bidding Application and Certification Procedures; Sections 1.2105(c) and 1.2205, Prohibition of Certain Communications.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents and Responses: 10 respondents and 10 responses.

Estimated Time per Response: 1.5 hours to 2 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 154(i), 309(j), and 1452(a)(3) of the Communications Act, as amended, 47 U.S.C. 4(i), 309(j)(5), 1452(a)(3), and sections 1.2105(c) and 1.2205 of the Commission's rules, 47 CFR 1.2105(c), 1.2205.

Estimated Total Annual Burden: 50 hours.

Total Annual Costs: $9,000.

Needs and Uses: A request for extension of this information collection (no change in requirements) will be submitted to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three year clearance from OMB.

The Commission's rules prohibiting certain communications in Commission auctions are designed to reinforce existing antitrust laws, facilitate detection of collusive conduct, and deter anticompetitive behavior, without being so strict as to discourage pro-competitive arrangements between auction participants. They also help assure participants that the auction

process will be fair and objective, and not subject to collusion. The information collected under this information collection allows the Commission to enforce the prohibition on auction applicants and other covered parties by making clear the responsibility of parties who receive information that potentially violates the rules to promptly report to the Commission. It also enables the Commission to ensure that no bidder gains an unfair advantage over other bidders in its auctions, thereby enhancing the competitiveness and fairness of Commission spectrum auctions. The information collected will be reviewed and, if warranted, referred to the Commission's Enforcement Bureau for possible investigation and administrative action. The Commission may also refer allegations of anticompetitive auction conduct to the Department of Justice for investigation.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–02506 Filed 2–4–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[PS Docket Nos. 15–80; FR ID 69281]

Potential Safeguards in Connection With NORS–DIRS Information Sharing Public Notice

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Public Safety and Homeland Security Bureau (Bureau) of the Federal Communication Commission (FCC or Commission) seeks comment on the cost, manner, and technical feasibility of technological safeguards to protect the integrity of NORS and DIRS information that will be shared with agencies granted access to the information pursuant to the *Second Report and Order.*[1]

DATES: Submit comments on or before March 9, 2022.

ADDRESSES: You may submit comments, identified by PS Docket Nos. 15–80, by any of the following methods:

- *Federal Communications Commission's website: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. See the **SUPPLEMENTARY INFORMATION** section for more instructions.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432. For detailed instructions for submitting comments see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For general questions, contact Scott Cinnamon, Attorney Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, at (202) 418–2319 or *scott.cinnamon@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the *Potential Safeguards in Connection with NORS–DIRS Information Sharing Public Notice,* PS Docket Nos. 15–80; DA 21–62, released January 19, 2022.

The complete text of the *Potential Safeguards in Connection with NORS–DIRS Information Sharing Public Notice* is also available electronically at: *https://www.fcc.gov/document/pshsb-seeks-comments-nors-dirs-information-sharing-safeguards.*

I. Background

On March 17, 2021, the Commission adopted a framework to allow sharing certain communications network outage information submitted to the FCC's NORS and DIRS systems with state, federal, and Tribal nation agencies to improve situational awareness, enhance their ability to response more rapidly to outages, and to help save lives. Information submitted in NORS and DIRS ''is sensitive for reasons concerning national security and commercial competitiveness, and the Commission this treats it as presumptively confidential.'' [2]

To protect the confidentiality and integrity of this sensitive information, the *Second Report and Order* adopted four specific safeguards: ''(1) providing read-only access to the NORS and DIRS filings; (2) limiting the number of users with access to NORS and DIRS filings at participating agencies; (3) requiring special training for participating agencies regarding their privileges and obligations under the program; and (4) potentially terminating access to agencies that misuse or improperly disclose NORS and DIRS data.'' [3]

II. Comment on the Cost, Utility and Feasibility of Specific Safeguards and Suggestions for Additional Safeguards

Acknowledging the utility of proposals raised by commenters earlier in this proceeding, the Commission directed the Bureau to ''to seek, via Public Notice, further information on the cost, manner and technical feasibility'' of including confidential notifications, headers, or watermarks on the read-only outage reports.[4] The Bureau seeks specific comments on the usefulness and effectiveness of these specific safeguards as well as information on costs and feasibility of these proposals.

The Bureau was further directed to ''implement in NORS and DIRS any measures and safeguards that it determines suitable and in the public interest based on the record developed in response to the Public Notice.'' [5] Keeping in mind that proposed safeguards ''should not impose new regulatory requirements on service providers or additional conditions on agencies seeking access to outage data,'' the Bureau invites comments proposing additional technical measures to preserve the confidentiality and integrity of the newly shared NORS and DIRS data.[6]

III. Implementation

Following the receipt of comments, the Bureau will release a Public Notice specifying any technical safeguards implemented in response to this Public Notice. To the extent necessary, these changes may be made without prior notice-and-comment under the Administrative Procedure Act as ''rules of agency organization, procedure, or practice,'' 5 U.S.C. 553(b)(A). The Bureau will then seek Office of Management and Budget (OMB) approval of the modifications to the extent required under the Paperwork Reduction Act. Upon receipt of OMB approval, and the Bureau's completion of all necessary changes to the systems, the Bureau will announce that the modifications are effective.

IV. Procedural Matters

Interested parties may file comments in response to this *Public Notice* on or before the date indicated on the first page of this document. See *Electronic*

[1] *See Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications,* PS Docket No. 15–80, Second Report and Order, 36 FCC Rcd 6136 (2021) (*Second Report and Order*).

[2] *Second Report and Order,* 36 FCC Rcd at 6137, para 2.

[3] *Second Report and Order,* 36 FCC Rcd at 6153, para. 58.

[4] *Second Report and Order,* 36 FCC Rcd at 6154, para. 61.

[5] *Id.*

[6] *Id.*

Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

▪ *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*

▪ *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

▪ Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

▪ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

▪ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (March 19, 2020).

▪ To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. See 47 CFR 1.1200(a), 1.1206. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

David Furth,

Deputy Chief, Public Safety and Homeland Security Bureau.

[FR Doc. 2022–02435 Filed 2–4–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0292 and OMB 3060–0743; FR ID 69908]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before March 9, 2022.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c)

ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0292.

Title: Part 69—Access Charges (Section 69.605, Reporting and Distribution of Pool Access Revenues).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 732 respondents; 8,773 responses.

Estimated Time per Response: 0.75 hours–1 hour.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained 47 U.S.C. 154, 201, 202, 203, 205, 218 and 403 of the Communications Act of 1934, as amended.

Frequency of Response: Annual and monthly reporting requirements and third party disclosure requirement.

Total Annual Burden: 6,580 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature of Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: Section 69.605 requires that access revenues and cost data shall be reported by participants in association tariffs to the association for computation of monthly pool revenues distributions. The association shall submit a report on or before February 1 of each calendar year describing the association's cost study review process for the preceding calendar year as well as the results of that process. For any revisions to the cost study results made or recommended by the association that would change the respective carrier's calculated annual common line or traffic sensitive revenue requirement by ten percent or more, the report shall include the following information:

(1) Name of the carrier;

(2) A detailed description of the revisions;

(3) The amount of the revisions;

(4) The impact of the revisions on the carrier's calculated common line and traffic sensitive revenue requirements; and

(5) The carrier's total annual common line and traffic sensitive revenue requirement.

The information is used by the Commission to compute charges in tariffs for access service (or origination and termination) and to compute revenue pool distributions. Neither process could be implemented without this information.

OMB Control Number: 3060–0743.

Title: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 4,471 respondents; 10,071 responses.

Estimated Time per Response: 0.50–100 hours.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority is contained in 47 U.S.C. 276 of the Telecommunications Act of 1996, as amended.

Frequency of Response: On occasion, quarterly and monthly reporting requirements, recordkeeping requirement and third-party disclosure requirement.

Total Annual Burden: 118,137 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature of Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: This collection will be submitted as an extension of a currently approved collection to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance. The Commission promulgated rules and reporting requirements implementing section 276 of the Telecommunications Act of 1996. Among other things, the rules: (1) Establish fair compensation for every completed intrastate and interstate payphone calls; (2) discontinue intrastate and interstate access charge payphone service elements and payments, and intrastate and interstate payphone subsidies from basic exchange services; and (3) adopt guidelines for use by the states in establishing public interest payphones to be located where there would otherwise not be a payphone. The information collected is provided to third parties and to ensure that interexchange carriers, payphone service providers (''PSP'') LECs, and the states comply with their obligations under the 1996 Act.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2022–02491 Filed 2–4–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0214 and OMB 3060–1207; FR ID 70459]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to

any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 8, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0214.

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: 23,805 respondents; 66,364 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. Statutory authority for these collections is contained in Sections 151, 152, 154(i), 303, 307, 308, and 315 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,064,483 hours.

Total Annual Cost: No cost.

Needs and Uses: On January 25, 2022, the Commission adopted a *Report and Order* in MB Docket No. 21–293, FCC 22–5, *Revisions to Political Programming and Record-Keeping Rule,* which updates the political file rules for broadcast licensees and cable television system operators to bring them into conformity with the Bipartisan Campaign Reform Act of 2002. The *Report and Order* revises the following information collection requirements:

Pursuant to 47 CFR 73.1943 and 76.1701, each broadcast station licensee and each cable television system is required to maintain in its online political file a complete record of any request to purchase broadcast and cablecast time that is made by or on behalf of a candidate for public office, or that communicates a message relating to any political matter of national importance, including a legally qualified candidate, any election to Federal office, or a national legislative issue of public importance. Such records must include information regarding:

(1) Whether the request to purchase broadcast or cablecast time is accepted or rejected by the broadcast licensee or cable television system operator;

(2) the rate charged for the broadcast or cablecast time;

(3) the date and time on which the communication is aired;

(4) the class of time that is purchased;

(5) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

(6) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

(7) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

In addition, when free time is provided for use by or on behalf of candidates, a record of the free time provided must be placed in the political file. These records must be placed in the political file as soon as possible and retained for a period of two years.

All other information collection requirements contained under 47 CFR 73.1212, 73.3526, 73.3527, 73.1943, and 76.1701 are still a part of the information collection and remain unchanged since last approved by OMB.

OMB Control Number: 3060–1207.

Title: Section 25.701, Other DBS Public Interest Obligations, and Section 25.702, Other SDARS Public Interest Obligations.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 3 respondents; 11 responses.

Estimated Time per Response: 1–11 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 for this information collection is contained in sections 154, 301, 302, 303, 307, 309, 310, 332, and 335 of the Communications Act of 1934, as amended.

Total Annual Burden: 75 hours.

Total Annual Cost: No cost.

Needs and Uses: On January 25, 2022, the Commission adopted a *Report and Order* in MB Docket No. 21–293, FCC 22–5, *Revisions to Political Programming and Record-Keeping Rule,* which updates the political file rules for Direct Broadcast Satellite (DBS) providers and Satellite Digital Audio Radio Service (SDARS) licensees to bring them into conformity with the Bipartisan Campaign Reform Act of 2002. The *Report and Order* revises the following information collection requirements:

Pursuant to 47 CFR 25.701(d) and 25.702(b), each DBS provider and each SDARS licensee is required to maintain in its online political file a complete record of any request to purchase airtime that is made by or on behalf of a candidate for public office, or that communicates a message relating to any political matter of national importance, including a legally qualified candidate, any election to Federal office, or a national legislative issue of public importance. Such records must include information regarding:

(1) Whether the request to purchase airtime is accepted or rejected by the DBS provider or SDARS licensee;

(2) the rate charged for the airtime;

(3) the date and time on which the communication is aired;

(4) the class of time that is purchased;

(5) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

(6) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

(7) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

In addition, when free time is provided for use by or on behalf of candidates, a record of the free time

provided must be placed in the political file. These records must be placed in the political file as soon as possible and retained for a period of two years.

All other information collection requirements contained under 47 CFR 25.701 and 25.702 are still a part of the information collection and remain unchanged since last approved by OMB.

This information collection (OMB 3060–1207) also consolidates the information collections in OMB 3060–1065, OMB 3060–1212, and the portion of OMB 3060–0214 which related to SDARS licensees to eliminate duplication and inconsistencies between these information collections. OMB 3060–1065 and OMB 3060–1212 will be discontinued.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2022–02497 Filed 2–4–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; ORR–6 Performance Report (OMB #0970–0036)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR) is requesting an extension of the ORR–6 Performance Report (OMB #0970–0036, expiration 2/28/2022) until 8/31/2022. ORR published a notice in the **Federal Register** on 8/12/2021 requesting comments within 60-days on revisions to the ORR–6. A related revision request will be submitted to the Office of Management and Budget along with an additional 30-day comment period prior to 8/12/2022.

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.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ACF/ORR requests information from the ORR–6 Performance Report to determine effectiveness of state Cash and Medical Assistance (CMA) and Refugee Support Services programs. ORR uses state-by-state CMA utilization rates, derived from the ORR–6 Performance Report, to formulate program initiatives, priorities, standards, budget requests, and assistance policies. Federal regulations require state Refugee Resettlement, Replacement Designee agencies, and local governments submit statistical or programmatic information that the ORR Director determines to be required to fulfill their responsibility under the Immigration and Nationality Act (INA). ORR will submit a revision request prior to 8/12/2022 for the revisions described in 86 FR 44370 (*https://www.federalregister.gov/d/2021-17246*). An additional request for comments will publish in the **Federal Register** at the time of the revision request.

Respondents: State governments and Replacement Designees.

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
ORR–6 Performance Report	64	6	15	5,760	1,920

Estimated Total Annual Burden Hours: 1,920.

Authority: 8 U.S.C 1522 of the Immigration and Nationality Act (the Act) (title IV, sec. 412 of the Act), and 45 CFR 400.28(b).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–02438 Filed 2–4–22; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0049]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke Under the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on Reporting Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke Under the Federal Food, Drug, and Cosmetic Act.

DATES: Submit either electronic or written comments on the collection of information by April 8, 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 8, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 8, 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–2012–D–0049 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke Under the Federal Food, Drug, and Cosmetic Act.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

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

Reporting Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke Under the Federal Food, Drug, and Cosmetic Act

OMB Control Number 0910–0732—Extension

The Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31) (Tobacco Control Act), enacted on June 22, 2009, amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) and provided FDA with the authority to regulate the manufacture, marketing, and distribution of cigarettes, cigarette tobacco, roll-your-own (RYO) tobacco, and smokeless tobacco products to protect the public health and to reduce tobacco use by minors. The Tobacco Control Act also gave FDA the authority to issue regulations deeming other products that meet the statutory definition of a tobacco product to be subject to chapter IX of the FD&C Act

(section 901(b) of the FD&C Act (21 U.S.C. 387a(b))).

In accordance with that authority, on May 10, 2016, FDA issued a final rule deeming all products that meet the statutory definition of tobacco product, except accessories of newly deemed tobacco products, to be subject to FDA's tobacco product authority (final deeming rule) (81 FR 28974).

Chapter IX of the FD&C Act now applies to newly regulated products, including sections 904(a)(3) and (c)(1) (21 U.S.C. 387d(a)(3) and (c)(1)). Section 904(a)(3) of the FD&C Act requires the submission of an initial report from each tobacco product manufacturer or importer, or agents thereof, listing all constituents, including smoke constituents as applicable, identified as a harmful and potentially harmful constituent (HPHC) to health by FDA. Reports must be by brand and by quantity in each brand and subbrand. We note that for cigarettes, smokeless tobacco, cigarette filler, and RYO tobacco products, this initial reporting was completed in 2012.

Section 904(c)(1) of the FD&C Act provides that manufacturers of tobacco products not on the market as of June 22, 2009, must also provide the information reportable under section 904(a)(3) at least 90 days prior to introducing the product into interstate commerce.[1]

FDA has taken several steps to identify HPHCs to be reported under section 904 of the FD&C Act, including issuing a guidance discussing FDA's current thinking on the meaning of the term ''harmful and potentially harmful constituent'' in the context of implementing the HPHC list requirement under section 904(e) of the FD&C Act (76 FR 5387, January 31, 2011, revised guidance issued August 2016). The guidance is available on the internet at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/harmful-and-potentially-harmful-constituents-tobacco-products-used-section-904e-federal-food-drug.* The current established list of HPHCs also is available on the internet at *https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/harmful-and-potentially-harmful-constituents-tobacco-products-and-tobacco-smoke-established-list* (77 FR 20034, April 3, 2012).

The purpose of the information collection is to collect statutorily mandated information regarding HPHCs in certain tobacco products and tobacco smoke, by brand and by quantity in each brand and subbrand.

To facilitate the submission of HPHC information, Forms FDA 3787a–j, for cigarettes, smokeless tobacco products, and RYO tobacco products, respectively, in both paper and electronic formats, are available. Additionally, FDA is developing forms to facilitate the submission of HPHC information for the deemed tobacco products. We intend to model these forms on the current HPHC reporting forms (*i.e.,* Forms FDA 3787a–j). A proposed information collection for deemed products will be published in a separate **Federal Register** notice, and we will solicit comments on that collection at that time.

Manufacturers or importers, or their agents, may submit HPHC information either electronically or in paper format. The FDA eSubmitter tool, available at *https://www.fda.gov/industry/fda-esubmitter/using-esubmitter-prepare-tobacco-product-submissions,* provides electronic forms to streamline the data entry and submission process for reporting HPHCs for cigarettes, smokeless tobacco products, and RYO tobacco products. Users of eSubmitter may populate an FDA-created Excel file and import data into eSubmitter. Whether respondents decide to submit reports electronically or on paper, each form provides instructions for completing and submitting HPHC information to FDA. The forms contain fields for company information, product information, and HPHC information.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Reporting for Section 904(c)(1) Products					
1. Reporting of Manufacturer/Importer Company and Product Information by Completing Submission Forms					
Cigarette	380	1	380	1.82	692
RYO	19	1	19	0.43	8
Smokeless	25	1	25	0.63	16
Total					716
2. Testing of HPHC Quantities in Products					
Cigarette Filler and RYO	19	1	19	9.42	179
Smokeless	25	1	25	12.06	302
Total					481
3. Testing of HPHC Quantities in Mainstream Smoke					
Cigarette: ISO Regimen	380	1	380	23.64	8,983
Cigarette: Health Canada Regimen	380	1	380	23.64	8,983
Total					17,996

[1] Note that section 904(c)(1) testing and reporting requirements are separate from the requirements that must be satisfied before a new tobacco product (sections 905 and 910 of the FD&C Act (21 U.S.C. 387e and 387j)), or modified risk tobacco product (section 911 of the FD&C Act (21 U.S.C. 387k)) may be marketed.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Total Section 904(c)(1) Reporting Burden Hours	.....	.....	.....	.....	19,193

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

The burden for this collection of information is estimated to be 19,193 hours. The burden estimate for this collection of information includes the time it will take to read the instructions, test the products, and prepare the HPHC report. In arriving at this burden estimate, FDA estimated the number of tobacco products to be reported under the requirements of section 904(c)(1) of the FD&C Act annually to FDA.

Section 1 of table 1 estimates that 424 respondents (380 cigarettes receiving authorizations, 19 RYO tobacco receiving authorizations, 25 smokeless receiving authorizations) will submit 424 HPHC reports annually. Each respondent represents a statutory tobacco product that receives authorization from FDA for which manufacturers and importers (or their agents), must report their product information to FDA under section 904(c)(1) of the FD&C Act at least 90 days prior to delivery for introduction into interstate commerce for all new products. This section addresses the time required to report their company information to FDA through the use of the electronic portal or paper forms.

The company information reported includes company name; mailing address; telephone and Fax numbers; FDA Establishment Identifier number; Data Universal Numbering System number; and point of contact name, mailing address, and telephone and Fax numbers, as applicable. It also addresses the time required for manufacturers and importers to report their product information by entering certain testing information into the electronic or paper forms.

The product information includes brand and subbrand name; unique product identification number; type of product identification number; product category and subcategory; and mean weight and standard deviation of tobacco in product.

We estimate that the burden to enter both the company and product information is no more than 1.82 hours per response for cigarettes, 0.43 hours per response for RYO, and 0.63 hours per response for smokeless tobacco products regardless of whether the paper or electronic Form FDA series 3787 is used. The time to report per tobacco product types varies because the number of HPHCs varies by tobacco product category. The total hours estimated for this section is 716.

The estimated number of responses under section 904(c)(1) of the FD&C Act is based on FDA's experience, the past 4 years of tobacco products receiving marketing authorizations from FDA, and actual responses to FDA under this provision of the FD&C Act for statutorily regulated products.

Section 2 of table 1 estimates that 44 respondents (19 cigarette filler and RYO tobacco receiving authorizations and 25 smokeless receiving authorizations) will test quantities of HPHCs in an average of 44 products annually. This section addresses the time required for manufacturers and importers (or their agents) who must test HPHC quantities in products. The burden estimates include the burden to test the tobacco products, draft testing reports, and submit the report to FDA. The total expected burden for this section is 481 hours.

Section 3 of table 1 addresses the time required for manufacturers and importers to test quantities for HPHCs in cigarette smoke. The burden estimates include: The burden to test the number of replicate measurements; test date range; manufacture date range; extraction method; separation method; detection method; and mean quantity and standard deviation of HPHCs and includes the burden to test the tobacco products, draft testing reports, and submit the report to FDA. The annual burden reflects our estimate of the time it takes to test the tobacco products (*i.e.,* carry out laboratory work). The burden estimate assumes that manufacturers and importers report HPHC quantities in cigarette mainstream smoke according to the two smoking regimens. The total expected burden is 17,996 hours for this section.

The total estimated burden for this information collection is 19,193 hours and 424 respondents. Our estimated burden for the information collection reflects an overall increase of 269 respondents and a corresponding increase of 16,677 hours. We attribute this adjustment to updated methodology in which the current estimates are derived from historical statutory tobacco product applications submitted and authorized by FDA in the past 4 years as (1) manufacturers and importers (or their agents) of authorized products are required to submit HPHC reports at least 90 days prior to delivery for introduction into interstate commerce for all new products and (2) initial reporting under section 904(a)(3) of the FD&C Act for statutory products was completed in 2012.

Dated: February 2, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–02478 Filed 2–4–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0961]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Environmental Impact Considerations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by March 9, 2022.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0322. Also include the FDA docket number found in

brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Environmental Impact Considerations

OMB Control Number 0910–0322—Extension

I. Background

FDA is requesting OMB approval for the reporting requirements contained in the FDA collection of information ''Environmental Impact Considerations.'' The National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347) states national environmental objectives and imposes upon each Federal Agency the duty to consider the environmental effects of its actions. Section 102(2)(C) of NEPA requires the preparation of an environmental impact statement (EIS) for every major Federal action that will significantly affect the quality of the human environment.

FDA's NEPA regulations are in part 25 (21 CFR part 25). All applications or petitions requesting Agency action require the submission of a claim for categorical exclusion or an environmental assessment (EA). A categorical exclusion applies to certain classes of FDA-regulated actions that usually have little or no potential to cause significant environmental effects and are excluded from the requirements to prepare an EA or EIS. Section 25.15(a) and (d) (21 CFR 25.15(a) and (d)) specifies the procedures for submitting to FDA a claim for a categorical exclusion. Extraordinary circumstances (21 CFR 25.21), which may result in significant environmental impacts, may exist for some actions that are usually categorically excluded. An EA provides information that is used to determine whether an FDA action could result in a significant environmental impact. Section 25.40(a) and (c) (21 CFR 25.40(a) and (c)) specifies the content requirements for EAs for non-excluded actions.

This collection of information is used by FDA to assess the environmental impact of Agency actions and to ensure that the public is informed of environmental analyses. Firms wishing to manufacture and market substances regulated under statutes for which FDA is responsible must, in most instances, submit applications requesting approval. Environmental information must be included in such applications for the purpose of determining whether the proposed action may have a significant impact on the environment. Where significant adverse events cannot be avoided, the Agency uses the submitted information as the basis for preparing and circulating to the public an EIS, made available through a **Federal Register** document also filed for comment at the Environmental Protection Agency. The final EIS, including the comments received, is reviewed by the Agency to weigh environmental costs and benefits in determining whether to pursue the proposed action or some alternative that would reduce expected environmental impact.

Any final EIS would contain additional information gathered by the Agency after the publication of the draft EIS, a copy or a summary of the comments received on the draft EIS, and the Agency's responses to the comments, including any revisions resulting from the comments or other information. When the Agency finds that no significant environmental effects are expected, the Agency prepares a finding of no significant impact.

In the **Federal Register** of August 25, 2021 (86 FR 47501), FDA published a 60-day notice requesting public comment on the proposed collection of information. Although one comment was received, it was not responsive to the four collection of information topics solicited.

FDA estimates the burden of this collection of information as follows:

II. Estimated Annual Reporting Burden for Human Drugs (Including Biologics in the Center for Drug Evaluation and Research)

Under §§ 312.23(a)(7)(iv)(e), 314.50(d)(1)(iii), and 314.94(a)(9)(i) (21 CFR 312.23(a)(7)(iv)(e), 314.50(d)(1)(iii), and 314.94(a)(9)(i)), each investigational new drug application (IND), new drug application (NDA), and abbreviated new drug application (ANDA) must contain a claim for categorical exclusion under § 25.30 (21 CFR 25.30) or § 25.31 (21 CFR 25.31), or an EA under § 25.40. Annually, FDA receives approximately 5,503 INDs from 3,717 sponsors; 142 NDAs from 111 applicants; 3,285 supplements to NDAs from 516 applicants; 35 biologic license applications (BLAs) from 32 applicants; 777 supplements to BLAs from 89 applicants; 743 ANDAs from 239 applicants; and 11,438 supplements to ANDAs from 482 applicants. FDA estimates that it receives approximately 21,923 claims for categorical exclusions as required under § 25.15(a) and (d) and 13 EAs as required under § 25.40(a) and (c). Based on information provided by the pharmaceutical industry, FDA estimates that it takes sponsors or applicants approximately 8 hours to prepare a claim for a categorical exclusion and approximately 3,400 hours to prepare an EA. Based on recent numbers, we now estimate a total of 21,936 annual responses and 219,584 hours for human drugs (an increase of 6,489 responses and 62,088 hours).

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.15(a) and (d)	5,186	4.2273	21,923	8	175,384
25.40(a) and (c)	14	0.9285	13	3,400	44,200
Total	219,584				

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

III. Estimated Annual Reporting Burden for Medical Devices

Under § 814.20(b)(11) (21 CFR 814.20(b)(11)), premarket approvals (PMAs) (original PMAs and supplements) must contain a claim for categorical exclusion under § 25.30 or 21 CFR 25.34 or an EA under § 25.40. In 2020, FDA received an average of 62 claims (original PMAs and supplements) for categorical exclusions as required under § 25.15(a) and (d), and 0 EAs as required under § 25.40(a) and (c). FDA estimates that approximately 62 respondents will submit an average of 1 application for categorical exclusion annually. Based on information provided by sponsors, FDA estimates that it takes approximately 6 hours to prepare a claim for a categorical exclusion. Based on recent numbers, we now estimate a total of 62 annual responses and 372 hours for medical devices (an increase of 12 responses and 72 hours).

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN FOR MEDICAL DEVICES [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.15(a) and (d)	62	1	62	6	372

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

IV. Estimated Annual Reporting Burden for Biological Products, Drugs, and Medical Devices in the Center for Biologics Evaluation and Research

Under 21 CFR 601.2(a), BLAs as well as INDs (§ 312.23), NDAs (§ 314.50), ANDAs (§ 314.94), and PMAs (§ 814.20) must contain either a claim of categorical exclusion under § 25.30 or § 25.32 (21 CFR 25.32) or an EA under § 25.40. Annually, FDA receives approximately 11 BLAs from 11 applicants, 1,080 BLA supplements to license applications from 160 applicants, 7,017 INDs from 2,087 sponsors, 1 NDA from 1 applicant, 16 supplements to NDAs from 6 applicants, 1 ANDA from 1 applicant, 3 supplements to ANDAs from 2 applicants, 1 PMA from 1 applicant, and 79 PMA supplements from 19 applicants. FDA estimates that approximately 10 percent of these supplements would be submitted with a claim for categorical exclusion or an EA.

FDA estimates that it has received approximately 7,150 claims for categorical exclusion as required under § 25.15(a) and (d) annually and 4 EAs as required under § 25.40(a) and (c) annually. Therefore, FDA estimates that approximately 3,575 respondents will submit an average of 2 applications for categorical exclusion and 4 respondents will submit an average of 1 EA. Based on information provided by industry, FDA estimates that it takes sponsors and applicants approximately 8 hours to prepare a claim of categorical exclusion and approximately 3,400 hours to prepare an EA for a biological product. Based on recent numbers, we now estimate a total of 7,154 annual responses and 70,800 hours for human drugs (an increase of 6,658 responses and 60,048 hours).

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICAL PRODUCTS [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.15(a) and (d)	3,575	2	7,150	8	57,200
25.40(a) and (c)	4	1	4	3,400	13,600
Total					70,800

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

V. Estimated Annual Reporting Burden for Animal Drugs

Under 21 CFR 514.1(b)(14), new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs); supplemental NADAs and ANADAs (21 CFR 514.8(a)(1)); investigational new animal drug applications and generic investigational new animal drug applications (21 CFR 511.1(b)(10)); and food additive petitions (21 CFR 571.1(c)) must contain a claim for categorical exclusion under § 25.30 or § 25.32 or an EA under § 25.40. Annually, FDA's Center for Veterinary Medicine has received approximately 1,140 claims for categorical exclusion as required under § 25.15(a) and (d) and 9 EAs as required under § 25.40(a) and (c). Assuming an average of 10 claims per respondent, FDA estimates that approximately 114 respondents will submit an average of 10 claims for categorical exclusion. FDA further estimates that nine respondents will submit an average of one EA. FDA estimates that it takes sponsors/applicants approximately 3 hours to prepare a claim of categorical exclusion and an average of 2,160 hours to prepare an EA. Based on recent numbers, we now estimate a total of 22,860 hours for animal drugs (a decrease of 22,860 hours).

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN FOR ANIMAL DRUGS [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.15(a) and (d)	114	10	1,140	3	3,420

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN FOR ANIMAL DRUGS [1]—Continued

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.40(a) and (c)	9	1	9	2,160	19,440
Total					22,860

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

VI. Estimated Annual Reporting Burden for Tobacco Products

Under sections 905, 910, and 911 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387e, 387j, and 387k), product applications and supplements, premarket tobacco applications (PMTAs), substantial equivalences (SEs), exemption from SEs, and modified risk tobacco product applications (MRTPAs) must contain a claim for categorical exclusion or an EA. The majority of the EA burden for tobacco products is covered under already existing information collections. The burden for SEs is currently approved under OMB control number 0910–0673; the burden for PMTAs are currently approved under OMB control number 0910–0768; and the burden for SE exemptions are currently approved under OMB control number 0910–0684.

FDA's estimates are based on actual report data from fiscal year (FY) 2018 to FY 2020. On average, FDA estimated it received approximately 14 MRTPAs from 14 respondents. Based on updated data for this collection, FDA estimates 14 EAs from 14 respondents. A total of 14 respondents will submit an average of 1 application for environmental assessment. Based on FDA's experience, previous information provided by potential sponsors and knowledge that part of the EA information has already been produced in one of the tobacco product applications, FDA estimates that it takes approximately 80 hours to prepare an EA. Based on recent MRTPA numbers, we now estimate a total of 14 annual responses and 1,120 hours for Tobacco Products (a decrease of 13 responses and 1,040 hours).

TABLE 5—ESTIMATED ANNUAL REPORTING BURDEN FOR TOBACCO PRODUCTS [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.40(a) and (c)	14	1	14	80	1,120

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

Since the last OMB approval, we have adjusted our burden estimate. We estimate the total burden for this information collection to be 30,315 annual responses, and 314,736 hours. These estimates reflect an overall increase of 13,463 responses and 94,078 hours. We attribute the adjustments to expected fluctuations in the number of responses the various centers in FDA have received over the last few years.

Dated: February 1, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–02475 Filed 2–4–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0053]

Notifying the Food and Drug Administration of a Permanent Discontinuance or Interruption in Manufacturing of a Device Under Section 506J of the Federal Food, Drug, and Cosmetic Act; Draft Guidance for Industry and Food and Drug Administration Staff; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is extending the comment period for the notice of availability that appeared in the **Federal Register** of January 11, 2022. In the notice of availability, FDA requested comments on draft guidance for industry and FDA staff entitled ''Notifying the Food and Drug Administration of a Permanent Discontinuance or Interruption in Manufacturing of a Device Under Section 506J of the Federal Food, Drug, and Cosmetic Act.'' The Agency is taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the document published January 11, 2022 (87 FR 1417). Submit either electronic or written comments on the draft guidance by April 11, 2022, to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance 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–2022–D–0053 for ''Notifying the Food and Drug Administration of a Permanent Discontinuance or Interruption in Manufacturing of a Device Under Section 506J of the Federal Food, Drug, and Cosmetic Act.'' 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 draft guidance document entitled ''Notifying the Food and Drug Administration of a Permanent Discontinuance or Interruption in Manufacturing of a Device Under Section 506J of the Federal Food, Drug, and Cosmetic Act'' 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 the Center for Biologics Evaluation and Research, Office of Communication, Outreach, and Development, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Brittany Caldwell, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5556, Silver Spring, MD 20993–0002, 301–796–5900 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

In the **Federal Register** of January 11, 2022, FDA published a notice of availability with a 60-day comment period to request comments on draft guidance for industry and FDA staff entitled ''Notifying FDA of a Permanent Discontinuance or Interruption in Manufacturing of a Device Under Section 506J of the Federal Food, Drug, and Cosmetic Act.''

The Agency has received a request for an extension of the comment period. The request conveyed concern that the current 60-day comment period does not allow sufficient time to develop a meaningful or thoughtful response.

FDA has considered the request and is extending the comment period for the notice of availability for 30 days, until April 11, 2022. The Agency believes that a 30-day extension allows adequate time for interested persons to submit comments without significantly delaying guidance on these important issues.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Notifying FDA of a Permanent Discontinuance or Interruption in Manufacturing of a Device Under Section 506J of the Federal Food, Drug, and Cosmetic Act.'' 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 draft 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 draft guidance document is also available at *https://www.regulations.gov* and at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of ''Notifying FDA of a Permanent Discontinuance or Interruption in Manufacturing of a Device Under Section 506J of the Federal Food, Drug, and Cosmetic Act'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please

use the document number 21003 and complete title to identify the guidance you are requesting.

Dated: February 1, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–02472 Filed 2–4–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0080]

Formal Meetings Between the Food and Drug Administration and Sponsors or Requestors of Over-the-Counter Monograph Drugs; Draft Guidance for Industry; 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 draft guidance for industry entitled ''Formal Meetings Between FDA and Sponsors or Requestors of Over-the-Counter Monograph Drugs.'' This draft guidance provides recommendations to industry on formal meetings between FDA and sponsors or requestors of over-the-counter (OTC) monograph drugs.

DATES: Submit either electronic or written comments on the draft guidance by April 8, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance 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–2022–D–0080 for ''Formal Meetings Between FDA and Sponsors or Requestors of Over-the-Counter Monograph Drugs.'' 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)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Trang Tran, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 240–402–7945.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Formal Meetings Between FDA and Sponsors or Requestors of Over-the-Counter Monograph Drugs.'' This draft guidance provides recommendations to industry on formal meetings between FDA and sponsors or requestors of nonprescription drugs without approved new drug applications that are governed by section 505G of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355h) (hereafter referred to as *OTC monograph drugs*).

Section 505G of the FD&C Act was added by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136), which was enacted on March 27, 2020. As required by section 505G(l) of the FD&C Act, this draft guidance, when finalized, will discuss the procedures and principles for formal meetings between FDA and sponsors or requestors for an OTC monograph drug (hereafter referred to collectively as *meeting requesters*). In doing so, and as required by section 505G(h) of the FD&C Act, this draft

guidance, when finalized, will describe procedures under which meeting requesters can meet with appropriate FDA officials to obtain recommendations on the studies and other information necessary to support submissions under section 505G of the FD&C Act, to obtain information on other matters relevant to the regulation of nonprescription drugs, and to obtain recommendations on the development of new OTC monograph drugs. As required by section 505G(i) of the FD&C Act, this draft guidance, when finalized, will also describe procedures to facilitate efficient participation in joint meetings by multiple meeting requestors and/or organizations nominated by them to represent their interests.

This draft guidance does not apply to meetings for the development of nonprescription drug products intended for submission in new drug applications or abbreviated new drug applications under section 505 of the FD&C Act. This draft guidance does not apply to meetings between FDA and pre-investigational new drug or investigational new drug sponsors. For the purposes of this draft guidance, a *formal meeting* includes any meeting that is requested by a meeting requester following the procedures provided in this draft guidance and includes meetings conducted in any format (*i.e.,* face to face, teleconference/videoconference, or written response only).

In support of the CARES Act, FDA agreed to specific performance goals and procedures described in the document ''Over-the-Counter Monograph User Fee Program Performance Goals and Procedures—Fiscal Years 2018–2022,'' commonly referred to as the OMUFA Commitment Letter (the document can be accessed at *https://www.fda.gov/media/106407/download* and the document with updated goal dates for fiscal years 2021–2025 can be accessed at *https://www.fda.gov/media/146283/download*). The OMUFA Commitment Letter includes meeting management goals for formal meetings that occur between FDA and meeting requesters. In the OMUFA Commitment Letter, FDA committed to issuing this draft guidance under specific timelines.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Formal Meetings Between FDA and Sponsors or Requestors of Over-the-Counter Monograph Drugs; Draft Guidance for Industry.'' 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. Paperwork Reduction Act of 1995

Under section 505G(o) of the FD&C Act, the Paperwork Reduction Act of 1995 does not apply to collections of information made under section 505G of the FD&C Act. The information collections made in this guidance implement the provisions of three subsections of section 505G: (1) Section 505G(l)(1), which requires FDA to issue guidance that specifies the procedures and principles for formal meetings between FDA and sponsors or requestors for drugs subject to section 505G; (2) section 505G(h), which requires FDA to establish procedures under which meeting requestors can meet with appropriate FDA officials to obtain advice on the studies and other information necessary to support submissions under section 505G, other matters relevant to the regulation of nonprescription drugs, and the development of new nonprescription drugs under section 505G; and (3) section 505G(i), which requires FDA to, among other things, establish procedures to facilitate efficient participation in joint meetings by multiple meeting requesters and/or organizations nominated by them to represent their interests. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required for these collections of information.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: February 1, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–02446 Filed 2–4–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIH Support for Conferences and Scientific Meetings.

Date: March 4, 2022.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5819, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Fentanyl and its Analogs: Effects and Consequences for Treatment of Addiction and Overdose (UG3/UH3 Clinical Trial Optional).

Date: March 9, 2022.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Preethy Nayar, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, 301–443–4577, *nayarp2@csr.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; SEP for Centers Review.

Date: March 9, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sheila Pirooznia, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 496–9350, *sheila.pirooznia@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; for Avenir Review.

Date: March 21, 2022.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ipolia R. Ramadan, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–4471, *ramadanir@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 1, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–02469 Filed 2–4–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; A Multilevel Approach to Connecting Underrepresented Populations to Clinical Trials (CUSP2CT).

Date: March 9, 2022.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W140, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: David G. Ransom, Ph.D., Chief, Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W140, Rockville, Maryland 20850, 240–276–6351, *david.ransom@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; The Role of Epstein Barr Virus (EBV) Infection in Non-Hodgkin Lymphoma (NHL) and Hodgkin Disease (HD) Development with or without an Underlying HIV Infection (U01).

Date: March 24, 2022.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W104, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Robert F. Gahl, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9606 Medical Center Drive, Room 7W104, Rockville, Maryland 20850, 240–276–7869, *robert.gahl@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; R13 Conference Grant Review.

Date: March 24, 2022.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W552, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Jeanette Irene Marketon, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W552, Rockville, Maryland 20850, 240–276–6780, *jeanette.marketon@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP–11: SBIR Contract Review Meeting.

Date: March 31, 2022.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W126, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Susan Lynn Spence, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W126, Rockville, Maryland 20850, 240–620–0819, *susan.spence@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Center Support Grant.

Date: May 12, 2022.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W612, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: CAPT Shari Williams Campbell, DPM, MSHS, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W612, Rockville, Maryland 20850, 240–276–7381, *shari.campbell@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 2, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–02476 Filed 2–4–22; 8:45 am]

BILLING CODE 4140–01–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 invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Elizabeth Pitts, Ph.D., 240–669–5299; *elizabeth.pitts@nih.gov.* Licensing information and copies of the patent applications listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement may be required to receive any unpublished information.

SUPPLEMENTARY INFORMATION: Technology description follows:

Monoclonal Antibodies To Prevent or Treat SARS–CoV–2 Infection

Description of Technology

The ongoing COVID–19 pandemic, caused by severe respiratory syndrome coronavirus 2 (SARS–CoV–2), has

created an immense public health, social, and economic burden. Variants of concern continue to emerge that have increased transmissibility, pathogenicity, or both and that reduce the effectiveness of current therapeutics and vaccines. Thus, there is a great need for broadly protective therapeutics.

This technology relates to two monoclonal antibodies targeting the spike protein of SARS–CoV–2 that between the two have picomolar activity against wild-type SARS–CoV–2 and the Alpha, Beta, Delta, and Omicron variants of concern. Additionally, one of the antibodies recognizes a highly-conserved epitope of the spike protein. Treatment with either monoclonal antibody before or after challenge with SARS–CoV–2 reduced symptoms and viral load in nasal turbinate and lung tissue in the golden Syrian hamster model. This monoclonal antibody technology has great potential to treat SARS–CoV–2 infections and may provide protection against future variants of concern.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404.

Potential Commercial Applications

- Treatment for SARS–CoV–2 infection
- Prophylaxis treatment to prevent or reduce SARS–CoV–2 infection
- Diagnostic for SARS–CoV–2 infection

Competitive Advantages

- Broad and potent neutralization of several variants of concern, including Omicron

Development Stage

- In vivo data assessment (animal)

Inventors: Zhaochun Chen (NIAID); Patrizia Farci (NIAID); Kamille West (CC); Peng Zhang (NIAID); Paolo Lusso (NIAID); Ulla Buchholz (NIAID); Yumiko Matsuoka (NIAID).

Intellectual Property: HHS Reference No. E–132–2021– U.S. Provisional Application No. 63/296,380, filed January 4, 2022.

Licensing Contact: To license this technology, please contact Elizabeth Pitts, Ph.D., 240–669–5299; *elizabeth.pitts@nih.gov,* and reference E–132–2021.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact Elizabeth Pitts, Ph.D., 240–669–5299; *elizabeth.pitts@nih.gov.*

Dated: February 1, 2022.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2022–02466 Filed 2–4–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NST 1 Member SEP.

Date: March 1, 2022.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, NIH, NSC, 6001 Executive Boulevard, Suite 3204, MSC 9529, Rockville, MD 20852, 301–496–0660, *benzingw@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN Initiative: Team-Research BRAIN Circuit Programs U19 Review.

Date: March 8–11, 2022.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Tatiana Pasternak, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Suite 3208, MSC 9529, Rockville, MD 20852, 301–496–9223, *tatiana.pasternak@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Biomarkers for the Lewy Body Dementias.

Date: March 11, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Joel A. Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Room 3205, MSC 9529, Rockville, MD 20852, 301–496–9223, *joel.saydoff@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 1, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–02468 Filed 2–4–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0016]

Plan of Action To Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains To Respond to COVID–19; Implemented Under the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary To Respond to a Pandemic Under Section 708 of the Defense Production Act

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) is publishing the text of one additional Plan of Action under the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic: Plan of Action to Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains to Respond to COVID–19.

FOR FURTHER INFORMATION CONTACT: Robert Glenn, Office of Business,

Industry, Infrastructure Integration, *OB3I@fema.dhs.gov,* or (202) 212–1666.

SUPPLEMENTARY INFORMATION:

Background and Legal Authority

The Defense Production Act (DPA), 50 U.S.C. 4501 *et seq.,* authorizes the making of ''voluntary agreements and plans of action'' with, among others, representatives of industry and business to help provide for the national defense.[1] The President's authority to facilitate voluntary agreements was delegated to the Secretary of Homeland Security with respect to responding to the spread of COVID–19 within the United States in Executive Order 13911.[2] The Secretary of Homeland Security has further delegated this authority to the FEMA Administrator.[3]

On August 17, 2020, after the appropriate consultations with the Attorney General and the Chairman of the Federal Trade Commission, FEMA completed and published in the **Federal Register** a ''Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic'' (Voluntary Agreement).[4] Unless terminated prior to that date, the Voluntary Agreement is effective until August 17, 2025, and may be extended subject to additional approval by the Attorney General after consultation with the Chairman of the Federal Trade Commission. The Voluntary Agreement may be used to prepare for or respond to any pandemic, including COVID–19, during that time.

Previously, FEMA has announced the activation of five Plans of Action under the Voluntary Agreement:

(1) Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Personal Protective Equipment (PPE) to Respond to COVID–19.

(2) Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Diagnostic Test Kits and other Testing Components to Respond to COVID–19.

(3) Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Drug Products, Drug Substances, and Associated Medical Devices to Respond to COVID–19.

(4) Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Devices to Respond to COVID–19.

(5) Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Gases to Respond to COVID–19.

FEMA has now activated a sixth Plan of Action under the Voluntary Agreement:

(6) Plan of Action to Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains to Respond to COVID–19.

This Plan is necessitated by continued transportation-related concerns and shortfalls that interfere with the movement of critical resources for our nation's COVID–19 response. Appropriate members of the private sector have been invited to join the Plan of Action as Sub-Committee Participants. Provided that a Sub-Committee Participant acts in accordance with the terms of the Plan, the DPA affords the Participant an affirmative defense to certain civil and criminal actions brought under the antitrust laws (or any similar law of any state) for appropriate actions taken to carry out the Plan. The Plan is designed to foster a close working relationship among FEMA, Department of Health and Human Services, and Sub-Committee Participants to address national defense needs through cooperative action under the direction and active supervision of FEMA.

The Attorney General, in consultation with the Chairman of the Federal Trade Commission, has made the required finding for the Plan of Action that the purposes of section 708(c)(1) of the DPA cannot reasonably be achieved without the Plan of Action, or by a Plan of Action having less anticompetitive effects than the proposed Plan of Action. Pursuant to section 708(f)(1)(B) of the DPA, the Department of Justice separately published the finding for this Plan of Action in the **Federal Register**.[5] The FEMA Administrator has certified in writing that the Plan of Action is necessary to help provide for the national defense.

Text of the Plan of Action To Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains To Respond to COVID–19 Implemented Under the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary To Respond to a Pandemic

Plan of Action To Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains To Respond to COVID–19 Implemented Under the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary To Respond to a Pandemic

Preface

Pursuant to section 708 of the Defense Production Act of 1950 (DPA), as amended (50 U.S.C. 4558), the Federal Emergency Management Agency (FEMA) Administrator (Administrator), after consultation with the Secretary of the Department of Health and Human Services (HHS), the Attorney General of the United States (Attorney General), and the Chair of the Federal Trade Commission (FTC), developed a Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic (Voluntary Agreement), 85 FR 50035 (August 17, 2020). The Voluntary Agreement, which operates through a series of Plans of Action, maximizes the manufacture and efficient distribution of Critical Healthcare Resources nationwide to respond to a pandemic by establishing unity of effort between Participants and the Federal Government for integrated coordination, planning, information sharing with FEMA, as authorized by FEMA, and distribution of Critical Healthcare Resources.

This document establishes a Plan of Action (Plan) to Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains to Respond to COVID–19. This Plan will be implemented under the Voluntary Agreement by one or more Sub-Committees, beginning with a Sub-Committee to Define Requirements for COVID–19 National Multimodal Healthcare Supply Chains and may also include:

(1) Sub-Committee to Define Requirements for COVID–19 National Multimodal Healthcare Supply Chains,

(2) Sub-Committee for Aviation,

(3) Sub-Committee for Surface Transportation (including Highway, Motor Carriers, and Freight Rail), and

(4) Sub-Committee for Maritime Transportation.

[1] 50 U.S.C. 4558(c)(1).

[2] 85 FR 18403 (Apr. 1, 2020).

[3] DHS Delegation 09052, Rev. 00.1 (Apr. 1, 2020); DHS Delegation Number 09052 Rev. 00 (Jan. 3, 2017).

[4] 85 FR 50035 (Aug. 17, 2020). The Attorney General, in consultation with the Chairman of the Federal Trade Commission, made the required finding that the purpose of the voluntary agreement may not reasonably be achieved through an agreement having less anticompetitive effects or without any voluntary agreement and published the finding in the **Federal Register** on the same day. 85 FR 50049 (Aug. 17, 2020).

[5] 86 FR 57444 (Oct. 15, 2021).

FEMA may combine these Sub-Committees or establish additional Sub-Committees under this Plan, so long as:

(1) The Sub-Committee addresses one specific and well-defined component of the National Multimodal Healthcare Supply Chains System; and

(2) The Sub-Committee is recommended by the Sub-Committee to Define Requirements for COVID–19 National Multimodal Healthcare Supply Chains.

The purpose of the Plan and Sub-Committees is to evaluate and optimize coordination of National Multimodal Healthcare Supply Chains System resources related to the COVID–19 response. The primary goal of the Plan is to create a mechanism to immediately address exigent needs within the National Multimodal Healthcare Supply Chains System and to ensure actions to address such needs do not come with unacceptable risks or interfere with other efforts to meet critical End-User requirements. When the requirements of the Plan are met, it affords Sub-Committee Participants defenses to civil and criminal actions brought under the antitrust laws (or any similar law of any state) for actions taken within the scope of the Plan. The Plan is designed to foster a close working relationship among FEMA, HHS, and Sub-Committee Participants to address national defense needs through cooperative action under the direction and active supervision of FEMA.

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I. Purpose

A pandemic may present conditions that pose a direct threat to the national defense of the United States or its preparedness programs such that, pursuant to DPA section 708(c)(1), it becomes necessary to establish an agreement and plan to collaboratively evaluate and coordinate resources within the National Multimodal Healthcare Supply Chains System. This Plan of Action to Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains to Respond to COVID–19 is established under the Voluntary Agreement and initially establishes up to four Sub-Committees responsible for the Plan's oversight and implementation. The Plan and Sub-Committees will optimize the coordination of National Multimodal Healthcare Supply Chains and create a prioritization protocol based upon End-Users' demonstrated or projected requirements.

II. Authorities

Section 708, Defense Production Act (50 U.S.C. 4558); sections 402(2) & 501(b), Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5207); sections 503(b)(2)(B) & 504(a)(10) & (16) of the Homeland Security Act of 2002 (6 U.S.C. 313(b)(2)(B), 314(a)(10) & (16)); sections 201, 301, National Emergencies Act (50 U.S.C. 1601 *et seq.*); section 319, Public Health Service Act (42 U.S.C. 247d); Executive Order (E.O.) 13911, 85 FR 18403 (March 27, 2020). Pursuant to DPA section 708(f)(1)(A), the Administrator certifies that this Plan is necessary for the national defense.

III. General Provisions

A. Definitions

Administrator

The FEMA Administrator is the Sponsor of the Voluntary Agreement. Pursuant to a delegation or redelegation of the functions given to the President by DPA section 708, the Administrator proposes and provides for the development and carrying out of the Voluntary Agreement, including through the development and implementation of Plans of Action. The Administrator is responsible for carrying out all duties and responsibilities required by 50 U.S.C. 4558 and 44 CFR part 332 and for appointing one or more Chairpersons to manage and administer the Committee and all Sub-Committees formed to carry out the Voluntary Agreement.

Agreement

The Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic (Voluntary Agreement).

Allotment

The process of analyzing and determining the relative distribution among one or more competing requests from End-Users utilizing the same National Multimodal Healthcare Supply Chains. Through the allotment process, FEMA—with participation from Sub-Committee Participants—will assess the actual needs of End-Users and determine how to divide the available and projected capabilities of National Multimodal Healthcare Supply Chains to minimize impacts to life, safety, and economic disruption associated with shortages. Allotment will take place only under Exigent Circumstances. With the exception of all forms of civil transportation resources under the jurisdiction of the Department of Transportation, which are excluded from this Plan, FEMA retains decision-making authority for allotment under this Plan.

Attendees

Subject matter experts, invited by the Chairperson or a Sub-Committee Chairperson to attend meetings authorized under the Voluntary Agreement or this Plan, to provide technical advice or to represent other government agencies or interested parties. Invitations to attendees will be extended as required for Committee or Sub-Committee meetings and deliberations.

Chairperson

FEMA senior executive(s), appointed by the Administrator, to chair the Committee for the Distribution of Healthcare Resources Necessary to Respond to a Pandemic (Committee). The Chairperson shall be responsible for the overall management and administration of the Committee, the Voluntary Agreement, and Plans of Action developed under the Voluntary Agreement while remaining under the supervision of the Administrator; shall initiate, or approve in advance, each meeting held to discuss problems, determine policies, recommend actions, and make decisions necessary to carry out the Voluntary Agreement; appoint one or more co-Chairpersons to chair the Committee, and otherwise shall carry out all duties and responsibilities assigned to him. With the approval of the Administrator, the Chairperson may create one or more Sub-Committees, and

may appoint one or more Sub-Committee Chairpersons to chair the Sub-Committees, as appropriate.

Committee

Committee for the Distribution of Healthcare Resources Necessary to Respond to a Pandemic established under the Voluntary Agreement.

Competitively Sensitive Information

Competitively Sensitive Information that is shared pursuant to this Plan may include any Document or other tangible thing or oral transmission that contains financial, business, commercial, scientific, technical, economic, or engineering information or data, including, but not limited to

- financial statements and data,
- customer and supplier lists,
- price and other terms of sale to customers,
- sales records, projections and forecasts,
- inventory levels,
- capacity and capacity utilization,
- cost information,
- sourcing and procurement information,
- manufacturing and production information,
- delivery and shipping information,
- systems and data designs, and
- methods, techniques, processes, procedures, programs, codes, or similar information,

whether tangible or intangible, and regardless of the method of storage, compilation, or recordation, if the owner thereof has taken reasonable measures to protect the information from disclosure to the public or competitors. These measures may be evidenced by marking or labeling the items as ''competitively sensitive information'' during submission to FEMA or in the Participant's customary and existing treatment of such information (regardless of labeling).

All Competitively Sensitive Information provided by a Sub-Committee Participant as described herein is deemed Competitively Sensitive Information, except for Information that:

a. Is published or has been made publicly available at the time of disclosure by the Sub-Committee Participant;

b. was in the possession of, or was lawfully and readily available to, FEMA from another source at the time of disclosure without breaching any obligation of confidentiality applicable to the other source; or

c. was independently developed or acquired without reference to or reliance upon the Sub-Committee Participant's Competitively Sensitive Information;

Where information deemed Competitively Sensitive Information is required to be disclosed by law, regulation, or court order, the ''Competitively Sensitive'' (or substantially similar) label will continue to attach to all information and portion(s) of documents that are not made public through the required disclosure.

Document

Any information, on paper or in electronic/audio/visual format, including written, recorded, and graphic materials of every kind, in the possession, custody, or control of the Participant and used or shared in the course of participation in the Voluntary Agreement or a subsequent Plan of Action.

End-User

This includes all direct and ancillary medical support including, but not limited to, hospitals, independent healthcare providers, nursing homes, medical laboratories, dental care providers, independent physician offices, first responders, alternate care facilities, distributors, wholesalers, and the general public that reasonably represents the totality of the nation's response to COVID–19.

Exigent Circumstances

As determined by the Chairperson, the actual or forecasted shortage of resources and their impact on the National Multimodal Healthcare Supply Chains which likely cannot be fulfilled via usual market mechanisms for an acute, critical time period, and where immediate and substantial harm is projected to occur from lack of intervention.

National Multimodal Healthcare Supply Chains System

Any or all of the necessary resources and processes contributing to the supply, production, and distribution of critical healthcare resources necessary to respond to COVID–19.

This Plan focuses on resources, entities, and processes within the Transportation Systems Sector, identified under Presidential Policy Directive (PPD)–21, Critical Infrastructure Security and Resilience, that support National Multimodal Healthcare Supply Chains.

Pandemic

A Pandemic is defined as an epidemic that has spread to human populations across a large geographic area that is subject to one or more declarations under the National Emergencies Act, the Public Health Service Act, or the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or if the Administrator determines that one or more declarations is likely to occur and the epidemic poses a direct threat to the national defense or its preparedness programs. For example, Coronavirus Disease 2019 (COVID–19) meets the definition of a Pandemic.

Participant

An individual, partnership, corporation, association, or private organization, other than a federal agency, that has substantive capabilities, resources or expertise to carry out the purpose of the Voluntary Agreement, that has been specifically invited to participate in the Voluntary Agreement by the Chairperson, and that has applied and agreed to the terms of the Voluntary Agreement. ''Participant'' includes a corporate or non-corporate entity entering into the Voluntary Agreement and all subsidiaries and affiliates of that entity in which that entity has 50 percent or more control either by stock ownership, board majority, or otherwise. The Administrator may invite Participants to join the Voluntary Agreement at any time during its effective period.

Plan of Action (Plan)

This document. A documented method, pursuant to 50 U.S.C. 4558(b)(2), proposed by FEMA to implement a particular set of activities under the Voluntary Agreement, through a Sub-Committee focused on a particular Critical Healthcare Resource, or pandemic response workstream or functional area necessary for the national defense.

Plan of Action Agreement

A separate commitment made by Participants upon invitation and agreement to participate in a Plan of Action as part of one or more Sub-Committees. Completing the Plan of Action Agreement confers responsibilities on the Participant consistent with those articulated in the Plan of Action and affords Participants a defense against antitrust claims under section 708 for actions taken to develop or carry out the Plan and the appropriate Sub-Committee(s), as described in Section IV below.

Representatives

The representatives the Administrator identifies and invites to the Committee from FEMA, HHS, and other federal

agencies with equities in this Plan, and empowered to speak on behalf of their agencies' interests. The Attorney General and the Chair of the FTC, or their delegates, may also attend any meeting as a Representative.

Sub-Committee

A body formed by the Administrator from select Participants to implement a Plan of Action.

Sub-Committee Chairperson

FEMA executive, appointed by the Chairperson, to chair a Sub-Committee to implement a Plan of Action. The Sub-Committee Chairperson shall be responsible for the overall management and administration of the Sub-Committee in furtherance of this Plan while remaining under the supervision of the Administrator and the Chairperson.

Sub-Committee Members

Collectively the Sub-Committee Chairperson(s), Representatives, and Sub-Committee Participants. Jointly responsible for developing and executing this Plan.

Sub-Committee Participant

A subset of Participants of the Committee, that have been specifically invited to participate in a Sub-Committee by the Sub-Committee Chairperson, and that have applied and agreed to the terms of this Plan and signed the Plan of Action Agreement. The Sub-Committee Chairperson may invite Participants in the Committee to join a Sub-Committee as a Sub-Committee Participant at any time during the Plan's effective period.

B. Plan of Action Participation

This Plan will be carried out by a subset of the Participants in the Voluntary Agreement through several Sub-Committees, which may include:

(1) Sub-Committee to Define Requirements for COVID–19 National Multimodal Healthcare Supply Chains,

(2) Sub-Committee for Aviation,

(3) Sub-Committee for Surface Transportation (including Highway, Motor Carriers, and Freight Rail), and

(4) Sub-Committee for Maritime Transportation.

FEMA may combine these Sub-Committees or establish additional Sub-Committees under this Plan, so long as:

(1) The Sub-Committee addresses one specific and well-defined component of the National Multimodal Healthcare Supply Chains System; and

(2) The Sub-Committee is recommended by the Sub-Committee to Define Requirements for COVID–19 National Multimodal Healthcare Supply Chains.

Each Sub-Committee will consist of the (1) Sub-Committee Chairperson(s), (2) Representatives from FEMA, HHS, the Department of Justice (DOJ), and other federal agencies with equities in this Plan, and (3) Sub-Committee Participants that have substantive capabilities, resources or expertise to carry out the purpose of this Plan and have signed the Plan of Action Agreement. The Chairperson shall invite Sub-Committee Participants who, in his or her determination, are reasonably representative of the appropriate industry or segment of such industry. Other Attendees—invited by the Sub-Committee Chairperson as subject matter experts to provide technical advice or to represent the interests of other government agencies or interested parties—may also participate in Sub-Committee meetings. The naming of these Sub-Committees does not commit the Administrator to creating them unless and until circumstances dictate.

C. Effective Date and Duration of Participation

This Plan is effective immediately upon satisfaction of the requirements of DPA section 708(f)(1). This Plan shall remain in effect until terminated in accordance with 44 CFR 332.4. It shall be effective for no more than five (5) years from August 17, 2020, when the requirements of DPA section 708(f)(1) were satisfied for the Voluntary Agreement, unless otherwise terminated pursuant to DPA section 708(h)(9) and 44 CFR 332.4 or extended as set forth in DPA section 708(f)(2). No action may take place under this Plan until it is activated, as described in Section III(E), below.

D. Withdrawal

Participation in the Plan is voluntary, as is the acceptance of most obligations under the Plan. Sub-Committee Participants may withdraw from this Plan or from an individual Sub-Committee at any point, subject to the fulfillment of obligations previously agreed upon by the Participant prior to the date of withdrawal. Note that the obligations outlined in V.B regarding information management and associated responsibilities apply once a party has shared or received information through a Sub-Committee and remain in place after the party's withdrawal from the Sub-Committee or Plan. If a Sub-Committee Participant indicates an intent to withdraw from the Plan due to a modification or amendment of the Plan (described below), the Sub-Committee Participant will not be required to perform actions directed by that modification or amendment. *Withdrawal from the Plan will automatically trigger withdrawal from all Sub-Committees; however, a Participant may withdraw from a Sub-Committee without also withdrawing from the Plan or other Sub-Committees.* To withdraw from the Plan or from an individual Sub-Committee, a Participant must provide written notice to the Administrator at least fifteen (15) calendar days prior to the effective date of that Sub-Committee Participant's withdrawal specifying the scope of withdrawal. Following receipt of such notice, the Administrator will inform the other Sub-Committee Participants of the date and the scope of the withdrawal.

Upon the effective date of the withdrawal from the Plan, the Sub-Committee Participant must cease all activities under the Plan. Upon the effective date of the withdrawal from one or more Sub-Committee(s), the Sub-Committee Participant must cease all activities under the Plan that pertain to the withdrawn Sub-Committee(s).

E. Plan of Action Activation and Deactivation

The Administrator, in consultation with the Chairperson and Sub-Committee Chairperson, will invite a select group of Participants in the Voluntary Agreement to form at least one of the following Sub-Committees, beginning with the Sub-Committee to Define Requirements for COVID–19 National Multimodal Healthcare Supply Chains, which will be responsible for implementing this Plan.

(1) Sub-Committee to Define Requirements for COVID–19 National Multimodal Healthcare Supply Chains,

(2) Sub-Committee for Aviation,

(3) Sub-Committee for Surface Transportation (including Highway, Motor Carriers, and Freight Rail), and

(4) Sub-Committee for Maritime Transportation.

FEMA may combine these Sub-Committees or establish additional Sub-Committees under this Plan, so long as:

(1) The Sub-Committee addresses one specific and well-defined component of the National Multimodal Healthcare Supply Chains System; and

(2) The Sub-Committee is recommended by the Sub-Committee to Define Requirements for COVID–19 National Multimodal Healthcare Supply Chains.

This Plan will be activated for each invited Participant when the Participant executes a Plan of Action Agreement, and a Participant may not participate in a Sub-Committee until the Plan of

Action Agreement is executed. Participants will be invited to join this Plan at the discretion of the Chairperson or the Sponsor to the Voluntary Agreement. Participants will be further invited to attend specific meetings of one or more Sub-Committees at the discretion of the Chairperson.

F. Rules and Regulations

Sub-Committee Participants acknowledge and agree to comply with all provisions of DPA section 708, as amended, and regulations related thereto which are promulgated by FEMA, the Department of Homeland Security, HHS, the Attorney General, and the FTC. FEMA has promulgated standards and procedures pertaining to voluntary agreements in 44 CFR part 332. The Administrator shall inform Participants of new rules and regulations as they are issued.

G. Modification and Amendment

The Administrator, after consultation with the Attorney General and the Chair of the FTC, may terminate or modify, in writing, this Plan at any time. The Attorney General, after consultation with the Chair of the FTC and the Administrator, may terminate or modify, in writing, this Plan at any time. Sub-Committee Participants may propose modifications or amendments to the Plan or to the Sub-Committees at any time.

Where possible, material modifications to the Plan or a Sub-Committee will be subject to a 30-calendar day delayed implementation and opportunity for notice and comment by Sub-Committee Participants to the Chairperson. This delayed implementation period may be shortened or eliminated if the Administrator deems it necessary. The Administrator shall inform Sub-Committee Participants of modifications or amendments to the Plan or to the Sub-Committees as they are proposed and issued.

The Administrator, after consultation with the Attorney General and the Chair of the FTC, may remove Sub-Committee Participants from the Plan or from a Sub-Committee at any time. The Attorney General, after consultation with the Chair of the FTC and the Administrator, may remove Sub-Committee Participants from this Plan or from a Sub-Committee at any time. If a Participant is removed from the Plan or from a Sub-Committee, the Participant may request written notice of the reasons for removal from the Chairperson, who shall provide such notice in a reasonable time period.

H. Expenses

Participation in this Plan or in a Sub-Committee does not confer funds to Sub-Committee Participants, nor does it limit or prohibit any pre-existing source of funds. Unless otherwise specified, all expenses, administrative or otherwise, incurred by Sub-Committee Participants associated with participation in this Plan or a Sub-Committee shall be borne exclusively by the Sub-Committee Participants.

I. Record Keeping

Each Sub-Committee Chairperson shall have primary responsibility for maintaining records in accordance with 44 CFR part 332 and shall be the official custodian of records related to carrying out this Plan. Each Sub-Committee Participant shall maintain for five years all minutes of meetings, transcripts, records, documents, and other data, including any communications with other Sub-Committee Participants or with any other member of the Sub-Committee, including drafts, related to the carrying out of this Plan or incorporating data or information received in the course of carrying out this Plan. Each Sub-Committee Participant agrees to produce to the Administrator, the Attorney General, and the Chair of the FTC upon request any item that this section requires the Participant to maintain. Any record maintained in accordance with 44 CFR part 332 shall be available for public inspection and copying, unless exempted on the grounds specified in 5 U.S.C. 552(b)(1), (3) or (4) or identified as privileged and confidential information in accordance with DPA section 705(d), and 44 CFR 332.5.

IV. Antitrust Defense

Under the provisions of DPA subsection 708(j), each Sub-Committee Participant in this Plan shall have available as a defense to any civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any action to develop or carry out this Plan, that such action was taken by the Sub-Committee Participant in the course of developing or carrying out this Plan, that the Sub-Committee Participant complied with the provisions of DPA section 708 and the rules promulgated thereunder, and that the Sub-Committee Participant acted in accordance with the terms of the Voluntary Agreement and this Plan. Except in the case of actions taken to develop this Plan, this defense shall be available only to the extent the Sub-Committee Participant asserting the defense demonstrates that the action was specified in, or was within the scope of, this Plan and within the scope of the appropriate Sub-Committee(s), including being taken at the direction and under the active supervision of FEMA.

This defense shall not apply to any actions taken after the termination of this Plan. Immediately upon modification of this Plan, no defense to antitrust claims under Section 708 shall be available to any subsequent action that is beyond the scope of the modified Plan. The Sub-Committee Participant asserting the defense bears the burden of proof to establish the elements of the defense. The defense shall not be available if the person against whom the defense is asserted shows that the action was taken for the purpose of violating the antitrust laws.

V. Terms and Conditions

As the sponsoring agency, FEMA will maintain oversight over Sub-Committee activities and direct and supervise actions taken to carry out this Plan, including by retaining decision-making authority over actions taken pursuant to the Plan to ensure such actions are necessary to address a direct threat to the national defense. The Attorney General and the Chair of the FTC will monitor activities of the Sub-Committees to ensure they execute their responsibilities in a manner consistent with this Plan and their actions have the least anticompetitive effects possible.

A. Plan of Action Execution

This Plan will be used to support Pandemic response by maximizing the coordination for selected National Multimodal Healthcare Supply Chains and creating a prioritization protocol for End-Users. Each Sub-Committee will support the following objectives to mitigate the loss of life and public health threats associated with COVID–19.

1. Objectives

(1) Identify capabilities to effectively support National Multimodal Healthcare Supply Chains.

(2) Ensure effective coordination of National Multimodal Healthcare Supply Chains System resources that may be required for the Response to COVID–19.

(3) Ensure ongoing competition continues within the National Multimodal Healthcare Supply Chains System to the greatest extent possible under the DPA.

2. Actions

Sub-Committee Participants may be asked to support these objectives by taking the following specific actions:

(1) Assist the Chairperson in identifying priorities and challenges within the National Multimodal Healthcare Supply Chains System that should be addressed within the Plan's Sub-Committees because of their importance to the national response to COVID–19. Using the best evidence available, Participants should consider whether current and projected National Multimodal Healthcare Supply Chains System resources are sufficient to meet essential needs of End-Users and geographic areas, and if there are any critical shortfalls of such resources that may be of concern for the response to COVID–19.

(2) Create a collaborative process for evaluating and addressing competing National Multimodal Healthcare Supply Chains System claims, as directed and decided by the Chairperson.

(3) Develop a mechanism to inform prioritization of the distribution of healthcare products through National Multimodal Healthcare Supply Chains, as directed and decided by the Chairperson.

(4) Prepare a general strategy to accomplish the activities listed in V(A)(2) and V(A)(5) regarding activities in Exigent Circumstances consistent with the decisions made by the Chairperson.

(5) In Exigent Circumstances, with review and concurrence in all possible instances by DOJ in consultation with FTC:

- Facilitate maximum use of the National Multimodal Healthcare Supply Chains System to meet requirements of the nation or particular geographic areas by deconflicting overlapping demands from the collective Participants' End-Users, as directed and decided by the Chairperson.
- Facilitate maximum availability of resources provided within the National Multimodal Healthcare Supply Chains System to meet requirements of the nation or particular geographic areas, as directed and decided by the Chairperson.
- Facilitate the efficient distribution of resources through the National Multimodal Healthcare Supply Chains System by deconflicting overlapping distribution chain activities of Sub-Committee Members, as directed and decided by the Chairperson.
- Establish a process and means of collaboration to address exigent End-User requirements in a manner aligned with the objectives of this Plan, as directed and decided by the Chairperson.

(6) Provide data and information necessary to validate the efforts of the Sub-Committee including the actual and planned COVID–19 response activities that may foreseeably impact National Multimodal Healthcare Supply Chains throughout the nation, as determined by the Chairperson.

(7) Provide feedback to the Chairperson and Sub-Committee Members on outcomes, accomplishments, and impediments of collective efforts to accomplish objectives and actions outlined in this Plan.

(8) Advise the Chairperson whether additional Participants or Attendees should be invited to join this Plan and its Sub-Committees.

(9) Carry out other activities that the Sub-Committees under this Plan determine to be necessary for the coordination of National Multimodal Healthcare Supply Chains System resources to address the COVID–19 Pandemic's direct threat to the national defense, as determined and directed by the Chairperson, where such activities have been reviewed and approved by DOJ and FTC and received concurrence from Sub-Committee members.

B. Information Management and Responsibilities

FEMA will request only the data and information from Sub-Committee Participants that is necessary to meet the objectives of the Plan and consistent with the scope of the relevant Sub-Committees. Upon signing a Plan of Action Agreement for this Plan, FEMA requests that Participants endeavor to cooperate with diligence and speed, and to the extent permissible under this Plan, and to share with FEMA any data and information necessary to meet the objectives of this Plan.

Sub-Committee Participants agree to share with FEMA the following data with diligence and speed to the extent permissible under this Plan, and to abide by the following guidelines where feasible and consistent with the data that is owned by each Sub-Committee Participant:

(1) In general, Participants will not be asked to share Competitively Sensitive Information directly with other Participants.

(2) FEMA will only request direct sharing of Competitively Sensitive Information among Participants during Exigent Circumstances where there is a mission critical need or timeline such that sharing only through FEMA is impractical or threatens the outcome of the Plan or Sub-Committee action. Such requests, if made, will be only among Participants whose participation is necessary to meet the objectives of the Plan, will be limited in scope to the greatest extent possible, and will be shared only pursuant to safeguards subject to prior review and audit by DOJ and FTC. Direct sharing of Competitively Sensitive Information with other Participants will be limited in scope and circumstances to the greatest extent possible. Participants may not share Competitively Sensitive Information directly with other Participants unless specifically requested by FEMA, in consultation with DOJ and FTC. All Competitively Sensitive Information delivered to FEMA or to another Sub-Committee Participant shall be delivered by secure means, for example, password-protected or encrypted electronic files or drives with the password/key delivered by separate communication or method or via upload to an appropriately secure web portal as directed by FEMA. All data delivered to the web portal designated by FEMA is deemed to be Competitively Sensitive Information.

(3) To allow FEMA to identify and appropriately protect documents containing Competitively Sensitive Information by the Sub-Committee Participant providing the documents, the Sub-Committee Participant will make good faith efforts to designate any Competitively Sensitive Information by placing restrictive markings on documents and things considered to be competitively sensitive, the restrictive markings being sufficiently clear in wording and visibility to indicate the restricted nature of the data. The Sub-Committee Participant will identify Competitively Sensitive Information that is disclosed verbally by oral warning. Information designated as competitively sensitive will, to the extent allowed by law, be presumed to constitute trade secrets, or commercial or financial information, and be provided by the Sub-Committee Participant to FEMA with the expectation that it will be kept confidential by both parties, as such terms are understood in accordance with 5 U.S.C. 552(b)(4) of the Freedom of Information Act and federal judicial interpretations of this statute. FEMA agrees that to the extent any information designated as competitively sensitive by a Sub-Committee Participant is responsive to a request for disclosure under the Freedom of Information Act, FEMA will consult with the Sub-Committee Participant and afford the Participant ten (10) working days to object to any disclosure by FEMA.

(4) FEMA will make good faith efforts to appropriately recognize unmarked Documents containing Competitively Sensitive Information as Competitively Sensitive Information. However, FEMA cannot guarantee that all unmarked

Documents will be recognized as being Competitively Sensitive Information and protected from disclosure to third parties. If the unmarked Documents have not been disclosed without restriction outside of FEMA, the Sub-Committee Participant may retroactively request to have appropriate designations placed on the Documents. If the unmarked Documents have been disclosed without restriction outside of FEMA, FEMA will, to the extent practicable, remove any requested information from public forums controlled by FEMA and will work promptly to request that a receiving party return or destroy disclosed unmarked Documents if requested by the Sub-Committee Participant.

(5) Competitively Sensitive Information may be used by FEMA, alone or in combination with additional information, including Documents and Competitively Sensitive Information received from third parties, to support FEMA's implementation of this Plan as determined by the Chairperson. In all situations, FEMA will aggregate and anonymize Competitively Sensitive Information to the greatest extent possible to protect the interests retained by the owners of the data while still allowing the objectives of the Plan and Sub-Committee to be achieved. To the greatest extent possible, such aggregation will render the competitively sensitive nature of the Competitively Sensitive Information of the Sub-Committee Participant no longer recognizable in a commercially sensitive manner, and without sufficient information to enable, by inference or otherwise, attribution to Sub-Committee Participant or its affiliates (as clearly identified and disclosed to FEMA). Any disclosure of Competitively Sensitive Information by FEMA, within or outside a Sub-Committee, will be subject to review and approval by DOJ and FTC.

(6) Except as otherwise expressly permitted by applicable federal law, FEMA shall not disclose any Competitively Sensitive Information or use any Competitively Sensitive Information for any purpose other than in connection with the purposes of this Plan, and FEMA will not sell any Competitively Sensitive Information of any Sub-Committee Participant.

(7) Except as described below, FEMA may disclose Competitively Sensitive Information only to its employees, officers, directors, contractors, agents, and advisors (including attorneys, accountants, consultants, and financial advisors). Any individual with access to Competitively Sensitive Information will be expected to comply with the terms of this Plan.

a. *Information Sharing within the Sub-Committee:* FEMA may share Competitively Sensitive Information with Sub-Committee Participants and Federal Representatives of the Plan, and their respective employees, officers, directors, contractors, agents, and advisors (including attorneys, accountants, consultants, and financial advisors) where there is a need to know and where disclosure is reasonably necessary in furtherance of implementing the Plan. FEMA will aggregate and anonymize data prior to sharing with the Sub-Committee Participants to the greatest extent possible while still allowing the objectives of the Plan to be achieved, and will not share data—particularly to competitors of the submitter—prior to consultation with and approval by the DOJ and FTC.

i. Sub-Committee Participants, when providing Competitively Sensitive Information to FEMA, may request that this Information not be shared with other Sub-Committee Participants. Where these requests are made in good faith and are reasonable in nature, FEMA will respect these requests to the greatest extent possible and will consult the owner of the data prior to any release made to Sub-Committee Participants.

b. *Restricted Reports.* FEMA may communicate Competitively Sensitive Information to appropriate government officials through Restricted Reports. The information contained in Restricted Reports shall be aggregated and anonymized to the greatest extent possible, while recognizing that these officials may need a certain amount of granularity and specificity of information to appropriately respond to COVID–19. FEMA will aim to aggregate data to the County level, and will not share Restricted Reports prior to consultation and approval from the DOJ and FTC. FEMA may disclose Restricted Reports to relevant White House and Administration officials and State Governors, and their respective employees, officers, directors, contractors, agents, and advisors (including attorneys, accountants, consultants, and financial advisors) who have a need to know and to whom such disclosure is reasonably necessary solely in furtherance of the implementation of this Plan. FEMA shall take appropriate action (by instructions, agreement, or otherwise) to ensure that receiving parties comply with all data-sharing confidentiality and obligations under this Plan as if such persons or entities had been parties to this Plan.

c. *Public Reports.* FEMA may share information with the public through Public Reports. Data contained in Public Reports shall be fully aggregated and anonymized. Public Reports shall be aggregated to at least a state level and may be publicly disclosed after consultation and approval from the DOJ and FTC.

(8) Where possible and not obviated by Exigent Circumstances, FEMA will notify Sub-Committee Participants prior to the release of any Competitively Sensitive Information that has not been fully aggregated and anonymized. In consultation with DOJ and FTC, FEMA will consider any good-faith requests made by Sub-Committee members to hold the release of data or requests for further aggregation or anonymization. In general, FEMA will not provide notification prior to the release of *Public Reports,* under the presumption that the data in these reports has already been fully anonymized and de-identified.

(9) Any party receiving Competitively Sensitive Information through this Plan shall use such information solely for the purposes outlined in the Plan and take steps, such as imposing previously approved firewalls or tracking usage, to prevent misuse of the information. Disclosure and use of Competitively Sensitive Information will be limited to the greatest extent possible, and any party receiving Competitively Sensitive Information shall follow the procedures outlined in paragraph 7 above.

(10) At the conclusion of a Participant's involvement in a Plan—due to the deactivation of the Plan or due to the Participant's withdrawal or removal—each Participant will be requested to sequester any and all Competitively Sensitive Information received through participation in the Plan. This sequestration shall include the deletion of all Competitively Sensitive Information unless required to be kept pursuant to the Record Keeping requirements as described *supra,* Section I, 44 CFR part 332, or any other provision of law.

C. Oversight

Each Sub-Committee Chairperson is responsible for ensuring that the Attorney General, or suitable delegate(s) from the DOJ, and the FTC Chair, or suitable delegate(s) from the FTC, have awareness of activities under this Plan, including activation, deactivation, and scheduling of meetings. The Attorney General, the FTC Chair, or their delegates may attend Sub-Committee meetings and request to be apprised of any activities taken in accordance with activities under this Plan. DOJ or FTC Representatives may request and review

any proposed action by the Sub-Committee or Sub-Committee Participants undertaken pursuant to this Plan, including the provision of data. If any DOJ or FTC Representative believes any actions proposed or taken are not consistent with relevant antitrust protections provided by the DPA, he or she shall provide warning and guidance to the Sub-Committee as soon as the potential issue is identified. If questions arise about the antitrust protections applicable to any particular action, FEMA may request DOJ, in consultation with the FTC, provide an opinion on the legality of the action under relevant DPA antitrust protections.

VI. Establishment of the Sub-Committees

This Plan establishes Sub-Committees to implement the Plan of Action to Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains to Respond to COVID–19 to provide the Federal Government and the Participants a forum to maximize the coordination of selected National Multimodal Healthcare Supply Chain resources and to create a prioritization protocol based upon existing or projected needs of End-Users and geographic areas within the National Multimodal Healthcare Supply Chains System. The outcome should include a framework to expeditiously meet critical needs within the National Multimodal Healthcare Supply Chains System that may arise in Exigent Circumstances, and to ensure actions to address such needs do not come with unacceptable risks to End-Users or interfere with other efforts to meet critical End-User requirements. A Sub-Committee Chairperson designated by the Chairperson will convene and preside over each Sub-Committee. Sub-Committees will not be used for contract negotiations or contract discussions between the Participants and the Federal Government; such negotiations or discussions will be in accordance with applicable federal contracting policies and procedures. However, this shall not limit any discussion within a Sub-Committee about the operational utilization of existing and potential contracts between the Participants and Representatives when seeking to align their use with overall manufacturing and distribution efforts consistent with this Plan.

Each Sub-Committee will consist of designated Representatives from FEMA, HHS, other federal agencies with equities in this Plan, and each Sub-Committee Participant. The Attorney General and Chair of the FTC, or their delegates, may also join each Sub-Committee and attend meetings at their discretion. Attendees may also be invited at the discretion of a Sub-Committee Chairperson as subject matter experts, to provide technical advice, or to represent other government agencies, but will not be considered part of the Sub-Committee.

Only to the extent necessary to respond to COVID–19 as explicitly directed by the Sub-Committee Chairperson, and subject to the provisions of Section V(B), Sub-Committee Members may be asked to provide technical advice, share information, help identify and validate places and resources of the greatest need, help project future manufacturing and distribution demands, assist in identifying and resolving the allotment of scarce resources under Exigent Circumstances, and take other actions necessary to maximize the timely coordination of National Multimodal Healthcare Supply Chains System resources for the COVID–19. A Sub-Committee Chairperson or his or her designee, at the Sub-Committee Chairperson's sole discretion, will make decisions on these issues in order to ensure the maximum efficiency and effectiveness in the use of Sub-Committee Member's resources. All Sub-Committee Participants will be invited to open Sub-Committee meetings. For selected Sub-Committee meetings, attendance may be limited to designated Sub-Committee Participants to meet specific operational requirements, as determined by FEMA.

Each Sub-Committee Chairperson shall notify the Attorney General, the Chair of the FTC, Representatives, and Participants of the time, place, and nature of each meeting and of the proposed agenda of each meeting to be held to carry out this Plan. Additionally, each Sub-Committee Chairperson shall provide for publication in the **Federal Register** of a notice of the time, place, and nature of each meeting. If a meeting is open, a **Federal Register** notice will be published reasonably in advance of the meeting. A Sub-Committee Chair may restrict attendance at meetings only on the grounds outlined by 44 CFR 332.5(c)(1)–(3). If a meeting is closed, a **Federal Register** notice will be published within ten (10) days of the meeting and will include the reasons why the meeting is closed pursuant to 44 CFR 332.3(c)(2).

The Sub-Committee Chairperson shall establish the agenda for each meeting, be responsible for adherence to the agenda, and provide for a written summary or other record of each meeting and provide copies of transcripts or other records to FEMA, the Attorney General, the Chair of the FTC, and all Sub-Committee Participants. The Chairperson shall take necessary actions to protect from public disclosure any data discussed with or obtained from Sub-Committee Participants which a Sub-Committee Participant has identified as a trade secret or as privileged and confidential in accordance with DPA sections 708(h)(3) and 705(d), or which qualifies for withholding under 44 CFR 332.5.

VII. Application and Agreement

The Sub-Committee Participant identified below hereby agrees to join in the Federal Emergency Management Agency sponsored Plan of Action to Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains to Respond to COVID–19 under the Voluntary Agreement for the Manufacture and Distribution of Healthcare Resources Necessary to Respond to a Pandemic and to become a Participant in one or more Sub-Committees established by this Plan. This Plan will be published in the **Federal Register**. This Plan is authorized under section 708 of the Defense Production Act of 1950, as amended. Regulations governing the Voluntary Agreement for the Manufacture and Distribution of Healthcare Resources Necessary to Respond to a Pandemic and all subsequent Plans of Action at 44 CFR part 332. The applicant, as a Sub-Committee Participant, agrees to comply with the provisions of section 708 of the Defense Production Act of 1950, as amended, the regulations at 44 CFR part 332, and the terms of this Plan.

VIII. Assignment

No Sub-Committee Participant may assign or transfer this Plan, in whole or in part, or any protections, rights or obligations hereunder without the prior written consent of the Sub-Committee Chairperson. When requested, the Sub-Committee Chairperson will respond to written requests for consent within 10 (ten) business days of receipt.

(Company name)

(Name of authorized representative)

(Signature of authorized representative)

(Date)

Administrator (Sponsor)

(Date)

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–02549 Filed 2–3–22; 11:15 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: TSA Claims Application

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0039, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the submission of information from claimants in order to thoroughly examine and resolve tort claims against the agency.

DATES: Send your comments by March 9, 2022. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on November 10, 2021, at 86 FR 62563.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: TSA Claims Application.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0039.

Forms(s): Supplemental Information Form, Payment Form.

Affected Public: Members of the traveling public who believe they have experienced property loss or damage, a personal injury, or other damages due to the negligent or wrongful act or omission of a TSA employee within their scope of employment, and who decide to seek compensation by filing a federal tort claim against TSA.

Abstract: TSA adjudicates tort claims pursuant to the Federal Tort Claims Act (28 U.S.C. 1346(b), 1402(b), 2401(b), 2671–2680). OMB Control Number 1652–0039, TSA Claims Application, allows the agency to collect information from claimants to examine and resolve tort claims against the agency.

TSA receives approximately 750 tort claims per month arising from airport screening activities, motor vehicle accidents, and employee loss, among others.

Number of Respondents: 9,000.

Estimated Annual Burden Hours: An estimated 4,708 hours.

Dated: February 1, 2022.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2022–02442 Filed 2–4–22; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7056–N–01]

60-Day Notice of Proposed Information Collection: Home Mortgage Disclosure Act (HMDA) Loan/Application Register

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* April 8, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Stacey Shindelar, Office of Risk Management and Regulatory Affairs, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Stacey Shindelar, at *Stacey.L.Shindelar@hud.gov* or telephone (202) 402–2569. This is not a toll-free number. Persons with hearing or speech impairments

may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Shindelar.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Home Mortgage Disclosure Act (HMDA) Loan/Application Register.

OMB Approval Number: 2502–0539.

Type of Request (i.e., new, revision or extension of currently approved collection): Revision of a currently approved collection.

Form Number: FR HUMDA–LAR.

Description of the need for the information and proposed use: The HMDA Loan/Application Register collects information from mortgage lenders on application for, and originations and purchases of, mortgage and home improvement loans. Non-depository mortgage lending institutions are required to use the information generated as a running log throughout the calendar year and send the information to HUD by March 1 of the following calendar year.

Respondents (i.e., affected public): Business and Other for-profit; Not-for-profit institutions.

Estimated Number of Respondents: 903.

Estimated Number of Responses: 1,056.

Frequency of Response: On Occasion/Quarterly/Annually.

Average Hours per Response: 120.

Total Estimated Burdens: 2,245,563 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Janet M. Golrick,

Acting, Chief of Staff for the Office of Housing—Federal Housing Administration.

[FR Doc. 2022–02439 Filed 2–4–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20X.LLAK930000.L51010000.000000. LVRWL20L1090]

Notice of Preparation of a Supplemental Environmental Impact Statement for the Willow Master Development Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of preparation of a supplemental environmental impact statement.

SUMMARY: The Bureau of Land Management (BLM) is preparing a Supplemental Environmental Impact Statement (SEIS) to address deficiencies identified by the U.S. District Court for Alaska in the 2020 Willow Master Development Plan (MDP)/Final Environmental Impact Statement (EIS) and Record of Decision (ROD) issued in October 2020, and to ensure compliance with applicable law. The BLM will not be holding a formal scoping period but has begun outreach to stakeholders and will accept input and comments through informal scoping for up to 30 days following the date of publication.

DATES: The BLM requests input concerning the scope of the analysis, and identification of relevant information, studies, and analyses to be considered in the SEIS, which must be received by March 9, 2022. The draft SEIS is scheduled to be released in the second quarter of 2022.

ADDRESSES: You may submit input by any of the following methods:

- *ePlanning Website: https://eplanning.blm.gov/eplanning-ui/project/109410/510*
- *Mail:* 222 W 7th Avenue, Stop #13, Anchorage, Alaska 99513
- More details and instructions for submitting public comment can be found on the BLM ePlanning website at *https://eplanning.blm.gov/eplanning-ui/project/109410/510*

Documents pertinent to this proposal may be examined at the ePlanning website.

FOR FURTHER INFORMATION CONTACT: Stephanie Rice at 907–271–3202, or by email at *srice@blm.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Willow project was originally analyzed in the 2020 Willow MDP/Final EIS and authorized in a ROD issued in October 2020. In August 2021, the U.S. District Court for Alaska vacated the ROD and remanded the matter to BLM to correct deficiencies in the EIS regarding analysis of foreign greenhouse gas emissions and screening of alternatives for detailed analysis. The BLM will prepare a SEIS to address the deficiencies identified by the Court's decision, and to ensure compliance with applicable law, including (but not limited to) the National Environmental Policy Act of 1969; the Federal Land Policy and Management Act of 1976; the Alaska National Interest Lands Conservation Act; and the Naval Petroleum Reserves Production Act. This process will incorporate input from federal agencies, environmental organizations, Alaska Native Tribes, organizations, and corporations, numerous State of Alaska agencies and the affected communities along the North Slope.

Additional opportunities for public participation, including public meetings, will be available upon publication of the draft SEIS. The BLM will continue to consult with potentially affected Federally recognized Tribes on a government-to-government basis in accordance with Executive Order 13175, and with affected Alaska Native corporations under the Department's Policy on Consultation with Alaska Native Claims Settlement Act Corporations (Aug. 10, 2012). We respectfully request participation in consultation by these Alaska Native entities to receive their views and recommendations on the Willow MDP. The BLM will hold individual consultations upon request.

Comments

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be

provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will also be accepted and considered.

Thomas A. Heinlein,

Acting State Director, BLM Alaska.

[FR Doc. 2022–02423 Filed 2–4–22; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–223–L14400000.BK0000; MO#4500158547]

Notice of Proposed Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of surveys for the lands described in this notice are scheduled to be officially filed 30 calendar days after the date of this publication in the Bureau of Land Management (BLM) Montana State Office, Billings, Montana. The surveys, which were executed at the request of the BLM Division of Energy, Minerals, and Realty, Fluids Adjudication, Billings, Montana, are necessary for the management of these lands.

DATES: A person or party who wishes to protest this decision must file a notice of protest in time for it to be received in the BLM Montana State Office no later than 30 days after the date of this publication.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Josh Alexander, BLM Chief Cadastral Surveyor for Montana; telephone: (406) 896–5123; email: *jalexand@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800) 877–8339 to contact Mr. Alexander during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands surveyed are:

Principal Meridian, Montana

T. 26 N., R. 59 E.
Secs. 4, 5, and 8.
T. 27 N., R. 59 E.
Sec. 33.

A person or party who wishes to protest an official filing of a plat of survey identified above must file a written notice of protest with the BLM Chief Cadastral Surveyor for Montana at the address listed in the **ADDRESSES** section of this notice. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be received in the BLM Montana State Office no later than the scheduled date of the proposed official filing for the plat(s) of survey being protested; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of the protest, if not filed with the notice of protest, must be filed with the BLM Chief Cadastral Surveyor for Montana within 30 calendar days after the notice of protest is received.

If a notice of protest of the plat(s) of survey is received prior to the scheduled date of official filing or during the 10-calendar-day grace period provided in 43 CFR 4.401(a) and the delay in filing is waived, the official filing of the plat(s) of survey identified in the notice of protest will be stayed pending consideration of the protest. Upon receipt of a timely protest, and after a review of the protest, the Authorized Office will issue a decision either dismissing or otherwise resolving the protest. A plat of survey will then be officially filed 30 days after the protest decision has been issued in accordance with 43 CFR part 4.

If a notice of protest is received after the scheduled date of official filing and the 10-calendar-day grace period provided in 43 CFR 4.401(a), the notice of protest will be untimely, may not be considered, and may be dismissed.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C. Chapter 3)

Joshua F. Alexander,

Chief Cadastral Surveyor for Montana.

[FR Doc. 2022–02443 Filed 2–4–22; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOS000000–L10200000–212L1109AF]

Notice of Colorado's Southwest District Resource Advisory Council Schedule of Quarterly Public Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Colorado's Southwest Resource Advisory Council (RAC) announces the 2022 schedule of public meetings.

DATES: The Southwest Colorado RAC will meet quarterly in 2022 as follows:

- The RAC will host a field tour on March 2 and a virtual meeting on March 3 from 10 a.m. to 3:30 p.m.
- The RAC will host a field tour on June 1 and a virtual meeting on June 2 from 10 a.m. to 3 p.m.
- The RAC will host a field tour on September 7 and a virtual meeting on September 8 from 10 a.m. to 3 p.m.
- The RAC will host a field tour on December 8 and a meeting on December 9 from 10 a.m. to 3 p.m. at the Uncompahgre Field Office, 2465 S. Townsend Ave., Montrose, CO 81401. The meeting may be held virtually depending on public health recommendations in place at the time of the meeting. Public notice of the change will be posted on the RAC's web page 30 days in advance of the meeting. All field tours will be held from 8 a.m. to 4 p.m. All field tours and meetings are open to the public.

ADDRESSES:

- The March 2 field tour will commence at the Uncompahgre Field Office, 2465 S. Townsend Ave., Montrose, CO 81401. Attendees will then travel to the Dominguez-Escalante National Conservation Area.
- The June 1 field tour will commence at the Tres Rios Field Office, 29211 CO–184, Dolores, CO 81323. Attendees will then travel to the Big Gypsum Valley Uranium Mine.
- The September 7 field tour will commence at the Gunnison Field Office,

210 W. Spencer Ave., Gunnison, CO 81230. Attendees will then travel to the Powderhorn Wilderness Area.

• The December 8 field tour will commence at the Uncompahgre Field Office, 2465 S. Townsend Ave., Montrose, CO 81401. Attendees will then travel to the Jumbo Mountain Travel Management Area. The December 9 meeting will also be held at the Uncompahgre Field Office.

The virtual meetings will be held via the Zoom platform. Registration and participation will be available on the RAC's web page 30 days in advance of the meetings at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/colorado/southwest-rac.*

FOR FURTHER INFORMATION CONTACT: Shawn Reinhardt, Public Affairs Specialist; BLM Southwest District Office, 2465 S. Townsend Ave., Montrose, CO 81401; telephone: (970) 240–5339; email: *sreinhardt@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800) 877–8339 to contact Mr. Reinhardt during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues in the Southwest District, including the Uncompahgre, Tres Rios, and Gunnison Field Offices.

The RAC will conduct a field tour on March 2 to grazing allotments within the bounds of the Uncompahgre Field Office and in the Dominguez-Escalante National Conservation Area. The March 3 virtual meeting will focus on RAC chair nominations and grazing issues within the RAC's jurisdiction, including domestic sheep and Bighorn sheep, drought, and Sage Grouse habitat impacts.

The RAC will conduct a field tour on June 1 to the Big Gypsum Valley Uranium Mine located within the bounds of the Tres Rios Field Office. The June 2 virtual meeting will include an election for chairperson and a review and discussion of the Big Gypsum Valley Uranium Mine, travel management, field manager updates, and an update on grazing issues.

The RAC will conduct a field tour on September 7 to the Powderhorn Wilderness Area Fuels Project. The September 8 virtual meeting will include a grazing update, a review and discussion of the North Powderhorn Fuels Reduction Project, field manager updates, and a presentation and discussion of public lands management within the BLM Colorado's Southwest District.

The RAC will conduct a field tour on December 8 to the Jumbo Mountain Travel Management Area located within the bounds of the Uncompahgre Field Office. The December 9 virtual meeting will include an update and discussion of grazing allotments in North Delta and the Dominguez-Escalante National Conservation Area, field manager updates, and a presentation and continued discussion of public lands management within the BLM Colorado's Southwest District.

A public comment period is scheduled at 2:30 p.m. for the March meeting and at 2 p.m. for June, September, and December meetings. Contingent on the number of people who wish to comment during the public comment period, individual comments may be limited. Written comments may be submitted to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Comments received at least one week in advance of the meeting will be provided to the RAC members prior to the meeting. Please include ''RAC Comment'' in your submission.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Members of the public are welcome on field tours but must provide their own transportation and meals. Individuals who plan to attend must RSVP to the BLM Southwest District Office at least 1 week in advance of the field tours to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individuals who need special assistance, such as sign language interpretation and other reasonable accommodations, also should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. The field tours will follow current Centers for Disease Control and Prevention COVID–19 guidance regarding social distancing and wearing of masks. Additional information regarding the meetings will be available on the RAC's web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/colorado/southwest-rac.*

Detailed summary minutes for the RAC meetings will be maintained in the Southwest District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting. Previous minutes and agendas are also available on the RAC's web page.

(Authority: 43 CFR 1784.4–2)

Stephanie Connolly,

Acting BLM Colorado State Director.

[FR Doc. 2022–02509 Filed 2–4–22; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[223.LLAK941200.L1440000.ET0000; A–062024]

Public Land Order No. 7905 ; Extension of Public Land Order No. 6127, as Extended by Public Land Order No. 7471; Campbell Tract Administrative Site, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Public Land Order (PLO) extends the duration of the withdrawal created by PLO No. 6127, as extended by PLO No. 7471, which would otherwise expire on February 10, 2022, for an additional 20-year term. PLO No. 6127 withdrew approximately 730.13 acres of public land from settlement, sale, location, or entry, under the general land laws, including mining laws, and from selection under Section 6 of the Alaska Statehood Act for the Campbell Tract administrative site, and reserved it for use by the Bureau of Land Management (BLM) in Anchorage, Alaska. PLO No. 7471 extended PLO No. 6127 for an additional 20-year term.

DATES: This PLO takes effect on February 11, 2022.

FOR FURTHER INFORMATION CONTACT: Chelsea Kreiner, BLM Alaska State Office, 222 West Seventh Avenue, Mailstop 13, Anchorage, AK 99513–7504, (907) 271–4205, or *ckreiner@blm.gov.* People who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800) 877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The purpose for which the withdrawal was

first made requires this extension to continue the use and protection of the capital investments of the Campbell Tract administrative site.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, PLO No. 6127, (47 FR 6277 (1982)), as extended by PLO No. 7471 (65 FR 71333 (2000)), which withdrew approximately 730.13 acres of public land from settlement, sale, location, or entry, under the general land laws, including mining laws, and from selection under Section 6 of the Alaska Statehood Act for the Campbell Tract administrative site, and reserved it for use as an administrative site by the Bureau of Land Management, is hereby extended for an additional 20-year period.

2. The withdrawal extended by this Order will expire on February 10, 2042, unless as a result of a review conducted prior to the expiration date, pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2022–02464 Filed 2–4–22; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–308–310 and 520–521 (Fifth Review)]

Carbon Steel Butt-Weld Pipe Fittings From Brazil, China, Japan, Taiwan, and Thailand

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on July 1, 2021 (86 FR 35133) and determined on October 4, 2021 that it would conduct expedited reviews (86 FR 72620, December 22, 2021).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on February 2, 2022. The views of the Commission are contained in USITC Publication 5276 (February 2022), entitled *Carbon Steel Butt-Weld Pipe Fittings from Brazil, China, Japan, Taiwan, and Thailand: Investigation Nos. 731 TA 308–310 and 520–521 (Fifth Review).*

By order of the Commission.

Issued: February 2, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–02477 Filed 2–4–22; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–NEW]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; New Information Collection; ATF Citizens Academy Application—ATF Form 3000.12

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection (IC) is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until April 8, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Paul Massock, Special Operations Division, either by mail at 99 New York Ave. NE, Mailstop 7.S–241,Washington DC 20226, or by email at *Paul.Massock@atf.gov,* or by telephone at 202–648–5966.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83):* New Information Collection.

2. *The Title of the Form/Collection:* ATF Citizens Academy Application.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 3000.12.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other (if applicable): None.

Abstract: The ATF Citizens Academy Application—ATF form 300.12 will be used to collect personally identifiable information to determine an individual's eligibility to participate in the Citizens Academy training program.

5. *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: An estimated 750 respondents will prepare responses for this collection once annually, and it will take each respondent approximately 5 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 63 hours, which is equal to 750 (total respondents) * 1 (# of response per respondent) * .0833333(5 minutes or the time taken to prepare each response).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–405A, Washington, DC 20530.

Dated: February 2, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–02493 Filed 2–4–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Wage and Hour Division

Agency Information Collection Activities; Comment Request; Information Collections: Requests To Approve Conformed Wage Classifications and Unconventional Fringe Benefit Plans Under the Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice and request for comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA). This program 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 Wage and Hour Division is soliciting comments concerning its proposal to extend Office of Management and Budget (OMB) approval of the Information Collection: Requests to Approve Conformed Wage Classifications and Unconventional Fringe Benefit Plans Under the Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 8, 2022.

ADDRESSES: You may submit comments identified by Control Number 1235–0023, by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, large print, braille, audiotape, compact disc, or other accessible format), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background: The Wage and Hour Division (WHD) of the Department of Labor (Department) administers the Davis-Bacon Act (DBA) and Davis-Bacon Related Acts (DBRA), 40 U.S.C. 3141 *et seq.,* and the Contract Work Hours and Safety Standards Act (CWHSSA), 40 U.S.C. 3701 *et seq.* Regulations at 29 CFR part 5 prescribe labor standards for federally financed and federally assisted construction contracts subject to DBA, DBRA, and labor standards for all contracts subject to CWHSSA. The DBA and DBRA require payment of locally prevailing wages and fringe benefits, as determined by the Department, to laborers and mechanics on most federally financed or assisted construction projects. CWHSSA requires the payment of one and one-half times the basic rate of pay for hours worked over 40 in a week on most federal contracts involving the employment of laborers or mechanics. The requirements of this information collection consist of (1) reports of conformed classifications and wage rates, and (2) requests for approval of unfunded fringe benefit plans.

II. Review Focus: The Department of Labor is particularly interested in comments which:

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

III. Current Actions: The Department of Labor seeks an approval for the extension of this information collection in order to ensure effective administration of the DBA, DBRA, and CWHSSA.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Requests to Approve Conformed Wage Classifications and Unconventional Fringe Benefit Plans Under the Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act.

OMB Control Number: 1235–0023.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Total Respondents: Conformance Reports—8,500; Unfunded Fringe Benefit Plans—18.

Total Annual Responses: Conformance Reports—8,500; Unfunded Fringe Benefit Plans—18.

Estimated Total Burden Hours: Conformance Reports—2,125; Unfunded Fringe Benefit Plans—18.

Estimated Time per Response: Various.

Frequency: On occasion.

Total Burden Cost (capital/startup/operation/maintenance): $5,196.

Dated: January 31, 2022.

Amy DeBisschop,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2022–02444 Filed 2–4–22; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. These meetings will primarily take place at NSF's headquarters, 2415 Eisenhower Avenue, Alexandria, VA 22314.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF website: *https://www.nsf.gov/events/advisory.jsp.* This information may also be requested by telephoning, 703/292–8687.

Dated: February 2, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022–02465 Filed 2–4–22; 8:45 am]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings

TIME AND DATE: 2 p.m., Thursday, February 17, 2022.

PLACE: Via Conference Call.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Regular Board of Directors meeting.

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (4) permit closure of the following portion(s) of this meeting:

- **Executive Session**

Agenda

I. CALL TO ORDER
II. Sunshine Act Approval of Executive Session
III. Executive Session Report from CEO
IV. Executive Session: Report from CFO
V. Executive Session: NeighborWorks Compass™ Update
VI. Action Item Approval of Minutes
VII. Action Item HUD Counseling Grant
VIII. Discussion Item Interim CIO Report
IX. Discussion Item End of FY17–FY21 Strategic Plan Scorecard
X. Discussion Item Kansas City and New York Offices Lease Discussion
XI. Health Insurance Special Delegation of Authority
XII. Adjournment

Portions Open to the Public: Everything except the Executive Session.

Portions Closed to the Public: Executive Session.

CONTACT PERSON FOR MORE INFORMATION: Lakeyia Thompson, Special Assistant, (202) 524–9940; *Lthompson@nw.org.*

Lakeyia Thompson,

Special Assistant.

[FR Doc. 2022–02591 Filed 2–3–22; 4:15 pm]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of February 7, 14, 21, 28, March 7, 14, 2022.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Via Webcast.

Week of February 7, 2022

Tuesday, February 8, 2022

10:00 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors (Public Meeting) (Contact: Celimar Valentin-Rodriguez: 301–415–7124)

Additional Information: The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/.*

Week of February 14, 2022—Tentative

There are no meetings scheduled for the week of February 14, 2022.

Week of February 21, 2022—Tentative

Thursday, February 24, 2022

10:00 a.m. Briefing on Regulatory Research Program Activities (Public Meeting) (Contact: Nick Difrancesco: 301–415–1115)

Additional Information: The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/.*

Week of February 28, 2022—Tentative

There are no meetings scheduled for the week of February 28, 2022.

Week of March 7, 2022—Tentative

There are no meetings scheduled for the week of March 7, 2022.

Week of March 14, 2022—Tentative

There are no meetings scheduled for the week of March 14, 2022.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to

participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Tyesha.Bush@nrc.gov* or *Betty.Thweatt@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: February 2, 2022.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2022–02524 Filed 2–3–22; 11:15 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94123; File No. SR–BX–2022–003]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update the Obvious Error Rule

February 1, 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 26, 2022, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Section 20 (Nullification and Adjustment of Options Transactions including Obvious Errors).

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Options 3, Section 20 (Nullification and Adjustment of Options Transactions including Obvious Errors) to improve the operation of the Rule. Following discussions with other exchanges and a cross-section of industry participants and in coordination with the Listed Options Market Structure Working Group (''LOMSWG'') (collectively, the ''Industry Working Group''), the Exchange proposes: (1) To amend section (b)(3) of the Rule to permit the Exchange to determine the Theoretical Price of a Customer option transaction in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or re-opening; and (2) to amend section (c)(4)(B) of the Rule to adjust, rather than nullify, Customer transactions in Obvious Error situations, provided the adjustment does not violate the limit price. The foregoing changes are based on the recently amended rules of NYSE Arca, Inc. (''Arca'').[3] Further, the Exchange proposes to make non-substantive, corrective changes. Each change is discussed in detail below.

Proposed Change to Section (b)(3)

Options 3, Section 20 has been part of various harmonization efforts by the Industry Working Group.[4] These efforts have often centered around the Theoretical Price for which an options transaction should be compared to determine whether an Obvious Error has occurred. For instance, all options exchanges have adopted language comparable to Supplementary Material .03,[5] which explains how an exchange is to determine Theoretical Price at the open, when there are no valid quotes, and when there is a wide quote. This includes at times the use of a singular third-party vendor, known as a TP Provider (currently CBOE Livevol, LLC).

Similarly, section (b)(3) of Options 3, Section 20 was previously harmonized across all options exchanges to handle situations where executions occur in markets that are wide (as set forth in the rule).[6] Under that section, the Exchange determines the Theoretical Price if the NBBO for the subject series is wide immediately before execution and a narrow market (as set forth in the rule) existed ''during the 10 seconds prior to the transaction.'' The rule goes on to clarify that, should there be no narrow quotes ''during the 10 seconds prior to the transaction,'' the Theoretical Price for the affected series is the NBBO that existed at the time of execution (regardless of its width).

In recent discussions, the Industry Working Group has identified proposed changes to section (b)(3) of Options 3, Section 20 that would improve the Rule's functioning. Currently, section (b)(3) does not permit the Exchange to determine the Theoretical Price unless there is a narrow quote 10 seconds prior to the transaction. However, in the first seconds of trading, there is no 10-second period ''prior to the transaction.'' Further, the Industry Working Group has observed that prices in certain series can be disjointed at the start of trading. Accordingly, the Exchange proposes to provide additional protections to trading in certain circumstances immediately after the opening before liquidity has had a chance to enter the market. The Exchange proposes to amend section (b)(3) to allow the Exchange to determine the Theoretical Price in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or reopening.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Arca Rule 6.87–O. *See also* Securities Exchange Act Release No. 93818 (December 17, 2021), 86 FR 73009 (December 23, 2021) (SR–NYSEArca–2021–91) (Order Approving a Proposed Rule Change to Amend Rule 6.87–O).

[4] *See, e.g.,* Securities Exchange Act Release No. 74916 (May 8, 2015), 80 FR 27733 (May 14, 2015) (SR–BX–2015–028).

[5] *See, e.g.,* Securities Exchange Act Release No. 81348 (August 8, 2017), 82 FR 37910 (August 14, 2017) (SR–BX–2017–038).

[6] *See, e.g.,* Securities Exchange Act Release No. 74916 (May 8, 2015), 80 FR 27733 (May 14, 2015) (SR–BX–2015–028).

Specifically, the Exchange proposes that the existing text of section (b)(3) would become sub-section (A). The Exchange proposes to add the following heading and text as sub-section (B):

(B) Customer Transactions Occurring Within 10 Seconds or Less After an Opening or Re-Opening:

(i) The Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the Minimum Amount set forth in paragraph (A) above and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction.

(ii) If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction, then the Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the Minimum Amount set forth in paragraph (A) above and there was a bid/ask differential less than the Minimum Amount anytime during the 10 seconds after an opening or re-opening.

(iii) If there was no bid/ask differential less than the Minimum Amount during the 10 seconds following an Opening or Re-Opening, then the Theoretical Price of an option series is the last NBB or NBO just prior to the Customer transaction in question, as set forth in paragraph (b) above.

(iv) Customer transactions occurring more than 10 seconds after an opening or re-opening are subject to paragraph (A) above.

The following examples illustrate the functioning of the proposed rule change. Consider that the NBBO of a series opens as $0.01 at $4.00. A marketable limit order to buy one contract arrives one second later and is executed at $4.00. In the third second of trading, the NBBO narrows from $0.01 at $4.00 to $2.00 at $2.10. While the execution occurred in a market with wide widths, there was no tight market within the 10 seconds prior to execution. Accordingly, under the current rule, the trade would not qualify for obvious error review, in part due to the fact that there was only a single second of trading before the execution. Under the proposal, since a tight market existed at some point in the first 10 seconds of trading (*i.e.,* in the third second), the Exchange would be able to determine the Theoretical Price as provided in Supplementary Material .03.

As another example, the NBBO for a series opens as $0.01 at $4.00. In the seventh second of trading, a marketable limit order is received to buy one contract and is executed at $4.00. Five seconds later (*i.e.,* in the twelfth second of trading), the NBBO narrows from $0.01 at $4.00 to $2.00 at $2.10. While the execution occurred in a market with wide widths, there was no tight market within 10 seconds prior to execution. Accordingly, under the current rule, the trade would not qualify for obvious error review. Under the proposal, since no tight market existed at any point during the first 10 seconds of trading (*i.e.,* the narrow market occurred in the twelfth second), the trade would not qualify for obvious error review.

The proposed rule change would also better harmonize section (b)(3) with section (b)(1) of the Rule. Under section (b)(1), the Exchange is permitted to determine the Theoretical Price for transactions occurring as part of the Opening Process (as defined in Options 3, Section 8) if there is no NBB or NBO for the affected series just prior to the erroneous transaction. However, under the current version of section (b)(3), a transaction during regular trading hours could occur in the same wide market but the Exchange would not be permitted to determine the Theoretical Price. Consider an example where one second after the Exchange opens a selected series, the NBBO is $1.00 at $5.00. At 9:30:03, a customer submits a marketable buy order to the Exchange and pays $5.00. At 9:30:03, a different exchange runs an opening auction that results in a customer paying $5.00 for the same selected series. At 9:30:06, the NBBO changes from $1.00 at $5.00 to $1.35 at $1.45. Under the current version of section (b)(3), the Exchange would not be able to determine the Theoretical Price for the trade occurring during regular trading hours. However, the trade on the other exchange could be submitted for review under (b)(1) and that exchange would be able to determine the Theoretical Price. If the proposed change to section (b)(3) were approved, both of the trades occurring at 9:30:03 (on the Exchange during regular trading and on another exchange via auction) would also be entitled to the same review regarding the same Theoretical Price based upon the same time.

The proposal would not change any obvious error review beyond the first 10 seconds of an opening or re-opening.

Proposed Change to Section (c)(4)(B)

The Exchange proposes to amend section (c)(4)(B)—the ''Adjust or Bust'' rule for Customer transactions in Obvious Error situations—to adjust rather than nullify such orders, provided the adjustment does not violate the Customer's limit price. Currently, the Rule provides that in Obvious Error situations, transactions involving non-Customers should be adjusted, while transactions involving Customers are nullified, unless a certain condition applies.[7] The Industry Working Group has concluded that the treatment of these transactions should be harmonized under the Rule, such that transactions involving Customers may benefit from adjustment, just as non-Customer transactions currently do, except where such adjustment would violate the Customer's limit price; in that instance, the trade would be nullified.

Specifically, the Exchange proposes to amend the text of section (c)(4)(B) to add that where at least one party to the Obvious Error is a Customer, ''the execution price of the transaction will be adjusted by the Official pursuant to the table immediately above. Any Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier defined in sub-paragraph (a)(4) above. However, if such adjustment(s) would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price,'' the trade will be nullified. The ''table immediately above'' referenced in the proposed text refers to the table at current Section (c)(4)(A), which provides for the adjustment of prices a specified amount away from the Theoretical Price, rather than adjusting the Theoretical Price.

Non-Substantive Amendments

The Exchange proposes non-substantive changes to the table in Options 3, Section 20(d)(3). Specifically, the Exchange proposes to amend the Theoretical Price (TP) column as follows:

Theoretical Price (TP)

Below $2.00
$2.00 to $5.00
Above $5.00 to $10.00
Above $10.00 to $20.00
Above $20.00 to $50.00
Above $50.00 to $100.00
Above $100.00

The proposed changes are corrective in nature and aligns to the other options exchanges.[8]

Implementation Date

The proposed rule change will become operative no sooner than six months following the approval of the Arca proposal to coincide with

[7] Specifically, the current Rule provides at section (c)(4)(C) that if a Participant has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, then the Exchange will apply the non-Customer adjustment criteria found in section (c)(4)(A).

[8] *See e.g.,* Phlx Options 3, Section 20(d)(3).

implementation on other options exchanges.[9] The Exchange will announce the effective date of the proposed changes in an alert distributed to all Participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change to section (b)(3) of the Rule would remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest because it provides a method for addressing Obvious Error Customer transactions that occur in a wide market at the opening of trading. Generally, a wide market is an indication of a lack of liquidity in the market such that the market is unreliable. Current section (b)(3) recognizes that a persistently wide quote (*i.e.,* more than 10 seconds) should be considered the reliable market regardless of its width, but does not address transactions that occur in a wide market in the first seconds of trading, where there is no preceding 10-second period to reference. Accordingly, in the first 10 seconds of trading, there is no opportunity for a wide quote to have persisted for a sufficiently lengthy period such that the market should consider it a reliable market for the purposes of determining an Obvious Error transaction.

The proposed change would rectify this disparity and permit the Exchange to consider whether a narrow quote is present at any time during the 10-second period after an opening or re-opening. The presence of such a narrow quote would indicate that the market has gained sufficient liquidity and that the previous wide market was unreliable, such that it would be appropriate for the Exchange to determine the Theoretical Price of an Obvious Error transaction. In this way, the proposed rule harmonizes the treatment of Customer transactions that execute in an unreliable market at any point of the trading day, by making them uniformly subject to Exchange determination of the Theoretical Price.

The Exchange believes that the proposed change to section (c)(4)(B) of the Rule would remove impediments to and perfect the mechanism of a free and open market and a national market system and enhance the protection of investors by harmonizing the treatment of non-Customer transactions and Customer transactions under the Rule. Under the current Rule, Obvious Error situations involving non-Customer transactions are adjusted, while those involving Customer transactions are generally nullified, unless they meet the additional requirements of section (c)(4)(C) (*i.e.,* where a Participant has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less). The proposal would harmonize the treatment of non-Customer and Customer transactions by providing for the adjustment of all such transactions, except where such adjustment would violate the Customer's limit price.

When it proposed the current rule in 2015, the Exchange believed there were sound reasons for treating non-Customer transactions and Customer transactions differently. At the time, the Exchange stated its belief that ''Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts,'' and that nullifying Obvious Error transactions involving Customers would give Customers ''greater protections'' than adjusting such transactions by eliminating the possibility that a Customer's order will be adjusted to a significantly different price. The Exchange also noted its belief that ''Customers are . . . less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need of maintaining a position at an adjusted price than non-Customers.[12]

Those assumptions about Customer trading and hedging activity no longer hold. The Exchange and the Industry Working Group believe that over the course of the last five years, Customers that use options have become more sophisticated, as retail broker-dealers have enhanced the trading tools available. Pursuant to OCC data, volumes clearing in the Customer range have expanded from 12,022,163 ADV in 2015 to 35,081,130 ADV in 2021. This increase in trading activity underscores the greater understanding of options by Customers as a trading tool and its use in the markets. Customers who trade options today largely are more educated, have better trading tools, and have better access to financial news than any time prior.[13] The proposed rule would extend the hedging protections currently enjoyed by non-Customers to Customers, by allowing them to maintain an option position at an adjusted price, which would in turn prevent a cascading effect by maintaining the hedge relationship between the option transaction and any other transactions in a related security.

The Exchange believes that extending such hedging protections to Customer transactions would remove impediments to and perfect the mechanism of a free and open market and a national market system and enhance the protection of investors by providing greater certainty of execution for all participants to options transactions. Under the current Rule, a Customer that believes its transaction was executed pursuant to an Obvious Error may be disincentivized from submitting the transaction for review, since during the review process, the Customer would be uncertain whether the trade would be nullified, and if so, whether market conditions would still permit the opportunity to execute a related order at a better price after the nullification ruling is finalized. In contrast, under the proposed rule, the Customer would know that the only likely outcomes of submitting a trade to Obvious Error review would be that the trade would stand or be re-executed at a better price; the trade would only be nullified if the adjustment would violate the order's limit. Similarly, under the current Rule, during the review period, a market maker who traded contra to the Customer would be uncertain if it should retain any position executed to hedge the original trade, or attempt to unwind it, possibly at a significant loss. Under the proposed rule change, this uncertainty is largely eliminated, and the question would be whether the already-executed and hedged trade would be adjusted to a better price for the Customer, or if it would stand as originally executed. In this way, the proposed rule enhances the protection of investors and removes impediments

[9] *See supra* note 3.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* Securities Exchange Act Release No. 74916 (May 8, 2015), 80 FR 27733 (May 14, 2015) (SR–BX–2015–028).

[13] *See* ''Retail Traders Adopt Options En Masse'' by Dan Raju, available at *https://www.nasdaq.com/articles/retail-traders-adopt-options-en-masse-2020-12-08.*

to and perfects the mechanism of a free and open market and a national market system.

The proposed rule also addresses the concern the Exchange cited in its 2015 filing that adjusting, rather than nullifying, Customer transactions could lead to a Customer's order being adjusted to a significantly different price. To address that concern, the proposed rule would prevent Customer transactions from being adjusted to a price that violates the order's limit; if the adjustment would violate a Customer's limit, the trade would instead be nullified. The Exchange believes it is in the best interest of investors to expand the availability of adjustments to Customer transactions in all Obvious Error situations except where the adjustment would violate the Customer's limit price.

Further, the Exchange believes that, with respect to such proposed adjustments to Customer transactions, it is appropriate to use the same form of adjustment as is currently in place with respect to non-Customer transactions as laid out in the table in section (c)(4)(A). That is, the Exchange believes that it is appropriate to adjust to prices a specified amount away from the Theoretical Price rather than to adjust the Theoretical Price, even though the Exchange has determined a given trade to be erroneous in nature, because the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an Obvious Error has occurred, additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange believes that providing an adjustment to the Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors, while adjusting to prices a specified amount away from the Theoretical Price would incentivize such behavior.

The Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed change to section (b)(3) would apply to all instances of a wide market occurring within the first 10 seconds of trading followed by a narrow market at any point in the subsequent 10-second period, regardless of the types of market participants involved in such transactions. The proposed change to section (c)(4)(B) would harmonize the treatment of Obvious Error transactions involving Customers and non-Customers, no matter what type of market participants those parties may be.

Lastly, the Exchange believes that the non-substantive corrections to the chart in Options 3, Section 20(d)(3) is consistent with the Act because it will bring greater transparency to the Rulebook and reduce potential confusion by investors.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange anticipates that the other options exchanges will adopt substantively similar proposals, such that there would be no burden on intermarket competition from the Exchange's proposal. Accordingly, the proposed change is not meant to affect competition among the options exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

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–BX–2022–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2022–003. 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.

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2022–003 and should be submitted on or before February 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–02426 Filed 2–4–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94121; File No. SR–NYSEARCA–2022–07]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules To Add New Subparagraph (i)(4) to Rule 7.31–E

February 1, 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 27, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to add new subparagraph (i)(4) to Rule 7.31–E (Orders and Modifiers) regarding orders designated with a ''retail'' modifier. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to add new subparagraph (i)(4) to Rule 7.31–E (Orders and Modifiers) regarding orders designated with a ''retail'' modifier.

Proposed Rule Change

Currently, the Exchange's Fee Schedule provides specified fees and credits for agency orders that originate from a natural person and are submitted to the Exchange by an ETP Holder,[4] provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.[5] The Exchange's rules concerning such orders are set out in the 2012 Filing but do not presently appear in Rule 7.31–E (Orders and Modifiers).

The Exchange now proposes to amend Rule 7.31–E to add new subparagraph (i)(4) pertaining to this ''retail'' modifier. The proposed rule is consistent with the existing requirements as set out in the 2012 Filing, except as set forth below, and is substantively identical to rules currently in effect on the Exchange's affiliates New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), and NYSE National, Inc. (''NYSE National'').[6]

Proposed Rule 7.31–E(i)(4)(A) would specify that an order designated with a ''retail'' modifier is an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an ETP Holder, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. It would also specify that an order with a ''retail'' modifier is separate and distinct from a ''Retail Order'' under Rule 7.44–E. This proposed rule is based on NYSE Rule 7.31(i)(6)(A), NYSE American Rule 7.31E(i)(4)(A), and NYSE National 7.31(i)(4)(A), without any substantive differences.[7]

Proposed Rule 7.31–E(i)(4)(B) would specify that an ETP Holder would be required to designate an order as ''retail'' in the form and/or manner prescribed by the Exchange. This proposed rule is based on NYSE Rule 7.31(i)(6)(B), NYSE American Rule 7.31E(i)(4)(B), and NYSE National 7.31(i)(4)(B), without any substantive differences.[8]

Proposed Rule 7.31–E(i)(4)(C) would specify that in order to submit an order with a ''retail'' modifier, an ETP Holder must submit an attestation, in a form prescribed by the Exchange, that substantially all orders designated as ''retail'' would meet the requirements set out in paragraph (A) above. This proposed rule is based on NYSE Rule 7.31(i)(6)(C), NYSE American Rule 7.31E(i)(4)(C), and NYSE National 7.31(i)(4)(C), without any substantive differences.[9]

Proposed Rule 7.31–E(i)(4)(D) would specify that an ETP Holder must have

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Rules 1.1(n) (definition of ETP) & (o) (definition of ETP Holder).

[5] *See* Securities Exchange Act Release No. 67540 (July 30, 2012), 77 FR 46539 (August 3, 2012) (SR–NYSEArca–2012–77) (the ''2012 Filing'').

[6] *See* Securities Exchange Act Release Nos. 93850 (December 22, 2021), 86 FR 74119 (December 29, 2021) (SR–NYSE–2021–75) (relocating ''retail'' order modifier from NYSE Rule 13 to NYSE Rule 7.31(i)(6)); 92254 (June 24, 2021), 86 FR 34819 (June 30, 2021) (SR–NYSEAMER–2021–31) (adding ''retail'' order modifier at NYSE American Rule 7.31E(i)(4)); and 92446 (July 20, 2021), 86 FR 40108 (July 26, 2021) (SR–NYSENAT–2021–15) (adding ''retail'' order modifier at NYSE National Rule 7.31(i)(4)).

[7] The proposed rule is identical to NYSE Rule 7.31(i)(6)(A), except that the term ''member organization'' in the NYSE rule would be replaced with the term ''ETP Holder'' in the proposed rule, and the reference to Rule 7.44 in the NYSE rule would be replaced with a reference to NYSE Arca Rule 7.44–E. The proposed rule is also identical to NYSE American Rule 7.31E(i)(4)(A) and NYSE National 7.31(i)(4)(A), except that the term ''Retail Order'' in the NYSE American and NYSE National rules would be replaced with the phrase ''order designated with a 'retail' modifier'' in the proposed rule.

[8] The proposed rule is identical to NYSE Rule 7.31(i)(6)(B), except that the term ''member organization'' in the NYSE rule would be replaced with the term ''ETP Holder'' in the proposed rule. The proposed rule is also identical to NYSE American Rule 7.31E(i)(4)(B) and NYSE National 7.31(i)(4)(B), except that the phrase ''designate an order as a Retail Order'' in the NYSE American and NYSE National rules would be replaced with the phrase ''designate an order as 'retail' '' in the proposed rule.

[9] The proposed rule is identical to NYSE Rule 7.31(i)(6)(C), except that the term ''member organization'' in the NYSE rule would be replaced with the term ''ETP Holder'' in the proposed rule. The proposed rule is also identical to NYSE American Rule 7.31E(i)(4)(C) and NYSE National 7.31(i)(4)(C), except that the phrase ''Retail Order'' in the NYSE American and NYSE National rules would be replaced with the phrase '' 'retail' order'' in the proposed rule.

written policies and procedures reasonably designed to assure that it will only designate orders as ''retail'' if all requirements of Rule 7.31–E(i)(4)(A) are met. Such written policies and procedures must require the ETP Holder to (i) exercise due diligence before entering a ''retail'' order to assure that entry as a ''retail'' order is in compliance with the requirements specified by the Exchange, and (ii) monitor whether orders entered as ''retail'' orders meet the applicable requirements. If an ETP Holder represents ''retail'' orders from another broker-dealer customer, the ETP Holder's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as ''retail'' orders meet the definition of a ''retail'' order. The ETP Holder must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as ''retail'' orders'' that entry of such orders as ''retail'' orders will be in compliance with the requirements specified by the Exchange, and (ii) monitor whether its broker-dealer customer's ''retail'' order flow meets the applicable requirements. This proposed rule is based on NYSE Rule 7.31(i)(6)(D), NYSE American Rule 7.31E(i)(4)(D), and NYSE National 7.31(i)(4)(D), without any substantive differences.[10]

Proposed Rule 7.31–E(i)(4)(E) would specify that an ETP Holder that fails to abide by the requirements specified in paragraphs (i)(4)(A)–(D) of Rule 7.31–E would not be eligible for the ''retail'' rates for orders it designates as ''retail'' orders. This proposed rule is based on NYSE Rule 7.31(i)(6)(E), NYSE American Rule 7.31E(i)(4)(E), and NYSE National 7.31(i)(4)(E), without any substantive differences.[11]

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)(5) of the Act,[13] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendment to Rule 7.31–E(i)(4) would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed requirements are based on existing requirements for orders designated as ''retail'' for purposes of fees and credits on the Exchange (in the 2012 Filing), NYSE, NYSE American, and NYSE National, and therefore are not novel. In addition, the proposed designation, attestation, and written policies and procedures are also based on existing procedures for similarly-defined orders on the Exchange (in the 2012 Filing), NYSE, NYSE American, and NYSE National, and therefore are not novel. The Exchange believes that the proposed requirements to submit attestations and to maintain written policies and procedures are not unfairly discriminatory, because they would apply equally to all ETP Holders that seek to enter orders designated with a ''retail'' modifier.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because they are substantively identical to the requirements for designating orders with a ''retail'' modifier that are currently in place on NYSE, NYSE American, and NYSE National, and therefore would harmonize the requirements for designating orders as ''retail'' across the four affiliated exchanges. Such uniformity will enhance market participants' understanding of the process for designating orders as ''retail'' across the exchanges, and will minimize any potential confusion that could result from having different programs on each exchange.

The Exchange believes that omitting the provision of the 2012 Filing requiring an ETP Holder to designate certain of its order entry ports at the Exchange as ''Retail Order Ports'' would remove impediments to and perfect the mechanism of a free and open market and a national market system because such requirement is obsolete under the Exchange's current Pillar trading system, which identifies ''retail'' orders by coded tag and not by the port through which they were submitted. As such, there is no longer any reason to require ETP Holders to submit ''retail'' orders through designated ports. Under the proposal, all orders that meet the requirements of proposed Rule 7.31–E(i)(4)(A)–(D) would be eligible for preferential ''retail'' order pricing as set out in the Exchange's Fee Schedule, regardless of the order entry port used.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[14] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competition at all, but merely moves the Exchange's existing requirements for orders designated as ''retail'' into Rule 7.31–E and conforms those requirements to those currently in place on the Exchange's affiliate exchanges NYSE, NYSE American, and NYSE National.

[10] The proposed rule is identical to NYSE Rule 7.31(i)(6)(D), except that the term ''member organization'' in the NYSE rule would be replaced with the term ''ETP Holder'' in the proposed rule. The proposed rule is also identical to NYSE American Rule 7.31E(i)(4)(D) and NYSE National 7.31(i)(4)(D), except that the term ''Retail Order'' in the NYSE American and NYSE National rules would be replaced with the term '' 'retail' order'' in the proposed rule.

[11] The proposed rule is identical to NYSE Rule 7.31(i)(6)(E), except that the term ''member organization'' in the NYSE rule would be replaced with the term ''ETP Holder'' in the proposed rule, and the reference to paragraphs (i)(6)(A)–(D) in the NYSE rule would be replaced with a reference to paragraphs (i)(4)(A)–(D) in the proposed rule. The proposed rule is also identical to NYSE American Rule 7.31E(i)(4)(E) and NYSE National 7.31(i)(4)(E), except that the term ''Retail Order'' in the NYSE American and NYSE National rules would be replaced with the term '' 'retail' order'' in the proposed rule. Note that orders that do not meet the requirements specified in paragraphs (i)(4)(A)–(D) of Rule 7.31–E would still be eligible to trade pursuant to the non-''retail'' fees in the NYSE Arca Equities Schedule of Fees and Charges (''Fee Schedule'').

The Exchange does not propose to add to the proposed rule the provision of the 2012 Filing requiring an ETP Holder to designate certain of its order entry ports at the Exchange as ''Retail Order Ports.'' Under the Exchange's current Pillar trading system, there is no need for ETP Holders to use designated ports to submit orders eligible for ''retail'' pricing, since Pillar identifies such orders by coded tags, not by the port through which they were submitted. As such, the requirement in the 2012 Filing that ETP Holders use ''Retail Order Ports'' to submit ''retail'' orders is now obsolete. Under the proposal, all orders that meet the requirements of the proposed rule would be eligible for preferential ''retail'' order pricing as set out in the Exchange's Fee Schedule, regardless of which order entry port the ETP Holder uses.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

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–2022–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2022–07. 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–2022–07 and should be submitted on or before February 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–02437 Filed 2–4–22; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 15 U.S.C. 78s(b)(2)(B).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, February 9, 2022 at 10:00 a.m.

PLACE: The meeting will be webcast on the Commission's website at *www.sec.gov.*

STATUS: The meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to propose rules and amendments under the Investment Advisers Act of 1940 (''Advisers Act'') for private fund advisers and whether to propose amendments to the compliance rule under the Advisers Act.

2. The Commission will consider whether to propose new rules to address cybersecurity risk management for investment advisers and investment companies as well as related amendments to certain rules regarding adviser and fund disclosures under the Investment Advisers Act of 1940 and the Investment Company Act of 1940.

3. The Commission will consider whether to propose rules and rule amendments under the Securities Exchange Act of 1934 to shorten the standard settlement cycle for most securities transactions. The proposed rules and rule amendments would be applicable to broker-dealers and certain clearing agencies. The Commission also will consider whether to propose rule amendments under the Investment Advisers Act of 1940 to require investment advisers to maintain certain related records.

4. The Commission will consider whether to propose amendments to its whistleblower rules.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: February 2, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–02534 Filed 2–3–22; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–802, OMB Control No. 3235–0758]

Proposed Collection; Comment Request; Extension: Rule 30e–3

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 30(e) of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') requires a registered investment company (''fund'') to transmit to its shareholders, at least semi-annually, reports containing financial statements and other financial information as the Commission may prescribe by rules and regulations. Rules 30e–1 (17 CFR 270.30e–1) and 30e–2 (17 CFR 270.30e–2) under the Investment Company Act require most funds to send their shareholders annual and semiannual reports containing financial information on the fund.

Rule 30e–3 (17 CFR 270.30e–3) under the Investment Company Act (15 U.S.C. 80a–1 *et seq.*) provides certain funds and unit investment trusts with an optional method to satisfy shareholder report transmission requirements by making such reports and certain other materials publicly accessible on a website, as long as they satisfy certain other conditions of the rule regarding: (a) Availability of the report and other materials; (b) notice to investors of the website availability of the report; and (c) delivery of paper copies of materials upon request. Reliance on the rule is voluntary. Responses to the disclosure requirements are not kept confidential.

The Commission estimates that 13,079 funds could rely on rule 30e–3. Of these funds, we estimate that 90% (or 11,771 funds) are currently relying on rule 30e–3. With respect to these 11,771 funds, we estimate that 90% (or 10,594 funds) already post shareholder reports on their websites for other purposes. In total, rule 30e 3 will impose an average total annual hour burden of 24,719 hours on applicable funds. Based on the Commission's estimate of 24,719 hours and an estimated wage rate of about $362 per hour, the total annual cost to registrants of the hour burden for complying with rule 30 3 is about $8.9 million.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collection of information under rule 30e–3 is mandatory. The information provided under rule 30e–3 will not be kept confidential. 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.

Written comments are invited on: (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 collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O John R. Pezzullo, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 2, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–02502 Filed 2–4–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94126; File No. SR–NYSEArca–2021–89]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Bitwise Bitcoin ETP Trust Under NYSE Arca Rule 8.201–E

February 1, 2022.

On October 14, 2021, NYSE Arca, Inc. (''NYSE Arca'' 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 list and trade shares (''Shares'') of the Bitwise Bitcoin ETP Trust (''Trust'') under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on November 3, 2021.[3]

On December 15, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal

As described in more detail in the Notice,[7] the Exchange proposes to list and trade the Shares of the Trust under NYSE Arca Rule 8.201–E, which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust is to seek to provide exposure to the value of bitcoin held by the Trust, less the expenses of the Trust's operations.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93445 (Oct. 28, 2021), 86 FR 60695 (''Notice''). No comments have been received on the proposed rule change.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 93790, 86 FR 72300 (Dec. 21, 2021). The Commission designated February 1, 2022, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3.

[8] *See id.* at 60696. Bitwise Investment Advisers, LLC (''Sponsor'') is the sponsor of the Trust, and

Continued

The Shares will represent units of undivided beneficial ownership of the Trust.[9] Under normal circumstances, the Trust's only asset will be bitcoin, and, under limited circumstances, cash.[10] The Trust will not use derivatives that may subject the Trust to counterparty and credit risks.[11]

The Trust's net asset value (''NAV'') and NAV per Share will be determined by the Administrator once each Exchange trading day as of 4:00 p.m. E.T., or as soon thereafter as practicable, by reference to the CF Bitcoin-Dollar US Settlement Price (''CME US Reference Rate'').[12] The Administrator will calculate the NAV by multiplying the number of bitcoin held by the Trust by the CME US Reference Rate for such day, and subtracting the accrued but unpaid expenses and liabilities of the Trust.[13] The CME US Reference Rate is a daily reference rate of the U.S. dollar price of one bitcoin, calculated at 4:00 p.m. E.T.[14]

The CME US Reference Rate aggregates during a calculation window the trade flow of several spot bitcoin trading platforms into the U.S. dollar price of one bitcoin as of its calculation time. The current constituent bitcoin platforms of the CME US Reference Rate are Bitstamp, Coinbase, Gemini, itBit, and Kraken (''Constituent Platforms''). In calculating the CME US Reference Rate, the methodology creates a joint list of certain trade prices and sizes from the Constituent Platforms. The methodology then divides this list into a number of equally sized time intervals, and it calculates the volume-weighted median trade price for each of those intervals. The CME US Reference Rate is the equally weighted average of the volume-weighted medians of all intervals.[15]

The Trust will provide website disclosure of its holdings daily.[16] In addition, each trading day, the Exchange will calculate and disseminate an intraday trust value (''ITV'') every 15 seconds during the NYSE Arca Core Trading Session.[17] The ITV will be calculated throughout the trading day by using the prior day's holdings at close of business and the most recently reported price level of the CME Bitcoin Real Time Price [18] as reported by Bloomberg, L.P., or another reporting service, or another price of bitcoin derived from updated bids and offers indicative of the spot price of bitcoin.[19]

The Trust will create and redeem Shares from time to time, but only in one or more Creation Units. A Creation Unit will initially consist of at least 25,000 Shares, but may be subject to change.[20] The Trust will process all creations and redemptions in-kind, and accrue all ordinary fees in bitcoin (rather than cash), as a way of seeking to ensure that the Trust holds the desired amount of bitcoin-per-share. The Trust will not purchase or sell bitcoin, other than if the Trust liquidates or must pay expenses not contractually assumed by the Sponsor. Instead, financial institutions authorized to create and redeem Shares (''Authorized Participants'') will deliver, or cause to be delivered, bitcoin to the Trust in exchange for Shares of the Trust, and the Trust will deliver bitcoin to Authorized Participants when those Authorized Participants redeem Shares of the Trust.[21]

II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2021–89 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [22] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[23] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [24]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[25] in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. What are commenters' views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices? What are commenters' views generally with respect to the liquidity and transparency of the bitcoin markets, the bitcoin markets' susceptibility to manipulation, and thus the suitability of bitcoin as an underlying asset for an exchange-traded product (''ETP'')?

2. The Exchange asserts that ''the exclusive use of in-kind creations, redemptions and fee accruals, in all situations except when the Trust is required to liquidate or to pay extraordinary expenses, provides long-term investors in the Trust with redundant but strong protection.'' [26] The Exchange further asserts that ''[t]he in-kind structure ensures that the Trust maintains the appropriate amount of bitcoin-per-Share in all scenarios, regardless of the U.S. dollar calculation of NAV or the CME US Reference Rate.'' [27] What are commenters' views of these assertions?

3. The Exchange asserts that, ''through extensive statistical analysis and careful

Delaware Trust Company is the trustee. The Trust will engage a third party custodian to maintain custody of the Trust's bitcoin assets. The Trust also will engage a third party service provider to serve as the administrator (''Administrator'') and transfer agent of the Trust. *See id.*

[9] *See id.* at 60699.

[10] *See id.* at 60696. The Trust may sell bitcoin and temporarily hold cash as part of a liquidation of the Trust or to pay certain extraordinary expenses not assumed by the Sponsor. According to the Exchange, the Trust also may, from time to time, passively receive, by virtue of holding bitcoin, certain additional digital assets or rights to receive such digital assets through a fork of the Blockchain or an airdrop of assets. *See id.* n.12.

[11] *See id.* at 60696.

[12] *See id.* at 60696, 60699.

[13] *See id.* at 60699.

[14] The Exchange states that the CME US Reference Rate utilizes the same methodology as the CME CF Bitcoin Reference Rate, which is calculated at 4:00 p.m. London time and is used to settle bitcoin futures on the CME. *See id.* at 60696 n.11; 60698–99.

[15] *See id.* at 60699.

[16] *See id.* at 60715.

[17] *See id.* at 60699. The ITV will also be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session. *See id.*

[18] The CME Bitcoin Real Time Price is a continuous real-time bitcoin price index published by the CME Group and Crypto Facilities Ltd. using data from the Constituent Platforms. *See id.*

[19] *See id.*

[20] *See id.*

[21] *See id.* at 60696.

[22] 15 U.S.C. 78s(b)(2)(B).

[23] *Id.*

[24] 15 U.S.C. 78f(b)(5).

[25] *See* Notice, *supra* note 3.

[26] *See id.* at 60700.

[27] *See id.*

consideration of third-party evaluations of these markets, the Sponsor has demonstrated that the CME [bitcoin futures] Market leads the bitcoin spot market and the unregulated bitcoin futures market, such that it is reasonably likely that a person attempting to manipulate the ETP would also have to trade on the CME [bitcoin futures] Market.'' [28] The Exchange further asserts ''both existing academic literature and the Sponsor's own studies show that the CME [bitcoin futures] Market leads price discovery relative to the bitcoin spot market.'' [29] Do commenters agree or disagree?

• Specifically, what are commenters' views of the Sponsor's methodology used to arrive at this conclusion? The Exchange describes how the Sponsor used data from the CME Group and Coin Metrics, supplemented with data from CoinAPI, to perform pairwise information share/component share (''IS/CS'') price discovery analysis and pairwise time-shift lead-lag (''TSLL'') analysis between the CME bitcoin futures market and 10 bitcoin spot markets and seven unregulated futures markets.[30] What are commenters' views on, for example, the Sponsor's choices for, and level of explanation of: The sources for the tick-level trade data; the aggregation (if any) the Sponsor performed on the tick-level trade data; the spot and unregulated futures trading platforms the Sponsor included in its pairwise analyses; the particular IS/CS and TSLL paradigms used to perform its pairwise analyses; the full-period and monthly results of its pairwise analyses; the statistical significance of the results; and the sensitivity of the results to the Sponsor's methodological choices?

• What are commenters' views on how the Commission should weigh the Sponsor's pairwise results compared to the previous academic and industry lead-lag studies that the Sponsor cites? [31] What are commenters' views on the accuracy of the Sponsor's summaries of such past studies?

• What are commenters' views on the robustness of the Sponsor's two-dimensional, pairwise results? Do commenters believe the Exchange has adequately addressed the extent of any relationship between prices on unregulated bitcoin futures markets and the CME bitcoin futures market, the bitcoin spot markets, and/or the Constituent Platforms, or where price formation occurs when the entirety of bitcoin futures markets, not just the CME, is considered?

• What are commenters' views on whether the Sponsor's lead-lag results sufficiently demonstrate a reasonable likelihood that a would-be manipulator of the proposed ETP would have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP? Do commenters believe that the Exchange has adequately explained and/or demonstrated how the Sponsor's market-level, statistical results provide sufficient evidence of the likely trading behavior of a would-be manipulator?

4. The Exchange asserts that ''the Sponsor's analysis shows that trading in the Trust is unlikely to become the predominant influence on prices in the CME [bitcoin futures] Market, even when assuming aggressive estimates of first-year flows of $4.7 billion and average daily trading volume of $143 million.'' [32] Do commenters agree or disagree?

• Specifically, what are commenters' views of the Exchange's estimates of the Trust's first-year flows? What are commenters' views of the methodology used to arrive at those estimates? [33] Do commenters agree with the Exchange that ''it is unlikely that a bitcoin ETP will experience the highest first-year flows in history,'' [34] and that the 2020 inflows to the Grayscale Bitcoin Trust (GBTC) of $4.7 billion is an ''aggressive'' working estimate for first-year flows into a new bitcoin ETP? [35]

• The Exchange describes how the Sponsor correlated the daily and weekly flows into GBTC with the corresponding daily or weekly price of bitcoin (calculated using the 4:00 p.m. E.T. bitcoin reference rate from Coin Metrics), and concludes that ''there is no meaningful relationship between daily and weekly flows into GBTC and changes in the price of bitcoin.'' [36] What are commenters' views on the data sources used, methodology selected, and results obtained by the Sponsor? The Exchange states that the Sponsor concluded from this analysis that ''it is unlikely that the aggressive estimate of first-year flows into a bitcoin ETP ($4.7 billion) would cause it to become the predominant influence on prices in the CME [bitcoin futures] Market.'' [37] What are commenters' views on how well the Sponsor's analysis of the historical correlation between GBTC inflows and the spot price of bitcoin predicts the future impact of inflows into the proposed ETP on prices in the CME bitcoin futures market?

• What are commenters' views of the Exchange's estimate of the likely average daily trading volume of the Shares ($143 million)? What are commenters' views on the methodology used to arrive at that estimate (which was based on an assessment of GBTC's and SPDR Gold (GLD)'s ratios of average daily trading volume to assets under management)? [38] Do commenters agree with the Exchange that $143 million is an ''aggressive'' working estimate for average daily trading volume of a new bitcoin ETP? [39]

• The Exchange states that ''[g]iven that the average daily trading volume of the CME [bitcoin futures] Market in 2020 was 174% higher at $392 million than the Sponsor's aggressive estimate of a new bitcoin ETP's potential trading volume of $143 million, the Sponsor found that it is unlikely that trading in a new bitcoin ETP will cause such ETP to become the predominant influence on prices in the CME [bitcoin futures] Market.'' [40] Do commenters agree or disagree with the Sponsor's conclusion? Why or why not?

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[41]

[28] *See id.* at 60704.

[29] *See id.* at 60716.

[30] *See id.* at 60704–11.

[31] *See id.* at 60705–07.

[32] *See id.* at 60711.

[33] *See id.* at 60711–12.

[34] *See id.* at 60711.

[35] *See id.* at 60712.

[36] *See id.* at 60712–13.

[37] *See id.* at 60713.

[38] *See id.* at 60713–14.

[39] *See id.* at 60714.

[40] *See id.* at 60715.

[41] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by February 28, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 14, 2022.

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–2021–89 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–2021–89. 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–2021–89 and should be submitted by February 28, 2022. Rebuttal comments should be submitted by March 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–02433 Filed 2–4–22; 8:45 am]

BILLING CODE 8011–01–P

[42] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94117; File No. SR–MRX–2022–02]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Proposed Rule Change To Update the Obvious Error Rule

February 1, 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 26, 2022, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Section 20 (Nullification and Adjustment of Options Transactions including Obvious Errors).

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Options 3, Section 20 (Nullification and Adjustment of Options Transactions including Obvious Errors) to improve the operation of the Rule. Following discussions with other exchanges and a cross-section of industry participants and in coordination with the Listed Options Market Structure Working Group (''LOMSWG'') (collectively, the ''Industry Working Group''), the Exchange proposes: (1) To amend section (b)(3) of the Rule to permit the Exchange to determine the Theoretical Price of a Customer option transaction in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or re-opening; and (2) to amend section (c)(4)(B) of the Rule to adjust, rather than nullify, Customer transactions in Obvious Error situations, provided the adjustment does not violate the limit price. The foregoing changes are based on the recently amended rules of NYSE Arca, Inc. (''Arca'').[3] Further, the Exchange proposes to make non-substantive, corrective changes. Each change is discussed in detail below.

Proposed Change to Section (b)(3)

Options 3, Section 20 has been part of various harmonization efforts by the Industry Working Group.[4] These efforts have often centered around the Theoretical Price for which an options transaction should be compared to determine whether an Obvious Error has occurred. For instance, all options exchanges have adopted language comparable to Supplementary Material .06,[5] which explains how an exchange is to determine Theoretical Price at the open, when there are no valid quotes, and when there is a wide quote. This includes at times the use of a singular

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Arca Rule 6.87–O. *See also* Securities Exchange Act Release No. 93818 (December 17, 2021), 86 FR 73009 (December 23, 2021) (SR–NYSEArca–2021–91) (Order Approving a Proposed Rule Change to Amend Rule 6.87–O).

[4] The Exchange's application for registration as a national securities exchange, as approved by the Commission, incorporated the changes made previously by the other options exchanges. *See* Securities Exchange Act Release No. 76998 (January 29, 2016); 81 FR 6066 (Feb. 4, 2016).

[5] *See, e.g.,* Securities Exchange Act Release No. 81353 (August 8, 2017), 82 FR 37926 (August 14, 2017) (SR–MRX–2017–16).

third-party vendor, known as a TP Provider (currently CBOE Livevol, LLC).

Similarly, section (b)(3) of Options 3, Section 20 was previously harmonized across all options exchanges to handle situations where executions occur in markets that are wide (as set forth in the rule).[6] Under that section, the Exchange determines the Theoretical Price if the NBBO for the subject series is wide immediately before execution and a narrow market (as set forth in the rule) existed ''during the 10 seconds prior to the transaction.'' The rule goes on to clarify that, should there be no narrow quotes ''during the 10 seconds prior to the transaction,'' the Theoretical Price for the affected series is the NBBO that existed at the time of execution (regardless of its width).

In recent discussions, the Industry Working Group has identified proposed changes to section (b)(3) of Options 3, Section 20 that would improve the Rule's functioning. Currently, section (b)(3) does not permit the Exchange to determine the Theoretical Price unless there is a narrow quote 10 seconds prior to the transaction. However, in the first seconds of trading, there is no 10-second period ''prior to the transaction.'' Further, the Industry Working Group has observed that prices in certain series can be disjointed at the start of trading. Accordingly, the Exchange proposes to provide additional protections to trading in certain circumstances immediately after the opening before liquidity has had a chance to enter the market. The Exchange proposes to amend section (b)(3) to allow the Exchange to determine the Theoretical Price in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or reopening.

Specifically, the Exchange proposes that the existing text of section (b)(3) would become sub-section (A). The Exchange proposes to add the following heading and text as sub-section (B):

(B) Customer Transactions Occurring Within 10 Seconds or Less After an Opening or Re-Opening:

(i) The Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the Minimum Amount set forth in paragraph (A) above and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction.

(ii) If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction, then the Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the Minimum Amount set forth in paragraph (A) above and there was a bid/ask differential less than the Minimum Amount anytime during the 10 seconds after an opening or re-opening.

(iii) If there was no bid/ask differential less than the Minimum Amount during the 10 seconds following an Opening or Re-Opening, then the Theoretical Price of an option series is the last NBB or NBO just prior to the Customer transaction in question, as set forth in paragraph (b) above.

(iv) Customer transactions occurring more than 10 seconds after an opening or re-opening are subject to paragraph (A) above.

The following examples illustrate the functioning of the proposed rule change. Consider that the NBBO of a series opens as $0.01 at $4.00. A marketable limit order to buy one contract arrives one second later and is executed at $4.00. In the third second of trading, the NBBO narrows from $0.01 at $4.00 to $2.00 at $2.10. While the execution occurred in a market with wide widths, there was no tight market within the 10 seconds prior to execution. Accordingly, under the current rule, the trade would not qualify for obvious error review, in part due to the fact that there was only a single second of trading before the execution. Under the proposal, since a tight market existed at some point in the first 10 seconds of trading (*i.e.,* in the third second), the Exchange would be able to determine the Theoretical Price as provided in Supplementary Material .06.

As another example, the NBBO for a series opens as $0.01 at $4.00. In the seventh second of trading, a marketable limit order is received to buy one contract and is executed at $4.00. Five seconds later (*i.e.,* in the twelfth second of trading), the NBBO narrows from $0.01 at $4.00 to $2.00 at $2.10. While the execution occurred in a market with wide widths, there was no tight market within 10 seconds prior to execution. Accordingly, under the current rule, the trade would not qualify for obvious error review. Under the proposal, since no tight market existed at any point during the first 10 seconds of trading (*i.e.,* the narrow market occurred in the twelfth second), the trade would not qualify for obvious error review.

The proposed rule change would also better harmonize section (b)(3) with section

(b)(1) of the Rule. Under section (b)(1), the Exchange is permitted to determine the Theoretical Price for transactions occurring as part of the opening rotation (as defined in Options 3, Section 8) if there is no NBB or NBO for the affected series just prior to the erroneous transaction. However, under the current version of section (b)(3), a transaction during regular trading hours could occur in the same wide market but the Exchange would not be permitted to determine the Theoretical Price. Consider an example where one second after the Exchange opens a selected series, the NBBO is $1.00 at $5.00. At 9:30:03, a customer submits a marketable buy order to the Exchange and pays $5.00. At 9:30:03, a different exchange runs an opening auction that results in a customer paying $5.00 for the same selected series. At 9:30:06, the NBBO changes from $1.00 at $5.00 to $1.35 at $1.45. Under the current version of section (b)(3), the Exchange would not be able to determine the Theoretical Price for the trade occurring during regular trading hours. However, the trade on the other exchange could be submitted for review under (b)(1) and that exchange would be able to determine the Theoretical Price. If the proposed change to section (b)(3) were approved, both of the trades occurring at 9:30:03 (on the Exchange during regular trading and on another exchange via auction) would also be entitled to the same review regarding the same Theoretical Price based upon the same time.

The proposal would not change any obvious error review beyond the first 10 seconds of an opening or re-opening.

Proposed Change to Section (c)(4)(B)

The Exchange proposes to amend section (c)(4)(B)—the ''Adjust or Bust'' rule for Customer transactions in Obvious Error situations—to adjust rather than nullify such orders, provided the adjustment does not violate the Customer's limit price. Currently, the Rule provides that in Obvious Error situations, transactions involving non-Customers should be adjusted, while transactions involving Customers are nullified, unless a certain condition applies.[7] The Industry Working Group has concluded that the treatment of these transactions should be harmonized under the Rule, such that transactions involving Customers may benefit from adjustment, just as non-Customer transactions currently do, except where such adjustment would violate the Customer's limit price; in that instance, the trade would be nullified.

[6] *See supra* note 4.

[7] Specifically, the current Rule provides at section (c)(4)(C) that if a Member has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, then the Exchange will apply the non-Customer adjustment criteria found in section (c)(4)(A).

Specifically, the Exchange proposes to amend the text of section (c)(4)(B) to add that where at least one party to the Obvious Error is a Customer, ''the execution price of the transaction will be adjusted by the Official pursuant to the table immediately above. Any Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier defined in sub-paragraph (a)(4) above. However, if such adjustment(s) would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price,'' the trade will be nullified. The ''table immediately above'' referenced in the proposed text refers to the table at current Section (c)(4)(A), which provides for the adjustment of prices a specified amount away from the Theoretical Price, rather than adjusting the Theoretical Price.

Non-Substantive Amendment

The Exchange proposes non-substantive changes to update the rule citations to Supplementary Material .04 throughout Options 3, Section 20 to Supplementary Material .06, which contains provisions relating to how the Theoretical Price will be determined.[8]

Implementation Date

The proposed rule change will become operative no sooner than six months following the approval of the Arca proposal to coincide with implementation on other options exchanges.[9] The Exchange will announce the effective date of the proposed changes in an alert distributed to all Members.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change to section (b)(3) of the Rule would remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest because it provides a method for addressing Obvious Error Customer transactions that occur in a wide market at the opening of trading. Generally, a wide market is an indication of a lack of liquidity in the market such that the market is unreliable. Current section (b)(3) recognizes that a persistently wide quote (*i.e.,* more than 10 seconds) should be considered the reliable market regardless of its width, but does not address transactions that occur in a wide market in the first seconds of trading, where there is no preceding 10-second period to reference. Accordingly, in the first 10 seconds of trading, there is no opportunity for a wide quote to have persisted for a sufficiently lengthy period such that the market should consider it a reliable market for the purposes of determining an Obvious Error transaction.

The proposed change would rectify this disparity and permit the Exchange to consider whether a narrow quote is present at any time during the 10-second period after an opening or re-opening. The presence of such a narrow quote would indicate that the market has gained sufficient liquidity and that the previous wide market was unreliable, such that it would be appropriate for the Exchange to determine the Theoretical Price of an Obvious Error transaction. In this way, the proposed rule harmonizes the treatment of Customer transactions that execute in an unreliable market at any point of the trading day, by making them uniformly subject to Exchange determination of the Theoretical Price.

The Exchange believes that the proposed change to section (c)(4)(B) of the Rule would remove impediments to and perfect the mechanism of a free and open market and a national market system and enhance the protection of investors by harmonizing the treatment of non-Customer transactions and Customer transactions under the Rule. Under the current Rule, Obvious Error situations involving non-Customer transactions are adjusted, while those involving Customer transactions are generally nullified, unless they meet the additional requirements of section (c)(4)(C) (*i.e.,* where a Member has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less). The proposal would harmonize the treatment of non-Customer and Customer transactions by providing for the adjustment of all such transactions, except where such adjustment would violate the Customer's limit price.

When it proposed the current rule in 2015, the Exchange believed there were sound reasons for treating non-Customer transactions and Customer transactions differently. At the time, the Exchange stated its belief that ''Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts,'' and that nullifying Obvious Error transactions involving Customers would give Customers ''greater protections'' than adjusting such transactions by eliminating the possibility that a Customer's order will be adjusted to a significantly different price. The Exchange also noted its belief that ''Customers are . . . less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need of maintaining a position at an adjusted price than non-Customers.[12]

Those assumptions about Customer trading and hedging activity no longer hold. The Exchange and the Industry Working Group believe that over the course of the last five years, Customers that use options have become more sophisticated, as retail broker-dealers have enhanced the trading tools available. Pursuant to OCC data, volumes clearing in the Customer range have expanded from 12,022,163 ADV in 2015 to 35,081,130 ADV in 2021. This increase in trading activity underscores the greater understanding of options by Customers as a trading tool and its use in the markets. Customers who trade options today largely are more educated, have better trading tools, and have better access to financial news than any time prior.[13] The proposed rule would extend the hedging protections currently enjoyed by non-Customers to Customers, by allowing them to maintain an option position at an adjusted price, which would in turn prevent a cascading effect by maintaining the hedge relationship between the option transaction and any other transactions in a related security.

The Exchange believes that extending such hedging protections to Customer transactions would remove impediments to and perfect the mechanism of a free and open market and a national market system and

[8] Specifically, the Exchange will make the corrective changes in Options 3, Section 20(b) and in Supplementary Material .06 to Options 3, Section 20.

[9] *See supra* note 3.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See supra* note 4.

[13] *See* ''Retail Traders Adopt Options En Masse'' by Dan Raju, available at *https://www.nasdaq.com/articles/retail-traders-adopt-options-en-masse-2020-12-08.*

enhance the protection of investors by providing greater certainty of execution for all participants to options transactions. Under the current Rule, a Customer that believes its transaction was executed pursuant to an Obvious Error may be disincentivized from submitting the transaction for review, since during the review process, the Customer would be uncertain whether the trade would be nullified, and if so, whether market conditions would still permit the opportunity to execute a related order at a better price after the nullification ruling is finalized. In contrast, under the proposed rule, the Customer would know that the only likely outcomes of submitting a trade to Obvious Error review would be that the trade would stand or be re-executed at a better price; the trade would only be nullified if the adjustment would violate the order's limit. Similarly, under the current Rule, during the review period, a market maker who traded contra to the Customer would be uncertain if it should retain any position executed to hedge the original trade, or attempt to unwind it, possibly at a significant loss. Under the proposed rule change, this uncertainty is largely eliminated, and the question would be whether the already-executed and hedged trade would be adjusted to a better price for the Customer, or if it would stand as originally executed. In this way, the proposed rule enhances the protection of investors and removes impediments to and perfects the mechanism of a free and open market and a national market system.

The proposed rule also addresses the concern the Exchange cited in its 2015 filing that adjusting, rather than nullifying, Customer transactions could lead to a Customer's order being adjusted to a significantly different price. To address that concern, the proposed rule would prevent Customer transactions from being adjusted to a price that violates the order's limit; if the adjustment would violate a Customer's limit, the trade would instead be nullified. The Exchange believes it is in the best interest of investors to expand the availability of adjustments to Customer transactions in all Obvious Error situations except where the adjustment would violate the Customer's limit price.

Further, the Exchange believes that, with respect to such proposed adjustments to Customer transactions, it is appropriate to use the same form of adjustment as is currently in place with respect to non-Customer transactions as laid out in the table in section (c)(4)(A). That is, the Exchange believes that it is appropriate to adjust to prices a specified amount away from the Theoretical Price rather than to adjust the Theoretical Price, even though the Exchange has determined a given trade to be erroneous in nature, because the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an Obvious Error has occurred, additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange believes that providing an adjustment to the Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors, while adjusting to prices a specified amount away from the Theoretical Price would incentivize such behavior.

The Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed change to section (b)(3) would apply to all instances of a wide market occurring within the first 10 seconds of trading followed by a narrow market at any point in the subsequent 10-second period, regardless of the types of market participants involved in such transactions. The proposed change to section (c)(4)(B) would harmonize the treatment of Obvious Error transactions involving Customers and non-Customers, no matter what type of market participants those parties may be.

Lastly, the Exchange believes that the non-substantive corrections to update the rule cites from Supplementary Material .04 to .06 is consistent with the Act because it will bring greater transparency to the Rulebook and reduce potential confusion by investors.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange anticipates that the other options exchanges will adopt substantively similar proposals, such that there would be no burden on intermarket competition from the Exchange's proposal. Accordingly, the proposed change is not meant to affect competition among the options exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

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–MRX–2022–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission,

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–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/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–MRX–2022–02 and should be submitted on or before February 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–02432 Filed 2–4–22; 8:45 am]

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[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94125; No. SR–NYSEArca–2022–05]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule

February 1, 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 25, 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'') regarding eligibility for certain tiers, incentives, and discounts during the Exchange's migration to a new trading platform. The Exchange proposes to implement the fee change effective January 25, 2022. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 provide OTP Holders and OTP Firms (collectively, ''OTP Holders'') with certainty regarding their eligibility for certain tiers, incentives, and discounts during the Exchange's migration to a new electronic trading platform, as an effort to mitigate fees during this transition period.

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 currently offers various volume- and performance-based incentives and discounts to encourage OTP Holders to use the Exchange as their primary venue for order routing and execution and for market making activity. Many of these incentive and discount programs include multiple tiers, which are intended to encourage greater participation in the programs and to incent OTP Holders to continually grow their business on the Exchange in order to qualify for the benefits offered in a higher tier.

In advance of the Exchange's migration to the Pillar platform, the Exchange has noted concern among OTP Holders regarding their ability to achieve various volume qualifications and thresholds during the migration. Specifically, because OTP Holders may choose to moderate their order flow and quotation sizes to reduce risk as they familiarize themselves with the new trading platform, they may not achieve the tier(s), incentive(s), and discount(s)

[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://www.nyse.com/trader-update/history#110000322291. 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. 4 to SR–NYSEArca–2021–47, *available here: https://www.sec.gov/comments/sr-nysearca-2021-47/srnysearca202147-20112491-265389.pdf.*

they qualified for pre-migration. Accordingly, the Exchange believes that providing OTP Holders with certainty with respect to certain pricing they would receive during the transition to Pillar would provide OTP Holders with an opportunity to adjust to new functionality and new order handling mechanisms without taking on an additional financial burden.

To this end, the Exchange proposes to amend Endnote 8 of the Fee Schedule to provide that for the month during which the Exchange commences its migration to the Pillar platform (the ''Migration Month''), OTP Holders will receive the tier(s), incentive(s), and discount(s) they achieved in the month prior to the Migration Month or the tier(s), incentive(s), and discount(s) achieved during the Migration Month, whichever are better. Specifically, the Exchange will compare an OTP Holder's performance in each of the programs set forth below during the Migration Month and during the month prior (currently anticipated to be January 2022) and will bill the OTP Holder for the Migration Month at the most favorable rates based on each qualification level achieved.

The following tiers, incentives, and discount programs would be covered by the proposed change:

- Customer Penny Posting Credit Tiers
- Firm and Broker Dealer Penny Posting Credit Tiers
- Firm and Broker Dealer Incentive Program
- Non-Customer, Non-Penny Posting Credit Tiers
- Customer Incentive Program
- Customer Posting Credit Tiers in Non-Penny Issues
- Discount in Take Liquidity Fees for Professional Customer and Non-Customer Liquidity Removing Interest
- Market Maker Incentive For Penny Issues
- Market Maker Incentive For Non-Penny Issues
- Market Maker Incentives for SPY
- Market Maker Penny and SPY Posting Credit Tiers
- LMM Rights Fee Discount

The Exchange believes that, to the extent OTP Holders choose to modify their trading activity during the Migration Month, the proposed change would mitigate the impact of potential pricing disruption by providing OTP Holders with certainty regarding the tier(s), incentive(s), and discount(s) they would be eligible for in the Migration Month, which would in turn encourage OTP Holders to continue to send orders and quotes to the Exchange during the transition to Pillar.

In addition, by offering OTP Holders the better pricing of the month before the Migration Month or the Migration Month, the Exchange believes OTP Holders will be incented to take full advantage of new Pillar functionality and possibly even increase their volume and participation during the migration.

The Exchange is not proposing any changes to the underlying tiers, incentives, or discounts covered by the proposed change described above.

The Exchange proposes to implement this change effective January 25, 2022.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[7] 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.'' [8]

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.[9] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in December 2021, the Exchange had less than 14% market share of executed volume of multiply-listed equity & ETF options trades.[10]

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.

The Exchange believes that the proposed change is reasonably designed to continue to incent OTP Holders to maintain active participation on the Exchange during the Pillar migration by offering OTP Holders pricing at each of the tier(s), incentive(s), and discount(s) they qualify for during either the Migration Month or in the month prior to the Migration Month, whichever is more favorable to the OTP Holder. The Exchange further believes that the proposed change would lessen the impact of the migration on OTP Holders by enabling them to adapt their trading activity as needed to transition to Pillar functionality during the Migration Month and would thus encourage OTP Holders to promptly transition to the more efficient Pillar platform.

To the extent the proposed rule change encourages OTP Holders to migrate to the new 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 rule change is an equitable allocation of its fees and credits because it would be available to all OTP Holders. In addition, the proposal is based on each OTP Holder's activity levels before and during the Migration Month and would afford OTP Holders the flexibility to moderate their activity as needed during the Migration Month and still receive the more favorable rates between the tier(s), incentive(s), and discount(s) they achieve in the Migration Month or in

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), *70 FR 37496,* 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[9] 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.*

[10] 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 9.65% for the month of December 2020 to 13.21% for the month of December 2021.

the month prior. Thus, the Exchange believes the proposed rule change would facilitate a smooth transition to the Pillar technology platform for all market participants on the Exchange by encouraging OTP Holders to send orders and quotes to the Exchange during the transition period, thereby improving market-wide quality.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the proposed rule change is not unfairly discriminatory because it would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposal is based on an OTP Holder's achievement of tiers, incentives, and discounts prior to and during the Migration Month and would provide all OTP Holders with certainty that they would at least qualify for the same tier(s), incentive(s), and discount(s) as in the month prior to the Migration Month. The proposed change would thus allow OTP Holders to adjust their interactions with Exchange systems during the Migration Month as needed and take advantage of the new functionality offered by Pillar by mitigating the impact of potential pricing disruptions. Thus, to the extent the proposal encourages OTP Holders to maintain or increase their current level of activity on the Exchange, such activity would result in trading opportunities for 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.'' [11]

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 that submit orders and quotes electronically to the Exchange. All OTP Holders would be eligible to receive the rates under each of the tier(s), incentive(s), and discount(s) they achieved in the Migration Month or in the month prior to the Migration Month, whichever are better.

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.[12] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in December 2021, the Exchange had less than 14% market share of executed volume of multiply-listed equity & ETF options trades.[13]

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 its fees are constrained by the robust competition for order flow among exchanges and thus believes that the proposed change is reasonably designed to encourage OTP Holders to transition to the Pillar platform while mitigating the risk of a significant change to the fees they would be subject to during the Migration Month. Accordingly, the Exchange believes that the proposed change 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 (or make adjustments as needed) during the Migration Month, thus encouraging prompt migration to the newer, more efficient Pillar technology platform and sustained activity on the Exchange during the Pillar transition.

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) [14] of the Act and subparagraph (f)(2) of Rule 19b–4 [15] 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) [16] 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

[11] *See* Reg NMS Adopting Release, *supra* note 8, at 37499.

[12] *See supra* note 9.

[13] 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 9.65% for the month of December 2020 to 13.21% for the month of December 2021.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 15 U.S.C. 78s(b)(2)(B).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2022–05 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2022–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2022–05, and should be submitted on or before February 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–02428 Filed 2–4–22; 8:45 am]

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[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94116; File No. SR–NASDAQ–2022–010]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update the Obvious Error Rule

February 1, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), and Rule 19b–4 thereunder, notice is hereby given that on January 26, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Section 20 (Nullification and Adjustment of Options Transactions including Obvious Errors).

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Options 3, Section 20 (Nullification and Adjustment of Options Transactions including Obvious Errors) to improve the operation of the Rule. Following discussions with other exchanges and a cross-section of industry participants and in coordination with the Listed Options Market Structure Working Group (''LOMSWG'') (collectively, the ''Industry Working Group''), the Exchange proposes: (1) To amend section (b)(3) of the Rule to permit the Exchange to determine the Theoretical Price of a Customer option transaction in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or re-opening; and (2) to amend section (c)(4)(B) of the Rule to adjust, rather than nullify, Customer transactions in Obvious Error situations, provided the adjustment does not violate the limit price. The foregoing changes are based on the recently amended rules of NYSE Arca, Inc. (''Arca'').[1] Further, the Exchange proposes to make non-substantive, corrective changes. Each change is discussed in detail below.

Proposed Change to Section (b)(3)

Options 3, Section 20 has been part of various harmonization efforts by the Industry Working Group.[2] These efforts have often centered around the Theoretical Price for which an options transaction should be compared to determine whether an Obvious Error has occurred. For instance, all options exchanges have adopted language comparable to Supplementary Material .03,[3] which explains how an exchange is to determine Theoretical Price at the open, when there are no valid quotes, and when there is a wide quote. This includes at times the use of a singular third-party vendor, known as a TP Provider (currently CBOE Livevol, LLC).

Similarly, section (b)(3) of Options 3, Section 20 was previously harmonized across all options exchanges to handle situations where executions occur in markets that are wide (as set forth in the rule).[4] Under that section, the Exchange determines the Theoretical Price if the NBBO for the subject series is wide immediately before execution and a narrow market (as set forth in the rule) existed ''during the 10 seconds prior to the transaction.'' The rule goes on to

[1] *See* Arca Rule 6.87–O. *See also* Securities Exchange Act Release No. 93818 (December 17, 2021), 86 FR 73009 (December 23, 2021) (SR–NYSEArca–2021–91) (Order Approving a Proposed Rule Change to Amend Rule 6.87–O).

[2] *See, e.g.,* Securities Exchange Act Release No. 74915 (May 8, 2015), 80 FR 27801 (May 14, 2015) (SR–NASDAQ–2015–054).

[3] *See, e.g.,* Securities Exchange Act Release No. 81323 (August 7, 2017), 82 FR 37639 (August 11, 2017) (SR–NASDAQ–2017–078).

[4] *See, e.g.,* Securities Exchange Act Release No. 74915 (May 8, 2015), 80 FR 27801 (May 14, 2015) (SR–NASDAQ–2015–054).

clarify that, should there be no narrow quotes ''during the 10 seconds prior to the transaction,'' the Theoretical Price for the affected series is the NBBO that existed at the time of execution (regardless of its width).

In recent discussions, the Industry Working Group has identified proposed changes to section (b)(3) of Options 3, Section 20 that would improve the Rule's functioning. Currently, section (b)(3) does not permit the Exchange to determine the Theoretical Price unless there is a narrow quote 10 seconds prior to the transaction. However, in the first seconds of trading, there is no 10-second period ''prior to the transaction.'' Further, the Industry Working Group has observed that prices in certain series can be disjointed at the start of trading. Accordingly, the Exchange proposes to provide additional protections to trading in certain circumstances immediately after the opening before liquidity has had a chance to enter the market. The Exchange proposes to amend section (b)(3) to allow the Exchange to determine the Theoretical Price in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or reopening.

Specifically, the Exchange proposes that the existing text of section (b)(3) would become sub-section (A). The Exchange proposes to add the following heading and text as sub-section (B):

(B) Customer Transactions Occurring Within 10 Seconds or Less After an Opening or Re-Opening:

(i) The Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the Minimum Amount set forth in paragraph (A) above and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction.

(ii) If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction, then the Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the Minimum Amount set forth in paragraph (A) above and there was a bid/ask differential less than the Minimum Amount anytime during the 10 seconds after an opening or re-opening.

(iii) If there was no bid/ask differential less than the Minimum Amount during the 10 seconds following an Opening or Re-Opening, then the Theoretical Price of an option series is the last NBB or NBO just prior to the Customer transaction in question, as set forth in paragraph (b) above.

(iv) Customer transactions occurring more than 10 seconds after an opening or re-opening are subject to paragraph (A) above.

The following examples illustrate the functioning of the proposed rule change. Consider that the NBBO of a series opens as $0.01 at $4.00. A marketable limit order to buy one contract arrives one second later and is executed at $4.00. In the third second of trading, the NBBO narrows from $0.01 at $4.00 to $2.00 at $2.10. While the execution occurred in a market with wide widths, there was no tight market within the 10 seconds prior to execution. Accordingly, under the current rule, the trade would not qualify for obvious error review, in part due to the fact that there was only a single second of trading before the execution. Under the proposal, since a tight market existed at some point in the first 10 seconds of trading (*i.e.,* in the third second), the Exchange would be able to determine the Theoretical Price as provided in Supplementary Material .03.

As another example, the NBBO for a series opens as $0.01 at $4.00. In the seventh second of trading, a marketable limit order is received to buy one contract and is executed at $4.00. Five seconds later (*i.e.,* in the twelfth second of trading), the NBBO narrows from $0.01 at $4.00 to $2.00 at $2.10. While the execution occurred in a market with wide widths, there was no tight market within 10 seconds prior to execution. Accordingly, under the current rule, the trade would not qualify for obvious error review. Under the proposal, since no tight market existed at any point during the first 10 seconds of trading (*i.e.,* the narrow market occurred in the twelfth second), the trade would not qualify for obvious error review.

The proposed rule change would also better harmonize section (b)(3) with section (b)(1) of the Rule. Under section (b)(1), the Exchange is permitted to determine the Theoretical Price for transactions occurring as part of the Opening Process (as defined in Options 3, Section 8) if there is no NBB or NBO for the affected series just prior to the erroneous transaction. However, under the current version of section (b)(3), a transaction during regular trading hours could occur in the same wide market but the Exchange would not be permitted to determine the Theoretical Price. Consider an example where one second after the Exchange opens a selected series, the NBBO is $1.00 at $5.00. At 9:30:03, a customer submits a marketable buy order to the Exchange and pays $5.00. At 9:30:03, a different exchange runs an opening auction that results in a customer paying $5.00 for the same selected series. At 9:30:06, the NBBO changes from $1.00 at $5.00 to $1.35 at $1.45. Under the current version of section (b)(3), the Exchange would not be able to determine the Theoretical Price for the trade occurring during regular trading hours. However, the trade on the other exchange could be submitted for review under (b)(1) and that exchange would be able to determine the Theoretical Price. If the proposed change to section (b)(3) were approved, both of the trades occurring at 9:30:03 (on the Exchange during regular trading and on another exchange via auction) would also be entitled to the same review regarding the same Theoretical Price based upon the same time.

The proposal would not change any obvious error review beyond the first 10 seconds of an opening or re-opening.

Proposed Change to Section (c)(4)(B)

The Exchange proposes to amend section (c)(4)(B)—the ''Adjust or Bust'' rule for Customer transactions in Obvious Error situations—to adjust rather than nullify such orders, provided the adjustment does not violate the Customer's limit price. Currently, the Rule provides that in Obvious Error situations, transactions involving non-Customers should be adjusted, while transactions involving Customers are nullified, unless a certain condition applies.[5] The Industry Working Group has concluded that the treatment of these transactions should be harmonized under the Rule, such that transactions involving Customers may benefit from adjustment, just as non-Customer transactions currently do, except where such adjustment would violate the Customer's limit price; in that instance, the trade would be nullified.

Specifically, the Exchange proposes to amend the text of section (c)(4)(B) to add that where at least one party to the Obvious Error is a Customer, ''the execution price of the transaction will be adjusted by the Official pursuant to the table immediately above. Any Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier defined in sub-paragraph (a)(4) above. However, if such adjustment(s) would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price,'' the trade will be nullified. The ''table immediately above'' referenced in

[5] Specifically, the current Rule provides at section (c)(4)(C) that if a Participant has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, then the Exchange will apply the non-Customer adjustment criteria found in section (c)(4)(A).

the proposed text refers to the table at current Section (c)(4)(A), which provides for the adjustment of prices a specified amount away from the Theoretical Price, rather than adjusting the Theoretical Price.

Non-Substantive Amendments

The Exchange proposes non-substantive changes to the table in Options 3, Section 20(d)(3). Specifically, the Exchange proposes to amend the Theoretical Price (TP) column as follows:

Theoretical Price (TP)

Below $2.00
$2.00 to $5.00
Above $5.00 to $10.00
Above $10.00 to $20.00
Above $20.00 to $50.00
Above $50.00 to $100.00
Above $100.00

The proposed changes are corrective in nature and aligns to the other options exchanges.[6]

Implementation Date

The proposed rule change will become operative no sooner than six months following the approval of the Arca proposal to coincide with implementation on other options exchanges.[7] The Exchange will announce the effective date of the proposed changes in an alert distributed to all Participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change to section (b)(3) of the Rule would remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest because it provides a method for addressing Obvious Error Customer transactions that occur in a wide market at the opening of trading. Generally, a wide market is an indication of a lack of liquidity in the market such that the market is unreliable. Current section (b)(3) recognizes that a persistently wide quote (*i.e.,* more than 10 seconds) should be considered the reliable market regardless of its width, but does not address transactions that occur in a wide market in the first seconds of trading, where there is no preceding 10-second period to reference. Accordingly, in the first 10 seconds of trading, there is no opportunity for a wide quote to have persisted for a sufficiently lengthy period such that the market should consider it a reliable market for the purposes of determining an Obvious Error transaction.

The proposed change would rectify this disparity and permit the Exchange to consider whether a narrow quote is present at any time during the 10-second period after an opening or re-opening. The presence of such a narrow quote would indicate that the market has gained sufficient liquidity and that the previous wide market was unreliable, such that it would be appropriate for the Exchange to determine the Theoretical Price of an Obvious Error transaction. In this way, the proposed rule harmonizes the treatment of Customer transactions that execute in an unreliable market at any point of the trading day, by making them uniformly subject to Exchange determination of the Theoretical Price.

The Exchange believes that the proposed change to section (c)(4)(B) of the Rule would remove impediments to and perfect the mechanism of a free and open market and a national market system and enhance the protection of investors by harmonizing the treatment of non-Customer transactions and Customer transactions under the Rule. Under the current Rule, Obvious Error situations involving non-Customer transactions are adjusted, while those involving Customer transactions are generally nullified, unless they meet the additional requirements of section (c)(4)(C) (*i.e.,* where a Participant has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less). The proposal would harmonize the treatment of non-Customer and Customer transactions by providing for the adjustment of all such transactions, except where such adjustment would violate the Customer's limit price.

When it proposed the current rule in 2015, the Exchange believed there were sound reasons for treating non-Customer transactions and Customer transactions differently. At the time, the Exchange stated its belief that ''Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts,'' and that nullifying Obvious Error transactions involving Customers would give Customers ''greater protections'' than adjusting such transactions by eliminating the possibility that a Customer's order will be adjusted to a significantly different price. The Exchange also noted its belief that ''Customers are . . . less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need of maintaining a position at an adjusted price than non-Customers.[10]

Those assumptions about Customer trading and hedging activity no longer hold. The Exchange and the Industry Working Group believe that over the course of the last five years, Customers that use options have become more sophisticated, as retail broker-dealers have enhanced the trading tools available. Pursuant to OCC data, volumes clearing in the Customer range have expanded from 12,022,163 ADV in 2015 to 35,081,130 ADV in 2021. This increase in trading activity underscores the greater understanding of options by Customers as a trading tool and its use in the markets. Customers who trade options today largely are more educated, have better trading tools, and have better access to financial news than any time prior.[11] The proposed rule would extend the hedging protections currently enjoyed by non-Customers to Customers, by allowing them to maintain an option position at an adjusted price, which would in turn prevent a cascading effect by maintaining the hedge relationship between the option transaction and any other transactions in a related security.

The Exchange believes that extending such hedging protections to Customer transactions would remove impediments to and perfect the mechanism of a free and open market and a national market system and enhance the protection of investors by providing greater certainty of execution for all participants to options transactions. Under the current Rule, a Customer that believes its transaction was executed pursuant to an Obvious Error may be disincentivized from

[6] *See, e.g.,* Phlx Options 3, Section 20(d)(3).

[7] *See supra* note 3.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* Securities Exchange Act Release No. 74915 (May 8, 2015), 80 FR 27801 (May 14, 2015) (SR–NASDAQ–2015–054).

[11] *See* ''Retail Traders Adopt Options En Masse'' by Dan Raju, available at *https://www.nasdaq.com/articles/retail-traders-adopt-options-en-masse-2020-12-08.*

submitting the transaction for review, since during the review process, the Customer would be uncertain whether the trade would be nullified, and if so, whether market conditions would still permit the opportunity to execute a related order at a better price after the nullification ruling is finalized. In contrast, under the proposed rule, the Customer would know that the only likely outcomes of submitting a trade to Obvious Error review would be that the trade would stand or be re-executed at a better price; the trade would only be nullified if the adjustment would violate the order's limit. Similarly, under the current Rule, during the review period, a market maker who traded contra to the Customer would be uncertain if it should retain any position executed to hedge the original trade, or attempt to unwind it, possibly at a significant loss. Under the proposed rule change, this uncertainty is largely eliminated, and the question would be whether the already-executed and hedged trade would be adjusted to a better price for the Customer, or if it would stand as originally executed. In this way, the proposed rule enhances the protection of investors and removes impediments to and perfects the mechanism of a free and open market and a national market system.

The proposed rule also addresses the concern the Exchange cited in its 2015 filing that adjusting, rather than nullifying, Customer transactions could lead to a Customer's order being adjusted to a significantly different price. To address that concern, the proposed rule would prevent Customer transactions from being adjusted to a price that violates the order's limit; if the adjustment would violate a Customer's limit, the trade would instead be nullified. The Exchange believes it is in the best interest of investors to expand the availability of adjustments to Customer transactions in all Obvious Error situations except where the adjustment would violate the Customer's limit price.

Further, the Exchange believes that, with respect to such proposed adjustments to Customer transactions, it is appropriate to use the same form of adjustment as is currently in place with respect to non-Customer transactions as laid out in the table in section (c)(4)(A). That is, the Exchange believes that it is appropriate to adjust to prices a specified amount away from the Theoretical Price rather than to adjust the Theoretical Price, even though the Exchange has determined a given trade to be erroneous in nature, because the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an Obvious Error has occurred, additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange believes that providing an adjustment to the Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors, while adjusting to prices a specified amount away from the Theoretical Price would incentivize such behavior.

The Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed change to section (b)(3) would apply to all instances of a wide market occurring within the first 10 seconds of trading followed by a narrow market at any point in the subsequent 10-second period, regardless of the types of market participants involved in such transactions. The proposed change to section (c)(4)(B) would harmonize the treatment of Obvious Error transactions involving Customers and non-Customers, no matter what type of market participants those parties may be.

Lastly, the Exchange believes that the non-substantive corrections to the chart in Options 3, Section 20(d)(3) is consistent with the Act because it will bring greater transparency to the Rulebook and reduce potential confusion by investors.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange anticipates that the other options exchanges will adopt substantively similar proposals, such that there would be no burden on intermarket competition from the Exchange's proposal. Accordingly, the proposed change is not meant to affect competition among the options exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

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–NASDAQ–2022–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to File Number SR–NASDAQ–2022–010. 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–NASDAQ–2022–010 and should be submitted on or before February 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–02427 Filed 2–4–22; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–440, OMB Control No. 3235–0496]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Appendix F to Rule 15c3–1

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Appendix F to Rule 15c3–1 (''Appendix F'' or ''Rule 15c3–1f'') (17 CFR 240.15c3–1f) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Appendix F applies to certain members of a class of broker-dealers known as over-the-counter (''OTC'') derivatives dealers. Exchange Act Rule 15c3–1 is the Commission's net capital rule for broker-dealers.[1] Under Appendix F, an OTC derivatives dealer that is not a security-based swap dealer may apply to the Commission for authorization to compute net capital charges for market and credit risk in accordance with Appendix F in lieu of computing securities haircuts under paragraph (c)(2)(vi) of Exchange Act Rule 15c3–1.[2]

At present, three OTC derivatives dealers have been approved to use Appendix F. No additional OTC derivatives dealers have applied to use Appendix F, and the staff does not expect that any additional OTC derivatives dealers will apply to use Appendix F during the next three years. The Commission estimates that the three approved OTC derivatives dealers will spend an average of approximately 1,000 hours each per year reporting information concerning their value-at-risk (''VAR'') models and internal risk management systems, for a total annual burden of approximately 3,000 hours.

Written comments are invited on: (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 estimates of the burden of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 2, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–02505 Filed 2–4–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 17 CFR 240.15c3–1. An OTC derivatives dealer that is also registered as a security-based swap dealer is subject to the net capital provisions of Exchange Act Rule 18a–1 (17 CFR 240.18a–1).

[2] An OTC derivatives dealer that is also registered as a security-based swap dealer may apply to the Commission for authorization to compute deductions for market and credit risk using models under paragraph (d) of Rule 18a–1.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34 94118; File No. SR–ISE–2022–03]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update the Obvious Error Rule

February 2, 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 26, 2022, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Section 20 (Nullification and Adjustment of Options Transactions including Obvious Errors).

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Options 3, Section 20 (Nullification and Adjustment of Options Transactions including Obvious Errors) to improve the operation of the Rule. Following discussions with other exchanges and a cross-section of industry participants and in coordination with the Listed Options Market Structure Working Group (''LOMSWG'') (collectively, the ''Industry Working Group''), the Exchange proposes: (1) To amend section (b)(3) of the Rule to permit the Exchange to determine the Theoretical Price of a Customer option transaction in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or re-opening; and (2) to amend section (c)(4)(B) of the Rule to adjust, rather than nullify, Customer transactions in Obvious Error situations, provided the adjustment does not violate the limit price. The foregoing changes are based on the recently amended rules of NYSE Arca, Inc. (''Arca'').[3] Further, the Exchange proposes to make a non-substantive, corrective change. Each change is discussed in detail below.

Proposed Change to Section (b)(3)

Options 3, Section 20 has been part of various harmonization efforts by the Industry Working Group.[4] These efforts have often centered around the Theoretical Price for which an options transaction should be compared to determine whether an Obvious Error has occurred. For instance, all options exchanges have adopted language comparable to Supplementary Material .06,[5] which explains how an exchange is to determine Theoretical Price at the open, when there are no valid quotes, and when there is a wide quote. This includes at times the use of a singular third-party vendor, known as a TP Provider (currently CBOE Livevol, LLC).

Similarly, section (b)(3) of Options 3, Section 20 was previously harmonized across all options exchanges to handle situations where executions occur in markets that are wide (as set forth in the rule).[6] Under that section, the Exchange determines the Theoretical Price if the NBBO for the subject series is wide immediately before execution and a narrow market (as set forth in the rule) existed ''during the 10 seconds prior to the transaction.'' The rule goes on to clarify that, should there be no narrow quotes ''during the 10 seconds prior to the transaction,'' the Theoretical Price for the affected series is the NBBO that existed at the time of execution (regardless of its width).

In recent discussions, the Industry Working Group has identified proposed changes to section (b)(3) of Options 3, Section 20 that would improve the Rule's functioning. Currently, section (b)(3) does not permit the Exchange to determine the Theoretical Price unless there is a narrow quote 10 seconds prior to the transaction. However, in the first seconds of trading, there is no 10-second period ''prior to the transaction.'' Further, the Industry Working Group has observed that prices in certain series can be disjointed at the start of trading. Accordingly, the Exchange proposes to provide additional protections to trading in certain circumstances immediately after the opening before liquidity has had a chance to enter the market. The Exchange proposes to amend section (b)(3) to allow the Exchange to determine the Theoretical Price in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or reopening.

Specifically, the Exchange proposes that the existing text of section (b)(3) would become sub-section (A). The Exchange proposes to add the following heading and text as sub-section (B):

(B) Customer Transactions Occurring Within 10 Seconds or Less After an Opening or Re-Opening:

(i) The Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the Minimum Amount set forth in paragraph (A) above and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction.

(ii) If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction, then the Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the Minimum Amount set forth in paragraph (A) above and there was a bid/ask differential less than the Minimum Amount anytime during the 10 seconds after an opening or re-opening.

(iii) If there was no bid/ask differential less than the Minimum Amount during the 10 seconds following an Opening or Re-Opening, then the Theoretical Price of an option series is the last NBB or NBO just prior to the Customer transaction in question, as set forth in paragraph (b) above.

(iv) Customer transactions occurring more than 10 seconds after an opening or re-opening are subject to paragraph (A) above.

The following examples illustrate the functioning of the proposed rule change. Consider that the NBBO of a series opens as $0.01 at $4.00. A marketable limit order to buy one contract arrives one second later and is executed at $4.00. In the third second of trading, the NBBO narrows from $0.01 at $4.00 to $2.00 at $2.10. While the execution occurred in a market with wide widths, there was no tight market within the 10 seconds prior to execution. Accordingly, under the current rule, the trade would not qualify for obvious error review, in part due to the fact that there was only a single second of trading before the execution. Under the proposal, since a tight market existed at some point in the first 10 seconds of trading (*i.e.,* in the third second), the Exchange would be able to determine the Theoretical Price as provided in Supplementary Material .06.

As another example, the NBBO for a series opens as $0.01 at $4.00. In the seventh second of trading, a marketable limit order is received to buy one contract and is executed at $4.00. Five seconds later (*i.e.,* in the twelfth second of trading), the NBBO narrows from $0.01 at $4.00 to $2.00 at $2.10. While the execution occurred in a market with wide widths, there was no tight market within 10 seconds prior to execution. Accordingly, under the current rule, the trade would not qualify for obvious error review. Under the proposal, since no tight market existed at any point during the first 10 seconds of trading (*i.e.,* the narrow market occurred in the

[3] *See* Arca Rule 6.87–O. *See also* Securities Exchange Act Release No. 93818 (December 17, 2021), 86 FR 73009 (December 23, 2021) (SR–NYSEArca–2021–91) (Order Approving a Proposed Rule Change To Amend Rule 6.87–O).

[4] *See, e.g.,* Securities Exchange Act Release Nos. 74896 (May 7, 2015), 80 FR 27373 (May 13, 2015) (SR–ISE–2015–18); 80429 (April 11, 2017), 82 FR 18173 (April 17, 2017) (SR–ISE–2017–30).

[5] *See, e.g.,* Securities Exchange Act Release No. 81322 (August 7, 2017), 82 FR 37627 (August 11, 2017) (SR–ISE–2017–76).

[6] *See, e.g.,* Securities Exchange Act Release No. 74896 (May 7, 2015), 80 FR 27373 (May 13, 2015) (SR–ISE–2015–18).

twelfth second), the trade would not qualify for obvious error review.

The proposed rule change would also better harmonize section (b)(3) with section (b)(1) of the Rule. Under section (b)(1), the Exchange is permitted to determine the Theoretical Price for transactions occurring as part of the opening rotation (as defined in Options 3, Section 8) if there is no NBB or NBO for the affected series just prior to the erroneous transaction. However, under the current version of section (b)(3), a transaction during regular trading hours could occur in the same wide market but the Exchange would not be permitted to determine the Theoretical Price. Consider an example where one second after the Exchange opens a selected series, the NBBO is $1.00 at $5.00. At 9:30:03, a customer submits a marketable buy order to the Exchange and pays $5.00. At 9:30:03, a different exchange runs an opening auction that results in a customer paying $5.00 for the same selected series. At 9:30:06, the NBBO changes from $1.00 at $5.00 to $1.35 at $1.45. Under the current version of section (b)(3), the Exchange would not be able to determine the Theoretical Price for the trade occurring during regular trading hours. However, the trade on the other exchange could be submitted for review under (b)(1) and that exchange would be able to determine the Theoretical Price. If the proposed change to section (b)(3) were approved, both of the trades occurring at 9:30:03 (on the Exchange during regular trading and on another exchange via auction) would also be entitled to the same review regarding the same Theoretical Price based upon the same time.

The proposal would not change any obvious error review beyond the first 10 seconds of an opening or re-opening.

Proposed Change to Section (c)(4)(B)

The Exchange proposes to amend section (c)(4)(B)—the ''Adjust or Bust'' rule for Customer transactions in Obvious Error situations—to adjust rather than nullify such orders, provided the adjustment does not violate the Customer's limit price. Currently, the Rule provides that in Obvious Error situations, transactions involving non-Customers should be adjusted, while transactions involving Customers are nullified, unless a certain condition applies.[7] The Industry Working Group has concluded that the treatment of these transactions should be harmonized under the Rule, such that transactions involving Customers may benefit from adjustment, just as non-Customer transactions currently do, except where such adjustment would violate the Customer's limit price; in that instance, the trade would be nullified.

Specifically, the Exchange proposes to amend the text of section (c)(4)(B) to add that where at least one party to the Obvious Error is a Customer, ''the execution price of the transaction will be adjusted by the Official pursuant to the table immediately above. Any Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier defined in sub-paragraph (a)(4) above. However, if such adjustment(s) would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price,'' the trade will be nullified. The ''table immediately above'' referenced in the proposed text refers to the table at current Section (c)(4)(A), which provides for the adjustment of prices a specified amount away from the Theoretical Price, rather than adjusting the Theoretical Price.

Non-Substantive Amendment

The Exchange proposes a non-substantive change in Options 3, Section 20(f) to update the reference therein to the Exchange's trading halts rule from Options 8, Section 9 to Options 3, Section 9.

Implementation Date

The proposed rule change will become operative no sooner than six months following the approval of the Arca proposal to coincide with implementation on other options exchanges.[8] The Exchange will announce the effective date of the proposed changes in an alert distributed to all Members.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change to section (b)(3) of the Rule would remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest because it provides a method for addressing Obvious Error Customer transactions that occur in a wide market at the opening of trading. Generally, a wide market is an indication of a lack of liquidity in the market such that the market is unreliable. Current section (b)(3) recognizes that a persistently wide quote (*i.e.,* more than 10 seconds) should be considered the reliable market regardless of its width, but does not address transactions that occur in a wide market in the first seconds of trading, where there is no preceding 10-second period to reference. Accordingly, in the first 10 seconds of trading, there is no opportunity for a wide quote to have persisted for a sufficiently lengthy period such that the market should consider it a reliable market for the purposes of determining an Obvious Error transaction.

The proposed change would rectify this disparity and permit the Exchange to consider whether a narrow quote is present at any time during the 10-second period after an opening or re-opening. The presence of such a narrow quote would indicate that the market has gained sufficient liquidity and that the previous wide market was unreliable, such that it would be appropriate for the Exchange to determine the Theoretical Price of an Obvious Error transaction. In this way, the proposed rule harmonizes the treatment of Customer transactions that execute in an unreliable market at any point of the trading day, by making them uniformly subject to Exchange determination of the Theoretical Price.

The Exchange believes that the proposed change to section (c)(4)(B) of the Rule would remove impediments to and perfect the mechanism of a free and open market and a national market system and enhance the protection of investors by harmonizing the treatment of non-Customer transactions and Customer transactions under the Rule. Under the current Rule, Obvious Error situations involving non-Customer transactions are adjusted, while those involving Customer transactions are generally nullified, unless they meet the additional requirements of section (c)(4)(C) (*i.e.,* where a Member has 200 or more Customer transactions under

[7] Specifically, the current Rule provides at section (c)(4)(C) that if a Member has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, then the Exchange will apply the non-Customer adjustment criteria found in section (c)(4)(A).

[8] *See supra* note 3.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less). The proposal would harmonize the treatment of non-Customer and Customer transactions by providing for the adjustment of all such transactions, except where such adjustment would violate the Customer's limit price.

When it proposed the current rule in 2015, the Exchange believed there were sound reasons for treating non-Customer transactions and Customer transactions differently. At the time, the Exchange stated its belief that ''Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts,'' and that nullifying Obvious Error transactions involving Customers would give Customers ''greater protections'' than adjusting such transactions by eliminating the possibility that a Customer's order will be adjusted to a significantly different price. The Exchange also noted its belief that ''Customers are . . . less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need of maintaining a position at an adjusted price than non-Customers.[11]

Those assumptions about Customer trading and hedging activity no longer hold. The Exchange and the Industry Working Group believe that over the course of the last five years, Customers that use options have become more sophisticated, as retail broker-dealers have enhanced the trading tools available. Pursuant to OCC data, volumes clearing in the Customer range have expanded from 12,022,163 ADV in 2015 to 35,081,130 ADV in 2021. This increase in trading activity underscores the greater understanding of options by Customers as a trading tool and its use in the markets. Customers who trade options today largely are more educated, have better trading tools, and have better access to financial news than any time prior.[12] The proposed rule would extend the hedging protections currently enjoyed by non-Customers to Customers, by allowing them to maintain an option position at an adjusted price, which would in turn prevent a cascading effect by maintaining the hedge relationship between the option transaction and any other transactions in a related security.

The Exchange believes that extending such hedging protections to Customer transactions would remove impediments to and perfect the mechanism of a free and open market and a national market system and enhance the protection of investors by providing greater certainty of execution for all participants to options transactions. Under the current Rule, a Customer that believes its transaction was executed pursuant to an Obvious Error may be disincentivized from submitting the transaction for review, since during the review process, the Customer would be uncertain whether the trade would be nullified, and if so, whether market conditions would still permit the opportunity to execute a related order at a better price after the nullification ruling is finalized. In contrast, under the proposed rule, the Customer would know that the only likely outcomes of submitting a trade to Obvious Error review would be that the trade would stand or be re-executed at a better price; the trade would only be nullified if the adjustment would violate the order's limit. Similarly, under the current Rule, during the review period, a market maker who traded contra to the Customer would be uncertain if it should retain any position executed to hedge the original trade, or attempt to unwind it, possibly at a significant loss. Under the proposed rule change, this uncertainty is largely eliminated, and the question would be whether the already-executed and hedged trade would be adjusted to a better price for the Customer, or if it would stand as originally executed. In this way, the proposed rule enhances the protection of investors and removes impediments to and perfects the mechanism of a free and open market and a national market system.

The proposed rule also addresses the concern the Exchange cited in its 2015 filing that adjusting, rather than nullifying, Customer transactions could lead to a Customer's order being adjusted to a significantly different price. To address that concern, the proposed rule would prevent Customer transactions from being adjusted to a price that violates the order's limit; if the adjustment would violate a Customer's limit, the trade would instead be nullified. The Exchange believes it is in the best interest of investors to expand the availability of adjustments to Customer transactions in all Obvious Error situations except where the adjustment would violate the Customer's limit price.

Further, the Exchange believes that, with respect to such proposed adjustments to Customer transactions, it is appropriate to use the same form of adjustment as is currently in place with respect to non-Customer transactions as laid out in the table in section (c)(4)(A). That is, the Exchange believes that it is appropriate to adjust to prices a specified amount away from the Theoretical Price rather than to adjust the Theoretical Price, even though the Exchange has determined a given trade to be erroneous in nature, because the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an Obvious Error has occurred, additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange believes that providing an adjustment to the Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors, while adjusting to prices a specified amount away from the Theoretical Price would incentivize such behavior.

The Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed change to section (b)(3) would apply to all instances of a wide market occurring within the first 10 seconds of trading followed by a narrow market at any point in the subsequent 10-second period, regardless of the types of market participants involved in such transactions. The proposed change to section (c)(4)(B) would harmonize the treatment of Obvious Error transactions involving Customers and non-Customers, no matter what type of market participants those parties may be.

Lastly, the Exchange believes that the non-substantive correction to update the rule cite within Options 3, Section 20(f) is consistent with the Act because it will bring greater transparency to the Rulebook and reduce potential confusion by investors.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange anticipates that the other options exchanges will adopt

[11] *See* Securities Exchange Act Release No. 74896 (May 7, 2015), 80 FR 27373 (May 13, 2015) (SR–ISE–2015–18).

[12] *See* ''Retail Traders Adopt Options En Masse'' by Dan Raju, available at *https://www.nasdaq.com/articles/retail-traders-adopt-options-en-masse-2020-12-08.*

substantively similar proposals, such that there would be no burden on intermarket competition from the Exchange's proposal. Accordingly, the proposed change is not meant to affect competition among the options exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [13] and subparagraph (f)(6) of Rule 19b0z64 thereunder.[14]

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–ISE–2022–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–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–ISE–2022–03 and should be submitted on or before February 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–02436 Filed 2–4–22; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94120; File No. SR–GEMX–2022–04]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update the Obvious Error Rule

February 1, 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 26, 2022, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Section 20 (Nullification and Adjustment of Options Transactions including Obvious Errors).

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Options 3, Section 20 (Nullification and Adjustment of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Options Transactions including Obvious Errors) to improve the operation of the Rule. Following discussions with other exchanges and a cross-section of industry participants and in coordination with the Listed Options Market Structure Working Group (''LOMSWG'') (collectively, the ''Industry Working Group''), the Exchange proposes: (1) To amend section (b)(3) of the Rule to permit the Exchange to determine the Theoretical Price of a Customer option transaction in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or re-opening; and (2) to amend section (c)(4)(B) of the Rule to adjust, rather than nullify, Customer transactions in Obvious Error situations, provided the adjustment does not violate the limit price. The foregoing changes are based on the recently amended rules of NYSE Arca, Inc. (''Arca'').[3] Each change is discussed in detail below.

Proposed Change to Section (b)(3)

Options 3, Section 20 has been part of various harmonization efforts by the Industry Working Group.[4] These efforts have often centered around the Theoretical Price for which an options transaction should be compared to determine whether an Obvious Error has occurred. For instance, all options exchanges have adopted language comparable to Supplementary Material .04,[5] which explains how an exchange is to determine Theoretical Price at the open, when there are no valid quotes, and when there is a wide quote. This includes at times the use of a singular third-party vendor, known as a TP Provider (currently CBOE Livevol, LLC).

Similarly, section (b)(3) of Options 3, Section 20 was previously harmonized across all options exchanges to handle situations where executions occur in markets that are wide (as set forth in the rule).[6] Under that section, the Exchange determines the Theoretical Price if the NBBO for the subject series is wide immediately before execution and a narrow market (as set forth in the rule) existed ''during the 10 seconds prior to the transaction.'' The rule goes on to clarify that, should there be no narrow quotes ''during the 10 seconds prior to the transaction,'' the Theoretical Price for the affected series is the NBBO that existed at the time of execution (regardless of its width).

In recent discussions, the Industry Working Group has identified proposed changes to section (b)(3) of Options 3, Section 20 that would improve the Rule's functioning. Currently, section (b)(3) does not permit the Exchange to determine the Theoretical Price unless there is a narrow quote 10 seconds prior to the transaction. However, in the first seconds of trading, there is no 10-second period ''prior to the transaction.'' Further, the Industry Working Group has observed that prices in certain series can be disjointed at the start of trading. Accordingly, the Exchange proposes to provide additional protections to trading in certain circumstances immediately after the opening before liquidity has had a chance to enter the market. The Exchange proposes to amend section (b)(3) to allow the Exchange to determine the Theoretical Price in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or reopening.

Specifically, the Exchange proposes that the existing text of section (b)(3) would become sub-section (A). The Exchange proposes to add the following heading and text as sub-section (B):

(B) Customer Transactions Occurring Within 10 Seconds or Less After an Opening or Re-Opening:

(i) The Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the Minimum Amount set forth in paragraph (A) above and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction.

(ii) If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction, then the Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the Minimum Amount set forth in paragraph (A) above and there was a bid/ask differential less than the Minimum Amount anytime during the 10 seconds after an opening or re-opening.

(iii) If there was no bid/ask differential less than the Minimum Amount during the 10 seconds following an Opening or Re-Opening, then the Theoretical Price of an option series is the last NBB or NBO just prior to the Customer transaction in question, as set forth in paragraph (b) above.

(iv) Customer transactions occurring more than 10 seconds after an opening or re-opening are subject to paragraph (A) above.

The following examples illustrate the functioning of the proposed rule change. Consider that the NBBO of a series opens as $0.01 at $4.00. A marketable limit order to buy one contract arrives one second later and is executed at $4.00. In the third second of trading, the NBBO narrows from $0.01 at $4.00 to $2.00 at $2.10. While the execution occurred in a market with wide widths, there was no tight market within the 10 seconds prior to execution. Accordingly, under the current rule, the trade would not qualify for obvious error review, in part due to the fact that there was only a single second of trading before the execution. Under the proposal, since a tight market existed at some point in the first 10 seconds of trading (*i.e.,* in the third second), the Exchange would be able to determine the Theoretical Price as provided in Supplementary Material .04.

As another example, the NBBO for a series opens as $0.01 at $4.00. In the seventh second of trading, a marketable limit order is received to buy one contract and is executed at $4.00. Five seconds later (*i.e.,* in the twelfth second of trading), the NBBO narrows from $0.01 at $4.00 to $2.00 at $2.10. While the execution occurred in a market with wide widths, there was no tight market within 10 seconds prior to execution. Accordingly, under the current rule, the trade would not qualify for obvious error review. Under the proposal, since no tight market existed at any point during the first 10 seconds of trading (*i.e.,* the narrow market occurred in the twelfth second), the trade would not qualify for obvious error review.

The proposed rule change would also better harmonize section (b)(3) with section (b)(1) of the Rule. Under section (b)(1), the Exchange is permitted to determine the Theoretical Price for transactions occurring as part of the opening rotation (as defined in Options 3, Section 8) if there is no NBB or NBO for the affected series just prior to the erroneous transaction. However, under the current version of section (b)(3), a transaction during regular trading hours could occur in the same wide market but the Exchange would not be permitted to determine the Theoretical Price. Consider an example where one second after the Exchange opens a selected series, the NBBO is $1.00 at $5.00. At 9:30:03, a customer submits a marketable buy order to the Exchange and pays $5.00. At 9:30:03, a different exchange runs an opening auction that results in a customer paying $5.00 for the same selected series. At 9:30:06, the NBBO changes from $1.00 at $5.00 to $1.35 at $1.45. Under the current version of section (b)(3), the Exchange

[3] *See* Arca Rule 6.87–O. *See also* Securities Exchange Act Release No. 93818 (December 17, 2021), 86 FR 73009 (December 23, 2021) (SR–NYSEArca–2021–91) (Order Approving a Proposed Rule Change to Amend Rule 6.87–O).

[4] *See, e.g.,* Securities Exchange Act Release No. 74897 (May 7, 2015), 80 FR 27415 (May 13, 2015) (SR–ISEGemini–2015–11).

[5] *See, e.g.,* Securities Exchange Act Release No. 81354 (August 8, 2017), 82 FR 37958 (August 14, 2017) (SR–GEMX–2017–36).

[6] *See, e.g.,* Securities Exchange Act Release No. 74897 (May 7, 2015), 80 FR 27415 (May 13, 2015) (SR–ISEGemini–2015–11).

would not be able to determine the Theoretical Price for the trade occurring during regular trading hours. However, the trade on the other exchange could be submitted for review under (b)(1) and that exchange would be able to determine the Theoretical Price. If the proposed change to section (b)(3) were approved, both of the trades occurring at 9:30:03 (on the Exchange during regular trading and on another exchange via auction) would also be entitled to the same review regarding the same Theoretical Price based upon the same time.

The proposal would not change any obvious error review beyond the first 10 seconds of an opening or re-opening.

Proposed Change to Section (c)(4)(B)

The Exchange proposes to amend section (c)(4)(B)—the ''Adjust or Bust'' rule for Customer transactions in Obvious Error situations—to adjust rather than nullify such orders, provided the adjustment does not violate the Customer's limit price. Currently, the Rule provides that in Obvious Error situations, transactions involving non-Customers should be adjusted, while transactions involving Customers are nullified, unless a certain condition applies.[7] The Industry Working Group has concluded that the treatment of these transactions should be harmonized under the Rule, such that transactions involving Customers may benefit from adjustment, just as non-Customer transactions currently do, except where such adjustment would violate the Customer's limit price; in that instance, the trade would be nullified.

Specifically, the Exchange proposes to amend the text of section (c)(4)(B) to add that where at least one party to the Obvious Error is a Customer, ''the execution price of the transaction will be adjusted by the Official pursuant to the table immediately above. Any Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier defined in sub-paragraph (a)(4) above. However, if such adjustment(s) would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price,'' the trade will be nullified. The ''table immediately above'' referenced in the proposed text refers to the table at current Section (c)(4)(A), which provides for the adjustment of prices a specified amount away from the Theoretical Price, rather than adjusting the Theoretical Price.

Implementation Date

The proposed rule change will become operative no sooner than six months following the approval of the Arca proposal to coincide with implementation on other options exchanges.[8] The Exchange will announce the effective date of the proposed changes in an alert distributed to all Members.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change to section (b)(3) of the Rule would remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest because it provides a method for addressing Obvious Error Customer transactions that occur in a wide market at the opening of trading. Generally, a wide market is an indication of a lack of liquidity in the market such that the market is unreliable. Current section (b)(3) recognizes that a persistently wide quote (*i.e.,* more than 10 seconds) should be considered the reliable market regardless of its width, but does not address transactions that occur in a wide market in the first seconds of trading, where there is no preceding 10-second period to reference. Accordingly, in the first 10 seconds of trading, there is no opportunity for a wide quote to have persisted for a sufficiently lengthy period such that the market should consider it a reliable market for the purposes of determining an Obvious Error transaction.

The proposed change would rectify this disparity and permit the Exchange to consider whether a narrow quote is present at any time during the 10-second period after an opening or re-opening. The presence of such a narrow quote would indicate that the market has gained sufficient liquidity and that the previous wide market was unreliable, such that it would be appropriate for the Exchange to determine the Theoretical Price of an Obvious Error transaction. In this way, the proposed rule harmonizes the treatment of Customer transactions that execute in an unreliable market at any point of the trading day, by making them uniformly subject to Exchange determination of the Theoretical Price.

The Exchange believes that the proposed change to section (c)(4)(B) of the Rule would remove impediments to and perfect the mechanism of a free and open market and a national market system and enhance the protection of investors by harmonizing the treatment of non-Customer transactions and Customer transactions under the Rule. Under the current Rule, Obvious Error situations involving non-Customer transactions are adjusted, while those involving Customer transactions are generally nullified, unless they meet the additional requirements of section (c)(4)(C) (*i.e.,* where a Member has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less). The proposal would harmonize the treatment of non-Customer and Customer transactions by providing for the adjustment of all such transactions, except where such adjustment would violate the Customer's limit price.

When it proposed the current rule in 2015, the Exchange believed there were sound reasons for treating non-Customer transactions and Customer transactions differently. At the time, the Exchange stated its belief that ''Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts,'' and that nullifying Obvious Error transactions involving Customers would give Customers ''greater protections'' than adjusting such transactions by eliminating the possibility that a Customer's order will be adjusted to a significantly different price. The Exchange also noted its belief that ''Customers are . . . less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need

[7] Specifically, the current Rule provides at section (c)(4)(C) that if a Member has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, then the Exchange will apply the non-Customer adjustment criteria found in section (c)(4)(A).

[8] *See supra* note 3.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

of maintaining a position at an adjusted price than non-Customers.[11]

Those assumptions about Customer trading and hedging activity no longer hold. The Exchange and the Industry Working Group believe that over the course of the last five years, Customers that use options have become more sophisticated, as retail broker-dealers have enhanced the trading tools available. Pursuant to OCC data, volumes clearing in the Customer range have expanded from 12,022,163 ADV in 2015 to 35,081,130 ADV in 2021. This increase in trading activity underscores the greater understanding of options by Customers as a trading tool and its use in the markets. Customers who trade options today largely are more educated, have better trading tools, and have better access to financial news than any time prior.[12] The proposed rule would extend the hedging protections currently enjoyed by non-Customers to Customers, by allowing them to maintain an option position at an adjusted price, which would in turn prevent a cascading effect by maintaining the hedge relationship between the option transaction and any other transactions in a related security.

The Exchange believes that extending such hedging protections to Customer transactions would remove impediments to and perfect the mechanism of a free and open market and a national market system and enhance the protection of investors by providing greater certainty of execution for all participants to options transactions. Under the current Rule, a Customer that believes its transaction was executed pursuant to an Obvious Error may be disincentivized from submitting the transaction for review, since during the review process, the Customer would be uncertain whether the trade would be nullified, and if so, whether market conditions would still permit the opportunity to execute a related order at a better price after the nullification ruling is finalized. In contrast, under the proposed rule, the Customer would know that the only likely outcomes of submitting a trade to Obvious Error review would be that the trade would stand or be re-executed at a better price; the trade would only be nullified if the adjustment would violate the order's limit. Similarly, under the current Rule, during the review period, a market maker who traded contra to the Customer would be uncertain if it should retain any position executed to hedge the original trade, or attempt to unwind it, possibly at a significant loss. Under the proposed rule change, this uncertainty is largely eliminated, and the question would be whether the already-executed and hedged trade would be adjusted to a better price for the Customer, or if it would stand as originally executed. In this way, the proposed rule enhances the protection of investors and removes impediments to and perfects the mechanism of a free and open market and a national market system.

The proposed rule also addresses the concern the Exchange cited in its 2015 filing that adjusting, rather than nullifying, Customer transactions could lead to a Customer's order being adjusted to a significantly different price. To address that concern, the proposed rule would prevent Customer transactions from being adjusted to a price that violates the order's limit; if the adjustment would violate a Customer's limit, the trade would instead be nullified. The Exchange believes it is in the best interest of investors to expand the availability of adjustments to Customer transactions in all Obvious Error situations except where the adjustment would violate the Customer's limit price.

Further, the Exchange believes that, with respect to such proposed adjustments to Customer transactions, it is appropriate to use the same form of adjustment as is currently in place with respect to non-Customer transactions as laid out in the table in section (c)(4)(A). That is, the Exchange believes that it is appropriate to adjust to prices a specified amount away from the Theoretical Price rather than to adjust the Theoretical Price, even though the Exchange has determined a given trade to be erroneous in nature, because the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an Obvious Error has occurred, additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange believes that providing an adjustment to the Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors, while adjusting to prices a specified amount away from the Theoretical Price would incentivize such behavior.

The Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed change to section (b)(3) would apply to all instances of a wide market occurring within the first 10 seconds of trading followed by a narrow market at any point in the subsequent 10-second period, regardless of the types of market participants involved in such transactions. The proposed change to section (c)(4)(B) would harmonize the treatment of Obvious Error transactions involving Customers and non-Customers, no matter what type of market participants those parties may be.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange anticipates that the other options exchanges will adopt substantively similar proposals, such that there would be no burden on intermarket competition from the Exchange's proposal. Accordingly, the proposed change is not meant to affect competition among the options exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

[11] *See* Securities Exchange Act Release No. 74897 (May 7, 2015), 80 FR 27415 (May 13, 2015) (SR–ISEGemini–2015–11).

[12] *See* ''Retail Traders Adopt Options En Masse'' by Dan Raju, available at *https://www.nasdaq.com/articles/retail-traders-adopt-options-en-masse-2020-12-08.*

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule

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–GEMX–2022–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2022–04. 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–GEMX–2022–04 and should be submitted on or before February 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

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change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94124; File No. SR–BOX–2022–05]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BOX Rule 7170 (Nullification and Adjustment of Options Transactions Including Obvious Errors) To Improve the Operation of the Rule

February 1, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), and Rule 19b–4 thereunder, notice is hereby given that on January 26. 2022, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rule 7170 (Nullification and Adjustment of Options Transactions including Obvious Errors) to improve the operation of the Rule. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BOX Rule 7170 (Nullification and Adjustment of Options Transactions including Obvious Errors) to improve the operation of the Rule. This is a competitive filing that is based on a proposal recently submitted by NYSE Arca, Inc. (''NYSE Arca'') and approved by the Commission.[1]

Following discussions with other exchanges and a cross-section of industry participants and in coordination with the Listed Options Market Structure Working Group (''LOMSWG'') (collectively, the ''Industry Working Group''), the Exchange proposes: (1) To amend section (b)(3) of the Rule to permit the Exchange to determine the Theoretical Price[2] of a Customer[3] option transaction in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or re-opening; and (2) to amend section (c)(4)(B) of the Rule to adjust, rather than nullify, Customer transactions in Obvious Error situations, provided the adjustment does not violate the limit price.

Proposed Change to Section (b)(3)

Exchange Rule 7170 has been part of various harmonization efforts by the Industry Working Group.[4] These efforts

[1] *See* Securities Exchange Act Release No. 34–93818 (December 17, 2021), 86 FR 73009 (December 23, 2021) (SR–NYSEArca–2021–91) (Order Approving a Proposed Rule Change to Amend Rule 6.87–O).

[2] *See* Exchange Rule 7170(b).

[3] For purposes of Rule 7170, the term ''Customer'' does not include any broker-dealer or Professional Customer. *See* Exchange Rule 7170(a)(1).

[4] *See e.g.,* Securities Exchange Act Release Nos. 74911 (May 8, 2015), 80 FR 27717 (May 14, 2015) (SR–BOX–2015–18); 80247 (March 15, 2017), 82 FR 14589 (March 21, 2017) (SR–BOX–2017–08).

have often centered around the Theoretical Price for which an options transaction should be compared to determine whether an Obvious Error has occurred. For instance, all options exchanges have adopted language comparable to IM–7170–5, Exchange Determining Theoretical Price,[5] which explains how an exchange is to determine Theoretical Price at the open, when there are no valid quotes, and when there is a wide quote. This includes at times the use of a singular third-party vendor, known as a TP Provider (currently CBOE Livevol, LLC).

Similarly, section (b)(3) of Rule 7170 was previously harmonized across all options exchanges to handle situations where executions occur in markets that are wide (as set forth in the rule).[6] Under that section, the Exchange determines the Theoretical Price if the NBBO[7] for the subject series is wide immediately before execution and a narrow market (as set forth in the rule) existed ''during the 10 seconds prior to the transaction.'' The rule goes on to clarify that, should there be no narrow quotes ''during the 10 seconds prior to the transaction,'' the Theoretical Price for the affected series is the NBBO that existed at the time of execution (regardless of its width). In recent discussions, the Industry Working Group has identified proposed changes to section (b)(3) of Rule 7170 that would improve the Rule's functioning. Currently, section (b)(3) does not permit the Exchange to determine the Theoretical Price unless there is a narrow quote 10 seconds prior to the transaction. However, in the first seconds of trading, there is no 10-second period ''prior to the transaction.'' Further, the Industry Working Group has observed that prices in certain series can be disjointed at the start of trading. Accordingly, the Exchange proposes to provide additional protections to trading in certain circumstances immediately after the opening before liquidity has had a chance to enter the market. The Exchange proposes to amend section (b)(3) to allow the Exchange to determine the Theoretical Price in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or reopening.

Specifically, the Exchange proposes that the existing text of section (b)(3) would become subsection ''(A).'' The Exchange proposes to add the following heading and text as subsection ''(B)'':

(B) Customer Transactions Occurring Within 10 Seconds or Less After an Opening or Re-Opening:

(i) The Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the Minimum Amount set forth in paragraph A above and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction.

(ii) If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction, then the Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the Minimum Amount set forth in paragraph A above and there was a bid/ask differential less than the Minimum Amount anytime during the 10 seconds after an opening or re-opening.

(iii) If there was no bid/ask differential less than the Minimum Amount during the 10 seconds following an Opening or Re-Opening, then the Theoretical Price of an option series is the last NBB or NBO just prior to the Customer transaction in question, as set forth in paragraph (b) above.

(iv) Customer transactions occurring more than 10 seconds after an opening or re-opening are subject to paragraph A above.

The following examples illustrate the functioning of the proposed rule change. Consider that the NBBO of a series opens as $0.01 at $4.00. A marketable limit order to buy one contract arrives one second later and is executed at $4.00. In the third second of trading, the NBBO narrows from $0.01 at $4.00 to $2.00 at $2.10. While the execution occurred in a market with wide widths, there was no tight market within the 10 seconds prior to execution. Accordingly, under the current rule, the trade would not qualify for Obvious Error review, in part due to the fact that there was only a single second of trading before the execution. Under the proposal, since a tight market existed at some point in the first 10 seconds of trading (*i.e.,* in the third second), the Exchange would be able to determine the Theoretical Price as provided in IM–7170–5. As another example, the NBBO for a series opens as $0.01 at $4.00. In the seventh second of trading, a marketable limit order is received to buy one contract and is executed at $4.00. Five seconds later (*i.e.,* in the twelfth second of trading), the NBBO narrows from $0.01 at $4.00 to $2.00 at $2.10. While the execution occurred in a market with wide widths, there was no tight market within 10 seconds prior to execution. Accordingly, under the current rule, the trade would not qualify for Obvious Error review. Under the proposal, since no tight market existed at any point during the first 10 seconds of trading (*i.e.,* the narrow market occurred in the twelfth second), the trade would not qualify for Obvious Error review. The proposed rule change would also better harmonize section (b)(3) with section (b)(1) of the Rule. Under section (b)(1), the Exchange is permitted to determine the Theoretical Price for transactions occurring as part of the opening auction process (as described in Exchange Rule 7170) if there is no NBB or NBO for the affected series just prior to the erroneous transaction. However, under the current version of section (b)(3), a core trading transaction could occur in the same wide market but the Exchange would not be permitted to determine the Theoretical Price. Consider an example where one second after the Exchange opens a selected series, the NBBO is $1.00 at $5.00. At 9:30:03, a customer submits a marketable buy order to the Exchange and pays $5.00. At 9:30:03, a different exchange runs an opening auction that results in a customer paying $5.00 for the same selected series. At 9:30:06, the NBBO changes from $1.00 at $5.00 to $1.35 at $1.45. Under the current version of section (b)(3), the Exchange would not be able to determine the Theoretical Price for the trade occurring during core trading. However, the trade on the other exchange could be submitted for review under (b)(1) and that exchange would be able to determine the Theoretical Price. If the proposed change to section (b)(3) were approved, both of the trades occurring at 9:30:03 (on the Exchange during core trading and on another exchange via auction) would also be entitled to the same review regarding the same Theoretical Price based upon the same time.

The proposal would not change any Obvious Error review beyond the first 10 seconds of an opening or re-opening.

Proposed Change to Section (c)(4)(B)

The Exchange proposes to amend section (c)(4)(B)—the ''Adjust or Bust'' rule for Customer transactions in Obvious Error situations—to adjust rather than nullify such orders, provided the adjustment does not violate the Customer's limit price.

Currently, the Rule provides that in Obvious Error situations, transactions involving non-Customers should be adjusted, while transactions involving Customers are nullified, unless a certain condition applies.[8] The Industry

[5] *See* Securities Exchange Act Release No. 81351 (August 8, 2017), 82 FR 37920 (August 14, 2017) (SR–BOX–2017–25).

[6] *See supra* note 6.

[7] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[8] Specifically, the current Rule provides at section (c)(4)(C) that if any Participant has 200 or

Working Group has concluded that the treatment of these transactions should be harmonized under the Rule, such that transactions involving Customers may benefit from adjustment, just as non-Customer transactions currently do, except where such adjustment would violate the Customer's limit price; in that instance, the trade would be nullified.

Specifically, the Exchange proposes to amend the text of section (c)(4)(B) to add that where at least one party to the Obvious Error is a Customer, ''the execution price of the transaction will be adjusted by the Official pursuant to the table immediately above. Any Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier defined in subparagraph (a)(4) above. However, if such adjustment(s) would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price,'' the trade will be nullified. The ''table immediately above'' referenced in the proposed text refers to the table at current Section (c)(4)(A), which provides for the adjustment of prices a specified amount away from the Theoretical Price, rather than adjusting the Theoretical Price.

The Exchange proposes no other changes at this time.

Implementation Date

The proposed rule change will become operative no sooner than six months following the approval of the NYSE Arca proposal [9] to coincide with implementation on other option exchanges. The Exchange will announce the implementation date to its Participants via Regulatory Circular.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[10] in general, and Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes the proposed rule change to section (b)(3) of the Rule would remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest because it provides a method for addressing Obvious Error Customer transactions that occur in a wide market at the opening of trading. Generally, a wide market is an indication of a lack of liquidity in the market such that the market is unreliable. Current section (b)(3) recognizes that a persistently wide quote (*i.e.,* more than 10 seconds) should be considered the reliable market regardless of its width, but does not address transactions that occur in a wide market in the first seconds of trading, where there is no preceding 10-second period to reference. Accordingly, in the first 10 seconds of trading, there is no opportunity for a wide quote to have persisted for a sufficiently lengthy period such that the market should consider it a reliable market for the purposes of determining an Obvious Error transaction.

The proposed change would rectify this disparity and permit the Exchange to consider whether a narrow quote is present at any time during the 10-second period after an opening or reopening. The presence of such a narrow quote would indicate that the market has gained sufficient liquidity and that the previous wide market was unreliable, such that it would be appropriate for the Exchange to determine the Theoretical Price of an Obvious Error transaction. In this way, the proposed rule harmonizes the treatment of Customer transactions that execute in an unreliable market at any point of the trading day, by making them uniformly subject to Exchange determination of the Theoretical Price.

The Exchange believes that the proposed change to section (c)(4)(B) of the Rule would remove impediments to and perfect the mechanism of a free and open market and a national market system and enhance the protection of investors by harmonizing the treatment of non-Customer transactions and Customer transactions under the Rule. Under the current Rule, Obvious Error situations involving non-Customer transactions are adjusted, while those involving Customer transactions are generally nullified, unless they meet the additional requirements of section (c)(4)(C) (*i.e.,* where a Participant has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less.) The proposal would harmonize the treatment of non-Customer and Customer transactions by providing for the adjustment of all such transactions, except where such adjustment would violate the Customer's limit price.

When it proposed the current rule in 2015, the Exchange believed there were sound reasons for treating non-Customer transactions and Customer transactions differently. At the time, the Exchange stated its belief that ''Customers are not necessarily immersed in the day-today trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts,'' and that nullifying Obvious Error transactions involving Customers would give Customers ''greater protections'' than adjusting such transactions by eliminating the possibility that a Customer's order will be adjusted to a significantly different price. The Exchange also noted its belief that ''Customers are . . . less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need of maintaining a position at an adjusted price than non-Customers.'' [12]

Those assumptions about Customer trading and hedging activity no longer hold. The Exchange and the Industry Working Group believe that over the course of the last five years, Customers that use options have become more sophisticated, as retail broker-dealers have enhanced the trading tools available. Pursuant to OCC data, volumes clearing in the Customer range have expanded from 12,022,163 ADV in 2015 to 35,081,130 ADV in 2021. This increase in trading activity underscores the greater understanding of options by Customers as a trading tool and its use in the markets. Customers who trade options today largely are more educated, have better trading tools, and have better access to financial news than any time prior.[13] The proposed rule would extend the hedging protections currently enjoyed by non-Customers to Customers, by allowing them to maintain an option position at an

more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, then the Exchange will apply the non-Customer adjustment criteria set forth in (c)(4)(A) for such transactions.

[9] See Securities Exchange Act Release No. 93818 (December 17, 2021), 86 FR 73009 (December 23, 2021) (SR–NYSEArca–2021–91) (Order Approving a Proposed Rule Change to Amend Rule 6.87–O).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* Securities Exchange Act Release No. 74911 (May 8, 2015), 80 FR 27717 (May 14, 2015) (SR–BOX–2015–18).

[13] Dan Raju, *Retail Traders Adopt Options En Masse,* by Dan Raju, (Dec 8, 2020) available at *https://www.nasdaq.com/articles/retail-traders-adopt-options-en-masse-2020-12-08.*

adjusted price, which would in turn prevent a cascading effect by maintaining the hedge relationship between the option transaction and any other transactions in a related security.

The Exchange believes that extending such hedging protections to Customer transactions would remove impediments to and perfect the mechanism of a free and open market and a national market system and enhance the protection of investors by providing greater certainty of execution for all participants to options transactions. Under the current Rule, a Customer that believes its transaction was executed pursuant to an Obvious Error may be disincentivized from submitting the transaction for review, since during the review process, the Customer would be uncertain whether the trade would be nullified, and if so, whether market conditions would still permit the opportunity to execute a related order at a better price after the nullification ruling is finalized. In contrast, under the proposed rule, the Customer would know that the only likely outcomes of submitting a trade to Obvious Error review would be that the trade would stand or be re-executed at a better price; the trade would only be nullified if the adjustment would violate the order's limit. Similarly, under the current Rule, during the review period, a market maker who traded contra to the Customer would be uncertain if it should retain any position executed to hedge the original trade, or attempt to unwind it, possibly at a significant loss. Under the proposed rule change, this uncertainty is largely eliminated, and the question would be whether the already-executed and hedged trade would be adjusted to a better price for the Customer, or if it would stand as originally executed. In this way, the proposed rule enhances the protection of investors and removes impediments to and perfects the mechanism of a free and open market and a national market system.

The proposed rule also addresses the concern the Exchange cited in its 2015 filing that adjusting, rather than nullifying, Customer transactions could lead to a Customer's order being adjusted to a significantly different price. To address that concern, the proposed rule would prevent Customer transactions from being adjusted to a price that violates the order's limit; if the adjustment would violate a Customer's limit, the trade would instead be nullified. The Exchange believes it is in the best interest of investors to expand the availability of adjustments to Customer transactions in all Obvious Error situations except where the adjustment would violate the Customer's limit price. Further, the Exchange believes that, with respect to such proposed adjustments to Customer transactions, it is appropriate to use the same form of adjustment as is currently in place with respect to non-Customer transactions as laid out in the table in section (c)(4)(A). That is, the Exchange believes that it is appropriate to adjust to prices a specified amount away from the Theoretical Price rather than to adjust the Theoretical Price, even though the Exchange has determined a given trade to be erroneous in nature, because the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an Obvious Error has occurred, additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange believes that providing an adjustment to the Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors, while adjusting to prices a specified amount away from the Theoretical Price would incentivize such behavior. The Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed change to section (b)(3) would apply to all instances of a wide market occurring within the first 10 seconds of trading followed by a narrow market at any point in the subsequent 10-second period, regardless of the types of market participants involved in such transactions. The proposed change to section (c)(4)(B) would harmonize the treatment of Obvious Error transactions involving Customers and non-Customers, no matter what type of market participants those parties may be. For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by NYSE Arca that was recently approved by the Commission.[14] The Exchange anticipates that the other options exchanges will adopt substantively similar proposals, such that there would be no burden on intermarket competition from the Exchange's proposal. Accordingly, the proposed change is not meant to affect competition among the options exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6)[16] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

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:

[14] *See supra,* note 3.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2022–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR– BOX–2022–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2022–05 and should be submitted on or before February 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–02430 Filed 2–4–22; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2022–0003]

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA

Comments: https://www.reginfo.gov/public/do/PRAMain. Submit your comments online referencing Docket ID Number [SSA–2022–0003].

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2022–0003].

SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than March 9, 2022. Individuals can obtain copies of these OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Application for a Social Security Number Card, the Social Security Number Application Process (SSNAP), internet SSN Replacement Card (iSSNRC) Application, and Online Social Security Number Application Process (oSSNAP)—20 CFR 422.103–422.110—0960–0066. SSA collects information on the SS–5 (used in the United States) and SS–5–FS (used outside the United States) to issue original or replacement Social Security cards. SSA also enters the application data into the SSNAP application when issuing a card via telephone or in person. In addition, hospitals collect the same information on SSA's behalf for newborn children through the Enumeration-at-Birth process. In this process, parents of newborns provide hospital birth registration clerks with information required to register these newborns. Hospitals send this information to State Bureaus of Vital Statistics (BVS), and they send the information to SSA's National Computer Center. SSA then uploads the data to the SSA mainframe along with all other enumeration data, and we assign the newborn a Social Security number (SSN) and issue a Social Security card. Respondents can also use these modalities to request a change in their SSN records. In addition, the iSSNRC internet application collects information similar to the paper SS–5 for no-change replacement SSN cards for adult U.S. citizens. The iSSNRC modality allows certain applicants for SSN replacement cards to complete the internet application and submit the required evidence online rather than completing a paper Form SS–5. Finally, oSSNAP collects information similar to that which we collect on the paper SS–5 for no change situations, with the exception of name change, new or replacement SSN cards for U.S Citizens (adult and minor children), and replacement cards only for non-U.S. citizens. oSSNAP allows these applicants for new or replacement SSN cards to start the application process on-line, receive a list of evidentiary documents, and then submit the application data to SSA for further processing by SSA employees. Applicants need to visit a local SSA office to complete the application process. The respondents for this information collection are applicants for original and replacement Social Security cards, or individuals who wish to change information in their SSN records, who use any of the modalities described above.

Type of Request: Revision of an OMB-approved information collection.

Application scenario	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
EAB Modality							
Hospital staff who relay the State birth certificate information to the BVS and SSA through the EAB process	3,587,284	1	5	298,857	* $24.49	** 0	*** $7,319,008
iSSNRC Modality							
Adult U.S. Citizens requesting a replacement card with no changes through the iSSNRC	3,141,061	1	5	261,755	* 27.07	** 0	*** 7,085,708
Adult U.S. Citizens requesting a replacement card with a name change through iSSNRC	44,818	1	5	3,735	* 27.07	** 0	*** 101,107
oSSNAP Modality							
Adult U.S. Citizens providing information to receive a replacement card through the oSSNAP +	866,575	1	5	72,215	* 27.07	** 24	*** 11,338,134
Adult U.S. Citizens providing information to receive an original card through the oSSNAP +	31,521	1	5	2,627	* 27.07	* 24	*** 412,412
Adult Non-U.S. Citizens providing information to receive an original card through the oSSNAP +	114,429	1	5	9,536	* 27.07	** 24	*** 1,497,188
Adult Non-U.S. Citizens providing information to receive a replacement card through the oSSNAP +	63,925	1	5	5,327	* 27.07	** 24	*** 836,382
SSNAP/SS–5 Modality							
Respondents who do not have to provide parents' SSNs	2,791,499	1	9	418,725	* 27.07	** 24	*** 41,561,248
Respondents whom we ask to provide parents' SSNs (when applying for original SSN cards for children under age 12)	102,258	1	9	15,339	* 27.07	** 24	*** 1,522,471
Applicants age 12 or older who need to answer additional questions so SSA can determine whether we previously assigned an SSN	335,587	1	10	55,931	* 27.07	** 24	*** 5,147,794
Applicants asking for a replacement SSN card beyond the allowable limits (*i.e.,* who must provide additional documentation to accompany the application)	2,428	1	60	2,428	* 27.07	** 24	*** 92,011
Enumeration Quality Review							
Authorization to SSA to obtain personal information cover letter	500	1	15	125	* 27.07	** 24	*** 8,798
Authorization to SSA to obtain personal information follow-up cover letter	500	1	15	125	* 27.07	** 24	*** 8,798
Grand Total							
Totals	11,081,385	.....	.....	1,146,724	.....	.....	*** 76,931,059

+ The number of respondents for this modality is an estimate based on google analytics data for the SS–5 form downloads from *SSA.Gov.*

* We based this figure on average Hospital Records Clerks (*https://www.bls.gov/oes/current/oes292098.htm*), and average U.S. worker's hourly wages (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*) as reported by the U.S. Bureau of Labor Statistics.

** We based this figure on the average FY 2021 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Response to Notice of Revised Determination—20 CFR 404.913, 404.914, 404.992(b), 416.1413–416.1414, and 416.1492(d)—0960–0347. When SSA determines: (1) Claimants for initial disability benefits do not actually have a disability; or (2) current disability recipients' records show their disability ceased, SSA notifies the disability claimants, or recipients of this decision. In response to this notice, the affected claimants and disability recipients have the following recourse: (1) They may request a disability hearing to contest SSA's decision; and (2) they may submit additional information or evidence for SSA to consider. Disability claimants, recipients, and their representatives use Form SSA–765 to accomplish these two actions. If respondents request the first option, SSA's Disability Hearings Unit uses the form to schedule a hearing; ensure an interpreter is present, if required; and ensure the disability recipients or claimants, and their representatives, receive a notice about the place and time of the hearing. If respondents choose the second option, SSA uses the form and other evidence to reevaluate the claimant's or recipients' case, and determine if the new information or evidence will change SSA's decision. The respondents are disability claimants, current disability recipients, or their representatives.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–765	51	1	30	26	* $19.01	** 24	*** $874

* We based this figure by averaging both the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2021 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

3. Travel Expense Reimbursement—20 CFR 404.999(d) and 416.1499—0960–0434. The Social Security Act (Act) provides for travel expense reimbursement from Federal and State agencies for claimant travel incidental to medical examinations, and to parties, their representatives, and all reasonably necessary witnesses for travel exceeding 75 miles to attend medical examinations, reconsideration interviews and proceedings before an administrative law judge. Reimbursement procedures require the claimant to provide: (1) A list of expenses incurred; and (2) receipts of such expenses. Federal and state personnel review the listings and receipts to verify the reimbursable amount to the requestor. The respondents are claimants for Title II benefits and Title XVI payments, their representatives, and witnesses.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
404.999(d) & 416.1499	60,000	1	10	10,000	* $19.01	** $190,100

* We based this figure by averaging both the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. Pain Report Child—20 CFR 404.1512 and 416.912—0960–0540. Before SSA can make a disability determination for a child, we require evidence from Supplemental Security Income (SSI) applicants or claimants to prove their disability. Form SSA–3371–BK provides disability interviewers, and SSI applicants or claimants in self-help situations, with a convenient way to record information about claimants' pain or other symptoms. The State disability determination services adjudicators and judges then use the information from Form SSA–3371–BK to assess the effects of symptoms on function for purposes of determining disability under the Act. The respondents are applicants for, or claimants of SSI payments.

Type of Request: Revision of an OMB-approved information collection

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–3371	1,500	1	15	375	*** $10.95	** 24	*** $10,676

* We based this figure on the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*).

** We based this figure on the average FY 2021 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

5. Internet Request for Replacement of Forms SSA–1099 & SSA–1042S—20 CFR 401.45—0960–0583. Title II beneficiaries use Forms SSA–1099 and SSA–1042S, Social Security Benefit Statement, to determine if their Social Security benefits are taxable, and the amount they need to report to the Internal Revenue Service. In cases where the original forms are unavailable (*e.g.,* lost, stolen, mutilated), an individual may use SSA's automated telephone application to request a replacement SSA–1099 and SSA–1042. SSA uses the information from the automated telephone requests to verify the identity of the requestor and to provide replacement copies of the forms. SSA accepts information in other ways, too; however, the automated telephone options reduce requests to the National 800 Number Network (N8NN) and visits to local Social Security field offices (FO). The respondents are Title II beneficiaries who wish to request a replacement SSA–1099 or SSA–1042S via telephone.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical at hourly cost amount (dollars) *	Average wait time for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
Automated Telephone Requests	219,117	1	2	7,304	* $27.07	** 19	*** $2,076,025
N8NN	497,778	1	3	24,889	* 27.07	** 19	*** 4,940,789
Calls to local field offices	848,444	1	3	42,422	* 27.07	** 19	*** 8,421,369
Other (program service centers)	41,640	1	3	2,082	* 27.07	** 19	*** 413,305
Totals	1,606,979			76,697			*** 15,851,488

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

** We based this figure by averaging the average FY 2021 wait times for teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

6. The Ticket to Work and Self-Sufficiency Program—20 CFR 411—0960–0644. SSA's Ticket to Work (TTW) Program transitions Social Security Disability Insurance (SSDI) and SSI recipients toward independence by allowing them to receive Social Security payments while maintaining employment under the auspices of the program. SSA uses service providers, called Employment Networks (ENs), to supervise participant progress through the stages of TTW Program participation, such as job searches and interviews; progress reviews; and changes in ticket status. ENs can be private for-profit and nonprofit organizations, as well as state vocational rehabilitation agencies (VRs). SSA and the ENs utilize the TTW program manager to operate the TTW Program and exchange information about participants. For example, the ENs use the program manager to provide updates on tasks such as selecting a payment system, or requesting payments for helping the beneficiary achieve certain work goals. Since the ENs are not PRA-exempt, the multiple information collections within the TTW program manager require OMB approval. Most of the categories of information are necessary for SSA to: (1) Comply with the Ticket to Work legislation; and (2) provide proper oversight of the program. SSA collects this information through several modalities, including forms, electronic exchanges, and written documentation. The respondents are the ENs or state VRs, SSDI beneficiaries, and blind or disabled SSI recipients working under the auspices of the TTW Program.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
(a) 20 CFR 411.140(d)(2)/Interactive Voice Recognition Telephone	6,000	1	3	300	* $15.43	** $4,629
(a) 20 CFR 411.140(d)(2)/Ticket Assignment via Portal	91,484	1	2	3,049	* 15.43	** 47,046
(a) 20 CFR 411.140(d)(3), 411.150(b)(3) and 411.325(a)/State Agency Ticket Assignment Form/SSA–1365	948	1	15	237	* 15.43	** 3,657
(a) 20 CFR 411.140(d)(3); 411.325((a); 411.150(b)(3); 20 CFR 411.465./Individualized Work Plan/SSA–1370	26,007	1	60	26,007	* 15.43	** 401,288
(a) 20 CFR 411.166; 411.170(b)/Electronic File Submission	4,104	1	5	342	* 15.43	** 5,277
(b) 20 CFR 411.145; 411.325/Requesting Ticket Unassignments	2,494	1	15	624	* 15.43	** 9,628
(b) 20 CFR 411.535(a)(1)(iii)/Notification of VR Case Closures via Portal	136,478	1	11	25,021	* 15.43	** 386,074
(c) 20 CFR 411.200(b)/Requests for Certification of Work and Educational Progress/SSA–1375	179	1	30	90	* 15.43	** 1,389

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
(d) 20 CFR 411.505/Selecting a Payment System	33	1	10	6	* 15.43	** 93
(e) 20 CFR 411.400—411.420; 20 CFR 411.325(d) and 411.415/Reporting Referral Agreement Activity	31	1	15	8	* 15.43	** 123
(f) 20 CFR 411.575/Requesting EN Payments/SSA–1391 or SSA–1398	1,704	1	40	1,136	* 15.43	** 17,528
(f) 20 CFR 411.560 and 411.581/ Requesting Split Payment/ SSA–1401	5	1	20	2	* 15.43	** 31
(g) 20 CFR 411.325(f)/Proof of Relationship	6,870	1	20	2,290	* 15.43	** 35,335
(g) 20 CFR 411.325(f)/Certification of Services	2,438	1	20	813	* 15.43	** 12,545
(g) 20 CFR 411.325(f)/Annual Performance Outcome Report	507	1	15	127	* 15.43	** 1,960
(h) 20 CFR 411.435, 411.615, and 411.625/ Dispute Resolution	196	1	120	392	* 15.43	** 6,049
(i) 20 CFR 411.320/EN Contract Changes/SSA–1374	929	1	5	77	* 15.43	** 1,188
(j) 20 CFR 411.200(b)/WISE Webinar Registration Page	4,000	1	3	200	* 15.43	** 3,086
(j) 20 CFR 411.200(b)/ WISE Webinar Survey	1,776	1	3	89	* 15.43	** 1,373
Totals	286,183		60,810			** 938,299

* We based these figures by averaging the average hourly wages for Social and Human Service Assistants (*https://www.bls.gov/oes/current/oes211093.htm*); Rehabilitation Counselors (*https://www.bls.gov/oes/current/oes211015.htm*); and the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

7. Representative Payment Policies and Administrative Procedures for Imposing Penalties for False or Misleading Statements or Withholding of Information—0960–0740. This information collection request comprises several regulation sections that provide additional safeguards for Social Security beneficiaries' whose representative payees receive their payment. SSA requires representative payees to notify them of any event or change in circumstances that would affect receipt of benefits or performance of payee duties. SSA uses the information to determine continued eligibility for benefits, the amount of benefits due and if the payee is suitable to continue serving as payee. The respondents are representative payees who receive and use benefits on behalf of Social Security beneficiaries.

Type of Collection: Revision of an OMB-approved information collection.

Regulation sections	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
404.2035(d) — Paper/Mail	30,489	1	5	2,541	* $27.07		*** $68,785
404.2035(d) — Office interview/Intranet	579,291	1	5	48,274	* 27.07	** 21	*** 6,795,274
404.2035(f) — Paper/Mail	304	1	5	25	* 27.07		*** 677
404.2035(f) — Office interview/Intranet	5,792	1	5	483	* 27.07	** 21	*** 67,946
416.635(d) — Paper/Mail	16,630	1	5	1,386	* 27.07		*** 37,519
416.635(d) — Office interview/Intranet	305,316	1	5	25,443	* 27.07	** 21	*** 3,581,469
416.635(f) — Paper/Mail	166	1	5	14	* 27.07		*** 379
416.635(f) — Office interview/Intranet	3,159	1	5	263	* 27.07	** 21	*** 37,059
Totals	941,147			78,429			*** 10,589,108

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

** We based this figure by averaging the average FY 2021 wait times for both field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

8. Protecting the Public and Our Personnel To Ensure Operational Effectiveness (RIN 0960–AH35), Regulation 3729I—20 CFR 422.905 and 422.906—0960–0796. SSA published regulations for the process we follow when we restrict individuals from receiving in-person services in our field offices and provide them, instead, with alternative services. We published these rules to create a safer environment for our personnel and members of the public who use our facilities, while ensuring we continue to serve the American people with as little disruption to our operations as possible. Under our regulations at 20 CFR 422.905, an individual for whom we restrict access to our facilities has the opportunity to appeal our decision within 60 days of the date of the restrictive access and alternative service notice. To appeal, restricted individuals must submit a written request stating why they believe SSA should rescind the restriction and allow them to conduct business with us on a face-to-face basis in one of our offices. There is no printed form for this request; rather, restricted individuals create their own written statement of appeal, and submit it to a sole decision-maker in the regional office of the region where the restriction originated. The individuals may also provide additional documentation to support their appeal. Under 20 CFR 422.906, if the individual does not appeal the decision within the 60 days, if we restricted the individual

prior to the effective date of this regulation, or if the appeal results in a denial, the individual has another opportunity to request review of the restriction after a three-year period. To submit this request for review, restricted individuals may re-submit a written appeal of the decision. The same criteria apply as for the original appeal: (1) It must be in writing; (2) it must go to a sole decision-maker in the regional office of the region where the restriction originated for review; and (3) it may accompany supporting documentation. We make this periodic review available to all restricted individuals once every three years. Respondents for this collection are individuals appealing their restrictions from in-person services at SSA field offices.

Type of Request: Extension of an OMB-approved information collection.

Regulation sections	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
20 CFR 422.905	75	1	15	19	* $19.01	** $361
20 CFR 422.906	75	1	20	25	* 19.01	** 475
Totals	150			44		** $836

* We based this figure by averaging both the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

9. Promoting Opportunity Demonstration—0960–0809. Section 823 of the Bipartisan Budget Act of 2015 required SSA to carry out the Promoting Opportunity Demonstration (POD) to test a new benefit offset formula for SSDI beneficiaries. Therefore, SSA is undertaking POD, a demonstration to evaluate the affect the new policy will have on SSDI beneficiaries and their families in several critical areas. We previously obtained OMB approval for this demonstration and are close to completing the project. In this information collection request, we are seeking to renew the approval for both the POD Monthly Earnings and Impairment-related work Expenses (IRWE) Reporting Form, and the POD End of Year reporting (EOYR) Documentation. The POD implementation team collects earnings and IRWE data from POD treatment group subjects whose monthly earnings exceed the POD threshold. The POD implementation team submits the data it collects from treatment group subjects to SSA. SSA uses the data to apply the POD offset to treatment group subjects' SSDI benefits. Respondents have two options for reporting their earnings and IRWE documentation contained in the POD Monthly Form and the POD EOYR Form: Paper (mail or fax) or an online reporting portal. Respondents are encouraged to submit their earnings and IRWE documentation monthly but can submit it the following year in advance of SSA's end of year reconciliation process. While the collection of the earnings and IRWE data from respondents on the POD Monthly Form and the POD EOYR Forms is voluntary, failure to submit data could result in the inaccurate calculation of SSDI benefits.

Note: We have completed the survey portion of this demonstration project and expect to finish collecting the data by the end of the third quarter of fiscal year 2022.

Respondents are SSDI beneficiaries, who provided written consent before agreeing to participate in the study and whom we randomly assigned to one of the two study treatment groups.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
POD Monthly Earnings and Impairment-related work Expenses (IRWE) Reporting Form—Paper Version (faxed in)	1,000	6	6,000	40	4,000	* $27.07	** $108,280
POD Monthly Earnings and Impairment-related work Expenses (IRWE) Reporting Form—Internet Version	1,000	6	6,000	5	500	* 27.07	** 13,535
POD End of Year reporting (EOYR) Documentation	2,000	1	2,000	8	267	* 27.07	** 7,228
Totals	4,000		14,000		4,767		** 129,043

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

10. Tribal Council Coverage Agreement—0960–0812. Section 218A of the Social Security Act grants voluntary Social Security coverage to Indian tribal council members. The coverage is voluntary for tribal council members; however, if the tribe wishes to obtain Social Security coverage, they must complete the agreement. Each tribe requesting coverage fills out one agreement. SSA employees collect this information via paper forms SSA–177 & SSA–177–OP1, Indian Tribal Council Coverage Agreement. The respondents are Indian tribal councils who wish to

receive Social Security coverage for their members.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of Response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–177	6	1	10	1	*$19.01	**$19
SSA–177–OP1	6	1	10	1	*19.01	**19
Totals	12			2		**38

*We based this figure by averaging both the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

**This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: February 2, 2022.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2022–02474 Filed 2–4–22; 8:45 am]

BILLING CODE 4191–02–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36377 (Sub-No. 5)]

BNSF Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

By petition filed on December 13, 2021, BNSF Railway Company (BNSF) requests that the Board partially revoke the trackage rights exemption granted to it under 49 CFR 1180.2(d)(7) in Docket No. FD 36377 (Sub-No. 4), as necessary to permit that trackage rights arrangement to expire at midnight on December 31, 2022.

As explained by BNSF in its verified notice of exemption in Docket No. FD 36377 (Sub-No. 4), BNSF and Union Pacific Railroad Company (UP) entered into an agreement granting BNSF restricted, local trackage rights over two rail lines owned by UP between: (1) UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, Cal., on UP's Canyon Subdivision, a distance of 126.2 miles; and (2) UP milepost 219.4 at Elsey, and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles (collectively, the Lines). BNSF Verified Notice of Exemption 1–2, *BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.,* FD 36377 (Sub-No. 4). BNSF further stated that the trackage rights arrangement is intended to permit BNSF to move empty and loaded unit ballast trains to and from the ballast pit located at Elsey. *Id.* at 2. BNSF filed its verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7), explaining that, because the trackage rights covered by the notice in Docket No. FD 36377 (Sub-No. 4) are local rather than overhead rights, they do not qualify for the Board's class exemption for temporary trackage rights under 49 CFR 1180.2(d)(8). BNSF Verified Notice of Exemption 1 n.1, *BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.,* FD 36377 (Sub-No. 4).

In its petition, BNSF asks the Board to partially revoke the exemption as necessary to permit the trackage rights to expire at midnight on December 31, 2022, pursuant to the parties' agreement. (*See* BNSF Pet. 1–2); *see also* BNSF Verified Notice of Exemption Ex. B at 2, *BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.,* FD 36377 (Sub-No. 4). BNSF argues that granting this petition will promote the rail transportation policy and that the revocation would be consistent with the limited scope of the transaction and would not have an adverse effect on shippers. (BNSF Pet. 3.) In addition, BNSF asserts that the Board has granted similar petitions for partial revocation to permit temporary trackage rights to expire, including petitions involving prior iterations of the trackage rights agreement at issue here. (*Id.*)

Discussion and Conclusions

Although BNSF and UP have expressly agreed on the duration of the proposed trackage rights agreement, trackage rights approved under the class exemption at 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. Occasionally, however, the Board has partially revoked a trackage rights exemption to allow those rights to expire after a limited time period rather than lasting in perpetuity. *See, e.g., BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.,* FD 36377 (Sub-No. 3) (STB served Feb. 23, 2021) (granting a petition to partially revoke a trackage rights exemption involving the Lines at issue in this case); *New Orleans Pub. Belt R.R.—Trackage Rts. Exemption—Ill. Cent. R.R.,* FD 36198 (Sub-No. 1) (STB served June 20, 2018).

Granting partial revocation in these circumstances to permit the trackage rights to expire at the end of 2022 would eliminate the need for BNSF to file a second pleading seeking discontinuance authority when the agreement expires, thereby promoting the aspects of the rail transportation policy at 49 U.S.C. 10101(2), (7), and (15). Moreover, partially revoking the exemption to limit the term of the trackage rights would have no adverse impact on shippers because the trackage rights at issue are solely to allow BNSF to move empty and loaded ballast trains to and from the ballast pit in Elsey for use in BNSF's maintenance-of-way projects. (*See* BNSF Pet. 2.) Therefore, the Board will grant the petition and permit the trackage rights exempted in Docket No. FD 36377 (Sub-No. 4) to expire at midnight on December 31, 2022.

To provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, the Board will impose the employee protective conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

It is ordered:

1. The petition for partial revocation of the trackage rights class exemption is granted.

2. As discussed above, the trackage rights in Docket No. FD 36377 (Sub-No. 4) are permitted to expire at midnight on December 31, 2022, subject to the employee protective conditions set forth in *Oregon Short Line.*

3. Notice of this decision will be published in the **Federal Register**.

4. This decision is effective on March 9, 2022. Petitions for stay must be filed by February 17, 2022. Petitions for reconsideration must be filed by February 28, 2022.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2022–02479 Filed 2–4–22; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 290 (Sub-No. 4)]

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Surface Transportation Board.

ACTION: Presentation of the Board's calculation for the change in railroad productivity for the 2016–2020 averaging period.

SUMMARY: In a decision served on February 3, 2022, the Board proposed to adopt 1.025 (2.5% per year) as the measure of average (geometric mean) change in railroad productivity for the 2016–2020 (five-year) period. The Board's February 3, 2022 decision stated that comments may be filed addressing any perceived data and computational errors in the Board's calculation. The decision also stated that, unless a further order is issued postponing the effective date, the decision will take effect on March 1, 2022.

DATES: Comments are due by February 24, 2022.

ADDRESSES: Comments may be e-filed on the Board's website at *www.stb.gov.* Comments must be served on all parties appearing on the service list.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez at (202) 245–0333. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available at *www.stb.gov.*

Decided: February 2, 2022.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2022–02508 Filed 2–4–22; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that it is appropriate to grant a Buy America waiver to the Golden Gate Bridge, Highway & Transportation District (District) for procurement of foreign iron and steel components for the maintenance traveler system, which is needed to allow continued inspections and routine maintenance operations after the Golden Gate Bridge Physical Suicide Deterrent System Project (Project) is constructed. The non-domestic parts include: (i) Electric motors; (ii) speed reducers; (iii) wheel chocks; (iv) a chain stopper; (v) rail clamps with hydraulic power units; (vi) pneumatic brakes; (vii) air compressors; (viii) gas cylinder stands; (ix) bearings (of various types specified in the request); (x) electric cabinet switches and handles; (xi) electrical cabinet shafts; (xii) grounding shoes; and (xiii) scissor lifts.

DATES: The effective date of the waiver is February 8, 2022.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Brian Hogge, FHWA Office of Infrastructure, 202–366–1562, or via email at *Brian.Hogge@dot.gov.* For legal questions, please contact Mr. Patrick C. Smith, FHWA Office of the Chief Counsel, 202–366–1345, or via email at *Patrick.C.Smith@dot.gov.* Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *www.FederalRegister.gov* and the Government Publishing Office's database at: *www.GovInfo.gov.*

Background

FHWA's Buy America regulation in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not produced in the United States in sufficient and reasonably available quantities. This notice provides information regarding FHWA's finding that it is appropriate to grant the District a Buy America waiver for procurement of foreign iron and steel components for the maintenance traveler system, which is needed to allow continued inspections and routine maintenance operations after the Project is constructed. The non-domestic parts include: (i) Electric motors; (ii) speed reducers; (iii) wheel chocks; (iv) a chain stopper; (v) rail clamps with hydraulic power units; (vi) pneumatic brakes; (vii) air compressors; (viii) gas cylinder stands; (ix) bearings (of various types specified in the request); (x) electric cabinet switches and handles; (xi) electrical cabinet shafts; (xii) grounding shoes; and (xiii) scissor lifts.

Background on the Project: On average, 30 people die from suicide at the Golden Gate Bridge each year. Hundreds more are stopped by the District, the California Highway Patrol, or other intervention. The District determined that a physical barrier was needed to stop suicides from the bridge. The Project, Federal Aid Project No. BHLS–6003(051), involves the construction of a horizontal stainless-steel net supported by steel net supports for the full length of the bridge, except for a tall vertical railing installed in one location. The horizontal steel net system uses all American steel. The Project also includes the replacement of the bridge maintenance travelers with new travelers because the installation of the net will block the movement of the existing travelers. In this context, a ''traveler'' means a moveable inspection and maintenance platform, which travels on steel rails and trolley beams and is designed to provide access to the bridge. A new replacement traveler access system is necessary to allow continued inspections and routine maintenance operations after the Suicide Deterrent System is constructed. Some of the traveler equipment is not available with the required Buy America certification because it is not

manufactured in America or manufactured in America with some non-domestic parts.

The contract for the Project also encompasses the Golden Gate Bridge Wind Retrofit Project, Federal Aid Project No. BHLS–6003(052). The current construction contract amount for both projects is approximately $142.1 million (with $132.6 million for the Suicide Deterrent System Project and $9.5 million for the Wind Retrofit Project). The estimated value of the components under the requested waiver is approximately $2.6 million (or less than two percent of the total contract amount). The construction contract specifies that the Project is partially funded with Federal funds and that the FHWA Buy America provisions apply. For the Suicide Deterrent System Project, approximately 65 percent of the total Project cost is Federal, 4 percent is from the State, and 31 percent is local. Under 23 U.S.C. 313(g), FHWA's Buy America requirement applies to the entire scope of the project, as defined in the NEPA document, when Federal funds are used in any part of the project regardless of whether Federal funds are used in the actual component that is subject to the waiver.

The traveler system is a ''contractor-designed'' element of this low-bid construction contract. As such, the fact that some of the requisite traveler equipment is not available with Buy America certifications was not identified until after the contract was awarded and the contractor completed the traveler design. Specifically, the new travelers will be propelled by electric drive systems that include some manufactured mechanical and electrical control components that are not available with the Buy America certification. The travelers must also be equipped with electric scissor lifts that are similarly not available with the Buy America certification.

Background on Waiver Request: The District originally submitted a Buy America waiver request letter to FHWA on June 24, 2020. Prior to requesting a waiver, the District unsuccessfully attempted to identify domestic manufacturers for these products. The District reported to FHWA in the waiver request letter that the District, its contractor, and consultants contacted numerous manufacturers and distributors to identify products that complied with Buy America but were not successful in locating any domestic manufacturers or fabricators of the relevant products. Attachment 1 to the request letter provided a record of the District's efforts. The waiver request included the following non-domestic parts: (i) Electric motors; (ii) speed reducers; (iii) wheel chocks; (iv) a chain stopper; (v) rail clamps with hydraulic power units; (vi) pneumatic brakes; (vii) air compressors; (viii) gas cylinder stands; (ix) bearings (of various types specified in the request); (x) electric cabinet switches and handles; (xi) electrical cabinet shafts; (xii) grounding shoes; and (xiii) scissor lifts. Attachment 1 to the request letter provided further information on these parts.

In accordance with the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), FHWA published a notice seeking comment on whether a waiver was appropriate on its website, *https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=157,* on September 27, 2021.

The FHWA received 14 comments in response to the publication. Eight commenters opposed the waiver, two supported it, and four of the comments documented the District's efforts to follow-up with one of the commenters opposing the waiver. Seven of the comments opposing the waiver did not offer any specific information on the availability of compliant products, nor did they suggest specific, additional actions that the District could take to maximize its use of goods, products, and materials produced in the United States. One commenter opposing the waiver indicated that he believed the parts were available from domestic suppliers but also did not name a specific manufacturer. This comment was submitted on September 28, 2021, and invited the District to contact the commenter for additional information on his statement. On October 4, 2021, the District responded to this commenter on the website requesting the names of United States manufacturers able to provide the relevant parts. On October 13, 2021, the District emailed this commenter at the email address he used to submit the comment asking the same. On October 25, 2021, the District posted a new comment to the website explaining that it had received no reply, either by email or phone, to its questions for this commenter. Thus, the District did not receive any new information indicating that the subject parts could be produced by domestic manufacturers from any of the commenters opposing the waiver.

Although the District did not identify compliant components for the maintenance travelers, it provided information to FHWA supporting its waiver request, including information:

- Supporting the necessity of these specific maintenance travelers for allowing continued access to the bridge for performing inspections and maintenance operations after the suicide prevention nets are installed;
- Documenting efforts to locate compliant manufactured products;
- Demonstrating that alternative designs were infeasible; and
- Describing the effects of denying the request.

Although ultimately unsuccessful, the District made substantial efforts to find suitable Buy America compliant components for the maintenance travelers.

Timing and Need for a Waiver. The District maintains that approval of a Buy America waiver for the relevant components of the maintenance travelers is now critical to maintain the schedule of ongoing construction on the Project. The District explained in early 2021 that it was already at a juncture where delays in the approval of the Buy America waiver may delay completion of construction with commensurate additional payments to the contractor.

Executive Order 14005. Executive Order 14005, ''Ensuring the Future is Made in All of America by All of America's Workers,'' provides that agencies should, consistent with applicable law, maximize the use of goods, products, and materials produced in, and services offered in, the United States. 86 FR 7475 (Jan. 28, 2021). Based on the information contained in the waiver request from the District and the lack of responsive comments following publication of a notice seeking comment on September 28, 2021, regarding available domestic manufacturers for the subject parts, FHWA concludes that issuing a waiver is consistent with Executive Order 14005.

Finding and Request for Comments

Based on all the information available to the Agency, FHWA concludes that there are no Buy America-compliant relevant components for the maintenance travelers for the Project, specifically including: (i) Electric motors; (ii) speed reducers; (iii) wheel chocks; (iv) a chain stopper; (v) rail clamps with hydraulic power units; (vi) pneumatic brakes; (vii) air compressors; (viii) gas cylinder stands; (ix) bearings (of various types specified in the request); (x) electric cabinet switches and handles; (xi) electrical cabinet shafts; (xii) grounding shoes; and (xiii) scissor lifts. This finding only includes components identified in the waiver request and supporting documents included on FHWA's website.

The District and its contractors and subcontractors involved in the procurement of the relevant components

are reminded of the need to comply with the Cargo Preference Act in 46 CFR part 38, if applicable.

In accordance with the provisions of Section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 stat. 1572), FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. FHWA invites public comment on this finding for an additional five (5) days following the effective date of the finding. Comments may be submitted to FHWA's website via the link provided to the waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–244; Pub. L. 116–260; 23 CFR 635.410.

Stephanie Pollack,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 2022–02449 Filed 2–4–22; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0033]

New Jersey Transit's Request To Amend Its Positive Train Control Safety Plan and Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on January 14, 2022, New Jersey Transit (NJT) submitted a request for amendment (RFA) to its FRA-approved Positive Train Control Safety Plan (PTCSP). As this RFA may involve a request for FRA's approval of proposed material modifications to an FRA-certified positive train control (PTC) system, FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTCSP.

DATES: FRA will consider comments received by February 28, 2022. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES:

Comments: Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0033. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) section 20157(h) requires FRA to certify that a host railroad's PTC system complies with 49 CFR part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under Title 49 Code of Federal Regulations (CFR) Section 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that on January 14, 2022, NJT submitted an RFA to its PTCSP for its Advanced Speed Enforcement System II (ASES II) and that RFA is available in Docket No. FRA–2010–0033.

Interested parties are invited to comment on NJT's RFA to its PTCSP by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA to its PTCSP at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2022–02512 Filed 2–4–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2022–0006]

Request for Information for the Corridor Identification and Development Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Request for information (RFI).

SUMMARY: On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL). The BIL provides historic appropriations for railroad transportation grant programs administered by the Federal Railroad Administration (FRA), and also authorizes new programs to enhance rail safety and to repair, restore, improve, and expand the nation's rail network. Among those new programs is the Corridor Identification and Development Program (the Program), which creates a new framework to facilitate the development of new, enhanced, and restored intercity passenger rail corridors throughout the country. The BIL requires the Secretary of Transportation to establish the Program within 180 days of enactment (*i.e.,* May 14, 2022). This responsibility is delegated to FRA. In this request for information (RFI), FRA is seeking comments on the Program and how it can best serve stakeholders and the public in facilitating the development of intercity passenger rail corridors.

DATES: Written comments on this RFI must be received on or before March 9,

2022. FRA will consider comments filed after this date to the extent practicable.

ADDRESSES: Comments should refer to docket number FRA–2022–0006 and be submitted by at *http://www.regulations.gov.* Search by using the docket number and follow the instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this RFI.

Note: All comments received, including any personal information, will be posted without change to the docket and will be accessible to the public at *http://www.regulations.gov.* You should not include information in your comment that you do not want to be made public. Input submitted online via *www.regulations.gov* is not immediately posted to the site. It may take several business days before your submission is posted.

FOR FURTHER INFORMATION CONTACT: For further information related to this RFI, please contact Peter Schwartz, Chief, Project Engineering and Transportation Planning Division, by email: *PaxRailDev@dot.gov* or by telephone: 202–493–6360.

SUPPLEMENTARY INFORMATION:

Background

The Program is intended to facilitate the development of intercity passenger rail corridors. Public Law 117–58 sec. 22308 (Nov. 15, 2021); 49 U.S.C. 25101(a) (while this citation may not yet be available in some online versions of the U.S. Code, the text may be found at *https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf* at 135 STAT. 730). The Program includes: (1) A process for eligible entities to submit proposals for the development of intercity passenger rail corridors; (2) a process for FRA to review and select such proposals; (3) criteria for determining the level of readiness for Federal financial assistance of intercity passenger rail corridors; (4) a process for preparing service development plans (SDPs); (5) the creation of a pipeline of intercity passenger rail corridor projects; (6) planning guidance; and (7) such other features as FRA considers relevant. 49 U.S.C. 25101(a)(1)–(7).

FRA seeks information from all those interested in the Program on how the Program should be implemented to best facilitate the development of intercity passenger rail corridors. Where available and appropriate, FRA requests that respondents provide relevant technical information, statutory or regulatory citations, data, or other evidence to support their comments. FRA also requests that responses to this RFI be organized by the topics outlined below, including references, as applicable, to the numbered questions. Respondents are encouraged to address in their responses any topics they believe to be relevant to the Program and are not limited to addressing only those topics and questions outlined below.

Roles and Responsibilities Within the Program

While FRA has a central role in the administration of the Program, the BIL also calls for important roles for other parties—including States, Amtrak, host railroads, labor organizations, and other stakeholders—who typically have responsibilities in intercity passenger rail development efforts. For example, Amtrak, States, groups of States, entities implementing interstate compacts, regional passenger rail authorities, regional planning organizations, political subdivisions of a State, federally recognized Tribes, and other public entities, as determined by FRA, are all eligible to submit proposals for the development of intercity passenger rail corridors under the Program. 49 U.S.C. 25101(b). In addition, in partnering on the preparation of an SDP, FRA must partner with the entity that submitted the proposal, relevant States, and Amtrak, as appropriate, and also must consult with Amtrak, appropriate State and regional transportation authorities and local officials, employee labor organizations, host railroads, and other stakeholders, as determined by the Secretary. 49 U.S.C. 25101(d) and (e).

1. What is the appropriate role for Amtrak, in the submission and development of proposals submitted by other entities, for corridors that currently are or would be intended to be operated by Amtrak?

2. What are the appropriate roles for FRA and other parties in the preparation of SDPs under 49 U.S.C. 25101(d), or in other Program activities?

Service Development Plans

As noted, for each intercity passenger rail corridor selected for development under the Program, FRA must partner with the entity that submitted the proposal, relevant States, and Amtrak, as appropriate, to prepare an SDP (or to update an existing SDP). 49 U.S.C. 25101(d). As further detailed in the statute, the SDP must include: (1) A detailed description of the proposed intercity passenger rail service; (2) a corridor project inventory, identifying the capital projects necessary to achieve the proposed intercity passenger rail service and the order in which Federal funding will be sought; (3) a schedule, and any associated phasing, of projects and related service initiation or changes; (4) project sponsors and other entities expected to participate in carrying out the plan; (5) a description of how the corridor would comply with Federal rail safety and security laws, orders, and regulations; (6) the locations of existing and proposed stations; (7) the needs for rolling stock and other equipment; (8) a financial plan; (9) a description of how the corridor would contribute to the development of a multi-State regional network of intercity passenger rail; (10) an intermodal plan; (11) a description of the anticipated environmental benefits; and (12) a description of the corridor's impacts on highway and aviation congestion, energy consumption, land use, and economic development. 49 U.S.C. 25101(d)(1)–(12).

3. Where permissible, should SDPs under the Program have the option to be prepared as longer-range planning documents, so that the implementation of the new or improved service (through the implementation of the projects included in the ''corridor project inventory,'' and advancement of such projects into the project pipeline) may be sequenced or phased over time?

4. Where permissible, should SDPs under the Program develop and narrow alternatives for implementing a new or improved service through the use of a planning process undertaken in advance of environmental review under the National Environmental Policy Act (NEPA) (*e.g.,* in a manner similar to that applicable to highway and transit projects under appendix A to 23 CFR part 450—Linking the Transportation Planning and NEPA Processes)?

5. How should public involvement and environmental considerations be incorporated into the preparation of SDPs under the Program, and how might that vary depending on whether or not SDPs develop and narrow alternatives (as described in Question #4)?

6. 49 U.S.C. 25101(e) requires that FRA consult with certain stakeholders in the preparation of SDPs under the Program. What approaches could FRA take to ensure the consultation process is effective and meaningful?

Project Pipeline

As noted above, under the Program, FRA must annually submit a project pipeline to Congress that, as further detailed in the statute: (1) Identifies intercity passenger rail corridors selected for development; (2) identifies capital projects for Federal investment; (3) specifies the order in which FRA would provide financial assistance, including a method and plan for apportioning funds; (4) takes into

consideration the appropriate sequence and phasing of projects; (5) takes into consideration the existing commitments and anticipated funding levels; (6) is prioritized based on the level of readiness of the corridor; and (7) reflects consultation with Amtrak. 49 U.S.C. 25101(g)(1)–(7). The statute does not specify what level of development should be achieved prior to identifying a capital project for Federal investment in the pipeline.

7. Should capital projects identified in the project pipeline be required to be ready for immediate implementation (*i.e.,* final design and construction), and be supported by a completed environmental determination under NEPA, completed preliminary engineering, and (as applicable) agreements with the relevant host railroad(s)?

8. If a capital project must be ready for immediate implementation in order to be included in the project pipeline (see Question #7), should FRA establish a ''pre-Pipeline'' of projects that have been identified in the ''corridor project inventories'' included in the SDPs prepared under 49 U.S.C. 25101(d), and that are in the process of being readied for implementation (*e.g.*, in the process of environmental review under NEPA, undergoing completion of preliminary engineering, etc.), but which are not ready for implementation?

9. Through what means, and in consideration of what factors (beyond those enumerated in 49 U.S.C. 25101(g)(4)–(7)), should FRA establish the order (or prioritization) of the list of capital projects eligible for funding identified under the project pipeline, as called for in 49 U.S.C. 25101(g)(3)?

Funding of Program Activities

The BIL makes funding available to carry out planning and development activities related to the Program. Public Law 117–58 22307; 49 U.S.C. 24911(k). The statute includes three examples of activities that may be undertaken using this funding, including: (1) Providing funding to public entities for the development of SDPs selected under the Program; (2) facilitating and providing guidance for intercity passenger rail systems planning; and (3) providing funding for the development and refinement of intercity passenger rail systems planning analytical tools and models. 49 U.S.C. 24911(k)(1)–(3). The statute does not limit the use of such funding to these three examples.

10. What other Program activities should be undertaken with the support of funding provided under 49 U.S.C. 24911(k)?

Readiness of Proposals for Selection into the Program

The statute specifies criteria for the selection of corridors for the Program. However, these criteria do not fully address the readiness of a proposed corridor for development under the Program.

11. Should FRA consider readiness factors not otherwise described in the statute when evaluating proposals submitted for the Program, and if so, what factors would be relevant in assessing readiness?

12. In determining the readiness of a proposal, should FRA consider the degree of commitment to the eventual implementation of the proposal demonstrated by: (1) The entity submitting the proposal, (2) the proposed service sponsor(s), and/or (3) the proposed capital project sponsor(s)?

Criteria for the Selection of Proposals

When selecting intercity passenger rail corridors for the Program, FRA must consider fourteen specific criteria. 49 U.S.C. 25101(c).

13. Of the fourteen selection criteria enumerated in 49 U.S.C. 25101(c), are certain criteria of greater importance to the successful development of an intercity passenger rail corridor?

14. What other considerations may be appropriate in evaluating proposals for corridors to be developed under the Program?

Selectivity of the Program

FRA must solicit and select intercity passenger rail corridor proposals for development under the Program, and must partner with the entity that submitted the proposal to prepare an SDP for a selected proposal. While FRA must apply certain corridor selection criteria, the statute does not address the selectivity of the Program.

15. In general, how selective should the Program be, particularly during the period directly following its establishment? Should all proposals that meet a minimum threshold be selected for development under the Program, or should only a limited number of top proposals be selected, and if so, why?

16. What considerations are relevant for determining the selectivity of the Program?

Issued in Washington, DC

Paul Nissenbaum,

Associate Administrator, Office of Railroad Policy and Development.

[FR Doc. 2022–02450 Filed 2–4–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice To Solicit Transit Advisory Committee for Safety Member Applications

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice to Solicit Transit Advisory Committee for Safety Member Applications.

SUMMARY: The Federal Transit Administration (FTA) is seeking applications for individuals to serve as members, for two-year terms, on the Transit Advisory Committee for Safety (TRACS). The TRACS provides information, advice, and recommendations to the U.S. Secretary of Transportation (Secretary) and FTA Administrator (Administrator) in response to tasks assigned to TRACS. The TRACS does not exercise program management responsibilities and makes no decisions directly affecting the programs on which it provides advice. The Secretary may accept or reject a recommendation made by TRACS and is not bound to pursue any recommendation from TRACS.

DATES: Interested persons must submit their applications to FTA by March 9, 2022.

FOR FURTHER INFORMATION CONTACT: Joseph DeLorenzo, TRACS Designated Federal Officer, Associate Administrator, FTA Office of Transit Safety and Oversight, (202) 366–1783, *Joseph.DeLorenzo@dot.gov;* or Bridget Zamperini, TRACS Program Manager, FTA Office of Transit Safety and Oversight, *TRACS@dot.gov.* Please address all mail to the Office of Transit Safety and Oversight, Federal Transit Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTAL INFORMATION:

Nominations

FTA invites qualified individuals interested in serving on TRACS to apply to FTA for appointment. The Administrator will recommend nominees for appointment by the Secretary. Appointments are for two-year terms; however, a member may reapply to serve additional terms, in the event that the TRACS Charter is renewed. Applicants should be knowledgeable of trends and issues related to rail transit and/or bus transit safety. Along with their experience in the rail transit and/or bus transit industry, applicants will also be evaluated and selected based on factors

including leadership and organizational skills, region of the country represented, diversity characteristics, and the overall balance of industry representation.

Each application should include the applicant's name and organizational affiliation; a cover letter describing the applicant's qualifications and interest in serving on TRACS; a curriculum vitae or resume of the applicant's qualifications; and contact information including the applicant's address, phone number, fax number, and email address. Self-application and application through nomination of others are acceptable. FTA prefers electronic submissions for all applications, via email to *TRACS@dot.gov.* Applications will also be accepted via mail at the address identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

FTA expects to nominate up to 25 representatives from the public transportation safety community for immediate TRACS membership. The Secretary, in consultation with the Administrator, will make the final selection decision.

This notice is provided in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. app. 2). Please see the TRACS website for additional information at *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-advisory-committee-safety-tracs.*

Nuria I. Fernandez,

Administrator.

[FR Doc. 2022–02494 Filed 2–4–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0035; Notice 2]

Hankook Tire America Corp., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Hankook Tire America Corp. (Hankook) has determined that certain Hankook Ventus S1 Noble2 passenger car tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles,* and part 574, *Tire Identification and Recordkeeping.* Hankook filed a noncompliance report dated April 23, 2020. Hankook subsequently petitioned NHTSA on May 19, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of Hankook's petition.

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), (325) 655–0547, *Jayton.Lindley@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview: Hankook has determined that certain Hankook Ventus S1 Noble2 size 235/40R18W XL H452 tires do not fully comply with the requirements of paragraph S5.5.1(b) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR 571.139) and with the labeling requirements of Part 574.5(a) of part 574, *Tire Identification and Recordkeeping* (49 CFR 574). Hankook filed a noncompliance report dated April 23, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Hankook subsequently petitioned NHTSA on May 19, 2020, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Hankook's petition was published with a 30-day public comment period, on March 23, 2021, in the **Federal Register** (86 FR 15546). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2020–0035.''

II. Tires Involved: Approximately 109 Hankook Ventus S1 Noble2 size 235/40R18W XL H452 passenger car tires manufactured on August 17, 2019, and August 18, 2019, are potentially involved.

III. Noncompliance: Hankook explains that the noncompliance is due to a mold error in which the subject tires contain a tire identification number (TIN) with an inverted serial week and year (date code) as required by part 574.5(a) and paragraph S5.5.1(b) of FMVSS No. 139. Specifically, the date code portion of the TIN was printed upside down.

IV. Rule Requirements: Paragraph S5.5.1(b) of FMVSS No. 139, includes the requirements relevant to this petition:

- For tires manufactured on or after September 1, 2009, each tire must be labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire.
- Except for retreaded tires, if a tire does not have an intended outboard sidewall, the tire must be labeled with the tire identification number required by 49 CFR part 574 on one sidewall and with either the tire identification number or a partial tire identification number, containing all characters in the tire identification number except for the date code and, at the discretion of the manufacturer, any optional code, on the other sidewall.

V. Summary of Hankook's Petition: The following views and arguments presented in this section, ''V. Summary of Hankook's Petition,'' are the views and arguments provided by Hankook and do not reflect the views of the Agency. Hankook describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Hankook submits the following reasoning:

1. The relevant information remains readily identifiable,
2. the Agency has granted a similar petition in the past (*See* 81 FR 43708 (Jul. 5, 2016)),
3. the subject tires otherwise meet the marking and performance requirements of FMVSS No. 139, and
4. Hankook is not aware of any consumer complaints, claims, or incidents related to the subject noncompliance.

Hankook's complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov* and by following the online search instructions to locate the docket number as listed in the title of this notice.

Hankook argues that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA's Analysis: The Agency agrees with the petitioner that the subject noncompliance is inconsequential to motor vehicle safety because the nature of the labeling error would not prevent the correct identification of the tires, should the tires be recalled for a performance related noncompliance. In the subject case, the date code portion of the TIN

is in the correct position, however, the date code is upside down or inverted vertically. The Agency believes that despite the error, the date code is still clearly legible, will not be misunderstood, and may be oriented correctly by rotating or spinning the tire.

VII. NHTSA's Decision: In consideration of the foregoing, NHTSA finds that Hankook has met its burden of persuasion that the subject FMVSS No. 139 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, Hankook's petition is hereby granted and Hankook is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject tires that Hankook no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Hankook notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–02459 Filed 2–4–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0092; Notice 2]

Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Michelin North America, Inc. (MNA) has determined that certain Michelin CrossClimate SUV replacement tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* MNA filed a noncompliance report dated July 31, 2020, and subsequently petitioned NHTSA on August 21, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of MNA's petition.

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (325) 655–0547.

SUPPLEMENTARY INFORMATION:

I. Overview

MNA has determined that certain Michelin CrossClimate SUV replacement tires do not fully comply with the requirements of paragraphs S5.5(e) and (f) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR 571.139). MNA filed a noncompliance report dated July 31, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* MNA subsequently petitioned NHTSA on August 21, 2020, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of MNA's petition was published with a 30-day public comment period, on September 13, 2021, in the **Federal Register** (86 FR 50949). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2020–0092.''

II. Tires Involved

Approximately 884 Michelin CrossClimate SUV replacement tires, size 235/55R17 99V, manufactured between October 20, 2019, and November 30, 2019, are potentially involved.

III. Noncompliance

MNA explains that the noncompliance is due to a mold error and that as a result, the number of tread plies indicated on the sidewall of the subject tires does not match the actual number of plies in the tire construction as required by paragraphs S5.5(e) and (f) of FMVSS No. 139. Specifically, the tires were marked ''Tread Plies: 2 Polyester + 2 Steel + 1 Polyamide; Sidewall: 2 Polyester'' when they should have been marked ''Tread Plies: 1 Polyester + 2 Steel + 1 Polyamide; Sidewall: 1 Polyester.''

IV. Rule Requirements

Paragraphs S5.5(e) and (f) of FMVSS No. 139 include the requirements relevant to this petition. Each tire must be marked on each sidewall with the information specified in paragraphs S5.5(a) through (d) and on one sidewall with the information specified in paragraphs S5.5(e) through (i) according to the phase-in schedule specified in paragraph S7 of FMVSS No. 139. Specifically, each tire should be marked with the generic name of each cord material used in the plies (both sidewall and tread area) of the tire and the actual number of plies in the sidewall, and the actual number of plies in the tread area, if different.

V. Summary of MNA's Petition

The following views and arguments presented in this section, ''V. Summary of MNA's Petition,'' are the views and arguments provided by MNA and do not reflect the views of the Agency. MNA describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, MNA submitted the following reasoning:

1. Operational Safety

a. Tire performance—MNA says that the subject tires have been designed as a single ply construction. The mismarked tires have been manufactured according to the design specification. These tires fully comply with MNA performance requirements as well as with all applicable FMVSS tire safety performance standards and related requirements.

b. Tire application—MNA claims that the mismarked ply information has no direct impact on tire application. The tires are properly marked with all other FMVSS required information including the tire size designation, maximum load, and maximum inflation pressure. These markings provide both dealers and consumers with the necessary information to ensure proper selection and application of the tires.

c. Tire repair and retread—MNA also says that concerns related to the safety of tire repair and retread personnel have been previously raised for filings

involving steel carcass ply tires. The CrossClimate SUV is a passenger car, sport utility, and light truck tire line with a polyester carcass. The tire is not intended for retreading. The concern for service personnel related to steel carcass construction is not relevant for this tire line.

2. Corrective Measures

a. Upon identification of the mismarking, MNA instituted a block on the affected SKU. A total of 782 tires were captured and retained in MNA inventory. These tires will be repaired to display the correct single ply marking, or they will be scrapped.

b. The tire specification drawing has been corrected and the mold plate has been updated to show the correct single ply marking. All tires currently being produced have the correct marking.

3. Prior NHTSA Decisions

MNA states that NHTSA has concluded in other petitions related to the number of plies marking that this type of noncompliance is inconsequential to safety. Examples of prior decisions include:

- Sumitomo Rubber Industries, Ltd., 83 FR 13002 (March 26, 2018)
- Continental Tire the Americas, LLC, 83 FR 36668 (July 30, 2018)
- Cooper Tire & Rubber Company, 82 FR 17075 (April 7, 2017)
- Hankook Tire America Corp., 79 FR 30688 (May 28, 2014)
- Bridgestone Americas Tire Operations, LLC, 78 FR 47049 (August 2, 2013)

MNA concludes by contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, be granted.

VII. NHTSA's Analysis

NHTSA has evaluated the merits of MNA's petition and agrees that, based on the facts presented, the subject noncompliance is inconsequential to motor vehicle safety. The Agency considered the following prior to making this determination:

1. *Operational Safety & Performance:* NHTSA agrees that the subject noncompliance has no effect on the operational safety of vehicles. Michelin stated that the affected tires meet all the applicable FMVSS performance requirements as well as Michelin's own internal testing requirements.

2. *Tire Identification and Traceability:* The tires have the required information per 49 CFR 574.5 to ensure that the tires may be properly registered for the purposes of a safety recall. The TIN is both legible and easily discernible.

3. *Downstream Operations:* The Agency must also consider other interested parties besides the manufacturer and end-user. Downstream entities involved in tire repair, retreading, and recycling operations require certain information to determine if tires may be safely used in their operations. The existence of steel in a tire's sidewall and tread can be relevant to the manner in which it should be repaired or retreaded. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries. The Agency believes the noncompliance of the subject tires will have no measurable effect on the safety of the tire retread, repair, and recycling industries since the tire sidewalls are marked correctly for the number of steel plies.

4. *Public & Consumer Groups Feedback:* The Agency has concluded, based on previous feedback, that the tire construction information (number of plies and cord material in the sidewall and tread plies) influences very few consumers when they are deciding to buy a motor vehicle or replacement tires. This conclusion is based on comments submitted to the docket for 2 separate Advance Notice of Proposed Rulemaking documents that were published in the **Federal Register** on December 1, 2000, (65 FR 75222) and December 19, 2018, (84 FR 69698).

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that MNA has met its burden of persuasion that the subject FMVSS No. 139 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, MNA's petition is hereby granted and MNA is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject tires that MNA no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after MNA notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–02460 Filed 2–4–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

DOT's Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act

ACTION: Notice of availability.

SUMMARY: Section 70913(a) of the Infrastructure Investment and Jobs Act requires that the head of each Federal agency shall submit to the Office of Management and Budget and to Congress a report that identifies each Federal financial assistance program for infrastructure administered by the Federal agency, and that that report be published in the **Federal Register**. The Department of Transportation is issuing this notice to make the public aware of the availability of that report on its website.

FOR FURTHER INFORMATION CONTACT: Darren Timothy at *darren.timothy@dot.gov* or at 202–366–4051.

SUPPLEMENTARY INFORMATION:

Background: The Bipartisan Infrastructure Law (known officially as the Infrastructure Investment and Jobs Act), signed by President Biden on November 15, 2021, includes the Build America, Buy America Act (BABA), which requires each agency to submit to OMB and Congress a report within 60 days of enactment that lists all Federal financial assistance programs for infrastructure administered by the agency and that identifies the programs that are ''deficient,'' as defined in the Act.

DOT's report was developed in accordance with the requirements found in section 70913 of the BABA and OMB guidance issued on December 20, 2021. It provides a listing of the Federal financial assistance programs for

infrastructure administered by DOT; a discussion of domestic preference laws and requirements that apply to those programs; and identifies those programs that are currently not fully consistent with the requirements of section 70914 of the BABA. The report provides information on the Federal financial assistance programs for infrastructure and associated Buy America(n) requirements administered by DOT and its operating administrations, including the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), and the Maritime Administration (MARAD), as well as the Office of the Secretary (OST).

The report is available online on the Department of Transportation website at *https://www.transportation.gov/office-policy/transportation-policy/made-in-america/build-america-buy-america-60-day-report.*

Dated: February 1, 2022.

Michael Shapiro,

Deputy Assistant Secretary.

[FR Doc. 2022–02441 Filed 2–4–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Information Collection and Request for Public Comment

ACTION: Notice and request for public comment.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Community Development Financial Institutions Fund (CDFI Fund), U.S. Department of the Treasury, is soliciting comments concerning the Certification of Material Events Form.

DATES: Written comments must be received on or before April 8, 2022 to be assured of consideration.

ADDRESSES: Submit your comments via email to Heather Hunt, Office of Compliance Monitoring and Evaluation (OCME) Program Manager, CDFI Fund, at *ccme@cdfi.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Heather Hunt, OCME Program Manager, CDFI Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220 or by phone at (202) 653–0385. The Certification of Material Events Form may be obtained from the CDFI Fund's website at *https://www.cdfifund.gov/news.* Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's website at *https://www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certification of Material Events Form.

OMB Number: 1559–0037.

Abstract: This information collection captures information related to specified ''material events'' that recipients and/or allocatees are required to report per applicable Assistance, Award, Allocation, or Bond Loan Agreement for New Markets Tax Credit Program, CDFI Bond Guarantee Program, Bank Enterprise Award Program, Small Dollar Loan Program, Capital Magnet Fund Program, CDFI Program/Native American CDFI Assistance Program, including Technical Assistance, Financial Assistance, Healthy Food Financing Initiative Financial Assistance, Disability Funds Financial Assistance, Persistent Poverty Counties Financial Assistance, and/or the CDFI Rapid Response Program. The revised form requires recipients and/or allocatees to indicate their material event, explain the event, and describe their organization's response.

Type of Review: Regular Review.

Affected Public: CDFIs and CDEs; including business or other for-profit institutions, non-profit entities, and State, local and Tribal entities participating in CDFI Fund programs.

Estimated Number of Respondents: 200.

Estimated Annual Time per Respondent: .25 hours.

Estimated Total Annual Burden Hours: 50 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 4701 *et seq.;* 26 U.S.C. 45D.

Jodie L. Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2022–02448 Filed 2–4–22; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Voucher for Payment of Awards

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Voucher for Payment of Awards.

DATES: Written comments should be received on or before April 8, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, PO Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Voucher for Payment of Awards.

OMB Number: 1530–0012.

Form Number: FS Form 5135.

Abstract: Awards certificate to Treasury are paid annually as funds are received from foreign governments. Vouchers are mailed to award holders showing payments due. Award holders sign vouchers certifying that he/she is entitled to payment. Executed vouchers are used as a basis for payment.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,400.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 700.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 2, 2022.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2022–02516 Filed 2–4–22; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Notice of Charter Renewal for the Financial Research Advisory Committee

AGENCY: Office of Financial Research, Department of the Treasury.

ACTION: Notice of charter renewal.

SUMMARY: The charter for the Financial Research Advisory Committee has been renewed for a two-year period beginning January 26, 2022.

FOR FURTHER INFORMATION CONTACT: Melissa Avstreih, Designated Federal Officer, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 927–8032 (this is not a toll-free number), or *OFR_FRAC@ofr.treasury.gov*. Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, (Pub. L. 92–463, 5 U.S.C. App. 2 § 1–16, as amended), the Treasury Department established a Financial Research Advisory Committee (Committee) to provide advice and recommendations to the Office of Financial Research (OFR) and to assist the OFR in carrying out its duties and authorities.

(I) Authorities of the OFR

The OFR was established under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, July 21, 2010). The purpose of the OFR is to support the Financial Stability Oversight Council (Council) in fulfilling the purposes and duties of the Council and to support the Council's member agencies by:

—Collecting data on behalf of the Council, and providing such data to the Council and member agencies;
—Standardizing the types and formats of data reported and collected;
—Performing applied research and essential long-term research;
—Developing tools for risk measurement and monitoring;
—Performing other related services;
—Making the results of the activities of the OFR available to financial regulatory agencies; and
—Assisting such member agencies in determining the types and formats of data authorized by the Dodd-Frank Act to be collected by such member agencies.

(II) Scope of the Committee

The Committee was established to advise the OFR on issues related to the responsibilities of the office. It may provide its advice, recommendations, analysis, and information directly to the OFR and the OFR may share the Committee's advice and recommendations with the Secretary of the Treasury or other Treasury officials.

The OFR will share information with the Committee as the Director determines will be helpful in allowing the Committee to carry out its role. The Committee charter was renewed for a two-year term on January 26, 2022.

James Martin,

Deputy Director, Operations, Office of Financial Research.

[FR Doc. 2022–02424 Filed 2–4–22; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 87 Monday,

No. 25 February 7, 2022

Part II

Department of Energy

10 CFR Parts 429 and 431

Energy Conservation Program: Test Procedure for Computer Room Air Conditioners; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2021–BT–TP–0017]

RIN 1904–AE45

Energy Conservation Program: Test Procedure for Computer Room Air Conditioners

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

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (DOE or the Department) proposes to amend its test procedure for computer room air conditioners (CRACs) to incorporate by reference the latest draft version of the relevant industry consensus test standard. DOE also proposes to adopt the net sensible coefficient of performance (NSenCOP) metric in its test procedures for CRACs. Additionally, DOE proposes to amend certain provisions for representations and enforcement. DOE welcomes written comments from the public on any subject within the scope of this document (including topics not raised in this proposal), as well as the submission of data and other relevant information.

DATES:

Comments: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) no later than April 8, 2022. See section V, ''Public Participation,'' for details.

Meeting: DOE will hold a webinar on Tuesday, March, 15, 2022, from 1:00 p.m. to 4:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments.

Alternatively, interested persons may submit comments, identified by docket number EERE–2021–BT–TP–0017, by any of the following methods:

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

(2) *Email: ComputerRoomAC2021TP0017@ee.doe.gov.* Include docket number EERE–2021–BT–TP–0017 in the subject line of the message.

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

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

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

The docket web page can be found at: *www.regulations.gov/docket/EERE-2021-BT-TP-0017.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V (Public Participation) for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–5827. Email: *Eric.Stas@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION: DOE proposes to incorporate by reference the following draft industry standard into parts 429 and 431:

Air-Conditioning, Heating and Refrigeration Institute (''AHRI'') Standard 1360–202X Draft, ''Performance Rating of Computer and Data Processing Room Air Conditioners (''Draft Standard'').'' AHRI Standard 1360–202X Draft is in draft form and its text was provided to the Department for the purposes of review only during the drafting of this NOPR. DOE intends to update the reference to the final published version of AHRI 1360–202X Draft in the Final Rule, unless there are substantive changes between the draft and published versions, in which case DOE may adopt the substance of the AHRI 1360–202X Draft or provide additional opportunity for comment on the changes to the industry consensus test procedure.

A copy of AHRI 1360–202X Draft is attached in this docket for review.

DOE proposes to maintain and update the previously approved incorporation by reference for the following industry standards in part 431:

ANSI/ASHRAE Standard 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ASHRAE approved June 24, 2009.

Copies of ANSI/ASHRAE Standard 37–2009 can be obtained from the American National Standards Institute, 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or online at: *webstore.ansi.org/.*

American National Standards Institute (''ANSI'')/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (''ASHRAE'') Standard 127–2007 ''Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners,'' ANSI approved June 28, 2007.

Copies of ANSI/ASHRAE Standard 127–2007 can be obtained from the American National Standards Institute, 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or online at: *https://webstore.ansi.org/.*

DOE proposes to incorporate by reference the following industry standard in part 431:

ANSI/ASHRAE Standard 127–2020, ''Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners,'' ANSI approved November 30, 2020.

Copies of ANSI/ASHRAE Standard 127–2020 can be obtained from the American National Standards Institute, 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or online at: *webstore.ansi.org/.*

See section IV.M of this document for further discussion of these standards.

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I. Authority and Background

Small, large, and very large commercial package air conditioning and heating equipment are included in the list of ''covered equipment'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(B)–(D)) Commercial package air conditioning and heating equipment includes CRACs as an equipment category. The current DOE test procedures for CRACs are codified at Title 10 of the Code of Federal Regulations (CFR), part 431, subpart F, appendix A, ''Uniform Test Method for the Measurement of Energy Consumption of Air-Cooled Small (≥65,000 Btu/h),[1] Large, and Very Large Commercial Package Air Conditioning and Heating Equipment'' (appendix A). The following sections discuss DOE's authority to establish and amend test procedures for CRACs, as well as relevant background information regarding DOE's consideration of and proposed amendments to the test procedures for this equipment.

A. Authority

The Energy Policy and Conservation Act, as amended (EPCA),[2] among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C[3] of EPCA, Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This covered equipment includes small, large, and very large commercial package air conditioning and heating equipment. (42 U.S.C. 6311(1)(B)–(D)) Commercial package air conditioning and heating equipment includes CRACs, which are the subject of this NOPR.

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, the statute also sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered equipment. Specifically, EPCA requires that any test procedure prescribed or amended shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of covered

[1] ''Btu/h'' refers to British thermal units per hour.

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

[3] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)).

As discussed, CRACs are a category of commercial package air conditioning and heating equipment. EPCA requires that the test procedures for commercial package air conditioning and heating equipment be those generally accepted industry testing procedures or rating procedures developed or recognized by AHRI or by ASHRAE, as referenced in ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (ASHRAE Standard 90.1). (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must update its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B))

EPCA also requires that, at least once every seven years, DOE evaluate test procedures for each type of covered equipment, including commercial package air conditioning and heating equipment (of which CRACs are a category), to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures not to be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)–(3)).

If DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish in the **Federal Register** its determination not to amend the test procedures. (42 U.S.C. 6314(a)(1)(A)(ii))

DOE is publishing this NOPR proposing amendments to the test procedures for CRACs in satisfaction of its aforementioned obligations under EPCA.

B. Background

On May 16, 2012, DOE published a final rule in the **Federal Register**, which, in relevant part, adopted test procedures for CRACs that incorporate by reference ANSI/ASHRAE Standard 127–2007, ''*Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners*'' (ANSI/ASHRAE 127–2007), which is the industry test procedure referenced in ASHRAE Standard 90.1–2010 for CRACs, as the basis for the Federal test procedure for such equipment. 77 FR 28928, 28989 (May 16, 2012). On October 26, 2016, ASHRAE published ASHRAE Standard 90.1–2016, which included updates to the test procedure references for CRACs as compared to ASHRAE Standard 90.1–2010 and ASHRAE Standard 90.1–2013.[4] This action by ASHRAE triggered DOE's obligations under 42 U.S.C. 6314(a)(4)(B), as outlined previously. On July 25, 2017, DOE published a request for information (RFI) (the July 2017 ASHRAE TP RFI) in the **Federal Register** to collect information and data to consider amendments to DOE's test procedures for commercial package air conditioning and heating equipment, given the test procedure updates included in ASHRAE Standard 90.1–2016. 82 FR 34427. As part of the July 2017 ASHRAE TP RFI, DOE identified several aspects of the currently applicable Federal test procedure that might warrant modifications, in particular: Incorporation by reference of the most recent version of the relevant industry standard(s); efficiency metrics and calculations; clarification of test methods; and any additional topics that may inform DOE's decisions in a future test procedure rulemaking, including methods to reduce regulatory burden while ensuring the test procedures' accuracy.

DOE received a number of comments regarding CRACs from interested parties in response to the July 2017 ASHRAE TP RFI, which covered multiple categories of equipment. Table I–1 lists the commenters relevant to CRACs, along with each commenter's abbreviated name used throughout this NOPR. Discussion of the relevant comments, and DOE's responses, are provided in the appropriate sections of this document. A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[5]

TABLE I–1—INTERESTED PARTIES PROVIDING CRAC-RELATED WRITTEN COMMENTS IN RESPONSE TO THE JULY 2017 ASHRAE TP RFI

Name	Abbreviation	Type
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	IR.
Appliance Standards Awareness Project, Alliance to Save Energy, American Council for an Energy-Efficient Economy, Northwest Energy Efficiency Alliance, and Northwest Power and Conservation Council *.	Joint Advocates	EA.
Lennox International Inc	Lennox	M.
National Comfort Institute	NCI	IR.
Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison.	California Investor-Owned Utilities (CA IOUs).	U.

EA: Efficiency/Environmental Advocate; IR: Industry Representative; M: Manufacturer; U: Utility.
* The Northwest Power and Conservation Council is an interstate compact agency, whose mission in part is to promote energy efficiency.

Following the July 2017 ASHRAE TP RFI, AHRI published additional updates to its test procedure standard for CRACs on December 21, 2017 (AHRI Standard 1360–2017, ''2017 Standard for Performance Rating of Computer and Data Processing Room Air Conditioners'' (AHRI 1360–2017)). ASHRAE published ASHRAE Standard

[4] More specifically, ASHRAE Standard 90.1–2016 references AHRI 1360–2016, ''Standard for Performance Rating of Computer and Data Processing Room Air Conditioners'' for CRACs.

[5] The parenthetical reference provides a reference for information located in a docket related to DOE's rulemaking to develop test procedures for CRACs. As noted, the July 2017 ASHRAE TP RFI addressed 4 different equipment categories and is available under docket number EERE–2017–BT–TP–0018. As this NOPR addresses only CRACs, it has been assigned a separate docket number (*i.e.,* EERE–2021–BT–TP–0017). The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

90.1–2019 on October 24, 2019, which updated the test procedure referenced for CRACs from AHRI 1360–2016 to AHRI 1360–2017 and added equipment classes for ceiling-mounted CRACs. Following the publication of ASHRAE Standard 90.1–2019, AHRI is currently working on an update to AHRI Standard 1360 (*i.e.,* AHRI Standard 1360–202X Draft, ''Performance Rating of Computer and Data Processing Room Air Conditioners (''Draft Standard'')'' (AHRI 1360–202X Draft)). These industry test standards are discussed further in section III.C of this NOPR.

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to update the Federal test procedure for CRACs consistent with the most recent draft version of the relevant industry consensus test procedure, AHRI 1360–202X Draft. If AHRI publishes a final version of AHRI 1360–202X Draft prior to DOE publishing a final rule, DOE intends to update the referenced industry test standard in the DOE test procedure to reference the latest version of AHRI 1360. If a finalized version of AHRI 1360–202X Draft is not published before the final rule or if there are substantive changes between the draft and published versions of AHRI 1360, DOE may adopt the substance of the AHRI 1360–202X Draft or provide additional opportunity for comment on the final version of that industry consensus standard. Specifically, DOE proposes to update its regulations at 10 CFR 431.96, ''Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps,'' as follows: (1) Incorporate by reference the updated version of AHRI 1360 and relevant industry standards referenced in that version of AHRI 1360; (2) establish provisions for determining NSenCOP for CRACs; (3) clarify the definition of ''computer room air conditioner'' to include consideration of how equipment is marketed; and (4) amend certain provisions for representations and enforcement in 10 CFR part 429, consistent with the changes proposed to the test procedure. In terms of implementation, DOE proposes to add new appendices E and E1 to subpart F of part 431, ''Uniform test method for measuring the energy consumption of computer room air conditioners,'' (appendix E and appendix E1, respectively). The current DOE test procedure for CRACs would be relocated to appendix E without change, and the new test procedure adopting the substance of AHRI 1360–202X Draft would be established in appendix E1 for determining NSenCOP. Compliance with appendix E1 would not be required until such time as compliance is required with amended energy conservation standards for CRACs that rely on NSenCOP, should DOE adopt such standards. After compliance with appendix E1 would be required, appendix E would no longer be used as part of the Federal test procedure.

DOE's proposed actions are summarized in Table II.1 and addressed in detail in section III of this document.

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE

Current DOE test procedure	Proposed test procedure	Attribution
Incorporates by reference ANSI/ASHRAE 127–2007.	Incorporates by reference in a new appendix E1- AHRI 1360–202X Draft, ANSI/ASHRAE 127–2020, and ANSI/ASHRAE 37–2009.	Updates to the applicable industry test procedures.
Includes provisions for determining SCOP	Includes provisions for determining NSenCOP	Updates to the applicable industry test procedures.
CRAC definition criteria include: (1) Used in computer rooms (or similar applications); (2) whether rated for SCOP and tested in accordance with 10 CFR 431.96; and (3) not a consumer product.	CRAC definition criteria include: (1) Marketed for use in computer rooms (or similar applications); and (2) not a consumer product.	To more clearly define CRACs and distinguish from other equipment categories.
Does not specify provisions specific to testing roof, wall, and ceiling-mounted CRAC units.	Defines roof, wall, and ceiling-mounted CRAC configurations and provides test provisions specific to such units.	Updates to the applicable industry test procedures.
Does not include CRAC-specific provisions for determination of represented values in 10 CFR 429.43.	Includes provisions in 10 CFR 429.43 specific to CRACs to determine represented values for units approved for use with multiple refrigerants, prescribe represented cooling capacity multiples, prevent cooling capacity over-rating, and specify configuration of unit under test.	Establish CRAC-specific provisions for determination of represented values.
Does not include CRAC-specific enforcement provisions in 10 CFR 429.134.	Adopts product-specific enforcement provisions for CRACs regarding verification of cooling capacity and configuration of unit under test.	Establish provisions for DOE testing of CRACs.

DOE has tentatively determined that the proposed amendments described in section III of this NOPR regarding the establishment of appendix E would not alter the measured efficiency of CRACs or require retesting solely as a result of DOE's adoption of the proposed amendments to the test procedure, if made final. DOE has tentatively determined, however, that the proposed test procedure amendments in appendix E1 would, if adopted, alter the measured efficiency of CRACs and that such amendments are consistent with the updated industry test procedure. Further, compliance with the proposed appendix E1 and the proposed amendments to the representation requirements in 10 CFR 429.43 would not be required until the compliance date of amended standards denominated in terms of NSenCOP. Additionally, DOE has tentatively determined that the proposed amendments, if made final, would not increase the cost of testing. Discussion of DOE's proposed actions are addressed in further detail in section III of this NOPR.

III. Discussion

A. Scope of Applicability

This rulemaking applies to CRACs. DOE defines ''computer room air conditioner'' as a basic model of commercial package air-conditioning and heating equipment (packaged or

split) that is: Used in computer rooms, data processing rooms, or other information technology cooling applications; rated for SCOP and tested in accordance with 10 CFR 431.96; and is not a covered consumer product under 42 U.S.C. 6291(1)–(2) and 42 U.S.C. 6292. A CRAC may be provided with, or have as available options, an integrated humidifier, temperature and/or humidity control of the supplied air, and reheating function. 10 CFR 431.92.

B. Proposed Organization of the CRAC Test Procedure

DOE is proposing to relocate and centralize the current test procedure for CRACs to a new appendix E to subpart F of 10 CFR part 431, without change. As proposed, appendix E would not amend the current test procedure. The test procedure as provided in proposed appendix E would continue to reference ANSI/ASHRAE 127–2007 and provide instructions for determining SCOP. Correspondingly, DOE is proposing to update the existing incorporation by reference of ANSI/ASHRAE 127–2007 at 10 CFR 431.95 so that the incorporation by reference applies to appendix E, rather than 10 CFR 431.96. The proposed appendix E would also centralize the additional test provisions currently applicable under 10 CFR 431.96 (*i.e.,* optional break-in period for tests conducted using ANSI/ASHRAE 127–2007 (currently at 10 CFR 431.96(c)) and additional provisions for equipment set-up (currently at 10 CFR 431.96(e)). As proposed, CRACs would be required to be tested according to appendix E until such time as compliance is required with an amended energy conservation standard that relies on the NSenCOP metric, should DOE adopt such a standard.

Accordingly, DOE also is proposing in parallel an amended test procedure for CRACs that adopts AHRI 1360–202X Draft in a new appendix E1 to subpart F of 10 CFR part 431. DOE proposes to adopt the substance of the updated draft version of AHRI 1360, including the NSenCOP metric, as discussed in the following sections. To this end, DOE intends to propose to incorporate by reference the final published version of AHRI 1360–202X Draft in the final rule, unless there are substantive changes between the draft and published versions, in which case DOE may adopt the substance of the AHRI 1360–202X Draft or provide additional opportunity for comment on changes presented in the final version of the industry consensus test standard. As proposed, CRACs would not be required to be tested according to the test procedure in proposed appendix E1 until such time as compliance is required with an amended energy conservation standard that relies on the NSenCOP metric, should DOE adopt such a standard.

C. Updates to Industry Test Standards

As noted previously, DOE's current test procedure for CRACs is codified at 10 CFR 431.96 and incorporates by reference ANSI/ASHRAE Standard 127–2007,[6] which is the test procedure recognized by ASHRAE Standard 90.1–2010 for CRACs. However, the most recent version of ASHRAE Standard 90.1 (*i.e.,* the 2019 edition) recognizes AHRI 1360–2017 as the test procedure for CRACs.

After publication of AHRI 1360–2017, DOE and other stakeholders supported the AHRI 1360 committee in its process to further update AHRI Standard 1360. DOE understands that this new update is currently in draft form (*i.e.,* AHRI 1360–202X Draft) and will supersede AHRI 1360–2017. AHRI 1360–202X Draft references ANSI/ASHRAE 127–2020, ''*Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners*'' (ANSI/ASHRAE 127–2020)[7] and ANSI/ASHRAE 37–2009, ''*Methods Of Testing For Rating Electrically Driven Unitary Air-Conditioning And Heat Pump Equipment* (ANSI/ASHRAE 37–2009). Both AHRI 1360–2017 and AHRI 1360–202X Draft include significant changes from ANSI/ASHRAE 127–2007, including the use of NSenCOP instead of SCOP as the test metric. Both efficiency metrics (NSenCOP and SCOP) are ratios of net sensible cooling capacity delivered to the power consumed, but there are several differences in the conditions at which tests are performed. Section III.E.1 of this NOPR includes further discussion of the differences between these test metrics.

In light of these updates to the relevant industry consensus standards, DOE is proposing to amend its test procedure for CRACs by incorporating by reference AHRI 1360–202X Draft (in its entirety). DOE intends to update its incorporation by reference to the final published version of AHRI 1360–202X Draft in the final rule, unless the draft version is not finalized before the final rule or if there are substantive changes between the draft and published versions, in which case DOE may adopt the substance of the AHRI 1360–202X Draft or provide additional opportunity for comment on the substantive changes to the updated industry consensus standard. Specifically, in the proposed test procedure for CRACs at 10 CFR part 431, subpart F, appendix E1, DOE is proposing to utilize sections 3.1, 3.4, 3.11, 3.14, 3.16, 3.17, 3.21–3.23, 5, 6.1–6.3, 6.5, 6.7, and Appendices C–F of AHRI 1360–202X Draft for the Federal test procedure for CRACs.[8]

DOE is also proposing to incorporate by reference several industry standards that are subsequently referenced by AHRI 1360–202X Draft. First, DOE is proposing to incorporate by reference ANSI/ASHRAE 127–2020. Specifically, in the proposed test procedure for CRACs at 10 CFR part 431, subpart F, appendix E1, DOE is proposing to utilize Figure A-1, *Test duct for measuring air flow and static pressure on downflow units,* of Appendix A of ANSI/ASHRAE 127–2020, because Figure A-1 of Appendix A is referenced in section 5.8 of AHRI 1360–202X Draft. Second, DOE is proposing to incorporate by reference ANSI/ASHRAE 37–2009 for 10 CFR part 431, subpart F, appendix E1, because section 5, Appendix D, and Appendix E of AHRI 1360–202X Draft reference methods of test in ANSI/ASHRAE 37–2009. More specifically, DOE is proposing to utilize all sections of ANSI/ASHRAE 37–2009, except sections 1, 2, and 4. (Any issues discussed in the July 2017 ASHRAE TP RFI that pertain to provisions in ANSI/ASHRAE 37–2009 are addressed in section III.F.4 of this NOPR.)

D. Definitions

1. CRAC Definition

As discussed, DOE currently defines a CRAC as a basic model of commercial package air-conditioning and heating equipment (packaged or split) that is: Used in computer rooms, data processing rooms, or other information technology cooling applications; rated for SCOP and tested in accordance with 10 CFR 431.96, and is not a covered consumer product under 42 U.S.C. 6291(1)–(2) and 42 U.S.C. 6292. 10 CFR 431.92. A computer room air conditioner may be provided with, or have as available options, an integrated humidifier, temperature and/or humidity control of the supplied air, and reheating function. *Id.* In defining a CRAC, DOE was unable to identify physical characteristics that consistently

[6] While ANSI/ASHRAE Standard 127–2007 is incorporated by reference in its entirety, Table 1 to 10 CFR 431.96 (which defines the applicable test methods for each category of equipment) excludes section 5.11 of ANSI/ASHRAE Standard 127–2007 for testing CRACs. The test procedure also includes additional provisions related to break-in period and test set-up. *See* 10 CFR 431.96(c) and (e).

[7] ASHRAE published ANSI/ASHRAE Standard 127–2020 on November 30, 2020.

[8] DOE notes that the most recent version of ASHRAE Standard 90.1–2019 references AHRI 1360–2017 as the industry consensus test method for CRACs.

distinguish CRACs from other categories of commercial package air conditioning and heating equipment that provide comfort-cooling. *See* 77 FR 16769, 16772–16774 (March 22, 2012); 77 FR 28928, 28947–28948 (May 16, 2012).

In an effort to better distinguish CRACs from other categories of commercial package air conditioning and heating equipment that provide comfort cooling, DOE is again considering means to consistently differentiate this equipment. To this end, DOE has considered as potential distinguishing factors use of a minimum sensible heat ratio (SHR) and the nominal airflow rate per ton of cooling capacity, as discussed further in this section. SHR is the ratio of sensible cooling capacity to the total cooling capacity. The total cooling capacity includes both sensible cooling capacity and latent cooling capacity.[9]

As part of the July 2017 ASHRAE TP RFI, DOE requested comment on the extent to which models of commercial package air conditioners are marketed and/or installed for use in both comfort cooling and computer room cooling applications. 82 FR 34427, 34430 (July 25, 2017). DOE also requested comment on whether there are models rated for Energy Efficiency Ratio (EER) or Seasonal Energy Efficiency Ratio (SEER), and not SCOP, that are used for computer room cooling. *Id.* DOE sought comment and data on whether a specific SHR value or any other design differences or performance features would effectively and consistently distinguish CRACs from other categories of commercial package air conditioners. *Id.*

In response to the July 2017 ASHRAE TP RFI, AHRI commented that some large unitary equipment, mini-split units, single packaged vertical units, and large direct and indirect evaporative coolers are used in data center applications. AHRI also noted that many of these products are custom-built for the application and are not necessarily designed for comfort cooling. The commenter added that in many instances, the consulting engineer and/or the end user determines the type of equipment used, regardless of how it is marketed. Additionally, AHRI stated that CRACs are uniquely designed to operate year-round only in cooling mode, and their efficiency rating should be stated as NSenCOP. (AHRI, No. 11 at pp. 1–2). DOE did not receive specific comments on whether there are models rated for EER or SEER, and not SCOP or NSenCOP, that are used for computer room cooling.

With regard to whether SHR could be used to effectively and consistently distinguish CRACs from other classes of commercial package air conditioners, AHRI commented that SHR is dependent on the rating conditions used for testing, coil design, and airflow rate of the unit. AHRI stated that SHRs for CRACs typically fall within a range of around 0.90–1.0, depending on which of the indoor air rating conditions specified for CRACs in AHRI 1360–2016 are used; whereas typical comfort cooling commercial units have an SHR of around 0.60 at the indoor air rating conditions specified for commercial unitary air conditioners (CUACs) in AHRI 340/360–2015 (which differ from CRAC rating conditions). AHRI added that CRACs obtain a higher SHR than CUACs by having a higher airflow rate per ton of cooling capacity,[10] and, thus, a larger fan motor. (AHRI, No. 11 at p. 2)

As part of preparing this NOPR, DOE conducted a preliminary review of performance data to explore the use of SHR to distinguish between CUACs and CRACs. DOE reviewed data from CUAC product literature [11] and DOE's Compliance Certification Database for CRACs,[12] which indicates that if CUACs were tested at the indoor air conditions specified in DOE's current test procedure for CRACs, there would be significant overlap in the ranges of SHR for CUAC models and CRAC models. Specifically, more than half of CRAC models certified to DOE would have an SHR that is also achieved by certain CUAC models. Additionally, DOE's analysis of rated cooling capacity and airflow rate data from DOE's Compliance Certification Database and the AHRI Directory of Certified Product Performance [13] revealed a substantial overlap in nominal airflow rate per ton of cooling capacity between CRACs and CUACs currently on the market. Therefore, DOE has tentatively concluded that neither SHR nor nominal airflow rate per ton of cooling capacity would provide a clear distinction between CRACs and CUACs.

Because DOE was unable to identify physical characteristics that could reliably be used to distinguish between CRACs and other equipment types, DOE is not proposing to define CRACs based on physical construction and/or component characteristics. Rather, DOE is proposing to amend the definition of CRAC to include how it is marketed for use by the manufacturer. Specifically, DOE is proposing first to replace the phrase ''used in computer rooms, data processing rooms, or other information technology cooling applications'' with ''marketed for use in computer rooms, data processing rooms, or other information technology cooling applications.'' DOE's proposed definition for CRACs is consistent with the definition in the latest draft industry standard, AHRI 1360–202X Draft, which also defines CRACs based on marketing.[14]

DOE also proposes to remove the current wording ''. . . rated for sensible coefficient of performance (SCOP) and tested in accordance with 10 CFR 431.96'' to ensure that a unit that otherwise meets the definition of a CRAC would be covered as a CRAC regardless of how the manufacturer has tested and rated the model. DOE also proposes to remove the unnecessary current wording ''. . . a basic model of'' to avoid confusion as to whether the equipment constitutes a basic model (*i.e.,* DOE specifies different basic model definitions for each equipment category at 10 CFR 431.92) before the determination is made whether the equipment meets the CRAC definition.

DOE proposes to maintain the existing requirement that a CRAC is not a covered consumer product under 42 U.S.C. 6291(1)–(2) and 42 U.S.C. 6292. DOE is also proposing to maintain the existing distinction that a CRAC may be provided with, or have as available options, an integrated humidifier, temperature, and/or humidity control of the supplied air, and reheating function.

In summary, DOE is proposing in 10 CFR 431.92 to define Computer Room Air Conditioner as ''commercial package air conditioning and heating equipment (packaged or split) that is: marketed for use in computer rooms, data processing rooms, or other information technology cooling applications; and not a covered

[9] Cooling load is composed of both sensible and latent portions. The sensible load is the energy required to reduce the temperature of the incoming air, without any phase change (*i.e.,* cooling). The latent load is the energy required to change the moisture in the air from water vapor into a liquid phase as it condenses on the cooling coil (*i.e.,* dehumidification).

[10] One ton of cooling capacity equals 12,000 Btu/h.

[11] Specifically, CUAC technical literature provided performance tables that show total cooling capacity and sensible cooling capacity at various indoor air conditions for each model.

[12] DOE's Compliance Certification Database does not contain sensible cooling capacity ratings for certified CUACs. (Available at: *www.regulations.doe.gov/ccms*).

[13] The AHRI Directory of Certified Product Performance is available at *www.ahridirectory.org.*

[14] Section 3.5 of AHRI 1360–202X Draft defines ''computer room air conditioner'' as a subset of ''computer and data processing room air conditioner.'' Section 3.4 of AHRI 1360–202X Draft defines ''computer and data processing room air conditioner,'' as an air conditioning unit specifically marketed for cooling data centers and information technology equipment.

consumer product under 42 U.S.C. 6291(1)–(2) and 42 U.S.C. 6292. A computer room air conditioner may be provided with, or have as available options, an integrated humidifier, temperature, and/or humidity control of the supplied air, and reheating function. Computer room air conditioners include, but are not limited to, the following configurations as defined in 10 CFR 431.92 down-flow, horizontal-flow, up-flow ducted, up-flow non-ducted, ceiling-mounted ducted, ceiling mounted non-ducted, roof-mounted, and wall-mounted.'' DOE is also proposing definitions for the configuration terms used in this proposed definition, as discussed further in the following section of this document. Further, regarding the ''marketed for'' criterion in the proposed definition, DOE proposes in 10 CFR 431.92 that DOE would consider any publicly-available document published by the manufacturer (*e.g.,* product literature, catalogs, and packaging labels) to determine the application for which equipment is marketed.

DOE recognizes that there may be units on the market that would be covered by DOE regulations for multiple equipment categories. As discussed in a previous notice addressing CRACs, such units would have to be tested and rated according to the requirements for each applicable equipment class of standards (*e.g.,* CRAC and CUAC). *See* 77 FR 16769, 16773 (March 22, 2012).

Issue 1: DOE requests comment on the proposed definition for ''computer room air conditioner'' that distinguishes between CRACs and other categories of air conditioning equipment, based on the marketing of the equipment.

2. CRAC Configuration Definitions

CRACs can be installed in a variety of different configurations, which vary by installation location, direction of airflow over the evaporator coil (*e.g.,* up, down, or horizontal), and by return and discharge air connections (*e.g.,* raised floor plenum, ducted, free air). AHRI 1360–202X Draft includes the concept of ''standard configurations'' to standardize the configuration and rating conditions (*e.g.,* ESP, return air temperature) for testing CRACs to generate standard ratings. Appendix C of AHRI 1360–202X Draft specifies eight different standard configurations: (1) Ceiling-mounted ducted (with ducted discharge and ducted return); (2) ceiling-mounted non-ducted (with free air discharge and free air return); (3) down-flow (with raised floor plenum discharge and free air return); (4) horizontal-flow (with free air discharge and free air return); (5) up-flow ducted (with ducted discharge and free air return); (6) up-flow non-ducted (with free air discharge and free air return); (7) wall-mounted (with free air discharge and free air return); and (8) roof-mounted ducted (with ducted discharge and ducted return).

Section C1 in Appendix C of AHRI 1360–202X Draft specifies that all units within the scope of the test standard must be categorized and rated as one of the eight standard configurations, and it specifies test conditions that vary between standard configurations. Standard configurations are further discussed in section III.F.1 of this NOPR.

Section 3.24 of AHRI 1360–202X Draft includes definitions for the following configurations of standard models: ''downflow unit,'' ''horizontal-flow unit,'' ''upflow unit–ducted,'' ''upflow unit–nonducted,'' ''ceiling mounted unit–ducted,'' ''ceiling-mounted unit–nonducted,'' ''wall-mounted,'' and ''roof-mounted ducted.'' Additionally, section 3.9.2 of AHRI 1360–202X Draft includes definitions for the following airflow configurations of floor-mounted CRACs: ''downflow,'' ''horizontal-flow,'' and ''upflow.''

To provide additional instruction as to which configuration (and, thus, which testing requirements and standards, as applicable) should be used for testing, DOE is proposing to add several definitions for CRACs consistent with the previously mentioned definitions in AHRI 1360–202X Draft. Specifically, DOE is proposing definitions for the following terms at 10 CFR 431.92: Floor-mounted, ceiling-mounted, wall-mounted, roof-mounted, up-flow, down-flow, horizontal flow, up-flow ducted, up-flow non-ducted, ceiling-mounted ducted, ceiling-mounted non-ducted, and fluid economizer. Because several of these proposed definitions reference other defined terms (*e.g.,* the ''up-flow non-ducted'' definition references the separately defined ''up-flow'' term), DOE is proposing to italicize the defined terms within CRAC-related definitions at 10 CFR 431.92 to signal to the reader which terms are separately defined. Each of these proposed definitions is discussed in further detail in the following sections.

Issue 2: DOE requests comment on its proposal to define the following terms, consistent with AHRI 1360–202X Draft: Floor-mounted, ceiling-mounted, wall-mounted, roof-mounted, up-flow, down-flow, horizontal flow, up-flow ducted, up-flow non-ducted, ceiling-mounted ducted, ceiling-mounted non-ducted, and fluid economizer.

a. Mounting Configurations

A variety of mounting configurations are available for CRACs. For CRACs for which the unit housing the evaporator coil is designed to be installed indoors (including both single package and split system CRACs), mounting configurations include floor-mounted, wall-mounted, and ceiling-mounted. Floor-mounted units are designed as free-standing units that are installed directly on a solid floor, a raised floor, or a floor-stand; wall-mounted units are designed for installation on or through a wall; and ceiling-mounted units are designed to be installed on or through a ceiling. Other CRACs are designed to be installed outdoors on a building rooftop or on a slab at ground level.

DOE proposes to adopt the definitions in AHRI 1360–202X Draft for ceiling mounted units, floor mounted units, roof mounted units, and wall mounted units, with one minor modification. Specifically, DOE proposes to replace the phrase ''Indoor Unit'' with ''unit housing the evaporator coil'' to avoid the need for defining another term (*i.e.,* ''Indoor Unit'') in the Federal regulations. Section 3.11 of AHRI 1360–202X Draft specifies that ''Indoor Unit'' for a split system is the unit that removes heat from the indoor air stream. DOE has tentatively concluded that ''the unit removing heat from the indoor air stream'' and ''the unit housing the evaporator coil'' are substantively identical for CRACs—the only distinction would be for computer room air handlers, which remove heat from the airstream via a chilled water coil and thus do not have an evaporator coil. Because DOE does not regulate air handlers, DOE is proposing to use the phrase ''housing the evaporator coil'' to describe more narrowly the indoor unit of a CRAC split system.

DOE proposes the following definitions for CRAC mounting configurations at 10 CFR 431.92. These definitions are referenced by other proposed CRAC configuration definitions described in the sections that follow.

Floor-mounted means a configuration of *computer room air conditioner* for which the unit housing the evaporator coil is configured for indoor installation on a solid floor, raised floor, or floor-stand. Floor-mounted *computer room air conditioners* are one of the following three configurations: *Down-flow, horizontal-flow,* or *up-flow.*

Ceiling-mounted means a configuration of *computer room air conditioner* for which the unit housing the evaporator coil is configured for

indoor installation on or through a ceiling.

Wall-mounted means a configuration of *computer room air conditioner* for which the unit housing the evaporator coil is configured for installation on or through a wall.

Roof-mounted means a configuration of *computer room air conditioner* that is not *wall-mounted,* and for which the unit housing the evaporator coil is configured for outdoor installation.

b. Flow Direction

DOE is proposing to adopt the definitions in AHRI 1360–202X Draft for ''up-flow,'' ''down-flow,'' and ''horizontal-flow'' CRAC configurations, with minor additions to: (1) Clarify that these provisions apply only to floor-mounted CRACs because other types of CRACs (*i.e.,* ceiling-mounted, roof-mounted, and wall-mounted CRACs) each only have one possible airflow direction through the unit; and (2) replace the term ''cooling coil'' with ''evaporator coil'' to more specifically reference the relevant coil, because a fluid economizer coil could also be considered a ''cooling coil.'' The limitation of scope of these definitions to floor-mounted CRACs is consistent with Section 3.9.2 of AHRI 1360–202X Draft, which includes these as sub-definitions under the definition for ''floor-mounted unit.''

DOE proposes the following definitions regarding the airflow direction for CRACs at 10 CFR 431.92:

Up-flow means a configuration of *floor-mounted computer room air conditioner* in which return air enters below the bottom of the evaporator coil and discharge air leaves above the top of the evaporator coil.

Down-flow means a configuration of *floor-mounted computer room air conditioner* in which return air enters above the top of the evaporator coil and discharge air leaves below the bottom of the evaporator coil.

Horizontal-flow means a configuration of *floor-mounted computer room air conditioner* that is neither a *down-flow* nor an *up-flow* unit.

c. Ducted and Non-Ducted Definitions

The definitions in Section 3.19 of AHRI 1360–2017 distinguish between ducted and non-ducted up-flow units based on the presence of factory-installed air discharge grills or factory-installed supply air plenums. Certain floor-mounted units, ceiling-mounted units, and wall-mounted units can be installed either with or without a duct, depending on the needs of the installation of the unit in the field. In the July 2017 ASHRAE TP RFI, DOE noted that AHRI 1360–2016 does not provide express instructions on which up-flow standard model requirements would be used for testing equipment that can be installed either with or without a duct. DOE requested comment on which equipment characteristics can be used to determine whether up-flow CRACs should be tested as ducted or non-ducted models. DOE also requested comment on whether up-flow units can be sold for both up-flow ducted and up-flow non-ducted applications, and whether such models are currently tested using both ducted and non-ducted rating conditions. 82 FR 34427, 34432–34433 (July 25, 2017).

In addition, as discussed in the July 2017 ASHRAE TP RFI, DOE's review of CRAC installation manuals suggests that some up-flow units are installed with a plenum that directs the vertical airflow exiting the top of the unit to a horizontal direction (*e.g.,* either toward the front or rear of the unit). DOE requested comment on the percentage of up-flow CRAC installations in which a plenum is attached, and whether non-ducted units are tested with or without this plenum. 82 FR 34427, 34434 (July 25, 2017).

In response to the July 2017 ASHRAE TP RFI, AHRI stated that up-flow units that can be installed with ducting or with an air discharge plenum would use more energy in the ducted configuration and should, therefore, be tested and rated as ducted. The commenter argued that testing and rating a unit as both ducted and non-ducted would add unnecessary testing burden on manufacturers. AHRI further stated that only units with factory-integrated discharge grills should be tested as non-ducted. (AHRI, No. 11 at p. 4)

AHRI also commented that if an up-flow unit is not shipped with an integral factory grill, it should be considered an up-flow ducted unit and that such units are currently tested with a duct regardless of whether they have a plenum installed or are ducted in the field. AHRI further added that approximately 33 percent of up-flow ducted units use a manufacturer's plenum to redirect the air from the upward direction, while the remaining 67 percent may be installed with ducting in the field. (AHRI, No. 11 at p. 6).

This issue was addressed with changes in AHRI 1360–202X Draft. The definitions in Sections 3.3.1 and 3.9.1 of AHRI 1360–202X Draft distinguish between ducted and non-ducted ceiling mounted and up-flow floor mounted units based on the marketing of the unit. Specifically, a unit that is marketed only for use without discharge ducting is classified as a non-ducted unit and a unit that is marketed for use with discharge ducting (but may also be marketed for use without discharge ducting) is classified as a ducted unit.

DOE is proposing to include definitions consistent with AHRI 1360–202X Draft that differentiate between ducted and non-ducted units, with only minor modifications. The modifications are to simplify the definitions and remove unnecessary phrases. For example, the definitions for ''ducted discharge'' and ''free air discharge'' in Section 3.9.1 of AHRI 1360–202X Draft apply to both up-flow and down-flow units and specify that the terms exclude units that are ''raised floor plenum discharge.'' The explicit exclusion of units that are ''raised floor plenum discharge'' applies only to down-flow units because an up-flow unit discharges air near the top of the unit and would, therefore, never discharge air into a raised floor plenum. Consequently, this exclusion is unnecessary in DOE's proposed definitions for ''up-flow ducted'' and ''up-flow non-ducted.''

In summary, DOE proposes the following definitions at 10 CFR 431.92 that differentiate between ducted and non-ducted units for up-flow and ceiling-mounted CRACs:

Up-flow ducted means a configuration of an *up-flow computer room air conditioner* that is configured for use with discharge ducting (even if the unit is also configurable for use without discharge ducting).

Up-flow non-ducted means a configuration of an *up-flow computer room air conditioner* that is configured only for use without discharge ducting.

Ceiling-mounted ducted means a configuration of *ceiling-mounted computer room air conditioner* that is configured for use with discharge ducting (even if the unit is also configurable for use without discharge ducting).

Ceiling-mounted non-ducted means a configuration of *ceiling-mounted computer room air conditioner* that is configured only for use without discharge ducting.

d. Fluid Economizer

Section 3.10 of AHRI 1360–202X Draft specifies a definition for ''fluid economizer,'' which it defines (in part) as an option available to CRACs or computer room air handler systems. DOE is proposing to adopt the following definition for ''fluid economizer'' at 10 CFR 431.92, which is consistent with the definition used by AHRI 1360–202X Draft, except that it does not include computer room air handlers because

these air handlers (*i.e.,* chilled water coils) do not meet DOE's definition for ''commercial package air conditioning and heating equipment'' at 10 CFR 431.92.

Fluid Economizer means an option available with a *computer room air conditioner* in which a fluid (other than air), cooled externally from the unit, provides cooling of the indoor air to reduce or eliminate unit compressor operation when outdoor temperature is low. The fluid may include, but is not limited to, chilled water, water/glycol solution, or refrigerant. An external fluid cooler, such as but not limited to a dry cooler, cooling tower, or condenser, is utilized for heat rejection. This component is sometimes referred to as a free cooling coil, econ-o-coil, or economizer.

E. Metric

1. NSenCOP

DOE's current efficiency metric for CRACs is SCOP, which is a ratio of cooling capacity delivered to the power consumed. For most categories of air conditioners and heat pumps other than CRACs, the efficiency metrics are calculated based on total cooling capacity (which includes both sensible cooling and latent cooling). However, unlike the conditioned spaces in most commercial buildings, computer rooms and data centers typically have limited human occupancy and minimal dehumidification requirements, and thus, primarily require only sensible cooling. Therefore, SCOP is calculated based on sensible cooling capacity rather than total cooling capacity.

As discussed, ASHRAE Standard 90.1–2016 amended the efficiency metric for CRACs from SCOP (measured per ANSI/ASHRAE 127–2007) to NSenCOP (measured per AHRI 1360–2016). ASHRAE Standard 90.1–2019 subsequently retained NSenCOP as the test metric, but it updated the test reference to AHRI 1360–2017 (which specifies NSenCOP as the test metric and has the same test conditions as AHRI 1360–2016). AHRI 1360–202X Draft also specifies NSenCOP as the test metric and maintains the rating conditions found in AHRI 1360–2017, while also adding rating conditions for roof-mounted and wall-mounted units. Like SCOP, NSenCOP is a ratio of sensible cooling capacity to the power consumed. However, the test procedure to determine NSenCOP differs from that to determine SCOP in four key aspects: (1) For several CRAC configurations (*e.g.,* down-flow, up-flow ducted), different indoor entering air temperatures are specified; (2) for water-cooled CRACs, different entering water temperatures are specified; (3) for up-flow ducted configurations, different indoor air external static pressure (ESP) requirements are specified; and (4) for water-cooled and glycol-cooled CRACs, NSenCOP accounts for energy consumed by fans and pumps that would be installed in the outdoor heat rejection loop, which is not accounted for in SCOP. Because of these key differences, the SCOP and NSenCOP metrics are not equivalent and would result in different ratings. As noted, the current energy conservation standards for CRACs are in terms of SCOP, and testing according to the DOE test procedure to determine SCOP would continue to be required until such time as the energy conservation standards are amended to rely on NSenCOP, should DOE adopt such changes to the standards. Each of the differences between SCOP and NSenCOP is discussed in further detail in the following paragraphs.

a. Indoor Entering Air Temperatures

ANSI/ASHRAE 127–2007 (for SCOP) specifies using a return air temperature (*i.e.,* indoor entering air temperature) of 75 °F for all CRAC configurations. However, in the field, the location of the return air inlet can impact the return air temperature. For example, CRAC configurations in which the return air inlet is located close to the heat source (*i.e.,* horizontal flow units, which are typically located adjacent to server racks) would have higher entering air temperatures than configurations with return air inlets located further from the heat source. In general, increasing the indoor entering air temperature (assuming all other parameters remain unchanged) increases the measured sensible cooling capacity and sensible cooling efficiency. In contrast, AHRI 1360–202X Draft (for NSenCOP) specifies different return air temperatures for different configurations. Specifically, AHRI 1360–202X Draft specifies indoor entering air dry-bulb temperatures for each CRAC configuration, as follows: (1) 85 °F for up-flow ducted units, down-flow units, and roof-mounted units; (2) 95 °F for horizontal-flow units; and (3) 75 °F for up-flow non-ducted units, ceiling-mounted ducted units, ceiling-mounted non-ducted units, and wall-mounted units.

b. Entering Water Temperatures

For water-cooled CRACs, ANSI/ASHRAE 127–2007 (for SCOP) specifies an entering water temperature of 86 °F, whereas AHRI 1360–202X Draft (for NSenCOP) specifies an entering water temperature of 83 °F. In general, decreasing the entering water temperature increases the measured efficiency.

c. Indoor Air ESP Requirements

For up-flow ducted CRACs, both ANSI/ASHRAE 127–2007 and AHRI 1360–202X Draft specify indoor air ESP requirements that vary with net sensible cooling capacity. AHRI 1360–202X Draft specifies lower ESP requirements than ANSI/ASHRAE 127–2007 across all capacity ranges, and the capacity bins (*i.e.,* capacity ranges over which each ESP requirement applies) are different between the two test standards. Testing with a lower ESP typically decreases the indoor fan power input without a corresponding decrease in cooling capacity, thus increasing the measured efficiency. Additionally, the reduction in fan heat entering the indoor air stream that results from lower fan power also slightly increases net sensible cooling capacity (NSCC). These indoor air ESP requirements are further discussed in section III.F.6 of this NOPR.

d. Energy Consumption of Heat Rejection Components

For air-cooled CRACs, all energy consumption associated with heat rejection (*i.e.,* transfer of heat that is captured from the conditioned space to outdoor air) is directly captured under both ANSI/ASHRAE 127–2007 and AHRI 1360–202X Draft because the units include the condenser fan(s) as integral components. However, for water-cooled CRACs and glycol-cooled CRACs, the energy consumption associated with heat rejection components (*i.e.,* liquid pump and cooling tower/dry cooler fan(s)) is not captured in either test method, because the heat rejection components for these CRACs are not integral components. However, Section 6.3.1 of AHRI 1360–202X Draft requires that an allowance for the power input of these components be added to the total power input used to determine NSenCOP. Specifically, Section 6.3.1.3 of AHRI 1360–202X Draft requires that an allowance be added for cooling tower fan(s) and water pump power input of water-cooled CRACs equal to 5 percent of the measured unit net sensible cooling capacity, and Section 6.3.1.4 of AHRI 1360–202X Draft requires that an allowance be added for dry cooler fan(s) and glycol pump power input of glycol-cooled CRACs equal to 7.5 percent of the measured unit net sensible cooling capacity. ANSI/ASHRAE 127–2007 does not include any such adjustments to account for the power consumption of

these heat rejection components in the power input used to calculate SCOP. The addition of these allowances does not change how the test is conducted, but the resulting changes to the efficiency ratings would more fully capture field energy consumption and allow for more representative comparison of water-cooled and glycol-cooled CRACs with air-cooled CRACs.

e. Conclusion

In response to the changes to the efficiency metric and referenced industry test standard for CRACs in ASHRAE Standard 90.1–2019 and the draft update to the referenced industry test standard (AHRI 1360–202X Draft), DOE proposes to update its efficiency metric for CRACs to NSenCOP. As discussed in section I.A of this NOPR, this approach is consistent with the general statutory scheme in EPCA to adopt an amended test procedure that is consistent with the updated relevant industry test procedure referenced in ASHRAE Standard 90.1. As part of any future analysis of energy conservation standards for CRACs, DOE would expect to conduct a crosswalk analysis to translate the current Federal standards in terms of SCOP to equivalent levels in terms of NSenCOP to evaluate potential amendments to the energy conservation standards, as appropriate.

Updating the industry consensus standard referenced in the DOE test procedure for CRACs to the draft updated version of the industry standard (*i.e.,* AHRI 1360–202X Draft), would require DOE to change the metric for CRACs from SCOP to NSenCOP. As noted, the energy conservation standards for CRACs are in terms of SCOP, and testing according to the DOE test procedure to determine SCOP would continue to be required until such time as the energy conservation standards are amended to rely on NSenCOP, should DOE adopt such changes to the standards. Further, DOE is unaware of any data or information indicating that NSenCOP test conditions are not representative of an average CRAC use cycle, but the Department requests comments, data, and information as to this understanding.

Issue 3: DOE requests comment on its proposal to adopt the NSenCOP metric for CRACs as part of the proposed test procedure in appendix E1, which would be used only if DOE were to prescribe energy conservation standards denominated in terms of NSenCOP in a future rulemaking. Additionally, DOE seeks feedback on whether the rating conditions in AHRI 1360–202X Draft are appropriately representative of field applications.

2. Integrated Efficiency Metric

In contrast to an efficiency metric that measures performance at only one test point, an annualized, or ''integrated'' efficiency metric measures performance at multiple test points (*i.e.,* tests with different outdoor test conditions) that are intended to reflect seasonal variation in outdoor ambient temperatures that would be experienced by the equipment installed in the field. ANSI/ASHRAE 127–2007 includes an integrated efficiency metric (*i.e.,* adjusted sensible coefficient of performance (ASCOP)—a metric for which DOE does not require manufacturers to report ratings), which is calculated based on the SCOP determined at four different rating conditions (A, B, C, and D) that represent different ambient conditions, with weightings for the SCOP at each rating condition based on the climate at a specific location. All subsequent versions of CRAC industry standards (*i.e,* 2012 and 2020 versions of ASHRAE Standard 127; 2013, 2016, 2017, and draft versions of AHRI Standard 1360) include a different integrated efficiency metric—integrated net sensible coefficient of performance (iNSenCOP). The iNSenCOP metric is similar to ASCOP in that it comprises a weighted average of NSenCOP values for four test points at varying outdoor conditions.[15] Additionally, iNSenCOP includes the weightings for each test point, whereas for ASCOP, ANSI/ASHRAE 127–2007 does not provide the weightings for each test point, and instead specifies obtaining data from a weather bureau or other reputable source to develop weightings for each ASCOP test point.

The ASCOP and iNSenCOP test methods in the CRAC industry consensus test standards require units to maintain a constant sensible cooling capacity at lower ambient temperatures. However, as the ambient temperature decreases, the maximum cooling capacity of a CRAC will inherently increase as the condensing temperature decreases. The CRAC industry consensus test standards do not provide direction regarding how the unit should be controlled to deliver the same amount of sensible cooling as its capacity increases for the lower-ambient tests. AHRI 1360–2017 acknowledges that it may be difficult to maintain test conditions within tolerance while operating at the full-load cooling load at reduced ambient temperatures, but does not provide direction regarding how the unit should be controlled. In the July 2017 ASHRAE TP RFI, DOE requested comment on whether it should consider adopting an integrated efficiency metric (*e.g.,* iNSenCOP) and, if so, how the requirement to maintain a constant sensible cooling capacity associated with the iNSenCOP test procedure should be implemented during testing. 82 FR 34427, 34432 (July 25, 2017).

In response, AHRI stated that an annualized energy efficiency metric such as iNSenCOP would best represent the energy efficiency of CRACs. However, AHRI stated that testing limitations currently prevent the development of an iNSenCOP metric. AHRI further commented that it had begun work to assess the feasibility of an annualized metric that can be verified by testing, but that this research would not be completed in time for inclusion in the 2017 version of AHRI 1360. Consequently, AHRI recommended that this issue be addressed at a later date. (AHRI, No. 11 at p. 3)

Consistent with AHRI's comment, section D1 of AHRI 136–2017 (and section G1 of the subsequently published AHRI 1360–202X Draft) states that ''a long-term goal is for iNSenCOP to replace NSenCOP after a more readily testable means has been standardized.'' DOE is not aware of any test data that verifies the validity of the iNSenCOP metric. Further, minimum efficiency levels in terms of iNSenCOP have not been adopted in ASHRAE Standard 90.1. The Department acknowledges the potential benefit regarding representativeness that would be provided with an annualized metric for CRACs. However, given the apparent need for further validation and the lack of test data, DOE is not proposing to use the iNSenCOP metric at this time.

3. Part-Load Operation and Air Circulation Mode

As discussed in the July 2017 ASHRAE TP RFI, CRACs typically operate at part-load (*i.e.,* less than designed full cooling capacity) in the field. 82 FR 34427, 34432 (July 25, 2017). Reasons for this may include, but are not limited to, redundancy in installed units to prevent server shutdown if a CRAC unit stops working, and server room designers building in extra cooling capacity to accommodate additional server racks in the future. While the current DOE test procedure measures performance at full-load, DOE has estimated that CRACs operate on average at a sensible load of 65 percent

[15] The rating conditions A, B, C, and D specified for ASCOP in ANSI/ASHRAE 127–2007 and for iNSenCOP in subsequent CRAC industry test standards (*i.e.,* 2012 and 2020 versions of ASHRAE Standard 127; 2013, 2016, 2017, and 202X Draft versions of AHRI Standard 1360) for air-cooled units correspond to outdoor entering air temperatures of 95.0 °F, 80.0 °F, 65.0 °F, and 40.0 °F, respectively.

of the full-load sensible capacity in the analysis for a final rule for standards and test procedures for certain commercial heating, air conditioning, and water heating equipment (including CRACs) published on May 16, 2012 (77 FR 28928). (Technical Support Document, EERE–2011–BT–STD–0029–0021, pp. 4–15, 4–16) In the July 2017 ASHRAE TP RFI, DOE requested information on the range of typical field load levels for CRACs at conditions close to or at the maximum ambient outdoor air temperature conditions specified in the DOE test procedure for various unit capacities. DOE also sought input on typical rules of thumb for oversizing and whether the issue of oversizing of this equipment should be addressed in the efficiency metric. 82 FR 34427, 34432 (July 25, 2017).

Additionally, as discussed in the July 2017 ASHRAE TP RFI, many CRACs operate in air circulation mode. 82 FR 34427, 34432 (July 25, 2017). In this mode, the direct expansion refrigerant system is shut down, and only the indoor fans and controls are operating. In a computer room with redundant CRAC units installed, one or more of the redundant units can be operated in air circulation mode to provide increased air movement. In the July 2017 ASHRAE TP RFI, DOE requested comment on the conditions under which CRACs typically operate in air circulation mode (*i.e.,* operating the indoor fan without actively cooling) in the field, whether each CRAC switches automatically between standard cooling mode and air circulation mode, and if so, the time percentage that CRACs operate in air circulation mode. DOE also sought comment on which fan setting(s) is used for air circulation mode and whether DOE should consider this energy use in the CRAC efficiency metric. *Id.*

The CA IOUs encouraged DOE to adopt an efficiency metric for CRACs that includes part-load conditions, stating that a full-load metric is highly unrepresentative of operation of CRACs in the field. Specifically, the CA IOUs stated that because computer rooms are built out in stages, CRACs may be sized for loads that are far greater than the loads actually met in practice, and that redundant and oversized CRACs are typically installed to ensure the continuous operation of these critical facilities. These commenters further stated that CRACs typically operate at between 10 percent and 50 percent of full-load capacity. Therefore, the CA IOUs recommended that DOE should modify the iNSenCOP metric to account for part-load operation in addition to variations in ambient conditions, or that DOE should develop a new integrated metric that includes part-load test points. (CA IOUs, No. 3 at pp. 3–4)

The Joint Advocates urged DOE to adopt an efficiency metric for CRACs that incorporates part-load performance, stating that a full-load metric is not representative of performance in the field and, therefore, does not provide good information to consumers. Additionally, the Joint Advocates stated that if CRACs spend a significant amount of time in air circulation mode, the energy use for that operating mode should be captured in the test procedure. These commenters also stated that variable-speed controls for fans and compressors can significantly improve performance when operating at part-load conditions or in air circulation mode, and that capturing these benefits in the test procedure would likely increase adoption of these technologies. The Joint Advocates acknowledged that measuring power consumption in air circulation mode would require additional testing, but suggested that the test burden would be small and that testing of air circulation mode could be performed immediately following the refrigeration system testing, similar to what is specified in the new test procedures for testing dehumidifiers in ''off-cycle'' mode. (Joint Advocates, No. 9 at pp. 2–3)

AHRI stated that oversizing of CRACs varies from site to site and depends on several factors such as redundancy, control sequencing, and the build-out plan. Because of such variations, AHRI stated that it is neither practical nor feasible to address oversizing in the efficiency metric for CRACs. AHRI did not comment on whether energy use from air circulation mode should be reflected in the CRAC efficiency metric, but stated that airflow is a major consideration in the design of a data center cooling system and that the control of airflow depends on how the data center is designed. The trade association stated that circulating fan speeds (in the case of variable-speed fans) are controlled by aisle temperatures, rack temperatures, static pressure, and supply air or return air temperatures; and that the industry has gone to great lengths to address airflow design and control issues. AHRI further commented that in many cases, the controls can be adjusted manually in a matter of seconds to respond to server equipment or load changes in the room. (AHRI, No. 11 at p. 4)

These comments suggest that CRACs are commonly oversized when installed in the field, and that this oversizing can significantly influence performance. DOE acknowledges that the extent of oversizing of CRACs likely varies by application, but DOE tentatively disagrees with AHRI's statement that it is neither practical nor feasible to account for oversizing in an efficiency metric for CRACs. For example, the ESP that indoor fans must overcome from ductwork varies widely by installation location, yet all versions of AHRI Standard 1360 specify ESP requirements to be used for testing all CRACs. Additionally, DOE understands that many CRACs operate in air circulation mode and that incorporating air circulation mode in testing might incentivize use of more-efficient fan technologies for CRACs that typically operate at lower fan speeds in air circulation mode. At this time, however, DOE does not have information or data on part-load or air circulation mode operation of CRACs to support a proposal to amend the efficiency metric to account for performance in these operating modes.

F. Test Method

This section discusses certain issues related to testing CRACs, several of which were identified by DOE in the July 2017 ASHRAE TP RFI and subsequently addressed in AHRI 1360–202X Draft. Therefore, in this section, comments received regarding such issues are briefly summarized and cited but are addressed by referencing the relevant language in AHRI 1360–202X Draft.

1. Standard Configurations

Section 3.18 of AHRI 1360–2016 specifies four floor-mounted ''standard model'' configurations to standardize rating conditions (*e.g.,* ESP, return air temperature) based on the configuration of a unit. These four ''standard model'' configurations are: Up-flow ducted, up-flow non-ducted, down-flow, and horizontal-flow. Section C1 of Appendix C of AHRI 1360–2016 categorizes all units within the scope of the test as one of the four floor-mounted ''standard model'' configurations, and Table C1 of AHRI 1360–2016 specifies the indoor rating conditions for each ''standard model'' configuration. Table C1 of AHRI 1360–2016 also identifies 13 ''application configurations,'' which are optional test configurations and are not specified for use in developing efficiency ratings.

As part of the July 2017 ASHRAE TP RFI, DOE requested confirmation that, although floor-mounted CRACs may be sold to be installed in multiple configurations, all models are capable of being tested as one of the four floor-mounted standard models identified in Table C.1 of AHRI 1360–2016. 82 FR 34427, 34433 (July 25, 2017).

In response to the July 2017 ASHRAE TP RFI, AHRI stated that all floor-mounted models can be configured as one of the four floor-mounted standard models specified in AHRI 1360–2016 and tested accordingly. AHRI also added that some air discharge unit variations may require special test set-ups, but did not elaborate on this issue. (AHRI, No. 11 at p. 4)

AHRI 1360–2017 specifies six ''standard model'' configurations and includes ceiling-mounted ducted and ceiling-mounted non-ducted ''standard model'' configurations, in addition to the four floor-mounted ''standard model'' configurations in AHRI 1360–2016. AHRI 1360–202X Draft includes a similar concept but designates the configurations as ''standard configurations'' rather than ''standard models.'' In addition to the six configurations specified as ''standard models'' in AHRI 1360–2017, Sections 3.25 and C1 (to Appendix C) of AHRI 1360–202X Draft include two additional standard configurations for wall-mounted and roof-mounted CRACs. Tables C1 and C2 to Appendix C of AHRI 1360–202X Draft specify these eight standard configurations, as well as 14 ''application configurations,'' which Section 3.2 of AHRI 1360–202X Draft defines as unit configurations other than standard configurations. However, Section 3.2 of AHRI 1360–202X Draft states that all units within the scope of AHRI Standard 1360 shall be tested and rated as standard configurations. Accordingly, for each application configuration, Note 2 to Table C1 and Notes 3 through 5 to Table C2 of AHRI 1360–202X Draft assign a specific standard configuration to be used for rating purposes.

In light of the provisions in AHRI 1360–202X Draft regarding standard configurations for testing CRACs, DOE surmises that the approach provided in AHRI 1360–202X Draft represents industry consensus regarding the most appropriate and representative configurations for testing. To the extent that AHRI had any concerns regarding special test set-ups needed for certain unit variations (as set forth in the comments in response to the July 2017 ASHRAE TP RFI), DOE presumes that AHRI's original position on this issue changed during the course of developing the updated industry consensus standard. DOE is proposing to adopt the provisions regarding standard configurations to be used for testing under AHRI 1360–202X Draft.

2. Ceiling-Mounted CRACs

The CRAC industry test standard referenced in DOE's current test procedure in 10 CFR 431.96, ANSI/ASHRAE 127–2007 (omitting section 5.11), is not specific as to mounting location (*i.e.,* floor, ceiling, wall, roof). However, on October 7, 2015, DOE issued a draft guidance document (''October 2015 Draft Guidance'') to clarify that ceiling-mounted CRACs are covered equipment and are required to be tested under the current DOE test procedure for purposes of making representations of energy consumption. DOE also noted that a manufacturer may request a test procedure waiver for a basic model if it contains design features that prevent testing according to the DOE test procedure. (Docket No. EERE–2014–BT–GUID–0022, No. 3, pp. 1–2) [16]

In the July 2017 ASHRAE TP RFI, DOE requested comment on the appropriate test procedure for ceiling-mounted CRACs and the test burden associated with any such procedure. 82 FR 34427, 34431 (July 25, 2017). DOE also noted that ANSI/ASHRAE 127–2007 and ANSI/ASHRAE 127–2012 do not exclude ceiling-mounted CRACs, but that AHRI 1360–2016 (the latest version of AHRI 1360 at the time of the July 2017 ASHRAE TP RFI) provides test provisions and rating conditions only for floor-mounted CRACs. 82 FR 34427, 34430–34431 (July 25, 2017). Further, DOE noted that the current DOE test procedure, which incorporates by reference ANSI/ASHRAE 127–2007, specifies different test conditions (*e.g.,* different ESP) than AHRI 1360–2016, and the Department requested comment on whether the test requirements of ANSI/ASHRAE 127–2007 are representative of average use cycles for ceiling-mounted CRACs. 82 FR 34427, 34433–34434 (July 25, 2017). In the July 2017 ASHRAE TP RFI, DOE requested information on whether the ESP levels required by ANSI/ASHRAE 127–2012 (which is referenced by AHRI 1360–2016) are representative of field operation for ceiling-mounted CRACs (among other non-floor-mounted CRAC configurations), and if not, what a representative minimum ESP would be. 82 FR 34427, 34434 (July 25, 2017).

In response, AHRI commented that AHRI 1360 was under revision (at the time of the response) and that an updated version would be published in 2017 (*i.e.,* AHRI 1360–2017). AHRI stated that the revised version would specify ESP requirements for ceiling-mounted CRACs. AHRI provided a working draft of AHRI 1360–2017 as part of its comment response. (AHRI, No. 11 at p. 6) AHRI also stated that the average use cycle for ceiling-mounted CRAC units and other non-floor-mounted CRACs would be the same as floor-mounted units. (AHRI, No. 11 at p. 5)

AHRI 1360–202X Draft includes ceiling-mounted units within the scope of the industry consensus test standard and specifies ducting configuration (*e.g.,* ducted discharge and ducted return) requirements in section 3.3.1, indoor entering air temperature in Table 3, and ESP requirements that apply specifically to ceiling-mounted units in Table 5 of that standard. These configurations and conditions align with those included for ceiling-mounted CRACs in the working draft of AHRI 1360–2017 provided as part of AHRI's comment response. Accordingly, DOE surmises that the approach provided in AHRI 1360–202X Draft represents industry consensus regarding the most appropriate and representative method for testing ceiling-mounted CRACs. Further, from DOE's initial review of public product literature for ceiling-mounted CRACs, DOE has tentatively determined that the ESP requirements for ceiling-mounted CRACs in AHRI 1360–202X Draft are more representative for testing ceiling-mounted CRACs than the ESP requirements specified in ANSI/ASHRAE 127–2007 (as provided in the October 2015 Draft Guidance Document). Therefore, DOE is proposing to adopt the provisions in AHRI 1360–202X Draft regarding testing ceiling-mounted CRACs. If DOE adopts the proposed test procedures for ceiling-mounted CRACs, DOE expects that this update to the industry consensus standard would obviate the need to update/finalize DOE's draft guidance document on this issue. (Docket No. EERE–2014–BT–GUID–0022, No. 3, pp. 1–2)

3. Non-Floor Mounted CRACs

The current DOE test procedure (which references ANSI/ASHRAE 127–2007) does not provide specific directions for testing wall-mounted or roof-mounted CRACs (although they are not excluded from ANSI/ASHRAE 127–2007). In the July 2017 ASHRAE TP RFI, DOE requested information on the extent to which single-package non-floor-mounted air conditioners are used in computer room applications. DOE also requested comment on whether special test procedure provisions should be developed for different kinds of single-package non-floor-mounted air conditioners that are used for computer room cooling. 82 FR 34427, 34431 (July 25, 2017).

In response to the July 2017 ASHRAE TP RFI, AHRI stated that it did not have

[16] Available at: *www.regulations.gov/docket?D=EERE-2014-BT-GUID-0022.*

information on the extent to which single-package non-floor-mounted air conditioners are used in computer room applications. AHRI further stated that it has not studied test provisions for single-package non-floor-mounted CRACs in-depth, but commented that these units could be tested by combining the test set-up(s) used for testing air conditioners intended for comfort cooling applications with the rating conditions specified for CRACs in AHRI 1360. (AHRI, No. 11 at pp. 2–3)

AHRI 1360–202X Draft includes wall-mounted and roof-mounted units in the scope of the test standard and provides rating and test conditions for these units. In light of the provisions in AHRI 1360–202X Draft regarding testing wall-mounted and roof-mounted CRACs, DOE surmises that the approach provided in AHRI 1360–202X Draft represents industry consensus regarding the most appropriate and representative method for testing these CRACs. DOE is proposing to adopt the provisions in AHRI 1360–202X Draft regarding testing wall-mounted and roof-mounted CRACs.

In the July 2017 ASHRAE TP RFI, DOE also requested comment on whether there are other configurations of commercial package air conditioners that are designed, marketed, or used in computer room cooling applications and that meet DOE's current definition for a CRAC, beyond floor-mounted units, ceiling-mounted units, portable units, indoor single-package wall-mounted units, roof-mounted units, and certain SPVUs. 82 FR 34427, 34431 (July 25, 2017).

In response, AHRI commented that DOE's list of configurations of commercial package air conditioners presented in the July 2017 ASHRAE TP RFI covers all variations of systems used for data center cooling other than variable refrigerant flow multi-split air conditioners and heat pumps (''VRF multi-split systems''), evaporative coolers, and site built-up systems (*i.e.,* engineered-to-order systems). (AHRI, No. 11 at p. 3)

DOE has not identified any VRF multi-split systems on the market that are specifically marketed for computer room cooling applications, and provisions for testing such systems are not included in AHRI 1360–202X Draft or ANSI/ASHRAE 127–2020. Evaporative coolers do not include refrigeration systems; therefore, they are not air conditioners and are not covered products or equipment under 42 U.S.C. 6291 or 42 U.S.C. 6311, respectively. The Federal test procedures (and energy conservation standards) do not distinguish between ''engineered-to-order'' equipment and mass-market equipment. To the extent that equipment is a CRAC, it is subject to the Federal test procedures and applicable energy conservation standards. In its comments, AHRI did not provide any indication that there are site-built/engineered-to-order CRACs that warrant unique test provisions. In accordance with the CRAC configurations covered in AHRI 1360–202X Draft, DOE surmises that the provisions provided in AHRI 1360–202X Draft represents industry consensus regarding the configurations of CRACs for which specific test provisions are warranted. DOE is not proposing test provisions for any configurations of CRACs not included in AHRI 1360–202X Draft.

4. ANSI/ASHRAE 37 Test Requirements

The current DOE test procedure for CRACs references ANSI/ASHRAE 127–2007, which in turn references ANSI/ASHRAE Standard 37–2005, ''Methods of Testing for Rating Unitary Air-Conditioning and Heat Pump Equipment'' (ANSI/ASHRAE 37–2005). In the July 2017 ASHRAE TP RFI, DOE noted that ANSI/ASHRAE 127–2012 and AHRI 1360–2016 reference a more recent version (*i.e.,* ANSI/ASHRAE 37–2009), but none of these industry test standards for CRACs indicate which specific provisions of the applicable version of ANSI/ASHRAE 37 are intended to apply. 82 FR 34427, 34433 (July 25, 2017). DOE requested comment on whether the test method of ANSI/ASHRAE 37–2009 is appropriate for measuring capacity, sensible capacity, and electric energy use for all configurations of CRACs (including configurations for which DOE does not currently prescribe standards). *Id.*

In response, AHRI stated that a combination of ANSI/ASHRAE 37–2009, ANSI/ASHRAE 127–2012, and the draft version of AHRI 1360 at the time of AHRI's comment should cover most test methods for CRACs. (AHRI, No. 11 at p. 5).

AHRI 1360–202X Draft also references ANSI/ASHRAE 37–2009 but provides additional clarity on the applicability of provisions in ANSI/ASHRAE 37–2009. Specifically, Section 5.1 of AHRI 1360–202X Draft specifies that all testing shall be conducted in accordance with ANSI/ASHRAE 127–2020 and ANSI/ASHRAE 37–2009, and that in the event of conflicting instructions between test standards, the instructions in AHRI 1360–202X Draft take precedence. In light of the provisions in AHRI 1360–202X Draft regarding the applicability of ANSI/ASHRAE 37–2009, DOE surmises that the approach provided in AHRI 1360–202X Draft represents industry consensus regarding the most appropriate and representative method for testing CRACs. DOE is proposing to adopt the provisions in AHRI 1360–202X Draft regarding the applicability of ANSI/ASHRAE 37–2009 for testing CRACs.

In the July 2017 ASHRAE TP RFI, DOE raised several more specific issues related to the applicability of ANSI/ASHRAE 37–2009. These issues are addressed in AHRI 1360–202X Draft, and DOE is proposing to adopt these provisions in AHRI 1360–202X Draft. These issues are discussed in the following subsections.

a. Test Tolerances

Table 2b of ANSI/ASHRAE 37–2009 includes test operating tolerances (*i.e.,* the maximum permissible range of a measurement during the specified test interval) and condition tolerances (*i.e.,* the maximum permissible difference between the averaged value of the measured test parameter and the specified test condition) for several parameters, including air and fluid temperatures. Section 5.1 of ANSI/ASHRAE 127–2007 and Section 5.2.1 of ANSI/ASHRAE 127–2012 include an operating tolerance for the room temperature; however, no published versions of ANSI/ASHRAE 127 or AHRI 1360 prior to AHRI 1360–2017 specifically include tolerances for any other test parameters or clarify whether such tolerances are included as part of the general reference to ASHRAE Standard 37.

In the July 2017 ASHRAE TP RFI, DOE requested comment on whether any operating or condition tolerances included in Table 2b of ANSI/ASHRAE 37–2009 are inappropriate for CRACs. If any are inappropriate, DOE requested an explanation as to why and suggestions on how the tolerances should be changed. 82 FR 34427, 34433 (July 25, 2017).

In response, AHRI commented that the tolerances listed in Table 2b of ANSI/ASHRAE 37–2009 are appropriate for testing CRACs. (AHRI, No. 11 at p. 5)

Subsequently, the AHRI 1360 committee has developed an updated draft version, AHRI 1360–202X Draft, which specifies operating and condition test tolerances in Table 7 of the draft industry test standard. These tolerances generally align with those in Table 2b of ANSI/ASHRAE 37–2009 but also include tolerances for electrical voltage, electrical frequency, and indoor and outdoor dew point temperatures. Furthermore, section E5.3.2 of Appendix E of AHRI 1360–202X Draft specifies condition tolerances for indoor

airflow and ESP. DOE is proposing to adopt the test tolerances specified in AHRI 1360–202X Draft.

b. Enclosure for CRACs With Compressors in Indoor Units

DOE's research indicates that most air-cooled CRACs are split systems with the compressor(s) housed in the indoor unit. Additionally, water-cooled and glycol-cooled CRACs are typically single-package systems, and all components in such systems are typically intended for indoor installation. Where the compressor is installed in relation to the conditioned space and other system components impacts the capacity of the system and the provisions necessary for accurately measuring system capacity, because waste heat from the compressor is transferred to the surrounding air. Section 6.1.5 of ASHRAE 37–2009 states that an enclosure as shown in Figure 3 of the standard must be used when the compressor is housed in the indoor section (*i.e.,* indoor unit) and separately ventilated (*i.e.,* air that absorbs compressor heat would not combine with supply air, which is used to measure capacity). Figure 3 shows an insulated enclosure surrounding the indoor unit that ensures that the separately ventilated compressor air recombines with supply air to be included in capacity measurements. Hence, the heat rejected from the compressor shell is accounted for in the indoor air enthalpy method measurement. This test arrangement also reflects field performance of the air conditioner to the extent that any compressor heat rejected to the indoors will heat the space, thereby reducing cooling capacity and increasing heating capacity. For systems where the compressor is in the indoor section but not separately ventilated, the air that absorbs compressor heat combines with supply air and is accounted for in the indoor air enthalpy method capacity measurements without the need for the enclosure in Figure 3. In the 2017 ASHRAE TP RFI, DOE requested comment on whether it is appropriate to incorporate the impact of compressor heat in sensible capacity measurements for CRACs with compressors housed in their indoor units. 82 FR 34427, 34433 (July 25, 2017).

In response, AHRI stated that the heat released from the compressor shell is not significant. AHRI further commented that both the hot and cold sections of the compressor are typically exposed to the unit airstream, and, therefore, that compressor heat (if any) is already included in the sensible capacity measurement of CRACs. Similarly, in units where the compressor is in a separate compartment, AHRI stated that the negative air pressure of the adjacent evaporator usually pulls the compressor heat, if any, into the airstream. (AHRI, No. 11 at p. 6).

Section 5.4 of AHRI 1360–202X Draft specifies requirements for when an enclosure as shown in Figure 3 of ANSI/ASHRAE 37–2009 must be used for testing CRACs. Specifically, Section 5.4.1 notes than an enclosure is required for systems for which the compressor(s) is housed in a part of the unit that the manufacturer's installation instructions indicate is intended for indoor installation and the compressor(s) is separately ventilated from the evaporator or condenser airstream. Additionally, for systems for which the compressor(s) is housed in a part of the unit that the manufacturer's installation instructions indicate is intended for indoor installation, but the compressor(s) is not separately ventilated—Section 5.4.2 states that an enclosure must be used if the required heat balance between the primary and secondary capacity measurements cannot be achieved. In light of the provisions in AHRI 1360–202X Draft regarding enclosures for CRACs with compressors in the indoor unit, DOE surmises that AHRI's original position on these provisions, as set forth in the comments in response to the July 2017 ASHRAE TP RFI, changed during the course of developing that industry consensus standard. DOE is proposing to adopt the provisions regarding enclosures for CRACs with compressors in the indoor unit specified in Section 5.4 of AHRI 1360–202X Draft.

c. Secondary Methods for Capacity Measurement

Section 7.2.1 of ANSI/ASHRAE 37–2005 (which is referenced by ANSI/ASHRAE 127–2007, which is incorporated by reference in DOE's current test procedure) and Section 7.2.1 of ANSI/ASHRAE 37–2009 (which is referenced by all CRAC industry test standards published after 2009) both require that when testing equipment with a total cooling capacity less than 135,000 Btu/h, simultaneous capacity tests must be conducted using the indoor air enthalpy method as the primary method and one other applicable method as the secondary method.[17] Specifically, these other applicable test methods include the outdoor air enthalpy method, the compressor calibration method, the refrigerant enthalpy method, and the outdoor liquid coil method. Table 1 of ANSI/ASHRAE 37–2005 and Table 1 of ANSI/ASHRAE 37–2009 specify which of these test methods are applicable for each equipment configuration and method of heat rejection in cooling mode. Additionally, Section 10.1.2 of these standards requires that the total cooling capacity values calculated from the two simultaneously conducted methods agree within 6.0 percent.

The secondary test method is mainly used to validate the accuracy of the capacity measurements. Specifically, the secondary test method ensures that all energy flowing into and out from the system are accounted for. If the measured total cooling capacity is verified to be accurate by using a secondary test method, the measured sensible cooling capacity using the indoor air enthalpy method likewise would be accurate, thereby ensuring results that are appropriately representative of equipment operation during an average use cycle.

In the 2017 ASHRAE TP RFI, DOE sought comment on whether a secondary test is appropriate for testing CRACs, for what range of cooling capacity such a requirement should apply for CRACs, how the requirement should be applied, what level of agreement should be required, and whether there would be a significant additional test burden resulting from a secondary test. 82 FR 34427, 34433 (July 25, 2017).

In response, AHRI stated that it is not aware of a secondary test that confirms sensible cooling capacity specifically. AHRI recommended that DOE not adopt a secondary test requirement for CRACs until such time as an appropriate test method is developed and proven to be accurate. (AHRI, No. 11 at p. 5)

AHRI 1360–202X Draft includes requirements for conducting secondary methods of total capacity measurement for CRACs. More specifically, Section E7.2 of Appendix E of AHRI 1360–202X Draft sets forth equipment configurations for which secondary measurements are not required, but for all other configurations, it requires use of one of the applicable ''Group B'' methods specified in Table 1 of ANSI/ASHRAE 37–2009 as a secondary method.[18] Section E7.4 of Appendix E

[17] ANSI/ASHRAE 37–2009 does not require secondary capacity measurements for equipment with cooling capacity greater than or equal to 135,000 Btu/h.

[18] Specifically, Section E7.2 of Appendix E of AHRI 1360–202X Draft includes the following requirements: For the following equipment, no secondary measurements are required: (1) Single-package evaporatively-cooled equipment with rated cooling capacity greater than or equal to 135,000

Continued

of AHRI 1360–202X Draft specifies a requirement on agreement between total capacity measurements (for applicable equipment)—the secondary capacity measurement must be within 6 percent of the primary capacity measurement. In light of the provisions in AHRI 1360–202X Draft regarding secondary methods for capacity measurement, DOE surmises AHRI's original position on these provisions, as set forth in the comments in response to the July 2017 ASHRAE TP RFI, changed during the course of developing that industry consensus standard. DOE is proposing to adopt the provisions regarding secondary methods specified in Section E7 of AHRI 1360–202X Draft.

5. Ducted Condensers

CRACs with condensers or condensing units intended for indoor installation may require ducting of outdoor air. As part of the July 2017 ASHRAE TP RFI, DOE requested comment on how to set up the condenser airflow when testing CRACs manufactured with condenser air inlet and outlet connections and high-static condenser fans (which is indicative of units that can be installed indoors with the condenser inlet air ducted from the outdoors to the unit, and vice versa for the condenser outlet air). Additionally, DOE requested comment on whether some CRACs can be installed with or without condenser ducting, and if so, how often these units are typically installed with condenser ducting. DOE also sought comment on whether certain CRAC configurations are more likely to be installed with condenser ducting. 82 FR 34427, 34434 (July 25, 2017).

In response, AHRI stated that the condenser airflow is established and measured in accordance with ANSI/ASHRAE 37–2009 and ANSI/ASHRAE 127–2012, and that a two-step process is required when testing in psychrometric rooms without an outdoor air measurement chamber. (AHRI, No. 11 at p. 7) AHRI also commented that manufacturers do not know what percentage of CRACs with indoor condensers are ducted in the field, but that all units with indoor condensers are capable of being ducted and are rated with an ESP consistent with the requirements in Section 6.2.4.5 of AHRI 1360–2016.[19] AHRI further stated that 99 percent of air-cooled floor-mounted CRACs utilize outdoor free air discharge condensers and that only 1 percent of units are installed with indoor ducted condensers. However, AHRI stated that indoor ducted condensers are more prevalent for air-cooled ceiling-mounted CRACs (20 percent). Additionally, AHRI argued that due to space constraints, as well as larger condenser fan motors, ceiling-mounted CRACs with ducted condensers should have lower minimum efficiency levels. AHRI stated that it will develop a proposal regarding efficiency levels to be included in ASHRAE Standard 90.1 for ceiling-mounted CRACs with ducted condensers in the near future. *Id.*

AHRI 1360–202X Draft includes provisions for testing CRACs with ducted condensers. Specifically, Table 6 of AHRI 1360–202X Draft provides the following outdoor air ESP requirements for units with ducted condensers: 0.5 in H_2O [20] for ceiling-mounted units, and 0.0 in H_2O for all other configurations. Further, Section E6 of Appendix E of AHRI 1360–202X Draft specifies test provisions for setting outdoor airflow and outdoor air ESP for units with ducted condensers. In light of the provisions in AHRI 1360–202X Draft regarding testing CRACs with ducted condensers, DOE surmises that the approach provided in AHRI 1360–202X Draft represents industry consensus regarding the most appropriate and representative method for testing CRACs with ducted condensers. DOE is proposing to adopt the provisions in AHRI 1360–202X Draft regarding testing CRACs with ducted condensers.

Regarding AHRI's comment about stringency of minimum efficiency levels for ceiling-mounted CRACs with ducted condensers, DOE notes that minimum efficiency levels for ceiling-mounted CRACs (including separate levels for units with and without ducted condensers) are included in ASHRAE Standard 90.1–2019. DOE is evaluating the ASHRAE Standard 90.1–2019 minimum efficiency levels for CRACs in a separate energy conservation standards rulemaking (*see* Docket No. EERE–2020–BT–STD–0008).

6. Minimum External Static Pressure Requirements

In the July 2017 ASHRAE TP RFI, DOE noted that ANSI/ASHRAE 127–2007 (which is referenced by the current DOE test procedure), ANSI/ASHRAE 127–2012, and AHRI 1360–2016 all contain different minimum ESP specifications. 82 FR 34427, 34433 (July 25, 2017). DOE noted that the 2007 and 2012 versions of ANSI/ASHRAE 127 contain the same minimum ESP levels but use different definitions to determine which minimum ESP level applies for a given unit. Specifically, ANSI/ASHRAE 127–2012 defines ''ducted systems'' as ''air conditioners intended to be connected to supply and/or return ductwork'' instead of ''to supply and return ductwork,'' as specified in ANSI/ASHRAE 127–2007. Additionally, DOE observed that the ESP requirements specified in AHRI 1360–2016 for up-flow ducted and down-flow configurations are significantly lower than those specified in ANSI/ASHRAE 127–2012. DOE further stated that it was considering adopting the test procedures and the ESP requirements specified in AHRI 1360–2016, but sought input on whether the ESP requirements specified in AHRI 1360–2016 are representative of field operation for floor-mounted CRACs. 82 FR 34433–34434 (July 25, 2017).

In response, AHRI commented that while there are some unusual circumstances where excessive ducting is required, the ESP requirements specified in AHRI 1360–2016 are representative of most applications. (AHRI, No. 11 at p. 6)

AHRI 1360–202X Draft specifies indoor air ESP requirements in Table 5 for all configurations of CRACs. The ESP requirements specified for floor-mounted CRACs in Table 5 align with those specified in AHRI 1360–2016, except that the capacity boundaries for ESP requirements for up-flow ducted units increased from 65,000 Btu/h and 240,000 Btu/h to 80,000 Btu/h and 295,000 Btu/h, respectively. This increase in capacity boundaries reflects the increase in NSCC associated with the increased return air temperature for up-flow ducted units in the NSenCOP metric, as compared to the SCOP metric (*see* section III.E.1.a of this NOPR for further discussion of the indoor entering air temperature conditions for NSenCOP). ESP requirements for ceiling-mounted CRACs are discussed in section III.F.2 of this NOPR, and ESP requirements for wall-mounted and roof-mounted CRACs are discussed in section III.F.3 of this NOPR. DOE surmises that the approach provided in AHRI 1360–202X Draft represents industry consensus regarding the most appropriate and representative ESP requirements for testing CRACs. DOE is not proposing any deviations from the ESP requirements specified in Table 5 of AHRI 1360–202X Draft.

Btu/h and (2) air-cooled single-package equipment with outdoor airflow rates (either manufacturer-specified or determined via testing) above 9,000 scfm. For all other equipment, use one of the applicable ''Group B'' methods specified in Table 1 of ANSI/ASHRAE 37–2009 as a secondary method for capacity measurement.

[19] Section 6.2.4.5 of AHRI 1360–2016 specifies that for products intended to be installed with the outdoor airflow ducted, the unit shall be installed with outdoor coil ductwork installed per manufacturer installation instructions and shall operate at 0.5 in H_2O ESP.

[20] The symbol ''in H_2O'' refers to inches of water column.

7. Refrigerant Charging Instructions

The amount of refrigerant charge in an air conditioner can have a significant impact on the system performance. DOE's current test procedure for CRACs requires that units be set up for test in accordance with the manufacturer installation and operation manuals. 10 CFR 431.96(e). In addition, the current DOE test procedure states that if the manufacturer specifies a range of superheat, sub-cooling, and/or refrigerant pressures in the installation and operation manual, any value within that range may be used to determine refrigerant charge, unless the manufacturer clearly specifies a rating value in its installation or operation manual, in which case the specified value shall be used. 10 CFR 431.96(e)(1). The current DOE test procedure does not provide charging instructions if the manufacturer does not provide instructions in the manual that is shipped with the unit or if the provided instructions are unclear or incomplete.

As part of the July 2017 ASHRAE TP RFI, DOE noted that neither the ASHRAE nor the AHRI test standards for CRACs (published at the time of the July 2017 ASHRAE TP RFI) include specific instructions for refrigerant charging. 82 FR 34427, 34434 (July 25, 2017). In a June 8, 2016 final rule for the test procedure for central air conditioners and heat pumps (CACs/HPs), DOE further stated that the Federal test procedure for CACs/HPs provides a comprehensive approach for refrigerant charging intended to improve test reproducibility.[21] 81 FR 36992, 37030–37031. Specifically, DOE noted in the July 2017 ASHRAE TP RFI that the approach for CACs/HPs indicates which set of installation instructions to use for charging, explains what to do if there are no instructions, indicates that target values of parameters are the centers of the range allowed by installation instructions, and specifies tolerances for the measured values. DOE requested comment on which refrigerant charging requirements should be considered to establish reproducible test results for CRACs, and whether the approach for CACs/HPs would be appropriate for CRACs. DOE also requested comment on the operating conditions at which CRAC units are typically charged in the field and/or what conditions should be used to set refrigerant charge for testing purposes. 82 FR 34427, 34434–34435 (July 25, 2017).

In response, AHRI commented that refrigerant charging should be based on the manufacturer's instructions, and that because CRACs are operated year-round, manufacturers determine the optimum charge for hot and cold weather operation. (AHRI, No. 11 at p. 8).

Section 5.9 of AHRI 1360–202X Draft includes a comprehensive set of provisions regarding refrigerant charging for CRACs that is generally consistent with the approach for CACs/HPs currently in DOE's regulations. Specifically, Section 5.9 of AHRI 1360–202X Draft requires that units be charged at conditions specified by the manufacturer in accordance with the manufacturer installation instructions or labels applied to the unit, which is consistent with AHRI's comment. If there are no manufacturer-specified charging conditions, Section 5.9 of AHRI 1360–202X Draft specifies charging at the standard rating conditions (as defined in Tables 3 and 4 of that test standard). Section 5.9 of AHRI 1360–202X Draft also provides additional charging instructions to be used if the manufacturer does not provide instructions or if the provided instructions are unclear or incomplete (*e.g.,* specifying default charging targets to use if none are provided by the manufacturer and specifying an instruction priority to be used in the event of conflicting information between multiple manufacturer-provided charging instructions). In light of the provisions in AHRI 1360–202X Draft, DOE surmises that the approach provided in AHRI 1360–202X Draft represents industry consensus regarding the most appropriate and representative approach for refrigerant charging for testing CRACs. DOE is not proposing any deviations from the refrigerant charging provisions specified in Section 5.9 of AHRI 1360–202X Draft.

G. Configuration of Unit Under Test

CRACs are distributed in commerce in a variety of configurations consisting of different combinations of components. The following sections address the required configuration of units under test.

1. Specific Components

An Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) working group for certain commercial heating, ventilating, and air conditioning (HVAC) equipment (Commercial HVAC Working Group),[22] which included CRACs, submitted a term sheet (Commercial HVAC Term Sheet) providing the Commercial HVAC Working Group's recommendations. (Docket No. EERE–2013–BT–NOC–0023, No. 52)[23] The Commercial HVAC Working Group recommended that DOE issue guidance under current regulations on how to test certain equipment features when included in a basic model, until the testing of such features can be addressed through a test procedure rulemaking. The Commercial HVAC Term Sheet listed the subject features under the heading ''Equipment Features Requiring Test Procedure Action.'' (*Id.* at pp. 3–9) The Commercial HVAC Working Group also recommended that DOE issue an enforcement policy stating that DOE would exclude certain equipment with specified features from Departmental testing, but only when the manufacturer offers for sale at all times a model without that feature but that is identical in terms of all other features; otherwise, the model with that feature would be eligible for Departmental testing. These features were listed under the heading ''Equipment Features Subject to Enforcement Policy.'' (*Id.* at pp. 9–15)

On January 30, 2015, DOE issued a Commercial HVAC Enforcement Policy addressing the treatment of specific features during Departmental testing of commercial HVAC equipment. (*See www.energy.gov/gc/downloads/commercial-equipment-testing-enforcement-policies*) The Commercial HVAC Enforcement Policy stated that—for the purposes of assessment testing pursuant to 10 CFR 429.104, verification testing pursuant to 10 CFR 429.70(c)(5), and enforcement testing pursuant to 10 CFR 429.110—DOE would not test a unit with one of the optional features listed for a specified equipment type if a manufacturer distributes in commerce an otherwise identical unit that does not include one of the optional features. (*Id* at p. 1) The objective of the Commercial HVAC Enforcement Policy is to ensure that each basic model has a commercially-available version eligible for DOE testing, meaning that each basic model includes either a model without the optional feature(s) or a model with the optional features that is eligible for testing. *Id.* The features in the Commercial HVAC Enforcement Policy for CRACs align with the Commercial HVAC Term Sheet's list designated

[21] The currently applicable test procedure for CACs/HPs is located at 10 CFR part 430, subpart B, appendix M.

[22] In 2013, members of ASRAC formed the Commercial HVAC Working Group to engage in a negotiated rulemaking effort regarding the certification of certain commercial HVAC equipment, including CRACs. The Commercial HVAC Working Group's recommendations are available at *www.regulations.gov* under Docket No. EERE–2013–BT–NOC–0023–0052.

[23] Available at *www.regulations.gov/document/EERE-2013-BT-NOC-0023-0052.*

''Equipment Features Subject to Enforcement Policy.''

AHRI 1360–202X Draft includes Appendix D, ''Unit Configuration for Standard Efficiency Determination—Normative.'' Section D2 of that appendix includes a list of features that are optional for testing. Section D2 of AHRI 1360–202X Draft further specifies the following general provisions regarding testing of units with optional features:

- If an otherwise identical model (within the same basic model) without the feature is distributed in commerce, test the otherwise identical model.
- If an otherwise identical model (within the same basic model) without the feature is not distributed in commerce, conduct tests with the feature present but configured and de-activated so as to minimize (partially or totally) the impact on the results of the test (as determined per the provisions in section D2). Alternatively, the manufacturer may indicate in the supplemental testing instructions that the test shall be conducted using a specially built otherwise identical unit that is not distributed in commerce and does not have the feature.

The optional features provisions in AHRI 1360–202X Draft are generally consistent with DOE's Commercial HVAC Enforcement Policy, but the list of optional features in Section D2 of AHRI 1360–202X Draft does not align with the list of features included for CRACs in the Commercial HVAC Enforcement Policy. For CRACs, the Commercial HVAC Enforcement Policy specifies two optional features (high-static condenser fan/motor assembly and dehumidification components) which are not included in the optional features section in Section D2 of AHRI 1360–202X Draft. DOE understands AHRI 1360–202X Draft to represent the industry consensus position on testing CRACs. As such, DOE understands the industry consensus to be that these two features should not be treated as optional features for CRACs.

Additionally, unlike Section D2 of AHRI 1360–202X Draft, DOE's Commercial HVAC Enforcement Policy does not allow a manufacturer to test a specially-built otherwise identical model for testing models without a feature that are not distributed in commerce. Because testing such specially-built models would not provide ratings representative of equipment distributed in commerce, DOE has tentatively concluded that this option is not appropriate. Therefore, consistent with the Commercial HVAC Enforcement Policy, DOE is not proposing to include this option for testing specially-built units in its representation and enforcement provisions.

DOE notes that the list of features and provisions in Section D2 of Appendix D of AHRI 1360–202X Draft conflates features that can be addressed by testing provisions with features that warrant enforcement relief (*i.e.,* features that, if present on a unit under test, could have a substantive impact on test results and that cannot be disabled or otherwise mitigated). This differentiation was central to the Commercial HVAC Term Sheet, which as noted previously, included separate lists for ''Equipment Features Requiring Test Procedure Action'' and ''Equipment Features Subject to Enforcement Policy,'' and remains central to providing clarity in DOE's regulations. Further, provisions more explicit than what is included in Section D2 of AHRI 1360–202X Draft are warranted to clarify the differences between how specific components must be treated when manufacturers are making representations as opposed to when DOE is conducting enforcement testing.

In order to provide clarity between test procedure provisions (*i.e.,* how to test a specific unit) and representation and enforcement provisions (*e.g.,* which model to test), DOE is not proposing to adopt Sections D1 and D2 of Appendix D of AHRI 1360–202X Draft but instead is proposing to adopt related provisions in 10 CFR part 431, subpart F, appendix E1, in 10 CFR 429.43, and in 10 CFR 429.134, without any substantive change to the requirements, except as discussed subsequently regarding coated coils and previously regarding specially-built units.

Specifically, in 10 CFR part 431, subpart F, appendix E1, DOE proposes test procedure provisions for specific components, including the components listed in section D2 of AHRI 1360–202X Draft for which there is a unique test procedure action (*i.e.,* test procedure provisions specific to the component that are not addressed by general provisions in AHRI 1360–202X Draft to test per manufacturers' installation instructions).[24] These provisions would specify how to test a unit with such a component. For example, for a unit with an air economizer factory-installed, place the economizer in the 100-percent return position and close and seal the outside air dampers for testing. These proposed test provisions are consistent with the provision in Section D2 of AHRI 1360–202X Draft, but include revisions for further clarity and specificity (*e.g.,* adding clarifying provisions for how to test units with modular economizers, as opposed to units shipped with economizers installed).

Consistent with the Commercial HVAC Term Sheet and the Commercial HVAC Enforcement Policy, in 10 CFR 429.43(a)(4), DOE is proposing provisions that would allow determination of represented values to be based on an individual model distributed in commerce without the component in specific cases. The components to which these provisions apply are limited to those components for which the test provisions for testing a unit with these components may result in differences in ratings compared to testing a unit without these components.[25] For these components, DOE proposes in 10 CFR 429.43(a)(4) that:

- If a basic model includes only individual models distributed in commerce with a specific component, or does not include any otherwise identical individual models without the specific component, the manufacturer must determine represented values for the basic model based on performance of an individual model with the component present (and consistent with any relevant proposed test procedure provisions in appendix E1).
- If a basic model includes both individual models distributed in commerce with a specific component and otherwise identical individual models without the specific component, the manufacturer may determine represented values for the basic model based on performance of an individual model either with the component present (and consistent with any relevant proposed test procedure provisions in appendix E1) or without the component present.

DOE's proposed provisions in 10 CFR 429.43(a)(4) include all of the optional features (excluding those that pertain only to chilled water equipment and not to CRACs) specified in Section D2 of AHRI 1360–202X Draft for which the

[24] For the following components listed in Section D2 of AHRI 1360–202X Draft, DOE has tentatively concluded that there is not a specific test procedure action to be specified for testing a unit with the component present: Powered exhaust/powered return air fans, coated coils, compressor variable frequency drive (VFD), flooded condenser head pressure controls, and condensate pump.

[25] DOE has tentatively concluded that for the following features included in Section D2 of AHRI 1360–202X Draft, testing a unit with these components in accordance with the proposed test provisions would not result in differences in ratings compared to testing a unit without these components. Therefore, DOE is not proposing to include these features in 10 CFR 429.43(a)(4): High-effectiveness indoor air filtration, harmonic distortion mitigation devices, electric reheat elements, and non-standard power transformer.

test provisions for testing a unit with these components may result in differences in ratings compared to testing a unit without these components, except coated coils. DOE is proposing to exclude coated coils from the specific components list specified in 10 CFR 429.43 because DOE has tentatively concluded that the presence of coated coils does not result in a significant impact to performance of CRACs, and, therefore, that models with coated coils should be rated based on performance of models with coated coils.

DOE notes that in some cases, individual models may include multiples of the specified components or there may be individual models within a basic model that include various versions of the specified components that result in more or less energy use. In these cases, the represented values of performance must be representative of the lowest efficiency found within the basic model.

Also consistent with the Commercial HVAC Term Sheet and the Commercial HVAC Enforcement Policy, in 10 CFR 429.134(g), DOE is proposing provisions regarding how DOE would assess compliance for basic models that include individual models distributed in commerce with specific components.

- If a basic model includes only individual models distributed in commerce with a specific component, or does not include any otherwise identical individual models without the specific component, DOE may assess compliance for the basic model based on testing an individual model with the component present (and consistent with any relevant proposed test procedure provisions in appendix E1).
- If a basic model includes both individual models distributed in commerce with a specific component and otherwise identical individual models without the specific component, DOE will assess compliance for the basic model based on testing of an otherwise identical model within the basic model that does not include the component, except if DOE is not able to obtain such a model for testing. In such a case, DOE will assess compliance for the basic model based on testing of an individual model with the specific component present (and consistent with any relevant proposed test procedure provisions in appendix E1).

Were DOE to adopt the provisions in 10 CFR part 431, subpart F, appendix E1, 10 CFR 429.43, and 10 CFR 429.134 as proposed, DOE would rescind the Commercial HVAC Enforcement Policy to the extent it is applicable to CRACs. In a separate certification rulemaking, DOE may consider certification reporting requirements such that manufacturers would be required to certify which otherwise identical models are used for making representations of basic models that include individual models with specific components.

Issue 4: DOE seeks comment on its proposals regarding specific components in 10 CFR part 431, subpart F, appendix E1, 10 CFR 429.43, and 10 CFR 429.134.

2. Non-Standard Indoor Fan Motors

The Commercial HVAC Enforcement Policy includes high-static indoor blowers/oversized motors as an optional feature for CRACs, among other equipment. The Commercial HVAC Enforcement Policy states that when selecting a unit of a basic model for DOE-initiated testing, if the basic model includes a variety of high-static indoor blowers or oversized motor options,[26] DOE will test a unit that has a standard indoor fan assembly (as described in the STI that is part of the manufacturer's certification, including information about the standard motor and associated drive that was used in determining the certified rating). This policy only applies where: (a) The manufacturer distributes in commerce a model within the basic model with the standard indoor fan assembly (*i.e.,* standard motor and drive), and (b) all models in the basic model have a motor with the same or better relative efficiency performance as the standard motor included in the test unit, as described in a separate guidance document discussed subsequently. If the manufacturer does not offer models with the standard motor identified in the STI or offers models with high-static motors that do not comply with the comparable efficiency guidance, DOE will test any indoor fan assembly offered for sale by the manufacturer.

DOE subsequently issued a draft guidance document (''Draft Commercial HVAC Guidance Document'') on June 29, 2015 to request comment on a method for comparing the efficiencies of a standard motor and a high-static indoor blower/oversized motor.[27] As presented in the Draft Commercial HVAC Guidance Document, the relative efficiency of an indoor fan motor would be determined by comparing the percent losses of the standard indoor fan motor to the percent losses of the non-standard (oversized) indoor fan motor. The percent losses would be determined by comparing each motor's wattage losses to the wattage losses of a corresponding reference motor. Additionally, the draft method contains a table that includes a number of situations with different combinations of characteristics of the standard motor and oversized motor (*e.g,* whether each motor is subject to Federal standards for motors, whether each motor can be tested to the Federal test procedure for motors, whether each motor horsepower is less than one) and specifies for each combination whether the non-standard fan enforcement policy would apply (*i.e.,* whether DOE would not test a model with an oversized motor, as long as the relative efficiency of the oversized motor is at least as good as performance of the standard motor). DOE has not issued a final guidance document and is instead addressing the issue for CRACs in this test procedure rulemaking.

Section D3 of AHRI 1360–202X Draft includes two different approaches for comparing the efficiency for standard and non-standard indoor fan motors.[28] Section D3.1 of AHRI 1360–202X Draft includes an approach for directly comparing the efficiency for standard and non-standard indoor fan motors, and this approach applies for most indoor fan assemblies. Section D3.2 includes an approach to compare performance for certain integrated fan and motor (IFM) combinations in which the motor and fan cannot be separated and/or are not rated separately.

Section D3.1 of AHRI 1360–202X Draft requires that in order for the individual model with the non-standard indoor fan motor to be certified within the same basic model as the individual model with the standard indoor fan motor, the non-standard indoor fan motor must be more efficient than the minimum value calculated using Equation D1 of AHRI 1360–202X Draft. This minimum non-standard motor efficiency calculation is dependent on the efficiency of the standard fan motor and the reference efficiencies (determined per Table D1 of AHRI 1360–202X Draft) of the standard and non-standard fan motors.

[26] The Commercial HVAC Enforcement Policy defines ''high static indoors blower or oversized motor'' as an assembly that drives the fan and can deliver higher external static pressure than the standard indoor fan assembly sold with the equipment.

[27] Available at *www1.eere.energy.gov/buildings/appliance_standards/pdfs/draft-commercial-hvac-motor-faq-2015–06–29.pdf.*

[28] Section D3 of AHRI 1360–202X Draft states that: (1) The standard indoor fan motor is the motor specified in the manufacturer's installation instructions by the manufacturer for testing and shall be distributed in commerce as part of a particular model; and that (2) a non-standard motor is an indoor fan motor that is not the standard indoor fan motor and that is distributed in commerce as part of an individual model within the same Basic Model.

Section D3.2 of AHRI 1360–202X Draft contains a method for comparing performance of IFMs. Because the motor in an IFM is not separately rated from the fan, this method compares the performance of the entire fan-motor assembly for the standard and non-standard IFMs, rather than just the fan motors. This approach enables comparison of the relative performance of standard and non-standard IFMs, for which motor efficiencies could otherwise not be compared using the method specified in Section D3.1 of AHRI 1360–202X Draft. Specifically, this method determines the ratio of the input power of the non-standard IFM to the input power of the standard IFM at the same duty point, as defined in Section D3.2 of AHRI 1360–202X Draft (*i.e.,* operating at the maximum external static pressure for the standard IFM at the rated airflow). If the input power ratio does not exceed the maximum ratio specified in Table D3 of AHRI 1360–202X Draft, the individual model with the non-standard IFM may be certified within the same basic model as the individual model with the standard IFM. Section D3.2 of AHRI 1360–202X Draft allows these calculations to be conducted using either test data or simulated performance data.

The approaches in Section D3 of AHRI 1360–202X Draft for non-standard indoor fan motors and IFMs generally align with the approaches of the Commercial HVAC Enforcement Policy and the Draft Commercial HVAC Guidance Document, while providing greater detail and accommodating a wider range of fan motor options. DOE also has tentatively determined that Section D3 of Appendix D of AHRI 1360–202X Draft would more fully provide the guidance intended by the Commercial HVAC Enforcement Policy with regard to non-standard indoor fan motors.

DOE proposes to adopt the provisions in Section D3 of AHRI 1360–202X Draft for comparing performance of standard and non-standard indoor fan motors and IFMs in the proposed appendix E1.[29] Additionally, DOE proposes to adopt the provisions in Section D3 of Appendix D of AHRI 1360–202X Draft for the determination of the represented efficiency value of CRACs at 10 CFR 429.43(a)(3)(v)(C) and for DOE assessment and enforcement testing of CRACs at 10 CFR 429.134(s)(1). Were DOE to adopt the references to section D3 of Appendix D of AHRI 1360–202X Draft, as proposed, DOE would rescind the Commercial HVAC Enforcement Policy to the extent it is applicable to CRACs.

Issue 5: DOE requests comment on its proposal to adopt the methods for comparing relative efficiency of standard and non-standard indoor fan motors and integrated fan and motor combinations specified in Section D3 of AHRI 1360–202X Draft in the proposed test procedure in 10 CFR part 431, subpart F, appendix E1, as well as in provisions for determination of represented values in 10 CFR 429.43(a) and provisions for DOE assessment and enforcement testing in 10 CFR 429.134.

H. General Comments

In response to the July 2017 ASHRAE TP RFI, DOE received several general comments not specific to any one equipment category or test procedure. This section addresses those comments.

NCI recommended that DOE follow the development of ASHRAE Standard 221P, ''Test Method to Measure and Score the Operating Performance of an Installed Constant Volume Unitary HVAC System,'' and consider where it may be appropriately applied within EPCA test procedures. (NCI, No. 4 at pp. 1–2) NCI stated that it has collected data indicating that typical split systems and packaged units serving residential and small commercial buildings typically deliver 50 percent to 60 percent of the rated capacity to the occupied zone, thereby making laboratory tests unrepresentative of field performance. *Id.*

As noted in section I.A of this NOPR, EPCA prescribes that if an industry testing procedure or rating procedure developed or recognized by industry (as referenced in ASHRAE Standard 90.1) is amended, DOE must update its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(A) and (B)) DOE notes that ASHRAE Standard 90.1 does not reference ANSI/ASHRAE Standard 221–2020, ''Test Method to Field-Measure and Score the Cooling and Heating Performance of an Installed Unitary HVAC System''[30] as the applicable test procedure for CRACs. NCI also did not provide data on field performance or any correlations between CRAC field performance and laboratory test performance for DOE to consider. Furthermore, ASHRAE 221–2020 does not provide a method to determine the efficiency of CRACs. As discussed, DOE is proposing to adopt the substance of AHRI 1360–202X Draft, either through incorporation by reference of the final version of the update to AHRI 1360 as published, or by specifying the substance of the relevant test procedure provisions in the CFR.

The CA IOUs commented that while the July 2017 ASHRAE TP RFI expressed interest in reducing burden to manufacturers, DOE already took steps to reduce burden by allowing alternative energy efficiency or energy use determination methods (AEDMs). (CA IOUs, No. 7 at pp. 1–2) The CA IOUs expressed their view that there are no further opportunities to streamline test procedures to limit testing burden. *Id.* Additionally, the CA IOUs emphasized the importance of accurate efficiency ratings for its incentive programs and customer knowledge, pointing to the statutory provision that test procedures must produce results that are representative of the product's energy efficiency. (*Id.*)

Lennox stated that it generally supports DOE meeting the statutory requirements to design test procedures to measure energy efficiency during an average use cycle, but in doing so, the commenter requested that DOE also consider overall impacts on consumers and manufacturers. (Lennox, No. 8 at pp. 1–2). The commenter stated that in commercial applications, predicting actual energy use from a single metric is difficult and that a metric better serves as a point of comparison. (*Id.*) Lennox suggested that DOE should strike a balance between evaluating equipment in a meaningful way without introducing unwarranted regulatory burden from overly complex test procedures or calculations that provide little value to consumers. (*Id.*)

In response to the CA IOUs and Lennox, DOE notes that its approach to test procedures is largely dictated by the requirements of EPCA. As discussed, EPCA prescribes that the test procedures for commercial package air conditioning and heating equipment must be those

[29] Per DOE's existing certification regulations, if a manufacturer were to use the proposed approach to certify a basic model, the manufacturer would be required to maintain documentation of how the relative efficiencies of the standard and non-standard fan motors or the input powers of the standard and non-standard IFMs were determined, as well as the supporting calculations. *See* 10 CFR 429.71.

[30] Found online at *www.webstore.ansi.org/Standards/ASHRAE/ANSIASHRAEStandard2212020.* ASHRAE Standard 221P was the name of the proposed standard prior to publication. However, after publication, the name of that standard became ASHRAE Standard 221–2020.

generally accepted industry testing procedures or rating procedures developed or recognized by industry as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) If such relevant industry test procedure is amended, DOE must update its test procedure to be consistent with the amended industry consensus test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B)) In establishing or amending its test procedures, DOE must develop test procedures that are reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment during a representative average use cycle and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)). DOE's considerations of these requirements in relation to individual test method issues are discussed within the relevant sections of this NOPR.

The Joint Advocates stated that there are ambiguities in industry test procedures, and these commenters recommended that DOE should address these ambiguities in order to provide a level playing field for manufacturers and to ensure that any verification or enforcement testing is consistent with manufacturers' own testing. (Joint Advocates, No. 9 at p. 2)

In response, DOE notes that the Joint Advocates did not identify any specific test provisions that were the cause of their concern. In the context of the test procedure for CRACs, DOE has carefully and thoroughly evaluated the industry test standard in the context of the statutory criteria regarding representativeness of the measured energy efficiency and test burden. To the extent there are provisions in the relevant industry test procedure that may benefit from further detail, such provisions are discussed in the previous sections of this document. DOE welcomes further stakeholder input on this topic, as necessary.

I. Represented Values

1. Multiple Refrigerants

DOE recognizes that some commercial package air conditioning and heating equipment may be sold with more than one refrigerant option (*e.g.,* R–410A or R–407C). Typically, manufacturers specify a single refrigerant in their literature for each unique model, but in its review, DOE has identified at least one CRAC manufacturer that provides two refrigerant options under the same model number. The refrigerant chosen by the customer in the field installation may impact the energy efficiency of a unit. For this reason, DOE is proposing representation requirements applicable to models approved for use with multiple refrigerants. So that the proposals in this NOPR would only require manufacturers to update representations once, DOE proposes to align the compliance date for these representation requirements with the proposed metric change (*i.e.,* these proposals would only be required when certifying to amended standards in terms of NSenCOP).

Use of a refrigerant (such as R–407C as compared to R–410A) that requires different hardware (*i.e.,* compressors, heat exchangers, or air moving systems that are not the same or comparably performing) would represent a different basic model, and according to current DOE regulations, separate representations of energy efficiency are required for each basic model. 10 CFR 429.43(a) In contrast, some refrigerants (such as R–422D, R–427A) do not require different hardware, and a manufacturer may consider them to be the same basic model, per DOE's current definition for ''basic model'' at 10 CFR 431.92. In the latter case of a CRAC with multiple refrigerant options that do not require different hardware, DOE proposes that a manufacturer must determine the represented values in the proposed new section 10 CFR 429.43(a)(3)(v)(A) (*e.g.,* NSenCOP and net sensible cooling capacity) for that basic model based on the refrigerant(s)—among all refrigerants listed on the unit's nameplate—that result in the lowest cooling efficiency. These represented values would apply to the basic model for all refrigerants specified by the manufacturer as appropriate for use, regardless of which refrigerant is actually used in the field.

Issue 6: DOE requests comment on its proposal regarding representations for CRAC basic models approved for use with multiple refrigerants.

2. Net Sensible Cooling Capacity

For CRACs, NSCC determines equipment class, which in turn determines the applicable energy conservation standard. 10 CFR 431.97. While NSCC is a required represented value for CRACs, DOE does not currently specify any provisions for CRACs regarding how close the represented value of NSCC must be to the tested or AEDM-simulated NSCC, or whether DOE will use measured or certified NSCC to determine equipment class for enforcement testing. In contrast, at paragraphs (a)(1)(iv) and (a)(2)(ii) of 10 CFR 429.43 and paragraph (g) of 10 CFR 429.134, DOE specifies such provisions regarding the cooling capacity for air-cooled CUACs (ACUACs). Because energy conservation standards for CRACs are dependent on NSCC, inconsistent approaches to the application of NSCC between basic models could result in inconsistent determinations of equipment class and, in turn, inconsistent applications of the energy conservation standards.

Consequently, DOE is proposing to add the following provisions regarding NSCC for CRACs: (1) A requirement that the represented NSCC be between 95 percent and 100 percent of the tested or AEDM-simulated NSCC; and (2) an enforcement provision stating that DOE would use the mean of measured NSCC values from testing, rather than the certified NSCC, to determine the applicable standards.

First, DOE proposes to require in 10 CFR 429.43(a)(3)(v)(B) that the represented value of NSCC must be between 95 percent and 100 percent of the mean of the NSCC values measured for the units in the sample (if determined through testing), or between 95 percent and 100 percent of the NSCC output simulated by an AEDM. This tolerance would help to ensure that equipment is capable of performing at the cooling capacity for which it is represented to commercial consumers, while also enabling manufacturers to conservatively rate the cooling capacity to allow for minor variations in the capacity measurements from different units tested at different laboratories.

Second, DOE is proposing in its product-specific enforcement provisions at 10 CFR 429.134(s)(1) that the NSCC of each tested unit of the basic model will be measured pursuant to the test requirements of 10 CFR part 431, subpart F, appendix E1 and that the mean of the measurement(s) will be used to determine the applicable standard for compliance purposes.

As discussed, determination of the applicable energy conservation standard for CRACs is dependent on the rated NSCC. Specifically, the standards for CRACs generally decrease in stringency with increasing NSCC (*i.e.,* equipment classes with higher NSCC ranges have lower standards than equipment classes with lower NSCC ranges). Consequently, over-rating a system could result in decreased stringency by incorrectly applying a more lenient standard prescribed for a higher NSCC equipment class. DOE has tentatively concluded that these proposals would result in

more accurate ratings of NSCC, thereby ensuring application of the appropriate energy conservation standards, while providing manufacturers the flexibility to conservatively rate NSCC so as to provide reasonable certainty that the subject equipment is capable of delivering the NSCC represented to commercial consumers.

Issue 7: DOE requests comment on its proposals related to represented values and verification testing of NSCC for CRACs.

3. Validation Class for Glycol-Cooled CRACs

DOE's existing testing regulations allow the use of an AEDM, in lieu of actual testing, to simulate the efficiency of CRACs. 10 CFR 429.43(a). In the AEDM requirements for CRACs in 10 CFR 429.70, the table itemizing validation classes for commercial HVAC equipment inadvertently omits glycol-cooled CRACs. For this reason and because DOE understands glycol-cooled CRACs to be similar in design to water-cooled CRACs, DOE is proposing to include glycol-cooled CRACs in the existing validation class for water-cooled CRACs at 10 CFR 429.70(c)(2)(iv). Specifically, DOE proposes at 10 CFR 429.70(c)(2)(iv) that the minimum number of distinct water-cooled and/or glycol-cooled models that must be tested per AEDM would be two basic models, which aligns with the ''two basic model'' requirement that currently applies to the water-cooled CRACs validation class.

J. Test Procedure Costs and Impact

In this NOPR, DOE proposes to amend the existing test procedure for CRACs, by adopting the substance of the latest draft version of the applicable industry test method, AHRI 1360–202X Draft, including the energy efficiency metric, NSenCOP. To the extent that AHRI 1360 is finalized consistent with the draft, DOE proposes to incorporate the industry test standard by reference. If there are substantive changes between the draft and published versions of AHRI 1360, DOE may adopt the substance of AHRI 1360–202X Draft or provide additional opportunity for comment. DOE also proposes to amend its representation and enforcement provisions for CRACs.

DOE has tentatively determined that the proposed amendments in this NOPR would improve the representativeness, accuracy, and reproducibility of the test results and would not be unduly burdensome for manufacturers to conduct or result in increased testing cost as compared to the current test procedure. Because the current DOE test procedure for CRACs would be relocated to appendix E without change, the proposed test procedure in appendix E for measuring SCOP would result in no change in testing practices.

Should DOE adopt standards in a future energy conservation standards rulemaking in terms of the new metric (NSenCOP), the proposed test procedure in appendix E1 for measuring NSenCOP (which DOE proposes to be substantively the same as AHRI 1360–202X Draft) would be required. DOE has tentatively concluded that this proposed test procedure would not increase third-party lab testing costs per unit relative to the current DOE test procedure, which DOE estimates to be $10,200 for CRACs [31] for physical testing. However, DOE has tentatively concluded that the potential adoption of standards denominated in terms of NSenCOP (and corresponding requirement to use the proposed test procedure in appendix E1) would alter the measured energy efficiency for CRACs. Consequently, manufacturers may not be able to rely on data generated under the current test procedure and would, therefore, be required to re-rate CRAC models. Once again, in accordance with 10 CFR 429.70, CRAC manufacturers may elect to use AEDMs to rate models, which significantly reduces costs to industry. DOE estimates the per-manufacturer cost to develop and validate an AEDM for CRACs to be $46,000. DOE estimates a cost of approximately $50 per basic model [32] for determining energy efficiency using the validated AEDM.

Given that most CRAC manufacturers are AHRI members and that DOE is proposing to adopt the procedure in the prevailing industry test procedure that was established for use in AHRI's certification program, which has already been updated to include NSenCOP, DOE expects that most manufacturers would already be testing using the published version of the AHRI 1360–202X Draft in the timeframe of any potential future energy conservation standard. Based on this, DOE has tentatively determined that the proposed test procedure amendments would not be expected to increase the testing burden on CRAC manufacturers that are AHRI members. For the minority of CRAC manufacturers that are not members of AHRI, the proposed test procedure amendments may have costs associated with model re-rating, to the extent that the manufacturers would not already be testing to the updated industry test procedure.

Issue 8: DOE requests comment on its understanding of the impact of the test procedure proposals in this NOPR, specifically DOE's initial conclusion that the proposed DOE test procedure amendments, if finalized, would not increase testing burden on most CRAC manufacturers (*i.e.,* CRAC manufacturers who are AHRI members), compared to current industry practice as indicated by AHRI 1360–202X Draft, and that those proposed amendments would not have a significant impact on the remaining CRAC manufacturers (*i.e.,* CRAC manufacturers who are not AHRI members).

K. Reserved Appendices for Test Procedures for Commercial Air Conditioning and Heating Equipment

In this document, DOE proposes to establish new test procedures for CRACs in the proposed appendix E and new appendix E1 to subpart F of part 431. This proposed organization of the test procedures would be consistent with the organization of the test procedures for other covered equipment and covered products. DOE has tentatively concluded that providing the test procedures for specific equipment in designated appendices would improve the readability of the test procedures. Accordingly, to provide for future consideration of a similar organization for other commercial package air conditioning and heating equipment test procedures, DOE is proposing to reserve appendices B through D. The reserved appendices are intended to facilitate any potential future reorganization of the regulations and are not an indication of substantive changes to test procedures for other commercial package air conditioning and heating equipment.

L. Compliance Date

EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made in the context of certification and on marketing materials

[31] Manufacturers are not required to perform laboratory testing on all basic models. In accordance with 10 CFR 429.70, CRAC manufacturers may elect to use AEDMs. An AEDM is a computer modeling or mathematical tool that predicts the performance of non-tested basic models. These computer modeling and mathematical tools, when properly developed, can provide a means to predict the energy usage or efficiency characteristics of a basic model of a given covered product or equipment and reduce the burden and cost associated with testing.

[32] DOE estimated initial costs to validate an AEDM assuming 80 hours of general time to develop an AEDM based on existing simulation tools and 16 hours to validate two basic models within that AEDM at the cost of an engineering technician wage of $50 per hour plus the cost of third-party physical testing of two units per validation class (as required in 10 CFR 429.70(c)(2)(iv)). DOE estimated the additional per basic model cost to determine efficiency using an AEDM, assuming 1 hour per basic model at the cost of an engineering technician wage of $50 per hour.

and product labels, must be made in accordance with that amended test procedure, beginning 360 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1)) CRACs would not be required to be tested according to the test procedure in the proposed appendix E1 until such time as compliance is required with an amended energy conservation standard that relies on the NSenCOP metric, should DOE adopt such a standard.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that this test procedure rulemaking does not constitute a ''significant regulatory action'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive order by the Office of Information and Regulatory Affairs (OIRA) in OMB.

B. Review Under the Regulatory Flexibility Act

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

The following sections detail DOE's IRFA for this test procedure rulemaking.

1. Description of Reasons Why Action Is Being Considered

DOE is proposing to amend the existing DOE test procedures for CRACs to reflect updates to the relevant industry test standard, pursuant to the relevant statutory provisions of EPCA.

2. Objective of, and Legal Basis for, Rule

EPCA, as amended, requires that the test procedures for commercial package air conditioning and heating equipment, which includes CRACs, be those generally accepted industry testing procedures or rating procedures developed or recognized by AHRI or by ASHRAE, as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B))

EPCA also requires that, at least once every 7 years, DOE must evaluate test procedures for each type of covered equipment, including CRACs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 614(a)(1)(A))

DOE is publishing this NOPR proposing amendments to the test procedure for CRACs in satisfaction of the aforementioned obligations under EPCA.

3. Description and Estimate of Small Entities Regulated

DOE uses the Small Business Administration (SBA) small business size standards to determine whether manufacturers qualify as small businesses, which are listed by the North American Industry Classification System (NAICS).[33] The SBA considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121.

CRAC manufacturers are classified under NAICS code 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

DOE utilized the California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS'')[34] and DOE's Compliance Certification Database (''CCD'')[35] in identifying potential small businesses that manufacture CRACs covered by this rulemaking. DOE used subscription-based business information tools (*e.g.,* reports from Dun & Bradstreet[36]) to determine headcount and revenue of those small businesses. DOE identified nine companies that are original equipment manufacturers (OEMs) of CRACs covered by this rulemaking. DOE screened out companies that do not meet the definition of a ''small business'' or are foreign-owned and operated. DOE identified three small, domestic OEMs for consideration. One small, domestic OEM is not an AHRI member, while the other two small, domestic OEMs are AHRI members.

4. Description and Estimate of Compliance Requirements

In this NOPR, DOE is proposing to relocate the current DOE test procedure to a new appendix E of subpart F of part 431 (''appendix E'') without change. DOE is also proposing an amended test procedure at appendix E1 to subpart F of part 431 (''appendix E1''). Specifically, DOE is proposing in appendix E1 to adopt the updated draft industry test standard AHRI 1360–202X Draft for CRACs. Additionally, this NOPR seeks to amend certain representation and enforcement provisions for CRACs in 10 CFR part 429.

Appendix E does not contain any changes from the current Federal test procedure, and, therefore, would have no cost to industry and would not require retesting solely as a result of DOE's adoption of this proposed amendment to the test procedure, if made final.

The proposed test procedure in appendix E1 includes amendments for measuring CRAC energy efficiency using the NSenCOP metric so as to be consistent with the updated draft industry test procedure. Should DOE adopt amended energy conservation standards in the future denominated in terms of NSenCOP, the Department

[33] The size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support-table-size-standards* (Last accessed on August 30, 2021).

[34] MAEDbS can be accessed at *www.cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx* (Last accessed August 30, 2021).

[35] Certified equipment in the CCD are listed by product class and can be accessed at *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A** (Last accessed August 30, 2021).

[36] Market research available at: *app.dnbhoovers.com* (Last accessed August 30, 2021).

expects there would not be an increase in third-party lab testing costs per unit relative to the current Federal test procedure. DOE estimates such testing costs to be $10,200 per unit for physical testing. DOE has tentatively concluded that the proposed test procedure may require re-rating of CRAC models; however, this would not be mandatory until such time as DOE amends the energy conservation standards for CRACs based on NSenCOP, should DOE adopt such amendments.

If CRAC manufacturers conduct physical testing to certify a basic model, two units are required to be tested per basic model. However, manufacturers are not required to perform laboratory testing on all basic models, as CRAC manufacturers may elect to use AEDMs.[37] An AEDM is a computer modeling or mathematical tool that predicts the performance of non-tested basic models. These computer modeling and mathematical tools, when properly developed, can provide a means to predict the energy usage or efficiency characteristics of a basic model of a given covered product or equipment and reduce the burden and cost associated with testing.

Small businesses would be expected to have different potential regulatory costs depending on whether they are a member of AHRI. DOE understands that all AHRI members and all manufacturers currently certifying to the AHRI Directory will be testing their CRAC models in accordance with the final version of AHRI 1360–202X Draft, the industry test procedure DOE is proposing to incorporate by reference (if finalized and consistent with AHRI 1360–202X Draft), and using AHRI's certification program, which has already been updated to include the NSenCOP metric.

The proposed test procedure amendments would not add any additional testing burden to manufacturers which are members of AHRI, as those members currently are or soon will be using the finalized version of the AHRI 1360–202X draft test procedure. If DOE were to adopt energy conservation standards denominated in terms of the NSenCOP metric, the proposed test procedure amendments may, however, result in re-rating costs for manufacturers which are not AHRI members (currently one identified OEM).

DOE estimated the range of additional potential testing costs for the single small CRAC manufacturer which is not an AHRI member. This small business would only incur additional testing costs if they would not already be using the finalized version of the AHRI 1360–202X Draft to test their CRAC models. DOE estimates that this small business manufactures 113 basic models.

When developing cost estimates for this single, non-AHRI-member small business, DOE considered the cost to develop an AEDM, the costs to validate the AEDM through physical testing, and the cost per model to determine ratings using the AEDM. The Department anticipates that this small OEM would avail itself of the cost-saving option which the AEDM provides. DOE estimated the cost to develop and validate an AEDM for CRACs to be approximately $46,000, which includes physical testing of two models per validation class. Additionally, DOE estimated a cost of approximately $50 per basic model for determining energy efficiency using the validated AEDM. The estimated cost to rate the 113 basic models with the AEDM would be $5,650. Therefore, should DOE adopt amended energy conservation standards in the future denominated in terms of NSenCOP as the efficiency metric, this small business could incur total testing and rating costs of $51,650.

DOE understands the annual revenue of this small business to be approximately $17 million. Therefore, testing and AEDM costs could cause this small business manufacturer to incur costs of up to 0.30 percent of its annual revenue.

Issue 9: DOE requests comment on the number of small businesses DOE identified. DOE also seeks comment on the potential costs for the small business that is not an AHRI member and manufactures CRACs

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered in this document.

6. Significant Alternatives to the Rule

DOE proposes to reduce burden on manufacturers, including small businesses, by allowing AEDMs in lieu of physically testing all basic models. The use of an AEDM is less costly than physical testing CRAC models. Without AEDMs, the average cost to rate all basic models for the small CRAC manufacturer (non-AHRI member) would be $1,152,600.

Additionally, DOE considered alternative test methods and modifications to the AHRI 1360–202X Draft test procedure for CRACs. However, DOE has tentatively determined that there are no better alternatives than the existing industry test procedures, in terms of both meeting the agency's objectives and reducing burden on manufacturers. Therefore, DOE is proposing to amend the existing DOE test procedure for CRACs through adoption of the substance of AHRI 1360–202X Draft. DOE intends to update the reference to the final published version of AHRI 1360–202X Draft in the final rule, unless there are substantive changes between the draft and published versions, in which case DOE may adopt the substance of the AHRI 1360–202X Draft or provide additional opportunity for comment on the changes to the industry consensus test procedure.

Manufacturers subject to DOE's energy efficiency standards may apply to DOE's Office of Hearings and Appeals for exception relief under certain circumstances. Manufacturers should refer to 10 CFR part 1003 for additional details.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of CRACs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including commercial package air condition and heating equipment. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

[37] In accordance with 10 CFR 429.70.

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 (NEPA) and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, appendix A5. DOE anticipates that this rulemaking qualifies for categorical exclusion A5 because it is an interpretive rulemaking that does not change the environmental effect of the rule and otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements for agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

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

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

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

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

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a

Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the test procedure for measuring the energy efficiency of CRACs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed amendments to the Federal test procedure for CRACs are primarily in response to modifications to the applicable industry consensus test standards (*i.e.,* AHRI 1360–202X Draft, ANSI/ASHRAE 37–2009, and ANSI/ASHRAE 127–2020). DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

In this NOPR, DOE proposes to incorporate by reference the following test standards:

(1) The draft test standard provided by AHRI, titled ''Performance Rating of Computer and Data Processing Room Air Conditioners (''Draft Standard'') AHRI Standard 1360–202X Draft. AHRI Standard 1360–202X Draft is a draft industry test procedure for measuring the performance of CRACs. AHRI Standard 1360–202X Draft is in draft form and its text was provided to the Department for the purposes of review only during the drafting of this NOPR. AHRI 1360–202X Draft has been attached in this docket for review. DOE intends to update the reference to the final published version of AHRI 1360–202X Draft in the Final Rule, unless there are substantive changes between the draft and published versions, in which case DOE may adopt the substance of the AHRI 1360–202X Draft or provide additional opportunity for comment on the changes to the industry consensus test procedure.

(2) The test standard published by ASHRAE, titled ''Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners,'' ANSI/ASHRAE Standard 127–2020. ANSI/ASHRAE Standard 127–2020 is an industry-accepted test procedure for measuring the performance of CRACs. ANSI/ASHRAE Standard 127–2020 is available on ANSI's website at *webstore.ansi.org/standards/ashrae/ansiashrae1272020.*

(3) The test standard published by ASHRAE, titled ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ANSI/ASHRAE Standard 37–2009. ANSI/ASHRAE Standard 37–2009 is an industry-accepted test procedure that provides a method of test for many categories of air conditioning and heating equipment. ANSI/ASHRAE Standard 37–2009 is available on ANSI's website at *webstore.ansi.org/RecordDetail.aspx?sku=ANSI%2FASHRAE+Standard+37-2009.*

(4) The test standard published by ASHRAE, titled ''Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners,'' ANSI/ASHRAE Standard 127–2007. ANSI/ASHRAE Standard 127–2007 is an industry-accepted test procedure for measuring the performance of CRACs. ANSI/ASHRAE Standard 127–2007 is available on ANSI's website at *https://webstore.ansi.org/standards/ashrae/ansiashrae1272007.*

The following standards were previously approved for incorporation by reference in the section where they appear and no change is proposed: AHRI 210/240–2008, AHRI 340/360–2007, ISO Standard 13256–1, AHRI 1230–2010, AHRI 390–2003.

V. Public Participation

A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *www.energy.gov/eere/buildings/public-meetings-and-comment-deadlines.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedures for Submitting Prepared General Statements for Distribution

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

DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar/public meeting. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and to prepare a transcript. DOE reserves the

right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar/public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

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

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

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

D. Submission of Comments

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

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

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

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

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

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

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

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

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

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

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

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

Issue 1: DOE requests comment on the proposed definition for ''computer room air conditioner'' that distinguishes between CRACs and other categories of air conditioning equipment, based on the marketing of the equipment.

Issue 2: DOE requests comment on its proposal to define the following terms, consistent with AHRI 1360–202X Draft: Floor-mounted, ceiling-mounted, wall-mounted, roof-mounted, up-flow, down-flow, horizontal flow, up-flow ducted, up-flow non-ducted, ceiling-mounted ducted, ceiling-mounted non-ducted, and fluid economizer.

Issue 3: DOE requests comment on its proposal to adopt the NSenCOP metric for CRACs as part of the proposed test procedure in appendix E1, which would be used only if DOE were to prescribe energy conservation standards denominated in terms of NSenCOP in a future rulemaking. Additionally, DOE seeks feedback on whether the rating conditions in AHRI 1360–202X Draft are appropriately representative of field applications.

Issue 4: DOE seeks comment on its proposals regarding specific components in 10 CFR part 431, subpart F, appendix E1, 10 CFR 429.43, and 10 CFR 429.134.

Issue 5: DOE requests comment on its proposal to adopt the methods for comparing relative efficiency of standard and non-standard indoor fan motors and integrated fan and motor combinations specified in Section D3 of AHRI 1360–202X Draft in the proposed test procedure in 10 CFR part 431, subpart F, appendix E1, as well as in provisions for determination of represented values in 10 CFR 429.43(a) and provisions for DOE assessment and enforcement testing in 10 CFR 429.134.

Issue 6: DOE requests comment on its proposal regarding representations for CRAC basic models approved for use with multiple refrigerants.

Issue 7: DOE requests comment on its proposals related to represented values and verification testing of NSCC for CRACs.

Issue 8: DOE requests comment on its understanding of the impact of the test procedure proposals in this NOPR, specifically DOE's initial conclusion that the proposed DOE test procedure amendments, if finalized, would not increase testing burden on most CRAC manufacturers (*i.e.,* CRAC manufacturers who are AHRI members), compared to current industry practice as indicated by AHRI 1360–202X Draft, and that those proposed amendments would not have a significant impact on the remaining CRAC manufacturers (*i.e.,* CRAC manufacturers who are not AHRI members).

Issue 9: DOE requests comment on the number of small businesses DOE identified. DOE also seeks comment on the potential costs for the small business that is not an AHRI member and manufactures CRACs.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and request for comment.

List of Subjects

10 CFR Part 429

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

10 CFR Part 431

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

Signing Authority

This document of the Department of Energy was signed on January 28, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 31, 2022.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

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

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

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

■ 2. Amend § 429.4 by revising paragraph (a) and redesignating paragraph (c)(2) as (c)(3), and adding new paragraph (c)(2) to read as follows:

§ 429.4 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, DOE must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–9127, *Buildings@ee.doe.gov, www.energy.gov/eere/buildings/building-technologies-office,* and may be obtained from the other sources in this section. Also, this material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

(c) * * *

(2) AHRI Standard 1360–202X Draft, (''AHRI 1360–202X Draft''), Performance Rating of Computer and Data Processing Room Air Conditioners, IBR approved for § 429.43.

* * * * *

■ 3. Amend § 429.43 by adding paragraphs (a)(3) and (4) to read as follows.

§ 429.43 Commercial heating, ventilating, air conditioning (HVAC) equipment.

(a) * * *

(3) *Product-specific provisions for determination of represented values.*

(i)–(iv) [Reserved]

(v) Computer room air conditioners. When certifying to standards in terms of NSenCOP, the following provisions apply.

(A) If a basic model is distributed in commerce and approved for use with multiple refrigerants, a manufacturer must determine all represented values for that basic model (*e.g.,* NSenCOP and net sensible cooling capacity) based on the refrigerant that results in the lowest cooling efficiency. A refrigerant is considered approved for use if it is listed on the nameplate of the outdoor unit. Per the definition of ''basic model'' in § 431.92, use of a refrigerant that requires different hardware (*i.e.,* compressors, heat exchangers, or air moving systems that are not the same or comparably performing), would represent a different basic model, and

separate representations would be required for each basic model.

(B) The represented value of net sensible cooling capacity must be between 95 percent and 100 percent of the mean of the capacities measured for the units in the sample selected as described in paragraph (a)(1)(ii) of this section, or between 95 percent and 100 percent of the net sensible cooling capacity output simulated by the AEDM as described in paragraph (a)(2) of this section.

(4) *Determination of represented values for individual models with specific components for computer room air conditioners.*

(i) If a manufacturer distributes in commerce individual models with one of the components listed in the following table, determination of represented values is dependent on the selected grouping of individual models into a basic model, as indicated in paragraphs (a)(4)(ii) through (v) of this section. For the purposes of this paragraph, ''otherwise identical'' means differing only in the presence of specific components listed in table 1 to this paragraph (a)(4)(i).

TABLE 1 TO PARAGRAPH (a)(4)(i)

Component	Description
Air Economizers	An automatic system that enables a cooling system to supply and use outdoor air to reduce or eliminate the need for mechanical cooling during mild or cold weather.
Process Heat Recovery/Reclaim Coils/Thermal Storage.	A heat exchanger located inside the unit that conditions the equipment's supply air using energy transferred from an external source using a vapor, gas, or liquid.
Evaporative Pre-cooling of Air-cooled Condenser Intake Air.	Water is evaporated into the air entering the air-cooled condenser to lower the dry-bulb temperature and thereby increase efficiency of the refrigeration cycle.
Steam/Hydronic Heat Coils	Coils used to provide supplemental heat.
Refrigerant Reheat Coils	A heat exchanger located downstream of the indoor coil that heats the supply air during cooling operation using high pressure refrigerant in order to increase the ratio of moisture removal to cooling capacity provided by the equipment.
Powered Exhaust/Powered Return Air Fans.	A powered exhaust fan is a fan that transfers directly to the outside a portion of the building air that is returning to the unit, rather than allowing it to recirculate to the indoor coil and back to the building. A powered return air fan is a fan that draws building air into the equipment.
Compressor Variable Frequency Drive (VFD).	A device connected electrically between the equipment's power supply connection and the compressor that can vary the frequency of power supplied to the compressor in order to allow variation of the compressor's rotational speed. If the manufacturer chooses to make representations for performance at part-load and/or low-ambient conditions (*e.g.,* using the iNSenCOP metric), compressor VFDs must be treated consistently for all cooling capacity tests for the basic model (*i.e.,* if the compressor VFD is installed and active for the part-load and/or low-ambient tests, it must also be installed and active for the NSenCOP test).
Fire/Smoke/Isolation Dampers	A damper assembly including means to open and close the damper mounted at the supply or return duct opening of the equipment.
Non-Standard Indoor Fan Motors	The standard indoor fan motor is the motor specified in the manufacturer's installation instructions for testing and shall be distributed in commerce as part of a particular model. A non-standard motor is an indoor fan motor that is not the standard indoor fan motor and that is distributed in commerce as part of an individual model within the same basic model. For a non-standard indoor fan motor(s) to be considered a specific component for a basic model (and thus subject to the provisions of paragraph (a)(3)(v)(A)–(B) of this section), the following provisions must be met: (1) Non-standard indoor fan motor(s) must meet the minimum allowable efficiency determined per Section D.3.1 of AHRI 1360–202X Draft (incorporated by reference, see § 429.4) (*i.e.,* for non-standard indoor fan motors) or per Section D.3.2 of AHRI 1360–202X Draft for non-standard indoor integrated fan and motor combinations). If the standard indoor fan motor can vary fan speed through control system adjustment of motor speed, all non-standard indoor fan motors must also allow speed control (including with the use of VFD).
Humidifiers	A device placed in the supply air stream for moisture evaporation and distribution. The device may require building steam or water, hot water, electricity, or gas to operate.
Flooded Condenser Head Pressure Controls.	An assembly, including a receiver and head pressure control valve, used to allow for unit operation at lower outdoor ambient temperatures than the standard operating control system.
Chilled Water Dual Cooling Coils	A secondary chilled water coil added in the indoor air stream for use as the primary or secondary cooling circuit in conjunction with a separate chiller.
Condensate Pump	A device used to pump condensate and/or humidifier drain water from inside the unit to a customer drain outside the unit.

(ii) If a basic model includes only individual models distributed in commerce without a specific component listed in paragraph (4)(i) of this section, the manufacturer must determine represented values for the basic model based on performance of an individual model distributed in commerce without the component.

(iii) If a basic model includes only individual models distributed in commerce with a specific component listed in paragraph (4)(i) of this section, the manufacturer must determine represented values for the basic model based on performance of an individual model with the component present (and consistent with any component-specific test provisions specified in section 4 of appendix E1 to subpart F of part 431 of this chapter).

(iv) If a basic model includes both individual models distributed in commerce with a specific component listed in paragraph (4)(i) of this section and individual models distributed in commerce without that specific component, and none of the individual models distributed in commerce without the specific component are otherwise identical to any given individual model distributed in commerce with the specific component, the manufacturer must consider the performance of individual models with the component present when

determining represented values for the basic model (and consistent with any component-specific test provisions specified in section 4 of appendix E1 to subpart F of part 431 of this chapter).

(v) If a basic model includes both individual models distributed in commerce with a specific component listed in paragraph (4)(i) of this section and individual models distributed in commerce without that specific component, and at least one of the individual models distributed in commerce without the specific component is otherwise identical to any given individual model distributed in commerce with the specific component, the manufacturer may determine represented values for the basic model either:

(A) Based on performance of an individual model distributed in commerce without the specific component or

(B) based on performance of an individual model with the specific component present (and consistent with any component-specific test provisions specified in section 4 of appendix E1 to subpart F of part 431 of this chapter).

(vi) In any of the cases specified in paragraphs (a)(4)(ii) through (v) of this section, the represented values for a basic model must be determined through either testing (paragraph (a)(1) of this section) or an AEDM (paragraph (a)(2) of this section).

■ 4. Amend § 429.70 by revising the table in paragraph (c)(2)(iv) to read as follows:

§ 429.70 Alternative methods for determining energy efficiency and energy use.

* * * * *

(c) * * *

(2) * * *

(iv) * * *

TABLE 1 TO PARAGRAPH (c)(2)(iv)

Validation class	Minimum number of distinct models that must be tested per AEDM
Air-Cooled, Split and Packaged Air Conditioners (ACs) and Heat Pumps (HPs) less than 65,000 Btu/h Cooling Capacity (3-Phase).	2 Basic Models.
(A) Commercial HVAC validation classes	
Air-Cooled, Split and Packaged ACs and HPs greater than or equal to 65,000 Btu/h Cooling Capacity and Less than 760,000 Btu/h Cooling Capacity.	2 Basic Models.
Water-Cooled, Split and Packaged ACs and HPs, All Cooling Capacities	2 Basic Models.
Evaporatively-Cooled, Split and Packaged ACs and HPs, All Capacities	2 Basic Models.
Water-Source HPs, All Capacities	2 Basic Models.
Single Package Vertical ACs and HPs	2 Basic Models.
Packaged Terminal ACs and HPs	2 Basic Models.
Air-Cooled, Variable Refrigerant Flow ACs and HPs	2 Basic Models.
Water-Cooled, Variable Refrigerant Flow ACs and HPs	2 Basic Models.
Computer Room Air Conditioners, Air Cooled	2 Basic Models.
Computer Room Air Conditioners, Water-Cooled and Glycol-Cooled	2 Basic Models.
(B) Commercial water heater validation classes	
Gas-fired Water Heaters and Hot Water Supply Boilers Less than 10 Gallons	2 Basic Models.
Gas-fired Water Heaters and Hot Water Supply Boilers Greater than or Equal to 10 Gallons	2 Basic Models.
Oil-fired Water Heaters and Hot Water Supply Boilers Less than 10 Gallons	2 Basic Models.
Oil-fired Water Heaters and Hot Water Supply Boilers Greater than or Equal to 10 Gallons	2 Basic Models.
Electric Water Heaters	2 Basic Models.
Heat Pump Water Heaters	2 Basic Models.
Unfired Hot Water Storage Tanks	2 Basic Models.
(C) Commercial packaged boilers validation classes	
Gas-fired, Hot Water Only Commercial Packaged Boilers	2 Basic Models.
Gas-fired, Steam Only Commercial Packaged Boilers	2 Basic Models.
Gas-fired Hot Water/Steam Commercial Packaged Boilers	2 Basic Models.
Oil-fired, Hot Water Only Commercial Packaged Boilers	2 Basic Models.
Oil-fired, Steam Only Commercial Packaged Boilers	2 Basic Models.
Oil-fired Hot Water/Steam Commercial Packaged Boilers	2 Basic Models.
(D) Commercial furnace validation classes	
Gas-fired Furnaces	2 Basic Models.
Oil-fired Furnaces	2 Basic Models.
(E) Commercial refrigeration equipment validation classes [1]	
Self-Contained Open Refrigerators	2 Basic Models.
Self-Contained Open Freezers	2 Basic Models.
Remote Condensing Open Refrigerators	2 Basic Models.
Remote Condensing Open Freezers	2 Basic Models.
Self-Contained Closed Refrigerators	2 Basic Models.
Self-Contained Closed Freezers	2 Basic Models.
Remote Condensing Closed Refrigerators	2 Basic Models.

TABLE 1 TO PARAGRAPH (c)(2)(iv)—Continued

Validation class	Minimum number of distinct models that must be tested per AEDM
Remote Condensing Closed Freezers	2 Basic Models.

[1] The minimum number of tests indicated above must be comprised of a transparent model, a solid model, a vertical model, a semi-vertical model, a horizontal model, and a service-over-the counter model, as applicable based on the equipment offering. However, manufacturers do not need to include all types of these models if it will increase the minimum number of tests that need to be conducted.

* * * * *

■ 5. Section 429.134 is amended by adding paragraph (s) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(s) *Computer room air conditioners.* The following provisions apply for assessment and enforcement testing of models subject to energy conservation standards denominated in terms of NSenCOP.

(1) *Verification of net sensible cooling capacity.* The net sensible cooling capacity of each tested unit of the basic model will be measured pursuant to the test requirements of part 431, subpart F, appendix E1 of this chapter. The mean of the net sensible cooling capacity measurement(s) will be used to determine the applicable energy conservation standards for purposes of compliance.

(2) *Specific components.* For basic models that include individual models distributed in commerce with any of the specific components listed at § 429.43(a)(4)(i), the following provisions apply. For purposes of this paragraph, ''otherwise identical'' means differing only in terms of the presence of specific components listed at § 429.43(a)(4)(i).

(i) If the basic model includes only individual models distributed in commerce with a specific component, or does not include any otherwise identical individual models without the specific component, DOE may assess compliance for the basic model based on testing of an individual model with the component present (and consistent with any component-specific test provisions specified in section 4 of appendix E1 to subpart F of part 431 of this chapter).

(ii) If the basic model includes both individual models distributed in commerce with a specific component and otherwise identical individual models without the specific component, DOE will assess compliance for the basic model based on testing an otherwise identical model within the basic model that does not include the component, unless DOE is not able to obtain an individual model for testing that does not include the component. In such a situation, DOE will assess compliance for the basic model based on testing of an individual model with the specific component present (and consistent with any component-specific test provisions specified in section 4 of appendix E1 to subpart F of part 431 of this chapter).

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

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

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

■ 7. Section 431.92 is amended by:

■ a. Revising the introductory paragraph;

■ b. Adding, in alphabetical order, definitions for ''Ceiling-mounted,'' ''Ceiling-mounted ducted,'' ''Ceiling-mounted non-ducted'';

■ c. Revising the definition for ''Computer room air conditioner''; and

■ d. Adding, in alphabetical order, definitions for ''Down-flow,'' ''Floor-mounted,'' ''Fluid economizer,'' ''Horizontal-flow,'' ''Net sensible coefficient of performance, or NSenCOP'' ''Roof-mounted,'' ''Up-flow,'' ''Up-flow ducted,'' ''Up-flow non-ducted,'' and ''Wall-mounted.''

The revisions and additions read as follows:

§ 431.92 Definitions concerning commercial air conditioners and heat pumps.

The following definitions apply for purposes of this subpart F, and of subparts J through M of this part. Any words or terms not defined in this section or elsewhere in this part shall be defined as provided in 42 U.S.C. 6311. For definitions that reference the application for which the equipment is marketed, DOE will consider any publicly available document published by the manufacturer (*e.g.,* product literature, catalogs, and packaging labels) to determine marketing intent.

Note: For definitions in this section that pertain to computer room air conditioners, italicized terms within a definition indicate terms that are separately defined in this section.

* * * * *

Ceiling-mounted means a configuration of a *computer room air conditioner* for which the unit housing the evaporator coil is configured for indoor installation on or through a ceiling.

Ceiling-mounted ducted means a configuration of a *ceiling-mounted computer room air conditioner* that is configured for use with discharge ducting (even if the unit is also configurable for use without discharge ducting).

Ceiling-mounted non-ducted means a configuration of a *ceiling-mounted computer room air conditioner* that is configured only for use without discharge ducting.

* * * * *

Computer room air conditioner means commercial package air-conditioning and heating equipment (packaged or split) that is marketed for use in computer rooms, data processing rooms, or other information technology cooling applications and not a covered consumer product under 42 U.S.C. 6291(1)–(2) and 42 U.S.C. 6292. A computer room air conditioner may be provided with, or have as available options, an integrated humidifier, temperature and/or humidity control of the supplied air, and reheating function. Computer room air conditioners include, but are not limited to, the following configurations as defined in this section: *Down-flow, horizontal-flow, up-flow ducted, up-flow non-ducted, ceiling-mounted ducted, ceiling mounted non-ducted, roof-mounted,* and *wall-mounted.*

* * * * *

Down-flow means a configuration of *floor-mounted computer room air conditioner* in which return air enters above the top of the evaporator coil and discharge air leaves below the bottom of the evaporator coil.

* * * * *

Floor-mounted means a configuration of a *computer room air conditioner* for which the unit housing the evaporator coil is configured for indoor installation on a solid floor, raised floor, or floor-

stand. Floor-mounted *computer room air conditioners* are one of the following three configurations: *Down-flow, horizontal-flow,* and *up-flow.*

Fluid economizer means an option available with a *computer room air conditioner* in which a fluid (other than air), cooled externally from the unit, provides cooling of the indoor air to reduce or eliminate unit compressor operation when outdoor temperature is low. The fluid may include, but is not limited to, chilled water, water/glycol solution, or refrigerant. An external fluid cooler such as, but not limited to a dry cooler, cooling tower, or condenser is utilized for heat rejection. This component is sometimes referred to as a free cooling coil, econ-o-coil, or economizer.

* * * * *

Horizontal-flow means a configuration of a *floor-mounted computer room air conditioner* that is neither a *down-flow* nor an *up-flow* unit.

* * * * *

Net sensible coefficient of performance, or *NSenCOP,* means a ratio of the net sensible cooling capacity in kilowatts to the total power input in kilowatts for *computer room air conditioners,* as measured in appendix E1 of this subpart.

* * * * *

Roof-mounted means a configuration of a *computer room air conditioner* that is not *wall-mounted,* and for which the unit housing the evaporator coil is configured for outdoor installation.

* * * * *

Up-flow means a configuration of a *floor-mounted computer room air conditioner* in which return air enters below the bottom of the evaporator coil and discharge air leaves above the top of the evaporator coil.

Up-flow ducted means a configuration of an *up-flow computer room air conditioner* that is configured for use with discharge ducting (even if the unit is also configurable for use without discharge ducting).

Up-flow non-ducted means a configuration of an *up-flow computer room air conditioner* that is configured only for use without discharge ducting.

* * * * *

Wall-mounted means a configuration of a *computer room air conditioner* for which the unit housing the evaporator coil is configured for installation on or through a wall.

* * * * *

■ 8. Amend § 431.95 by:

■ a. Revising paragraph (a);

■ b. Adding new paragraph (b)(8);

■ c. Revising paragraphs (c)(2) and (4); and

■ d. Adding paragraph (c)(5).

The additions and revisions read as follows:

§ 431.95 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, DOE must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202)–586–9127, *Buildings@ee.doe.gov*, *https://www.energy.gov/eere/buildings/building-technologies-office,* and may be obtained from the other sources in this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(b) * * *

* * * * *

(8) AHRI Standard 1360–202X Draft, (''AHRI 1360–202X Draft''), ''Performance Rating of Computer and Data Processing Room Air Conditioners (''Draft Standard'')'', IBR approved for appendix E1 to this subpart.

(c) * * *

(2) ANSI/ASHRAE Standard 37–2009, (''ANSI/ASHRAE 37''), ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ASHRAE approved June 24, 2009, IBR approved for § 431.96, and appendices A and E1 to this subpart.

* * * * *

(4) ANSI/ASHRAE Standard 127–2007, (''ANSI/ASHRAE 127–2007''), ''Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners,'' approved on June 28, 2007, IBR approved for § 431.96 and appendix E to this subpart.

(5) ANSI/ASHRAE Standard 127–2020, (''ANSI/ASHRAE 127–2020''), ''Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners,'' ANSI approved on November 30, 2020, IBR approved for appendix E1 to this subpart.

* * * * *

■ 9. Amend § 431.96 by revising paragraph (b)(1) and table 1 to § 431.96 (immediately following paragraph (b)(2)), to read as follows:

§ 431.96 Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.

* * * * *

(b) * * * (1) Determine the energy efficiency of each type of covered equipment by conducting the test procedure(s) listed in table 1 of this section along with any additional testing provisions set forth in paragraphs (c) through (g) of this section and appendices A through E1 to this subpart, that apply to the energy efficiency descriptor for that equipment, category, and cooling capacity. The omitted sections of the test procedures listed in Table 1 of this section must not be used. For equipment with multiple appendices listed in Table 1, consult the notes at the beginning of those appendices to determine the applicable appendix to use for testing.

* * * * *

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

Equipment type	Category	Cooling capacity	Energy efficiency descriptor	Use tests, conditions, and procedures [1] in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Small Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled, 3-Phase, AC and HP.	<65,000 Btu/h	SEER and HSPF	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).
	Air-Cooled AC and HP.	≥65,000 Btu/h and <135,000 Btu/h.	EER, IEER, and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	<65,000 Btu/h	EER	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS—Continued

Equipment type	Category	Cooling capacity	Energy efficiency descriptor	Use tests, conditions, and procedures [1] in	Additional test procedure provisions as indicated in the listed paragraphs of this section
		≥65,000 Btu/h and <135,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
	Water-Source HP	<135,000 Btu/h	EER and COP	ISO Standard 13256–1 (1998).	Paragraph (e).
Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP.	≥135,000 Btu/h and <240,000 Btu/h.	EER, IEER and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥135,000 Btu/h and <240,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Very Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP.	≥240,000 Btu/h and <760,000 Btu/h.	EER, IEER and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥240,000 Btu/h and <760,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Packaged Terminal Air Conditioners and Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	Paragraph (g) of this section.	Paragraphs (c), (e), and (g).
Computer Room Air Conditioners	AC	<760,000 Btu/h	SCOP	Appendix E to this subpart [2].	None.
		<760,000 Btu/h	NSenCOP	Appendix E1 to this subpart [2].	None.
Variable Refrigerant Flow Multi-split Systems.	AC	<65,000 Btu/h (3-phase).	SEER	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
		≥65,000 Btu/h and <760,000 Btu/h.	EER	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	HP	<65,000 Btu/h (3-phase).	SEER and HSPF	ANSI/AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
		≥65,000 Btu/h and <760,000 Btu/h.	EER and COP	ANSI/AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Variable Refrigerant Flow Multi-split Systems, Water-source.	HP	<760,000 Btu/h	EER and COP	ANSI/AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	AHRI 390–2003 (omit section 6.4).	Paragraphs (c) and (e).

[1] Incorporated by reference; see § 431.95.
[2] For equipment with multiple appendices listed in Table 1, consult the notes at the beginning of those appendices to determine the applicable appendix to use for testing.

* * * * *

Appendix B to Subpart F of Part 431 [Reserved]

■ 10. Add and reserve Appendix B to subpart F of part 431:

Appendix C to Subpart F of Part 431 [Reserved]

■ 11. Add and reserve Appendix C to subpart F of part 431.

Appendix D to Subpart F of Part 431 [Reserved]

■ 12. Add and reserve Appendix D to subpart F of part 431.

■ 13. Add Appendix E to subpart F of part 431 to read as follows:

Appendix E to Subpart F of Part 431—Uniform Test Method for Measuring the Energy Consumption of Computer Room Air Conditioners

Note: Prior to the compliance date for any amended energy conservation standards based on NSenCOP for computer room air conditioners, representations with respect to energy use or efficiency of this equipment, including compliance certifications, must be based on testing pursuant to this appendix. Starting on the compliance date for any amended energy conservation standards for this equipment based on NSenCOP, any representations, including compliance certifications, made with respect to the energy use, power, or efficiency of this equipment must be based on testing pursuant to appendix E1 of this subpart. Manufacturers may use appendix E1 to certify compliance with any amended standards prior to the applicable compliance date for those standards.

1. *Incorporation by Reference.* DOE incorporated by reference in § 431.95, the entire standard for ANSI/ASHRAE 127–2007. However, certain enumerated provisions of ANSI/ASHRAE 127–2007, as set forth in paragraphs (a) of this section, are inapplicable. To the extent that there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control.

(a) ANSI/ASHRAE 127–2007:

(i) Section 5.11 is inapplicable as specified in section 2 of this appendix.

(ii) [Reserved].

2. *General.* Determine the sensible coefficient of performance (SCOP) in accordance with ANSI/ASHRAE 127–2007, ''Method of Testing for Rating Computer and Data Processing Room Unitary Air-Conditioners''; however, Section 5.11, *Tolerances,* of ANSI/ASHRAE 127–2007 is not applicable. In addition, the instructions in sections (3) through (4) of this appendix apply in determining SCOP. In cases where there is a conflict between the language of this appendix and ANSI/ASHRAE 127–2007, the language of this appendix takes precedence.

3. *Optional break-in period.* Manufacturers may optionally specify a ''break-in'' period, not to exceed 20 hours, to operate the equipment under test prior to conducting the test method specified in this appendix. A manufacturer who elects to use an optional compressor break-in period in its certification testing should record this period's duration as part of the information in the supplemental testing instructions under 10 CFR 429.43.

4. *Additional provisions for equipment set-up.* The only additional specifications that may be used in setting up the basic model for test are those set forth in the installation and operation manual shipped with the unit. Each unit should be set up for test in accordance with the manufacturer installation and operation manuals. Paragraphs 4.1 and 4.2 of this section provide specifications for addressing key information typically found in the installation and operation manuals.

4.1. If a manufacturer specifies a range of superheat, sub-cooling, and/or refrigerant pressure in its installation and operation manual for a given basic model, any value(s) within that range may be used to determine refrigerant charge or mass of refrigerant, unless the manufacturer clearly specifies a rating value in its installation and operation manual, in which case the specified rating value must be used.

4.2. The airflow rate used for testing must be that set forth in the installation and operation manuals being shipped to the commercial customer with the basic model and clearly identified as that used to generate the DOE performance ratings. If a rated airflow value for testing is not clearly identified, a value of 400 standard cubic feet per minute (scfm) per ton must be used.

■ 14. Add Appendix E1 to subpart F of part 431 to read as follows:

Appendix E1 to Subpart F of Part 431—Uniform Test Method for Measuring the Energy Consumption of Computer Room Air Conditioners

Note: Prior to the compliance date for any amended energy conservation standards based on NSenCOP for computer room air conditioners, representations with respect to energy use or efficiency of this equipment, including compliance certifications, must be based on testing pursuant to appendix E of this subpart. Starting on the compliance date for any amended energy conservation standards for this equipment based on NSenCOP, any representations, including compliance certifications, made with respect to the energy use, power, or efficiency of this equipment must be based on testing pursuant to this appendix. Manufacturers may use appendix E1 to certify compliance with any amended standards prior to the applicable compliance date for those standards.

1. *Incorporation by Reference.*

DOE incorporated by reference in § 431.95, the entire standards for AHRI 1360–202X Draft, ANSI/ASHRAE 127–2020, ANSI/ASHRAE Standard 37–2009. However, only certain enumerated provisions of AHRI 1360–202X Draft, ANSI/ASHRAE 127–2020 and ANSI/ASHRAE Standard 37–2009 apply as set forth in paragraphs (a), (b), and (c) of this section. To the extent that there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control.

(a) AHRI 1360–202X Draft:

(i) The following sections of Section 3. Definitions—3.1 (Air Sampling Device(s)), 3.4 (Computer and Data Processing Room Air Conditioner), 3.11 (Indoor Unit), 3.14 (Manufacturer's Installation Instruction), 3.16 (Net Sensible Cooling Capacity), 3.17 (Net Total Cooling Capacity), 3.21 (''Shall,'' ''Should,'' ''Recommended,'' or ''It Is Recommended''), 3.22 (Standard Air) and 3.23 (Standard Airflow) are applicable as specified in section 2(a)(i) of this appendix,

(ii) Section 5. Test Requirements, is applicable as specified in section 2(a)(ii) of this appendix,

(iii) The following sections of Section 6. Rating Requirements—6.1–6.3, 6.5 and 6.7 are applicable as specified in section 2(a)(iii) of this appendix,

(iv) Appendix C. Standard Configurations—Normative, is applicable as specified in section 2(a)(iv) of this appendix,

(v) Section D3 of Appendix D. Non-Standard Indoor Fan Motors for CRAC units, is applicable as specified in section 2(a)(v) of this appendix,

(vi) Appendix E. Method of Testing Computer and Data Processing Room Air Conditioners—Normative, is applicable as specified in section 2(a)(vi) of this appendix, and

(vii) Appendix F. Indoor and Outdoor Air Condition Measurement—Normative is applicable as specified in section 2(a)(vii) of this appendix.

(b) ANSI/ASHRAE 127–2020:

(i) Appendix A—Figure A–1, Test duct for measuring air flow and static pressure on downflow units, is applicable as specified in section 2(b)(i) of this appendix.

(c) ASHRAE 37–2009:

(i) Section 1 Purpose is inapplicable as specified in section 2(c)(i) of this appendix,

(ii) Section 2 Scope is inapplicable as specified in section 2(c)(ii) of this appendix, and

(iii) Section 4 Classification is inapplicable as specified in section 2(c)(iii) of this appendix.

2. General. Determine the net sensible coefficient of performance (NSenCOP), in accordance with AHRI 1360–202X Draft, ''Performance Rating of Computer And Data Processing Room Air Conditioners'', ANSI/ASHRAE 127–2020, and ANSI/ASHRAE 37–2009 ''Methods of Testing for Rating Electronically Driven Unitary Air-Conditioning and Heat-Pump Equipment''. However only enumerated provisions of AHRI 1360–202X Draft, ANSI/ASHRAE 127–2020 and ANSI/ASHRAE 37–2009 are applicable, as set forth in paragraphs (a), (b), and (c) of this appendix. In addition, the instructions in section 3 of this appendix apply to determining NSenCOP. In cases where there is a conflict between these sources, the language of this appendix takes highest precedence, followed by AHRI 1360–202X Draft, followed by ANSI/ASHRAE 127–2020, followed by ANSI/ASHRAE 37–2009. Any subsequent amendment to a referenced document by a standard-setting organization will not affect the test procedure in this appendix, unless and until this test procedure is amended by DOE. Material is incorporated as it exists on the date of the approval, and a notice of any change in the incorporation will be published in the **Federal Register**.

(a) *Included sections of AHRI 1360–202X Draft.*

(i) The following sub-sections of Section 3. Definitions—3.1 (Air Sampling Device(s)), 3.4 (Computer and Data Processing Room Air Conditioner), 3.11 (Indoor Unit), 3.14 (Manufacturer's Installation Instruction), 3.16 (Net Sensible Cooling Capacity), 3.17 (Net Total Cooling Capacity), 3.21 (''Shall,'' ''Should,'' ''Recommended,'' or ''It Is Recommended''), 3.22 (Standard Air) and 3.23 (Standard Airflow),

(ii) Section 5. Test Requirements,

(iii) The following sections of Section 6. Rating Requirements—6.1–6.3, 6.5 and 6.7,

(iv) Appendix C. Standard Configurations—Normative,

(v) Section D3 of Appendix D. Non-Standard Indoor Fan Motors for CRAC units,

(vi) Appendix E. Method of Testing Computer and Data Processing Room Air Conditioners—Normative, and

(vii) Appendix F. Indoor and Outdoor Air Condition Measurement—Normative.

(b) *Included section of ANSI/ASHRAE 127–2020*

(i) Figure A-1, Test duct for measuring air flow and static pressure on downflow units,

(ii) [Reserved].

(c) *Excepted sections of ANSI/ASHRAE 37–2009:*

(i) Section 1. Purpose,

(ii) Section 2. Scope,

(iii) Section 4. Classifications.

3. *Test Conditions.*

3.1. *Test Conditions for Certification.* When testing to certify to the energy conservation standards in § 431.97, test use the ''Indoor Return Air Temperature Standard Rating Conditions'' and ''Heat Rejection/Cooling Fluid Standard Rating Conditions'' conditions, as specified in Tables 3 and 4 of AHRI 1360–202X Draft, respectively.

4. *Set-Up and Test Provisions for Specific Components.* When testing a unit that includes any of the features listed in Table 4.1 of this appendix, test in accordance with the set-up and test provisions specified in Table 4.1 of this appendix.

TABLE 4.1—TEST PROVISIONS FOR SPECIFIC COMPONENTS

Component	Description	Test provisions
Air Economizers	An automatic system that enables a cooling system to supply outdoor air to reduce or eliminate the need for mechanical cooling during mid or cold weather.	For any air economizer that is factory-installed, place the economizer in the 100% return position and close and seal the outside air dampers for testing. For any modular air economizer shipped with the unit but not factory-installed, do not install the economizer for testing.
Process Heat recovery/Reclaim Coils/Thermal Storage.	A heat exchanger located inside the unit that conditions the equipment's supply air using energy transferred from an external source using a vapor, gas, or liquid.	Disconnect the heat exchanger from its heat source for testing.
Evaporative Pre-cooling of Condenser Intake Air.	Water is evaporated into the air entering the air-cooled condenser to lower the dry-bulb temperature and thereby increase efficiency of the refrigeration cycle.	Disconnect the unit from the water supply for testing (*i.e.,* operate without active evaporative cooling).
Steam/Hydronic Heat Coils	Coils used to provide supplemental heat	Test with steam/hydronic heat coils in place but providing no heat.
Refrigerant Reheat Coils	A heat exchanger located downstream of the indoor coil that heats the supply air during cooling operation using high pressure refrigerant in order to increase the ratio of moisture removal to cooling capacity provided by the equipment.	De-activate refrigerant re-heat coils so as to provide the minimum (none if possible) reheat achievable by the system controls.
Fire/Smoke/Isolation Dampers.	A damper assembly including means to open and close the damper mounted at the supply or return duct opening of the equipment.	For any fire/smoke/isolation dampers that are factory-installed, close and seal the dampers for testing. For any modular fire/smoke/isolation dampers shipped with the unit but not factory-installed, do not install the dampers for testing.
Harmonic Distortion Mitigation Devices.	A high voltage device that reduces harmonic distortion measured at the line connection of the equipment that is created by electronic equipment in the unit.	Remove harmonic distortion mitigation devices for testing.
Humidifiers	A device placed in the supply air stream for moisture evaporation and distribution. The device may require building steam or water, hot water, electricity, or gas to operate.	Test with humidifiers in place but providing no humidification.
Electric Reheat Elements	Electric reheat elements and controls that are located downstream of the cooling coil that may heat the air using electrical power during the dehumidification process.	Test with electric reheat elements in place but providing no heat.
Non-standard Power Transformer.	A device applied to a high voltage load that transforms input electrical voltage to that voltage necessary to operate the load.	Disable the non-standard power transformer during testing.
Chilled Water Dual Cooling Coils.	A secondary chilled water coil added in the indoor air stream for use as the primary or secondary cooling circuit in conjunction with a separate chiller.	Test with chilled water dual cooling coils in place but providing no cooling.
High-Effectiveness Indoor Air Filtration.	Indoor air filters with greater air filtration effectiveness than Minimum Efficiency Reporting Value (MERV) 8 for ducted units and MERV 1 for non-ducted units.	Test with the filter offered by the manufacturer with the least air filtration effectiveness that meets or exceeds MERV 8 for ducted units and MERV 1 for non-ducted units.

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Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 210, 215, 220, et al.

Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, and 226

[FNS–2020–0038]

RIN 0584–AE81

Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium

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

ACTION: Final rule with request for comments.

SUMMARY: USDA is finalizing its November 25, 2020, proposed rulemaking regarding child nutrition meal pattern requirements. This final rule will establish transitional standards to support the continued provision of nutritious school meals as schools respond to and recover from the pandemic and while USDA engages in notice-and-comment rulemaking to update the meal pattern standards to more comprehensively reflect the *Dietary Guidelines for Americans, 2020–2025.* This final rule will provide immediate relief to schools during the return to traditional school meal service following extended use of COVID–19 meal pattern flexibilities. This rule finalizes the proposed milk provision by allowing local operators of the National School Lunch Program and School Breakfast Program to offer flavored, low-fat milk (1 percent fat) for students in grades K through 12 and for sale as a competitive beverage. It will also allow flavored, low-fat milk in the Special Milk Program for Children and in the Child and Adult Care Food Program for participants ages 6 and older. Beginning in SY 2022–2023, this final rule will require at least 80 percent of the weekly grains in the school lunch and breakfast menus to be whole grain-rich. Lastly, this final rule will modify the proposed sodium standards and establish Sodium Target 1 as the sodium limit for school lunch and breakfast in SY 2022–2023 as proposed, but implement a Sodium Interim Target 1A effective for school lunch beginning in SY 2023–2024.

DATES:

Effective date: This final rule will become effective July 1, 2022.

Comment date: Written comments on this final rule should be received on or before March 24, 2022, to receive consideration.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on the provisions of this final rule. Interested persons are also invited to comment on considerations for future rulemaking related to the school nutrition requirements. In the coming months, the public will have an additional opportunity to comment when the Food and Nutrition Service publishes a new proposed rule related to the school meal pattern requirements. Comments related to this final rule may be submitted in writing by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to Tina Namian, Chief, School Programs Branch, Policy and Program Development Division—4th Floor, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314; telephone: 703–305–2590.

All written comments submitted in response to this final rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. The Food and Nutrition Service will make the written comments publicly available on the internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Tina Namian, Chief, School Programs Branch, Policy and Program Development Division—4th Floor, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314; telephone: 703–305–2590.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

APA—Administrative Procedure Act
CACFP—Child and Adult Care Food Program
FDA—U.S. Food and Drug Administration
FFCRA—Families First Coronavirus Response Act
FNS—Food and Nutrition Service
HEI—Healthy Eating Index
ICN—Institute of Child Nutrition
NSLP—National School Lunch Program
SBP—School Breakfast Program
SFA—School Food Authority
SFSP—Summer Food Service Program
SMP—Special Milk Program
SY—School Year
USDA—United States Department of Agriculture

I. Background

This final rule establishes transitional standards for the Child Nutrition Program requirements related to milk, whole grains, and sodium to support schools after more than two years of serving meals under pandemic conditions. This final rule will apply as the U.S. Department of Agriculture (USDA) works to strengthen the school meal pattern requirements through another notice-and-comment rulemaking based on a comprehensive review of the *Dietary Guidelines for Americans, 2020–2025* (*Dietary Guidelines*). As described further below, USDA plans to promulgate a new rule for long-term meal pattern requirements to be effective starting in school year (SY) 2024–2025. The standards in this final rule are intended to be transitional and in effect for only two school years (SY 2022–2023 and SY 2023–2024). In case of a delay, the standards in this rule will remain effective until subsequent standards are promulgated. Nevertheless, because USDA intends to establish new meal pattern requirements for SY 2024–2025 and beyond, the standards in this rule will be referred to as ''transitional.''

This rule finalizes the proposed rule *Restoration of Milk, Whole Grains, and Sodium Flexibilities* (85 FR 75241, November 25, 2020) with some modifications based on review of the comments received, circumstances caused by the COVID–19 pandemic, and current dietary science. Although the proposed rule would have implemented permanent changes to the school meal standards, USDA agrees with public comments that making permanent changes in response to circumstances created by COVID–19 is not a viable long-term solution. However, public comments also asserted that due to the financial and operational impacts of the pandemic, it would be unrealistic for USDA to expect schools to fully meet certain meal standard requirements in the immediate term, and supported allowing more time for product innovation and implementation. As noted, following publication of this final rule, USDA intends to propose a new rulemaking to continue to support successful, science-based meal pattern requirements based on a comprehensive review of the *Dietary Guidelines for Americans, 2020–2025* and meaningful stakeholder input. USDA will develop updated standards through the new rulemaking for implementation in SY 2024–2025 and beyond, based on current nutrition science and public input on how to build on the success of school meals in supporting healthy eating and improved dietary outcomes.

In 2012, the USDA updated the National School Lunch Program (NSLP) and School Breakfast Program (SBP) meal requirements, as required by the National School Lunch Act in Section 4(b)(3)(A), 42 U.S.C. 1753(b)(3)(A). These new meal requirements were a key component of the Healthy, Hunger-

Free Kids Act, (Pub. L. 111–296), and raised school meal nutrition standards for the first time in more than 15 years. The updated requirements were largely based on recommendations issued by the National Academy of Medicine (formerly the Institute of Medicine), which, in turn, were based on the *2005 Dietary Guidelines.* The implementing regulations [1] increased the availability of fruits, vegetables, whole grains, and fat-free and low-fat milk in school meals; limited sodium and saturated fat and eliminated *trans* fat in the weekly school menu; and established calorie ranges intended to meet part of the age-appropriate calorie needs of children.

Regarding the milk, grains, and sodium requirements, the regulations implemented in 2012:

- Allowed flavoring only in fat-free milk in the NSLP and SBP;
- Required that at least half of the grains offered in the NSLP be whole grain-rich (meaning the grain product contains at least 50 percent whole grains and the remaining grain content of the product must be enriched) in SY 2012–2013 and one year later in the SBP; and required that effective SY 2014–2015, all grains offered in both programs be whole grain-rich; and
- Required schools participating in the NSLP and SBP to reduce the sodium content of meals offered on average over the school week by meeting progressively lower sodium targets over a 10-year period (Target 1, Target 2, and the Final Target).[2]

Age/grade group	Target 1 (mg) July 1, 2014 (SY 2014–2015)	Target 2 (mg) July 1, 2017 (SY 2017–2018)	Final Target (mg) July 1, 2022 (SY 2022–2023)
K–5	<1,230	<935	<640
6–8	<1,360	<1,035	<710
9–12	<1,420	<1,080	<740

Before and after the regulations were implemented in 2012, USDA offered guidance, technical assistance resources, and tailored trainings for schools in collaboration with the Institute of Child Nutrition (ICN) (formerly the National Food Service Management Institute). Program advocates, the food industry, and other stakeholders also collaborated with USDA in different ways to assist schools with implementation. This enabled many schools to adopt most of the changes to the NSLP and SBP meal patterns. USDA acknowledges the significant efforts and progress these schools have achieved, and is committed to further meal pattern improvements to address children's nutritional needs.

Many components of the 2012 regulations were successfully implemented, and had measurable, positive impacts, as demonstrated by the Healthy Eating Index (HEI) scores associated with school meals and recent research showing that U.S. children get their healthiest meals of the day at school.[3] The HEI is a measure of diet quality used to assess how well a set of foods aligns with key recommendations of the *Dietary Guidelines,* with scores ranging from 0 to 100. An ideal overall HEI score of 100 reflects that the set of foods aligns with key dietary recommendations from the *Dietary Guidelines.*[4] For example, the school lunch average total HEI score increased by 24 points (57.9 to 81.5) from SY 2009–2010 to SY 2014–2015. For school breakfast, the average total HEI score increased by 21 points (49.6 to 71.3) over the same time period.[5] Many schools had great success in implementing the updated nutrition standards in a way that encourages healthy eating and participation.

However, full implementation of the 2012 meal pattern requirements for milk, whole grains, and sodium has been delayed due to legislative and administrative actions. Through multiple annual appropriations bills,[6] Congress directed USDA to provide flexibilities for these specific requirements. Mainly in response to this congressional direction, USDA issued several policy memoranda addressing the affected nutritional requirements for each specified time period.[7] For example, as required by the Consolidated Appropriations Act, 2017 (Pub. L. 115–31), USDA issued policy guidance providing milk, whole grains, and sodium flexibilities for SY 2017–2018.[8] This guidance allowed State agencies to grant exemptions to allow flavored, low-fat milk in the NSLP and SBP and as a competitive food if schools demonstrated hardship by documenting a reduction in student milk consumption or an increase in school milk waste. For whole grains, the guidance allowed State agencies to offer exemptions to the whole grain-rich requirements if SFAs could demonstrate hardship in procuring, preparing, or serving compliant products that were accepted by students. Finally, for sodium, the guidance allowed schools

[1] *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088, January 26, 2012). Available at: *https://www.federalregister.gov/documents/2012/01/26/2012-1010/nutrition-standards-in-the-national-school-lunch-and-school-breakfast-programs.*

[2] Sodium reduction timeline and amounts in the National School Lunch Program, from final rule *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088, January 26, 2012).

[3] Liu J, Micha R, Li Y, Mozaffarian D. *Trends in Food Sources and Diet Quality Among US Children and Adults, 2003–2018.* JAMA. April 12, 2021. Available at: *https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2778453?utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_term=040921.*

[4] For more information about the Healthy Eating Index, see *How the HEI Is Scored: https://www.fns.usda.gov/how-hei-scored.*

[5] *School Nutrition and Meal Cost Study* findings suggest that the updated nutrition standards have had a positive and significant influence on the nutritional quality of school meals. Between SY 2009–2010 and SY 2014–2015, ''Healthy Eating Index-2010'' (HEI) scores for NSLP and SBP increased significantly, suggesting that the updated standards significantly improved the nutritional quality of school meals. Over this period, the mean HEI score for NSLP lunches increased from 57.9 to 81.5, and the mean HEI score for SBP breakfasts increased from 49.6 to 71.3. The study is available at: *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.* (OMB Control Number 0584–0596, expiration date 07/31/2017.)

[6] These include Section 743 of the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112– 55); Sections 751 and 752 of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235); Section 733 of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113); Section 747 of the Consolidated Appropriations Act, 2017 (Pub. L. 115– 31) (Consolidated Appropriations Act, 2017). For a more detailed discussion, please see the interim final rule *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (82 FR 56703, at 56704, November 30, 2017). Available at: *https://www.federalregister.gov/documents/2017/11/30/2017-25799/child-nutrition-programs-flexibilities-for-milk-whole-grains-and-sodium-requirements.*

[7] These include SP 20–2015, *Requests for Exemption from the School Meals' Whole Grain-Rich Requirement for School Years 2014–2015 and 2015–2016;* SP 33–2016, *Extension Notice: Requests for Exemption from the School Meals' Whole Grain-Rich Requirement for School Year 2016–2017;* and SP 32–2017, *School Meal Flexibilities for School Year 2017–2018.*

[8] SP 32–2017, May 22, 2017, *School Meal Flexibilities for School Year 2017–2018.*

to continue to meet Sodium Target 1 in SY 2017–2018.

USDA's policy guidance for SY 2017–2018 was followed by the interim final rule *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (82 FR 56703, November 30, 2017), which established regulations that extended school meal flexibilities through SY 2018–2019 and applied the flavored milk flexibility to the Special Milk Program for Children (SMP) and the Child and Adult Care Food Program (CACFP) for participants age 6 and older in SY 2018–2019 only. As a result, the regulations applicable in SY 2018–2019 provided flexibility in three specific areas while retaining other essential meal requirements from the 2012 rule (for example, fruit and vegetable quantities, saturated and *trans* fat limits, and calorie ranges) that contribute to heathy meals. In brief, for SY 2018–2019, the interim final rule:

- Provided NSLP and SBP operators the option to offer flavored, low-fat (1 percent fat) milk with reimbursable meals in grades K through 12 and as a beverage for sale during the school day, and applied the flexibility in the SMP and CACFP for participants age 6 and older;
- Allowed State agencies to continue granting school food authority (SFA) exemption requests to use specific alternative grain products if the SFA could demonstrate hardship(s) in procuring, preparing, or serving specific products that were acceptable to students and compliant with the whole grain-rich requirement; and
- Retained Sodium Target 1 in the NSLP and SBP.

USDA issued a final rule in December 2018 (83 FR 63775, December 12, 2018). In general, the 2018 final rule, which became effective on July 1, 2019, generally codified the flexibilities offered in the 2017 interim final rule but made some key modifications. The optional flexibilities codified in the 2018 final rule included the following targeted changes with the balance of the meal pattern remaining intact:

- Allowing schools in the NSLP and SBP to offer flavored, low-fat milk at lunch and breakfast for grades K through 12 and as a beverage for sale à la carte, and requiring that unflavored milk (fat-free or low-fat) be available at each school meal service, as well as allowing flavored, low-fat milk in the SMP and CACFP for participants ages 6 and older, for consistency across the Child Nutrition Programs;
- Requiring that at least half of the weekly grains in the NSLP and SBP be whole grain-rich and that the remaining weekly grains offered be enriched; and
- Retaining Sodium Target 1 through SY 2023–2024, moving Target 2 to SY 2024–2025, and eliminating the Final Target.

On April 3, 2019, the Center for Science in the Public Interest challenged the 2018 final rule claiming the regulation was unlawful under the Administrative Procedure Act (APA). On April 13, 2020, the District of Maryland, in *Center for Science in the Public Interest* v. *Perdue,* 438 F. Supp. 3d 546 (D. Md. 2020), vacated the rule. The court found that while the standards finalized by that rule were reasonable interpretations of relevant statutory language that gave discretion to USDA to promulgate standards ''based on'' the *Dietary Guidelines* but not necessarily matching the *Dietary Guidelines,* 438 F. Supp. 3d at 562–64, the 2018 final rule was not a logical outgrowth of the 2017 interim final rule, and therefore violated the APA.

When the 2018 final rule was vacated, the meal pattern requirements immediately reverted to the 2012 regulations. USDA published a notice in the **Federal Register** that removed the regulatory text that was changed by the 2018 final rule and replaced it with the regulatory text from the 2012 final rule (85 FR 74847, November 24, 2020). In addition, on November 25, 2020, USDA issued a new proposed rule that would have codified the operational flexibilities included in the 2018 final rule (85 FR 75241, November 25, 2020).

The vacatur of the 2018 rule coincided with the COVID–19 pandemic. Beginning in March 2020, using authority provided by the Families First Coronavirus Response Act (FFCRA) (Pub. L. 116–127), which was not at issue in the court ruling, USDA published a series of nationwide waivers to provide flexibility to a variety of program requirements so that children continued to have access to nutritious meals during the pandemic.[9] Along with several other waivers, meal pattern waivers provided by USDA facilitated the service of grab-and-go meals, which helped schools provide a safe and socially distanced meal service for the remainder of SY 2019–2020. For example, under the standard NSLP and SBP requirements, meals must meet age/grade group requirements and children must have a choice (at least two different options) for fluid milk. The waivers gave schools flexibility for these and other requirements that were more difficult to meet when serving pre-packaged meals, bulk meals, or to-go meals that parents or guardians took home to their children. During SY 2020–2021, using FFCRA authority,[10] USDA provided waivers to allow schools to operate the Summer Food Service Program (SFSP), which operates under separate, simpler meal pattern requirements, and which was not affected by the court ruling. For SY 2021–2022, USDA focused on supporting the safe reopening of schools and moving toward meals that meet the NSLP and SBP standards. To this end, USDA issued a nationwide waiver based on the FFCRA authority allowing schools to operate the NSLP Seamless Summer Option, which follows the NSLP and SBP meal patterns, during the regular school year. Under another nationwide waiver, schools that were unable to meet the NSLP and SBP standards due to the pandemic could request targeted meal pattern waivers from their State agency, including those providing flexibility for the milk, whole grains, and sodium requirements.[11] Therefore, the new, independent statutory authority that Congress provided in response to COVID–19 authorized significant but temporary flexibilities from the 2012 standards for milk, whole grains, and sodium. USDA recognizes that schools may not be prepared to immediately implement the 2012 meal standards for milk, whole grains, and sodium when the current COVID–19 meal pattern waiver expires on June 30, 2022. With this rule, USDA intends to provide a transitional approach in these areas while also acknowledging that a return to stronger nutrition standards is imperative to support healthy eating and improved dietary outcomes.

Establishing Strong School Meal Nutrition Standards

Throughout the pandemic, the critical role of the school meal programs has become increasingly clear. Food hardship increased in spring 2020 and has remained high during the public health emergency. In March 2021, households with children were more likely to report that their household did not get enough to eat (11 percent, compared to 7 percent of households without children). Black and Latino households also experienced disproportionate rates of food hardship; in March 2021, 16 percent of Black and

[9] USDA's COVID–19 nationwide waivers are available at: *https://www.fns.usda.gov/fns-disaster-assistance/fns-responds-covid-19/child-nutrition-covid-19-waivers.*

[10] On October 1, 2020, the FFCRA was extended by the Continuing Appropriations Act 2021 and Other Extensions Act (Pub. L. 116–159).

[11] See *Nationwide Waiver to Allow Specific School Meal Pattern Flexibility for School Year 2021–2022: https://www.fns.usda.gov/cn/child-nutrition-response-90.*

Latino households reported that their household did not get enough to eat compared to 6 percent of White households.[12] Federal nutrition programs, including the school meal programs, have played a critical role in supporting individuals, families, and children facing food and nutrition insecurity during this challenging time. In response to the COVID–19 pandemic, it was essential for USDA to provide schools with broad flexibility to support families in need. It is equally critical now to establish the pathway to return to strong school nutrition standards consistent with current dietary science.

School meals are one of the most powerful tools for ensuring children have access to healthy and nutritious food, and evidence shows that strong school nutrition standards are effective. After the 2012 rule went into effect, the HEI component scores for fruits jumped from 77 percent to 95 percent of the maximum score, and the scores for vegetables jumped from 75 percent to 82 percent. The updated standards also reduced empty calories, with the HEI component score for empty calories improving from 73 percent to 96 percent of the maximum possible score.[13] USDA research on implementation of the 2012 standards also found that students who ate school lunches were more likely to consume milk, fruits, and vegetables at lunch, and less likely to consume desserts, snack items, and non-milk beverages at lunch, compared to students who ate lunches from home or other places.[14] Another study found higher diet quality associated with the 2012 rule extended to low-income, low-middle-income, and middle-high-income students participating in the school lunch program.[15] Recent research shows that U.S. children get their healthiest meals of the day at school,[16] and for many children, the meals they receive from school are a primary source of food, providing up to half their dietary intake every school day.[17]

Improving nutrition is a critical element in preventing childhood obesity, which puts children at risk for poor health,[18] and in combatting the serious effects of diet-related disease. The pandemic has added urgency to the already critical issue of nutrition insecurity, as diet-related chronic diseases including diabetes, hypertension, and heart failure made people more vulnerable to COVID–19.[19] Further, these conditions are costly; total spending to treat cardiovascular disease, cancer, and diabetes in the United States was $383.6 billion in 2018, which was 18 percent higher than in 2009. According to the Government Accountability Office, government spending accounted for the majority (54 percent) of spending for treatment of cardiovascular diseases, cancer, and diabetes in 2018. Total government spending for diet-related health conditions increased 30 percent from 2009 through 2018.[20] Children facing nutrition insecurity are at a higher risk for diet-related chronic diseases. By contrast, healthy eating can reduce an individual's risk of developing high blood pressure, heart disease, type 2 diabetes, cancer, and other harmful conditions.[21]

Research also shows that chronic health conditions can be more common or severe for some racial and ethnic groups. For example, from 2013 to 2016, total age-adjusted diabetes was higher among Hispanic (18 percent) and non-Hispanic Black (17 percent) adults compared to non-Hispanic White (10 percent) adults. Further, from 2017 to 2018, American Indian and Alaska Native adults had the highest age-adjusted prevalence rates of diagnosed diabetes by race/ethnicity.[22] While many complex factors drive health disparities, increasing access to healthy foods is an important part of the solution. USDA research suggests that Black and Hispanic children participate in the school meal programs at higher rates than White children,[23] meaning that the school meal nutrition standards are an important tool in addressing health disparities and supporting racial equity. This makes it all the more important that USDA, in partnership with State agencies, schools, and other stakeholders, raises the bar on meal quality for children. School nutrition professionals have demonstrated their commitment to serving our children throughout the pandemic, and USDA applauds their efforts. As we collectively respond to and recover from COVID–19, it is important to provide children with the most nutritious food possible.

USDA is committed to working with its partners at all levels to achieve this shared goal. However, as acknowledged in the proposed rule, the menu planning challenges experienced by some schools, which have become significantly more difficult during the ongoing global pandemic and supply chain disruptions, necessitates a balance between nutrition science, practical application of requirements, and the need to ensure that children receive school meals they will eat. Accordingly, this final rule establishes transitional standards that apply only to the milk, whole grains, and sodium requirements.

[12] Center on Budget and Policy Priorities: *Number of Families Struggling to Afford Food Rose Steeply in Pandemic and Remains High, Especially Among Children and Households of Color,* April 27, 2021. Available at: *https://www.cbpp.org/sites/default/files/4-27-21fa2.pdf.*

[13] See *School Meals Are More Nutritious After Updated Nutrition Standards.* Available at: *https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCS_infographic2_NutritionalQualityofSchool%20Meals.pdf.*

[14] See *Lunches Consumed From School Are the Most Nutritious.* Available at: *https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCS_infographic5_SchoolLunchesArethe MostNutritious.pdf.*

[15] Kinderknecht K, Harris C, Jones-Smith J. *Association of the Healthy, Hunger-Free Kids Act With Dietary Quality Among Children in the US National School Lunch Program.* JAMA. July 28, 2020. Available at: *https://jamanetwork.com/journals/jama/article-abstract/2768807.*

[16] Liu J, Micha R, Li Y, Mozaffarian D. *Trends in Food Sources and Diet Quality Among US Children and Adults, 2003–2018.* JAMA. April 12, 2021. Available at: *https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2778453?utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_term=040921.*

[17] Karen Weber Cullen, Tzu-An Chen, *The contribution of the USDA school breakfast and lunch program meals to student daily dietary intake,* Preventive Medicine Reports. March 2017. Available at: *https://www.sciencedirect.com/science/article/pii/S2211335516301516.*

[18] According to the Centers for Disease Control and Prevention, in 2017–2018, the prevalence of obesity was 19.3 percent among children and adolescents, aged 2–19. Childhood obesity is also more common among certain populations. See Centers for Disease Control and Prevention: *Childhood Obesity Facts—Prevalence of Childhood Obesity in the United States.* Available at: *https://www.cdc.gov/obesity/data/childhood.html.*

[19] *Coronavirus Disease 2019 Hospitalizations Attributable to Cardiometabolic Conditions in the United States: A Comparative Risk Assessment Analysis.* O'Hearn M, Liu J, Cudhea F, Micha R, Mozaffarian D. J Am Heart Assoc. February 2021. Available at: *https://www.nih.gov/news-events/nih-research-matters/most-covid-19-hospitalizations-due-four-conditions.*

[20] Government Accountability Office, *Chronic Health Conditions—Federal Strategy Needed to Coordinate Diet-Related Efforts.* August 17, 2021. Available at: *https://www.gao.gov/products/gao-21-593.*

[21] Centers for Disease Control and Prevention, *Child Nutrition Facts.* Available at: *https://www.cdc.gov/healthyschools/nutrition/facts.htm.*

[22] Centers for Disease Control and Prevention, *CDC's Racial and Ethnic Approaches to Community Health Program.* Available at: *https://www.cdc.gov/chronicdisease/resources/publications/factsheets/reach.htm.*

[23] Overall, 70 percent of Hispanic and non-Hispanic Black students participated in the NSLP on the target day, compared with about half of non-Hispanic white students. See: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes,* by Mary Kay Fox, Elizabeth Gearan, Charlotte Cabili, Dallas Dotter, Katherine Niland, Liana Washburn, Nora Paxton, Lauren Olsho, Lindsay LeClair, and Vinh Tran. Project Officer: John Endahl. Alexandria, VA: April 2019. Available at: *https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCS-Volume4.pdf.* (OMB Control Number 0584–0596, expiration date 07/31/2017.)

Further, after considering public comments, in this final rule, USDA has modified the whole grains and sodium provisions to provide measured improvements in these areas during this transition period, as USDA develops longer-term standards that are achievable and aligned with the *Dietary Guidelines.* The other components of the 2012 regulations will remain in place.

As described in the next section, USDA will build on this final rule with a new rulemaking that comprehensively incorporates the updated *Dietary Guidelines* and nutrition science. The *Dietary Guidelines* provide science-based recommendations on what to eat and drink to promote health, reduce risk of chronic disease, and meet nutrient needs. The goals of the *Dietary Guidelines, 2020–2025* include a healthy dietary pattern that consists of nutrient-dense forms of foods and beverages across all food groups, in recommended amounts, and within calorie limits. They note the core elements that make up a healthy dietary pattern include vegetables and fruits of all types, grains, dairy, protein foods, and oils. The guidelines also recommend limiting foods and beverages that are higher in added sugars, saturated fat, and sodium. Stakeholders have emphasized the importance of aligning school meal nutrition standards with the *Dietary Guidelines,* as well as the importance of supporting schools in meeting stronger standards.[24] USDA is committed to its statutory obligation to develop school meal nutrition standards that are consistent with the goals of the latest *Dietary Guidelines,* and is committed to working toward this effort immediately following this rule.

Multi-Stage Approach to Nutrition Standards

USDA's long-term goal is to establish regulations that align school meal nutrition standards with the *Dietary Guidelines, 2020–2025* and support the successful provision of appealing and nutritious meals to millions of students each day. However, in response to the proposed rule, USDA received comments from a variety of stakeholders, including State agencies, advocacy and industry groups, and school nutrition professionals, noting the unprecedented disruptions that schools have faced over the last several years, particularly due to the COVID–19 pandemic. For example, public comments from two State agencies expressed support for a transitional approach to the sodium standards, noting that it would be challenging for schools to move directly to Target 2 immediately following the pandemic-related flexibilities. A school nutrition professional respondent agreed, arguing that requiring schools to comply with the 2012 standards following administrative flexibilities and COVID–19 operations is unreasonable; this respondent also hoped that future regulations could work towards continuing to improve the nutritional value of school meals. A respondent representing large school districts pointed out that due to COVID–19, school meal programs are in ''operational and financial crisis,'' and asserted that it is likely to take years for school meal programs to recover and achieve program sustainability. In light of these comments and experience administering the school meal programs during the pandemic, USDA recognizes that updating the standards to reflect the latest dietary recommendations will require thoughtfully addressing the challenges stakeholders face as a result of the public health emergency and the subsequent supply chain and meal service disruptions, as well as the impacts of the multiple delays in implementing specific elements of the milk, whole grains, and sodium standards prior to the pandemic.

Therefore, USDA is taking a two-stage approach to updating the school meal nutrition standards. This final rule, which will establish transitional standards for milk, whole grains, and sodium, is the first stage. This final rule is intended for two school years only: SY 2022–2023 and SY 2023–2024.[25] These transitional standards will balance the needs of schools as they recover from the challenges noted above, with measured steps towards improving nutritional quality.

This transitional approach will also allow industry additional time to reformulate and develop products needed to meet stronger standards, particularly products lower in sodium that students enjoy. As a food industry respondent noted, consumer acceptability, and specifically schoolchildren's acceptance, is critical to sodium reduction efforts. Other food industry respondents emphasized the need to maintain student acceptance when reformulating products, and highlighted some specific challenges with maintaining palatability and food safety when reducing sodium. A June 2019 USDA study titled *Successful Approach to Reducing Sodium in School Meals,* which was referenced in the proposed rule and in public comments, identified several barriers to meeting Sodium Target 2 and the Final Sodium Target, including a low-level of demand for these products outside of the school system, the costs and time involved in reformulating existing products, limited capacity among schools to achieve the targets, and challenges with replacing sodium in some foods given its functionality.[26] More recently, a 2021 survey of school nutrition directors found that 62 percent of respondents considered product or ingredient availability to be a significant challenge in working towards meeting Sodium Target 2 limits, while another 33 percent considered product or ingredient availability to be a moderate challenge. Only 5 percent did not consider product or ingredient availability to be a challenge in meeting Sodium Target 2 limits.[27] These concerns were also raised in in public comments, where some respondents noted how the pandemic has exacerbated issues with product availability. For example, respondents were unsure about industry's ability to meet demand for lower sodium products, due to supply chain and other challenges, and expressed concern about how product shortages and cost constraints could impact schools.

In the second stage, USDA intends to issue a proposed rule in fall 2022 which will address school meal nutrition standards for SY 2024–2025 and beyond. The new rulemaking will advance permanent standards that further demonstrate USDA's commitment to nutritious school meals. It will thoughtfully consider the areas addressed through this final rule and ensure that the long-term standards are consistent with the goals of the *Dietary Guidelines, 2020–2025* and nutrition science, as required by the National School Lunch Act. The new rulemaking will incorporate meaningful stakeholder input, and will meet the nutritional needs of America's schoolchildren. USDA intends for the new rule to be

[24] *USDA–FNS Listening Session with Nutrition Advocacy Groups,* June 29, 2021. Available at: *https://www.regulations.gov/docket/FNS-2020-0038/document.*

[25] USDA fully expects to have new standards in place for SY 2024–2025 and beyond. However, in case of an unanticipated delay, the standards set by this rule will remain legally effective until subsequent standards are promulgated.

[26] *Successful Approaches to Reduce Sodium in School Meals.* Available at: *https://fns-prod.azureedge.net/sites/default/files/resource-files/Approaches-ReduceSodium-Volume2.pdf.*

[27] School Nutrition Association. *Back to School 2021 Report: A Summary of Survey Results.* Available at: *https://schoolnutrition.org/uploadedFiles/News_and_Publications/Press_Releases/Press_Releases/Back-to-School-Report-2021.pdf.*

finalized in summer 2023, well in advance of procurement cycles for SY 2024–2025. USDA invites comments on the milk, whole grain, and sodium standards discussed in this final rule. USDA also welcomes comments on all other aspects of the meal pattern; these comments will help inform USDA's work to permanently update the school meal nutrition standards through the new rulemaking. USDA encourages the public to provide comments with the recommendations of the *Dietary Guidelines* in mind. As noted, the public will also submit comments on the proposed rule USDA intends to publish in fall 2022.

II. 2020 Proposed Rule Comment Summary

This final rule follows the proposed rule *Restoration of Milk, Whole Grains, and Sodium Flexibilities* (85 FR 75241, November 25, 2020). As noted, this final rule is an important step in USDA's longer-term effort to update the school nutrition requirements. With this final rule, USDA is making meaningful, achievable improvements in the nutritional quality of school meals for the short-term. Following this rule, USDA will engage in a longer-term effort to further strengthen the school meal pattern regulations, consistent with the goals of the *Dietary Guidelines* and nutrition science.

USDA appreciates public interest in the proposed rule. During the 30-day comment period (November 25, 2020–December 28, 2020), USDA received a total of 7,493 comments, including 3 non-germane or duplicate comments. Of the total, 7,041 comments were form letter copies from five form letter campaigns. USDA received 449 unique submissions, including 101 unique submissions that provided substantive comments on issues specific to the rule, including the milk, whole grain, and sodium standards.

Approximately 2,500 of the comments addressed the length of the comment period and requested an extension of the 30-day public comment period. The comment period was not extended; however, USDA carefully considered the comments received on the proposed rule, the *Dietary Guidelines, 2020–2025,* and current challenges stemming from the pandemic. Further, as explained, this rule implements transitional standards; USDA will build upon this rule by issuing another notice-and-comment rulemaking to address standards for SY 2024–2025 and beyond.

Several respondents noted the impact of COVID–19 on the school meal programs. One respondent stated that the COVID–19 pandemic resulted in budget readjustments, food and supply shortages, and staffing emergencies for school meal programs. A State agency emphasized that schools may need additional time to transition back to providing meals that meet the 2012 standards, and noted that it seemed appropriate to temporarily extend the implementation of certain requirements, like sodium reductions, given the public health emergency. Several other respondents argued that USDA should not use the pandemic to make permanent changes to nutrition standards. Instead, they argued that USDA should issue temporary waivers, as needed, to respond to pandemic-related challenges.

In addition to specific comments about the milk, whole grains, and sodium standards, which are outlined within the section-by-section analysis of this preamble, respondents provided general feedback on the proposed rule. Proponents argued that the proposed rule would provide more menu planning options for schools, enhancing their ability to offer healthy and appealing meals. They stated the proposed changes would lead to increased meal consumption and better health outcomes for children. Proponents argued that the changes represent a permanent solution to operational challenges, rather than temporary rules and annual waivers. Some proponents stated that the proposed changes would provide a more readily available supply of food products. A professional association asserted that the changes would preserve important nutrition guidelines, including limits on calories and fat. Several proponents stated that the proposed changes would not prevent school districts from having stricter nutrition guidelines, would not remove fruit and vegetable requirements, and still would encourage whole grains and lower sodium.

Opponents argued that the proposed changes are not needed because most schools are in compliance with the meal pattern requirements, and that the changes could restrain schools' progress in increasing whole grain consumption and reducing sodium intake. They argued that students eventually become accustomed to whole grain foods and foods with less sodium. Several opponents stated that the proposed changes are not in the best interest of children's health; citing the 2019 School Nutrition and Meal Cost Study, they suggested that nutritious school meals lead to improved health outcomes. Other opponents asserted that healthy school meals improve academic performance. Many opponents cited USDA research that found that the 2012 rule did not result in increased food waste. Some opponents stated that school meals should have high nutrition standards because they can be a source of more than 50 percent of a child's daily caloric intake. Multiple opponents suggested that the proposed rule would widen disparities in access to healthy meals for children of color, who are disproportionately impacted by food insecurity and diet-related chronic conditions, such as diabetes and hypertension. Several opponents argued that the 2012 meal pattern requirements promote child nutrition, are reasonable and supported by the science, and are effective at improving the nutritional quality of school meals. Many opponents stressed the importance of helping children develop positive dietary habits for life.

The following table shows tallies of the general comments received in support of and against the proposed changes. Tables outlining specific comments regarding the milk, whole grains, and sodium standards are included in the section-by-section analysis.

GENERAL FEEDBACK ON PROPOSED MILK, WHOLE GRAIN-RICH, AND SODIUM STANDARDS

Themes	Count of total comments received (including form letters)	Percent of all comments received (7,493)	Count of unique comments received	Percent of all unique comments received (449)
General Support				
Positive health impacts for children	36	0.5	36	8.0
Increase meal consumption and decrease food waste	128	1.7	124	27.6

GENERAL FEEDBACK ON PROPOSED MILK, WHOLE GRAIN-RICH, AND SODIUM STANDARDS—Continued

Themes	Count of total comments received (including form letters)	Percent of all comments received (7,493)	Count of unique comments received	Percent of all unique comments received (449)
Relieve industry of meal pattern compliance challenges (such as product development)	15	0.2	15	3.3
Reduce compliance burden for Program operators	42	0.6	42	9.1
Other general support	31	0.4	31	6.9
General Opposition				
Negative health impacts for children	2,553	34.1	85	18.9
Negative impacts on children's ability to access healthy meals	4,609	61.5	53	11.8
Changes are not needed (such as widespread compliance with existing standards)	21	0.3	21	4.7
Inconsistent with Dietary Guidelines	2,506	33.4	38	8.5
Other general opposition	16	0.2	16	3.6

USDA worked in collaboration with a data analysis company to code and analyze the public comments using a commercial web-based software product and obtained data showing support for or opposition to each proposed change. The Summary of Public Comments report is available under the Supporting Documentation tab in docket FNS–2020–0038. All comments are posted online at *www.regulations.gov.* See docket FNS–2020–0038, *Restoration of Milk, Whole Grains, and Sodium Flexibilities.*

III. Transitional Standards

USDA recognizes the importance of promoting strong nutrition standards, while also providing necessary support to schools as they respond to and recover from the public health and economic crisis. The challenges created by COVID–19 and supply chain constraints, raised by public comments, require a near-term response from USDA, which is achieved through this final rule. Although the proposed rule would have implemented permanent changes to the school meal standards, USDA agrees that making permanent changes in response to temporary circumstances created by COVID–19 is not a viable long-term solution. Following publication of this rule, USDA intends to work towards even stronger nutritional standards for reasons described further below, namely more positive health outcomes for children. Therefore, USDA will engage in another full notice-and-comment rulemaking in the near future which will consider, among other things, the current *Dietary Guidelines.* However, until such rulemaking is accomplished, schools need transitional standards that improve the nutritional content of school meals in an achievable manner for the short-term.

USDA appreciates comments on the proposed rule that emphasized the importance of strong nutrition standards and the value of the 2012 requirements. USDA agrees that improving the school meal pattern standards is critical for ensuring nutrition security, which considers not only food access, but specifically, access to nutritious food that promotes health and wellbeing. As noted in the proposed rule, many schools have made significant progress towards achieving the 2012 standards; for example, the proposed rule noted that 70 percent of the weekly menus offered at least 80 percent of the grain items as whole grain-rich.[28] However, USDA also must consider comments emphasizing the widespread and ongoing impact of COVID–19 on schools.

The pandemic has impacted the entire Nation, and schools faced challenges adjusting to widespread closures, online and hybrid learning, and supply chain issues that affected the school meal service and the broader school environment. In public comments, respondents noted that the challenges facing schools are ongoing, and some schools are not prepared to fully meet the milk, whole grains, and sodium requirements from the 2012 rule. While USDA does not have current comprehensive data on schools that would not be prepared to fully meet these three standards in the absence of this final rule, USDA does have data on schools that faced challenges with initial implementation of the milk, whole grains, and sodium standards after the 2012 rule took effect. According to a study conducted in SY 2014–2015, the most recent USDA data available, only 27 percent of NSLP menus were offering 100 percent of grains as whole grain-rich.[29] The same study found that about 72 percent of weekly lunch menus met the Sodium Target 1 requirement; however, this varied by type of school. For example, about 56 percent of weekly lunch menus in rural schools met Sodium Target 1, compared to 84 percent of urban schools.[30] Since then, there have been

[28] See footnote 41 of *Restoration of Milk, Whole Grains, and Sodium Flexibilities,* November 25, 2020. Available at: *https://www.federalregister.gov/documents/2020/11/25/2020-25761/restoration-of-milk-whole-grains-and-sodium-flexibilities#footnote-41-p75252.* See also: ''All Grains are Whole Grain Rich: Percentage Meeting Requirement and Percentage Below Requirement'' in Tables C.14 and E.14 of *School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals* by Elizabeth Gearan, Mary Kay Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019. Available at: *https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCS-Volume2.pdf.* (OMB Control Number 0584–0596, expiration date 07/31/2017.)

[29] See: ''All Grains are Whole Grain Rich: Percentage Meeting Requirement'' in Table C.14 of *School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals* by Elizabeth Gearan, Mary Kay Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019. Available at: *https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCS-Volume2.pdf.* (OMB Control Number 0584–0596, expiration date 07/31/2017.) *Note:* In SY 2014–2015, all grains were supposed to be whole grain-rich. However, State agencies had the option of granting exemptions to this requirement if an SFA demonstrated hardship in procuring compliant whole grain-rich products that were acceptable to students.

[30] See: ''Sodium: Percentage Meeting Requirement'' in Tables C.14 and C.16 of *School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals* by Elizabeth Gearan, Mary Kay Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April

several years of Congressional and administrative interventions, followed by two years of meal pattern waivers authorized by Congress in response to the public health emergency. As a result of these interventions, the 2012 whole grain-rich requirement and Sodium Target 2 have never been fully implemented; many operators would need to significantly adapt to return fully to the 2012 nutrition standards. Moreover, the 2012 milk requirements have not been fully implemented in more than five years. After careful consideration of the proposed rule and public comments, USDA believes that it is prudent to provide transitional standards in the near-term while further revisions to the meal pattern are considered and established through a new notice-and-comment rulemaking.

To ensure children were safely fed during the pandemic, schools served meals in ways they never had before, such as providing curbside meal service and delivering meals to children's homes. As noted in many comments, the pandemic has caused huge disruptions to the meal service, and school nutrition programs are stretched thin financially and limited in staff; respondents argued that children and staff both will need time to return to standard operations. They also noted that the pandemic has created temporary challenges, making it difficult for manufacturers and distributors to meet the demand for specific products, such as individually wrapped foods that many schools have relied on to provide a safe meal service during COVID–19. Vendors have unexpectedly canceled contracts because they could not fulfill product orders, or products have been re-directed to other food service sectors. Schools have reported difficulty obtaining responses to food bid solicitations and have experienced unpredictable pricing, inadequate substitutions, and food outages. While USDA expects that these challenges will ultimately be transitory, USDA agrees that the school marketplace will require time to recover.

Schools have also reported staff shortages and hiring challenges,[31] which have made it more difficult to safely prepare and serve meals that are compliant with certain meal pattern requirements. For example, staffing issues may make it harder to do scratch cooking. Altering recipes (59 percent) and increasing scratch cooking (28 percent) were two practices that SFAs planned to implement to meet sodium requirements, according to a USDA survey published in June 2021. Many SFAs (44 percent) also reported altering recipes as a practice to meet the whole grain-rich standard.[32] Current staffing and hiring issues may make it difficult to implement these strategies to meet meal pattern requirements in the near-term.

Throughout the pandemic, USDA's priorities shifted to focusing on ensuring children continued to be fed while schools were closed and modifying the programs to be responsive to changing school environments, such as social distancing needs, staffing shortages, and supply chain disruptions, when schools reopened. This has primarily been accomplished through a series of nationwide waivers. The latest set of nationwide waivers, which includes the targeted school meal pattern waiver for SY 2021–2022, will expire on June 30, 2022.[33]

Finalizing these transitional standards is also critical because according to public comments received, if the 2012 rule requirements apply beginning in SY 2022–2023, USDA has heard that the milk, whole grain, and sodium requirements would be extraordinarily difficult for all schools to implement successfully. As noted, previous implementation of these requirements was halted for years prior to the pandemic, and particularly in the case of sodium, go well beyond what is achievable given the current range of products available in the marketplace. In addition, in the near-term, schools are facing difficulties in procuring food and supplies due to manufacturer changes, canceled vendor or distributor contracts, product unavailability, unexpected and lower quality product substitutions, increased product pricing, and supply chain disruptions; it is not clear how long it will take to fully recover from these disruptions. This final rule balances the need to allow adequate time to recover from these disruptions and prior implementation challenges, with the need to begin transitioning to stronger nutrition standards. This transitional standards approach will provide schools with the ability to make menu adjustments, procurement revisions, and personnel training necessary to transition back to traditional meal service after COVID–19 operations.

Therefore, after thoughtful deliberation of the current circumstances, review of comments received in response to the proposed rule as well as during stakeholder meetings, and consideration of the current *Dietary Guidelines,* USDA believes that school nutrition operators need the transitional standards outlined in this rule in the near-term, as the Department works diligently to further strengthen the school meal pattern requirements. The following sections explain the transitional standards made available through this final rule, which are effective until long-term standards are promulgated.

A. Milk Standards

As established by the 2012 final rule, current regulations at 7 CFR 210.10(d)(1)(i) and 220.8(d) permit only fat-free milk to be flavored in the NSLP and SBP; low-fat milk (1 percent fat) must be unflavored. However, for SY 2017–2018, Congress directed USDA to allow State agencies to grant exemptions allowing flavored, low-fat milk through the NSLP and SBP and as a competitive food available for sale, provided that schools demonstrated hardship.[34] For SY 2018–2019 and SY 2019–2020, the 2017 interim final rule and 2018 final rule allowed NSLP, SMP, SBP, and CACFP operators the option to serve flavored, low-fat milk as part of the reimbursable meal, and for schools, as a competitive beverage for sale on campus during the school day. Moreover, during the pandemic, USDA permitted schools to operate SFSP at the end of SY 2019–2020 and in SY 2020–2021; the SFSP does not include any limitations on milkfat or flavoring. For SY 2021–2022, USDA provided nationwide meal pattern waivers, which allowed SFAs to request targeted and justified waivers to serve flavored, low-fat milk.

2019. Available at: *https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCS-Volume2.pdf.* (OMB Control Number 0584–0596, expiration date 07/31/2017.)

[31] A 2021 survey of school nutrition directors found that about 46 percent of survey respondents had reduced staffing, through reduction in hours, layoffs, or deferred hiring, since March 2020. School Nutrition Association. *Back to School 2021 Report: A Summary of Survey Results.* Available at: *https://schoolnutrition.org/uploadedFiles/News_and_Publications/Press_Releases/Press_Releases/Back-to-School-Report-2021.pdf.*

[32] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *Child Nutrition Program Operations Study (CN–OPS–II): SY 2016–17.* Beyler, Nick, Jim Murdoch, and Charlotte Cabili. Project Officer: Holly Figueroa. Alexandria, VA: June 2021. Available at: *https://fns-prod.azureedge.net/sites/default/files/resource-files/CNOPS-II-SY2016-17.pdf.*

[33] USDA issued a series of nationwide waivers to allow non-congregate meal service, flexible meal times, parent or guardian meal pick-up, and other flexibilities. These waivers are available at: *https://www.fns.usda.gov/fns-disaster-assistance/fns-responds-covid-19/child-nutrition-covid-19-waivers.*

[34] Congress instructed the Secretary to provide State agencies this flexibility through the Consolidated Appropriations Act, 2017 (Pub. L. 115–31). Schools were required to demonstrate hardship by documenting a reduction in student milk consumption or increase in milk waste.

Additionally, Congress has directed USDA that it cannot restrict the offering of flavored, low-fat milk through Section 747 of Division A of the Consolidated Appropriations Act, 2017 (Pub. L. 115–31), and Section 789 of Division A of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260).

2020 Proposed Rule and Public Comments

In the 2020 proposed rule, USDA proposed to continue to allow schools the option to offer flavored, low-fat milk in reimbursable school meals. As described previously, this option has been available to schools in some form since SY 2017–2018. The proposed rule would have maintained the requirement that unflavored milk be offered at each meal service. For consistency, the flavored, low-fat milk option would have been extended to competitive beverages for sale on campus during the school day and would apply in the SMP and CACFP for participants ages 6 and older. USDA also proposed a technical correction to clarify in CACFP regulations that lactose-free and reduced-lactose fluid milk meet the CACFP meal pattern requirements for fluid milk. In response to the 2020 proposed rule, USDA received 4,685 comments regarding the milk standard. The following table shows tallies of the total and unique comments received in response to the proposed milk standard:

2020 PROPOSED MILK STANDARD

Respondent position	Total milk comments (including form letters)	Percent of total milk comments	Unique milk comments	Percent of unique milk comments
Support	91	2	91	69
Mixed	8	<1	8	6
Oppose	4,585	97	33	25
Total	4,684	100	132	100

Comments in Support

A total of 91 comments supported the proposed milk standard. Proponents generally expressed concern related to the decline in children's milk consumption. They argued that allowing flavored, low-fat milk would provide schools more menu planning options, promote milk consumption, and lead to better health outcomes. State agency proponents argued that allowing additional variety in student milk choices may increase overall milk consumption. Proponents stated that increased milk consumption could result in greater intake of essential nutrients, such as vitamins A and D, magnesium, potassium, and calcium. A national nutrition advocacy group noted that flavored milk is an effective tool in encouraging milk consumption by school-aged children, and that school-aged children who drink flavored milk do not consume more added sugars, fat, or calories compared to non-milk drinkers. Proponents also stated that the minor increase in calories from flavored, low-fat milk could be offset with appropriate menu planning. They noted that the net increase in calories between fat-free and low-fat, flavored milk is small, due to progress made by dairy processors in reducing the calories in flavored milk. A national industry group noted that because flavored, low-fat milk is less likely to be wasted, more milk and more essential nutrients are consumed when flavored, low-fat milk is offered.

A national industry group also expressed support for the proposed change to clarify that lactose-free and reduced-lactose milk is an acceptable option in the CACFP. They noted that milk with lower lactose provides the same important nutrients as conventional milk and is an important offering for individuals with lactose intolerance. Lactose-free and reduced-lactose milk are also supported by the *Dietary Guidelines.*

Comments in Opposition

A total of 4,585 comments opposed the proposed milk standard. Opponents argued that allowing flavored, low-fat milk contradicts scientific literature regarding the known relationships between diet quality, overweight and obesity, cardiovascular disease, cancer, dental caries, and other negative health outcomes. One opponent cited a recent study that stated, ''Excess added sugars, particularly in the form of sugar sweetened beverages, is a leading cause of tooth decay in U.S. children.'' Opponents also argued that the added calories from low-fat chocolate milk could increase the already alarming childhood obesity rates, and that research indicates there is very little room in the diet for calories from added sugars, providing additional reason not to allow flavored, low-fat milk. One opponent urged USDA to require schools to offer unflavored milk in the NSLP afterschool snack service, SMP, and CACFP. Some opponents stated that the proposed change is inconsistent with the *Dietary Guidelines.*

A State agency asserted that the proposed milk standard is not needed due to widespread acceptance of fat-free flavored milk and noted that with high levels of student acceptance for fat-free flavored milk, this change is unlikely to impact participation. Another opponent noted that virtually all SFAs have employed strategies to encourage milk consumption and encouraged USDA to address any remaining challenges through training and technical assistance instead of the proposed change.

Mixed Response

Eight respondents expressed conditional support or opposition or offered suggestions for improving the proposed milk standard. For example, an individual respondent advised USDA to establish limits for sugar in flavored milk. Similarly, a healthcare professional noted that sweetened beverages and added sugars are areas of concern for child nutrition and recommended that USDA adopt nutrition standards consistent with those findings. Several opponents recommended that if USDA allows flavored, low-fat milk, a calorie limit of no more than 130 calories per 8 ounce serving should be established, consistent with the Robert Wood Johnson's Healthy Eating Research Healthier Beverage Guidelines. A number of respondents also suggested that USDA allow whole milk for health reasons.

Transitional Standard and Considerations for Future Rulemaking

This final rule will provide NSLP and SBP operators with the transitional option to offer flavored, low-fat (1 percent fat) milk in reimbursable school meals and require that unflavored milk be offered at each meal service. For consistency, the flavored, low-fat milk option will be extended to competitive beverages for sale on the school campus during the school day and will also apply in the SMP and CACFP for participants ages 6 and older. USDA recognizes that regulatory consistency across programs, a long-time goal at USDA, facilitates program administration and operation at the State and local levels, fosters support, and meets stakeholder expectations.[35]

The final rule's adoption of the proposed milk standards balances various factors, including the lack of full implementation of the 2012 rule milk standards in recent years and the current *Dietary Guidelines.* Section 9(f)(1) of the National School Lunch Act, as amended, 42 U.S.C. 1758(f)(1), requires that school meals are consistent with the goals of the latest *Dietary Guidelines.*[36] Milk is a popular item among children and is an important source of calcium, vitamin D, and potassium—nutrients under consumed by the U.S. population.[37] Flavored milk has received high palatability ratings from children [38] and has been shown to encourage milk consumption among school-aged children.[39] Studies indicate that children drink more flavored milk than unflavored milk, and that flavored milk served in the school meal programs is wasted less than unflavored milk.[40] USDA appreciates concerns raised by comments regarding flavored milk, and as detailed below, will consider them in greater detail in the subsequent rulemaking. While USDA appreciates comments on whole milk, allowing whole milk in the school meal programs would not align with recommendations in the *Dietary Guidelines, 2020–2025.*

USDA is committed to ensuring that school meals provide children with nutrient-dense foods that are consistent with the goals of the *Dietary Guidelines.* Flavored milks (both fat-free and low-fat) contain added sugars, and USDA will consider their contribution to the overall amount of added sugars in school meals as it develops subsequent meal pattern regulations to follow this final rule. The *Dietary Guidelines, 2020–2025* recommend that intake of beverages high in added sugars be limited, and that added sugars consist of no more than 10 percent of total calories per day for children aged 2 years and older. Although there are currently no added sugars limits in the school meal programs, because the NSLP and SBP calorie limits apply to the meals offered on average over the school week, SFAs that choose to offer flavored, low-fat milk will need to plan menus carefully to ensure that they stay within the required calorie limits. SFAs should consult with their State agency as necessary to make proper menu adjustments.

Consistent with the proposed rule, this final rule also requires that NSLP and SBP operators that choose to offer flavored milk must also offer unflavored milk (fat-free or low-fat) at the same meal service. This requirement ensures that milk variety in the NSLP and SBP is not limited to flavored milk choices, and that the most nutrient-dense form of milk is always available. USDA recognizes the importance of having unflavored milk as a choice for students at each lunch and breakfast service. The requirement to ensure that unflavored milk is available on the school menu will not apply in the NSLP afterschool snack service, the SMP, or the CACFP, consistent with existing requirements; these programs do not have a requirement to offer a variety of fluid milk as they are smaller in size and resources than the school lunch and breakfast programs.[41]

It is important to note that offering flavored milk (low-fat and/or fat-free) is an option, not a requirement, and operators may choose not to offer flavored milk. For example, the local school wellness policy provides students, parents and guardians, and interested community members the opportunity to influence the school nutrition environment at large (*see* 7 CFR 210.31). Some individual schools and school districts have opted to remove all flavored milk from school meal menus via local wellness policies to reduce students' added sugars consumption. Schools may also consider placing unflavored milk in visible locations in the school cafeteria to encourage children to select it instead of flavored milk.

This final rule also makes a technical correction in SMP and CACFP regulations to clarify that lactose-free and reduced-lactose fluid milk meet the SMP and CACFP requirements for fluid milk; no written request or statement is required for a school, institution, or facility to offer lactose-free or reduced-lactose fluid milk. This language aligns with other Program regulations, which state that lactose-free and reduced-lactose fluid milk may be served to meet the fluid milk requirement (*see* 7 CFR 210.10(d)(1)(i) (NSLP) and 220.8(d) (SBP)). Allowing lactose-free milk is consistent with the *Dietary Guidelines.* It also helps to increase access to the nutritional benefits of milk among populations that are more likely to experience lactose intolerance.[42] This

[35] The Office of Management and Budget's implementing memorandum, M–11–10, for Executive Order 13563, ''Executive Order 13563, ''Improving Regulation and Regulatory Review'','' discusses the importance of consistency for regulatory requirements. February 2, 2011. Available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2011/m11-10.pdf.*

[36] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans.* 9th Edition. December 2020. Available at: *https://www.dietaryguidelines.gov/.*

[37] Cohen JFW, Richardson S, Rimm EB. *Impact of the Updated USDA School Meal Standards, Chef-Enhanced Meals, and the Removal of Flavored Milk on School Meal Selection and Consumption.* J Acad Nutr Diet. May 29, 2019 May 29. Available at: *https://pubmed.ncbi.nlm.nih.gov/31153957/.*

[38] Fayet-Moore F. (2016). *Effect of flavored milk vs plain milk on total milk intake and nutrient provision in children. Nutrition Reviews;* 74(1). Available at: *https://academic.oup.com/nutritionreviews/article/74/1/1/1905542.*

[39] *Nutrition Standards for Foods in Schools: Leading the Way Toward Healthier Youth (''IOM Report''), Institute of Medicine,* page 58. Available at: *http://www.nationalacademies.org/hmd/Reports/2007/Nutrition-Standards-for-Foods-in-Schools-Leading-the-Way-toward-Healthier-Youth.aspx.* See also: Mary M. Murphy et al., *Drinking Flavored or Plain Milk is Positively Associated with Nutrient Intake and Is Not Associated with Adverse Effects on Weight Status in U.S. Children and Adolescents.*

[40] A USDA study found that the mean percentage of wasted milk was highest for unflavored, fat-free and low-fat milks, and lowest for flavored, fat-free and low-fat milk. Available at: *https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCS-Volume4.pdf.* (OMB Control Number 0584–0596, expiration date 07/31/2017.)

[41] Please note, while operators of NSLP afterschool snack, SMP, and CACFP are not required to offer a variety of fluid milk to all participants, operators of the Child Nutrition Programs are required to provide meal modifications to ensure that participants with disabilities have an equal opportunity to participate in and benefit from the programs. This would include providing participants with a substitute for milk, as needed, due to a disability. See: *Accommodating Disabilities in the School Meal Programs: Guidance and Q&As, https://www.fns.usda.gov/cn/accommodating-disabilities-school-meal-programs-guidance-qas* and *Modifications to Accommodate Disabilities in CACFP and SFSP, https://www.fns.usda.gov/cn/modifications-accommodate-disabilities-cacfp-and-sfsp.*

[42] According to the National Institute of Diabetes and Digestive and Kidney Diseases, in the United States, African Americans, American Indians, Asian Americans, and Hispanics/Latinos are more likely to have the symptoms of lactose intolerance. Lactose intolerance is least common among people who are from, or whose families are from, Europe. *Definition & Facts for Lactose Intolerance.* Available at: *https://www.niddk.nih.gov/health-information/digestive-diseases/lactose-intolerance/definition-facts.*

clarification builds greater consistency in Program regulations and is expected to reduce confusion for SMP and CACFP operators, as well as families.

Accordingly, this final rule amends 7 CFR 210.10(d)(1)(i); 210.11(m)(1)(ii), (m)(2)(ii) and (m)(3)(ii); 215.7a(a); 220.8(d); 226.20(a)(1)(iii); and 226.20(c)(1), (2), and (3), to allow NSLP and SBP operators to offer flavored, low-fat milk as part of a reimbursable meal and for sale as a competitive beverage, and allow flavored, low-fat milk in the SMP and in the CACFP for participants ages 6 and older. It also clarifies that lactose-free and reduced-lactose fluid milk meet the SMP and CACFP requirements for fluid milk. USDA invites public comments on the milk standards discussed in this final rule. These public comments will help to inform USDA's future rulemaking.

B. Whole Grain-Rich Standards

As established by the 2012 final rule, current NSLP and SBP regulations at 7 CFR 210.10(c)(2)(iv) and 220.8(c)(2)(iv) require all grains offered in school meals to meet the USDA whole grain-rich criteria. To meet USDA's whole grain-rich criteria, a product must contain at least 50 percent whole grains, and the remaining grain content of the product must be enriched. However, successive legislative and administrative action beginning in 2012 prevented full implementation of the whole grain-rich requirement. Prior to the vacatur of the 2018 final rule, in SY 2019–2020, at least 50 percent of the weekly grains offered in the NSLP and SBP were required to be whole grain-rich.

The requirement to offer exclusively whole grain-rich products proved challenging for some school districts. For example, while some schools have successfully implemented the whole grain-rich requirement, others have cited student acceptance, higher costs, and a lack of available products as barriers to meeting the requirement.[43] As noted, in SY 2014–2015, only 27 percent of NSLP menus were offering 100 percent of grains as whole grain-rich.[44] Due to a long history of administrative and legislative actions allowing exemptions, this requirement was never fully implemented nationwide. Seeking to assist schools, USDA allowed enriched pasta exemptions for SY 2014–2015 and SY 2015–2016, and Congress expanded the pasta flexibility to include other grain products. Through successive legislative action, Congress directed USDA to allow State agencies to grant individual whole grain-rich exemptions (Section 751 of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235); and Section 733 of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113). In addition, Section 747 of the Consolidated Appropriations Act, 2017 (Pub. L. 115–31) (2017 Appropriations Act) provided flexibilities related to whole grains for SY 2017–2018. More recently, Section 101(a)(1) of Division D of the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Pub. L. 115–56), enacted September 8, 2017, extended the flexibilities provided by Section 747 of the Consolidated Appropriations Act, 2017 through December 8, 2017. The 2017 Appropriations Act provided authority for whole grain-rich exemptions through the end of SY 2017–2018, and the interim final rule (82 FR 56703, November 30, 2017) extended the availability of exemptions through SY 2018–2019.

For SY 2017–2018, a total of 4,297 SFAs (about 23 percent of SFAs operating the school meal programs) submitted whole grain-rich exemption requests for specific products based on hardship, and nearly all (4,124) received exemption approval from their State agency. In addition, during the pandemic, USDA permitted schools to operate SFSP at the end of SY 2019–2020 and in SY 2020–2021; the SFSP meal standards do not include a whole grain-rich requirement. USDA also provided nationwide meal pattern waivers through SY 2021–2022, which allowed SFAs to request flexibility for the whole grain-rich requirements on a case-by-case basis.

2020 Proposed Rule and Public Comments

In the 2020 proposed rule, USDA proposed to require that at least half of the weekly grains offered in the NSLP and SBP meet the whole grain-rich criteria specified in USDA guidance, and that the remaining grain items offered must be enriched. In response to the 2020 proposed rule, USDA received 4,710 comments regarding the whole grain-rich standard. The following table shows tallies of the total and unique comments received in response to the proposed whole grain-rich standard:

2020 PROPOSED WHOLE GRAIN-RICH STANDARD

Respondent position	Total whole grain-rich comments (including form letters)	Percent of total whole grain-rich comments	Unique whole grain-rich comments	Percent of unique whole grain-rich comments
Support	112	2	108	70
Mixed	6	<1	6	4
Oppose	4,592	97	40	26
Total	4,710	100	154	100

[43] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *Child Nutrition Program Operations Study (CN–OPS–II): SY 2016–17.* Beyler, Nick, Jim Murdoch, and Charlotte Cabili. Project Officer: Holly Figueroa. Alexandria, VA: June 2021. Available at: *https://fns-prod.azureedge.net/sites/default/files/resource-files/CNOPS-II-SY2016-17.pdf.*

[44] See: ''All Grains are Whole Grain Rich: Percentage Meeting Requirement'' in Table C.14 of *School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals* by Elizabeth Gearan, Mary Kay Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019. Available at: *https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCS-Volume2.pdf.* (OMB Control Number 0584–0596, expiration date 07/31/2017.) Note: In SY 2014–2015, the most recent school year that USDA data is available, all grains were supposed to be whole grain-rich. However, State agencies had the option of granting exemptions to this requirement if an SFA demonstrated hardship in procuring compliant whole grain-rich products that were acceptable to students.

Comments in Support

There were 112 comments in support of the proposed whole grain-rich standard. Several proponents reasoned that a reduction in the whole grain-rich requirement was needed because many products (such as pasta, bread, sushi rice, and tortillas), including some regional products (such as grits and biscuits), are not acceptable to students in a whole grain-rich form. A State agency agreed with the proposal, arguing that it would provide the right balance of whole grain-rich and enriched grain products. That State agency also affirmed the proposed standard would allow SFAs to serve grain products that children would enjoy, while still exposing children to more whole grain-rich products.

A food industry proponent suggested that whole, fortified, and enriched grains provide shelf-stable and cost-efficient options; they argued that all grains, including those that are refined but fortified and enriched, are a reliable choice for schools. Another food industry proponent agreed, asserting that a variety of grain choices, both whole and enriched, have the potential to increase consumption of shortfall nutrients identified by the *Dietary Guidelines,* particularly dietary fiber, folate, and iron. Other proponents stated that more time is necessary for the food industry and school food service professionals to develop whole grain-rich products and recipes that students enjoy. Several proponents asserted that whole grain versions of certain foods, including tortillas, pizza crust, and pasta, suffer from quality issues (for example, crumbly, dry, or poor consistency) that make them difficult to serve in a school meal setting.

Some proponents noted that there are currently not enough options for whole grain-rich products, and that whole grain-rich products are not always available in the necessary quantities. One advocacy group asserted that requiring all grain items on school menus to be whole grain-rich is costly and unrealistic. Proponents suggested that requiring only 50 percent of grains offered to be whole grain-rich would ease procurement concerns in rural school districts, where they suggested some whole grain-rich items are difficult to obtain.

Comments in Opposition

A total of 4,592 comments opposed the proposed whole grain-rich standard. Some opponents voiced concern that the proposed change would make it more difficult for schools to procure whole grain-rich products, because there would be less incentive for the food industry to develop compliant products. One advocacy group suggested that without this incentive, fewer companies would choose to produce whole grain-rich products, meaning that whole grain-rich products would be less widely available and more expensive for schools that wish to serve them.

Several policy advocacy groups, a professional association, and a State agency asserted that most schools had met the stricter 100 percent whole grain-rich requirement—with some States not needing any whole grain-rich waivers, some States requesting waivers for only one product type (such as pasta), and other States not allowing waivers. These opponents remarked that all schools should be able to meet the 100 percent whole grain-rich standard. A State agency opponent maintained that schools in their State have continued to offer 100 percent whole grain-rich products, and they are seeing high rates of student acceptance.

Several opponents argued that the proposed change is inconsistent with the *Dietary Guidelines* and does not support children's health. Many opponents noted that eating more whole grains is associated with reduced risk of heart disease, stroke, colon cancer, and diabetes, and provides more nutrients and fiber. Opponents also stated that USDA's 2019 School Nutrition and Meal Cost Study found one of the factors most highly correlated with improved school lunch nutritional quality was having met the 100 percent whole grain-rich requirement.

A State agency opponent described their experience implementing the 100 percent whole grain-rich requirement, asserting that despite initial challenges that involved additional training, implementation of the standard was ultimately successful, and the State now sees very high rates of compliance. Another State agency opponent argued that the proposed standard would be more difficult for SFAs to track and for the State agency to monitor, compared to the 2012 whole grain-rich requirement, and would therefore create additional administrative burden for both SFAs and State agencies.

Mixed Response

Six respondents expressed conditional support or opposition, or offered suggestions for improving the proposed whole grain-rich standard. For example, one State agency opposed the proposed change, but suggested USDA allow exceptions for quality and availability issues. This State agency also emphasized the importance of ensuring USDA standards expand access to and consumption of whole grain-rich foods.

Some respondents offered an approach in between the proposed standard and the 2012 standard. For example, a nutritionist noted that most schools in their State already exceed the 50 percent threshold and recommended an 80 percent whole grain-rich requirement. They argued that this approach would be consistent with the science of the *Dietary Guidelines,* while allowing schools to serve certain products, such as pasta and biscuits, in a form students find more appealing. Similarly, two respondents expressed support for a 75 percent threshold, maintaining that it would appropriately balance the goals of the *Dietary Guidelines* with the importance of meeting student preferences and encouraging student participation. A State agency also supported a 75 percent threshold, arguing that the proposed 50 percent threshold would cause the nutritional integrity of the meals to suffer. Another State agency recommended USDA allow schools to serve one item per week that is not whole grain-rich. One respondent noted the benefits of whole grains but suggested an in between approach where USDA require half of grains to be whole grain, and one quarter to be enriched grains.

One food industry respondent opposed the proposed change, and instead expressed support for returning to the 2012 standard. However, they recommended delaying implementation of the 100 percent whole grain-rich standard to SY 2024–2025. The food industry respondent argued that delaying implementation would allow SFAs adequate time to develop menus and recipes with whole grain-rich foods and would enable industry to continue to invest in the development and manufacturing of whole grain-rich foods that are acceptable to children. This respondent recommended delaying implementation to SY 2024–2025 in recognition of the impact of COVID–19 on schools.

Transitional Standard and Considerations for Future Rulemaking

As recommended by comments, this rulemaking adopts a balanced approach that recognizes the need for transitional meal pattern improvements in the short-term. As noted by a State agency and other respondents, setting a standard between the proposed rule and the 2012 rule allows schools to serve foods their students enjoy and find palatable, which could increase student satisfaction and participation, while

helping to advance the nutritional integrity of school meals. Respondents noted that schools have successfully incorporated many whole grain-rich items on their menus, and manufacturers have improved many whole grain-rich products, but currently, there are still some products that students have trouble accepting.

USDA agrees with comments suggesting a transitional standard in between the proposed rule and 2012 rule is appropriate. In addition, after considering comments, USDA agrees that increasing the whole grain-rich standard beyond what was proposed is achievable and appropriate and is an important step in advancing nutrition security. A standard between 50 and 100 percent will balance the importance of strengthening the whole grain-rich requirements with the difficulties currently facing some schools, such as supply chain disruptions, financial challenges, and staffing limitations related to COVID–19. This rule will serve as a middle-ground bridge until the notice-and-comment rulemaking for SY 2024–2025 and beyond is complete.

In determining what the transitional standard should be, USDA looked for an achievable standard that still moved meaningfully forward. As mentioned, comments suggested a variety of middle-ground thresholds, including 80 percent. The proposed rule also noted that, according to a study conducted in SY 2014–2015, the most recent USDA data available, 70 percent of weekly school menus offered at least 80 percent of the grain items as whole grain-rich.[45] Therefore, USDA finds that requiring at least 80 percent of the weekly grains offered in the NSLP and SBP to be whole grain-rich is an appropriate transitional standard. The remaining grain items offered must be enriched. Under this whole grain-rich requirement, SFAs are expected to procure and incorporate a significant amount of whole grain-rich product into their NSLP and SBP menus, but will have the ability to serve enriched grains when whole grain-rich products are not available or when certain products are not acceptable to students in whole grain-rich form.

The current *Dietary Guidelines* recommend that at least half of total grains consumed should be whole grains. The *Dietary Guidelines* also note that while school-age children, on average, meet the recommended intake of total grains, they do not meet the recommendation to make half of their grains whole grains. With this final rule, USDA is continuing to advance the important progress made in improving school nutrition standards. Compared to the nutrition requirements that were in effect prior to COVID–19, this transitional rule provides meaningful, achievable improvements in the whole grain-rich standard, while continuing to be responsive to the current needs of schools. The 80 percent requirement is consistent with and based on the *Dietary Guidelines, 2020–2025* recommendation regarding consumption of more whole grains and is intended to be a transitional threshold as USDA works to enhance the meal pattern standards in a way that reflects the latest nutrition science.[46]

The requirement that at least 80 percent of the weekly grains offered in the NSLP and SBP are whole grain-rich is a minimum standard, not a maximum. It reflects a practical and feasible way to work towards *the Dietary Guidelines'* emphasis on increasing whole grain consumption as USDA considers further changes in a future rulemaking. Requiring at least 80 percent—as opposed to the proposed 50 percent—of the weekly grains offered in the NSLP and SBP to be whole grain-rich is a standard that many schools were able to accomplish prior to the COVID–19 pandemic. This achievable, transitional standard gives schools the ability to plan healthy meals that reflect regional and cultural student preferences and allows the food industry time to develop more whole grain-rich products that students find acceptable. A 2021 survey of school nutrition directors found that 49 percent of respondents considered product or ingredient availability to be a significant challenge in meeting the whole grain-rich requirement. Another 44 percent of respondents considered product or ingredient availability to be a moderate challenge.[47] This is consistent with USDA research that found that 45 percent of SFA respondents identified lack of available products as a challenge to meeting the whole grain-rich requirement. SFAs also identified purchasing whole grain-rich products as the top strategy to meet this requirement, suggesting that product availability is key to success in meeting the whole grain-rich standard.[48]

Schools already offering all grains as whole grain-rich do not have to change their menus as a result of this final rule and are encouraged to continue exceeding the minimum regulatory standard. For other schools, 7 CFR 210.12(a) allows students, parents and guardians, and community members to influence menu planning at the local level; USDA encourages the school community to provide ideas on how to incorporate more whole grain-rich products in the breakfast and lunch menus at their local school. USDA appreciates comments that suggested allowing exceptions or waivers to the whole grain-rich requirement on an as-needed basis; however, USDA's waiver authority under the National School Lunch Act does not allow the Secretary to issue individual or statewide waivers related to the meal pattern requirements. Therefore, USDA does not have the authority to waive the whole grain-rich requirement on an as-needed basis.[49]

Studies have demonstrated the importance of school meals in improving children's overall diets, including their whole grain consumption.[50] [51] Whole grains are a

[45] See footnote 41 of *Restoration of Milk, Whole Grains, and Sodium Flexibilities,* November 25, 2020. Available at: *https://www.federalregister.gov/documents/2020/11/25/2020-25761/restoration-of-milk-whole-grains-and-sodium-flexibilities#footnote-41-p75252.* See also: ''All Grains are Whole Grain Rich: Percentage Meeting Requirement and Percentage Below Requirement'' in Tables C.14 and E.14 of *School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals* by Elizabeth Gearan, Mary Kay Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019. Available at: *https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCS-Volume2.pdf.* (OMB Control Number 0584–0596, expiration date 07/31/2017.)

[46] As noted by the court in *CSPI,* the statutory language requiring that meals be ''consistent with'' *Dietary Guidelines* and that regulatory meal pattern standards be ''based on'' the *Dietary Guidelines* (*see* 42 U.S.C. 1758(f)(1)(A) and (a)(4)(B)) is sufficiently general to allow for meal pattern standards that use the *Dietary Guidelines* as a starting point and align with general recommended goals, rather than exactly replicating specific quantitative standards. *See* 438 F. Supp. 3d at 562–63.

[47] School Nutrition Association. *Back to School 2021 Report: A Summary of Survey Results.* Available at: *https://schoolnutrition.org/uploadedFiles/News_and_Publications/Press_Releases/Press_Releases/Back-to-School-Report-2021.pdf.*

[48] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Child Nutrition Program Operations Study (CN–OPS–II): SY 2016–17. Beyler, Nick, Jim Murdoch, and Charlotte Cabili. Project Officer: Holly Figueroa. Alexandria, VA: June 2021. Available at: *https://fns-prod.azureedge.net/sites/default/files/resource-files/CNOPS-II-SY2016-17.pdf.*

[49] Temporary authority provided by Congress has permitted USDA to issue whole grain-rich exemptions or meal pattern waivers in the past; for example, in response to the COVID–19 public health emergency. However, USDA does not have the authority to issue these waivers without Congressional intervention.

[50] Biing-Hwan Lin, Joanne F. Guthrie, Travis A. Smith, *Dietary Guidance and New School Meal Standards: Schoolchildren's Whole Grain Consumption Over 1994–2014,* American Journal of Preventive Medicine, Volume 57, Issue 1, July 2019. Available at: *http://www.sciencedirect.com/science/article/pii/S0749379719300546.*

good source of dietary fiber, and consumption of whole grains is associated with reduced risk of cardiovascular disease, type 2 diabetes, and certain cancers. In acknowledgement of the health benefits of whole grains, USDA encourages schools to incorporate whole grain-rich products in their menus as often as possible, especially in popular foods such as pizza or sandwich rolls. USDA will continue to provide training and technical assistance to assist in these efforts. In addition, USDA Foods will continue to make whole grain-rich products available to schools. For example, whole grain-rich USDA Foods available to schools for SY 2021–2022 included flour, rolled oats, pancakes, tortillas, and several varieties of pasta and rice.

Accordingly, this final rule amends 7 CFR 210.10(c)(2)(iv)(B) and 220.8(c)(2)(iv)(B), to require that at least 80 percent of the weekly grains offered in the NSLP and SBP meet the whole grain-rich criteria specified in USDA guidance. USDA invites public comments on the whole grain-rich standards discussed in this final rule. These public comments will help inform USDA's future rulemaking.

C. Sodium Standards

To avoid excessive sodium intake in school meals, the 2012 final rule established sodium target limits at 7 CFR 210.10(f)(3) and 220.8(f). These targets were developed through a review of scientific literature; consultation with public health professionals, industry, and other entities involved in sodium reduction efforts; and recommendations from the National Academy of Medicine (formerly the Institute of Medicine). Based on this research, the 2012 final rule included three transitional targets to gradually reduce sodium intake over a 10-year period. The initial target, Sodium Target 1 for NSLP, was determined as a 10 percent reduction from the average sodium content offered for lunch in SY 2004–2005.[52] Similarly, Sodium Target 1 for SBP was determined as a 5 percent reduction from the average sodium content offered for breakfast. The Final Sodium Target was developed using the 2005 Tolerable Upper Intake Levels (UL) for sodium in the Dietary Reference Intakes (DRI) for each age group at the current time. The Final Sodium Target would require significant efforts by the food industry to reformulate and develop new products lower in sodium. Sodium Target 2 represented an intermediate target achievable with product reformulations using technology available to industry when the 2012 rule was under development.

Prior to the vacatur of the 2018 final rule, successive legislative and administrative action delayed implementation of the sodium reduction targets. At the time of the court vacatur, schools were required to meet Sodium Target 1; with the court vacatur, Sodium Target 2 immediately went into effect. However, during the pandemic, USDA permitted schools to operate SFSP, which does not have a sodium limit, at the end of SY 2019–2020 and in SY 2020–2021. USDA also provided nationwide targeted meal pattern waivers through SY 2021–2022, which allowed SFAs to serve meals that did not meet the sodium targets, throughout that period. As a result, schools have never had to implement Sodium Target 2.

2020 Proposed Rule and Public Comments

The 2020 proposed rule sought to maintain Sodium Target 1 requirements through SY 2023–2024 (June 30, 2024); to delay required compliance with Target 2 requirements to SY 2024–2025 (July 1, 2024); and to remove the Final Target. In response to the 2020 proposed rule, USDA received 4,710 comments regarding the sodium standards. The following table shows tallies of the total and unique comments received in response to the proposed sodium standards:

2020 PROPOSED SODIUM STANDARDS

Respondent position	Total sodium comments (including form letters)	Percent of total sodium comments	Unique sodium comments	Percent of unique sodium comments
Support	94	2	90	58
Mixed	34	<1	34	22
Oppose	4,582	97	30	19
Total	4,710	100	154	99

Comments in Support

Ninety-four comments supported the proposed sodium standards. Many proponents discussed the work done by school food service professionals, manufacturers, and vendors in striving to meet Sodium Targets 1 and 2 and their commitment toward gradual sodium reduction over time. However, proponents also expressed concern about student acceptance of lower sodium meals because students are accustomed to eating foods with higher sodium content outside of school. Some proponents predicted Sodium Target 2 would create more food waste, or that decreasing sodium to the Final Target would result in lower student participation. One proponent suggested the proposed sodium standards provide schools with ''desperately needed time'' for gradual sodium reduction by temporarily retaining Target 1, continuing to Target 2 in SY 2024–2025, and eliminating the Final Target; this respondent also acknowledged the considerable work already done by schools to meet Target 1.

One proponent reasoned it does not make sense to move to a lower sodium target until manufacturers find a way to make low-sodium foods taste better. Several proponents stated sodium naturally occurs in some foods, such as meat and milk, and it would be difficult to reduce sodium levels without removing these items from menus. A national industry group and a food manufacturer argued that some foods require certain levels of sodium for

[51] Aune D, Keum N, Giovannucci E, Fadnes LT, Boffetta P, Greenwood DC, Tonstad S, Vatten LJ, Riboli E, Norat T. *Whole grain consumption and risk of cardiovascular disease, cancer, and all cause and cause specific mortality: systematic review and dose-response meta-analysis of prospective studies.* BMJ. June 2016. Available at: *https://pubmed.ncbi.nlm.nih.gov/27301975/.*

[52] Institute of Medicine (IOM 2010). *School Meals: Building Blocks for Healthy Children.* Washington, DC: The National Academies Press. Available at: *https://fns-prod.azureedge.net/sites/default/files/SchoolMealsIOM.pdf.*

functional and food safety reasons, making it particularly difficult to formulate lower sodium options without increasing food safety risk, increasing food waste, and decreasing shelf-life.

Comments in Opposition

A total of 4,582 comments opposed the proposed sodium standards. Several opponents were concerned that the proposed changes are not consistent with current nutrition science and may exacerbate the already high rates of nutrition-related chronic disease in the United States. Some opponents, including advocacy groups and professional associations, argued the delay of Target 2 and the elimination of the Final Target would conflict with the dietary reference intake guidelines for sodium. They cited a 2019 report warning that exceeding recommended sodium levels could increase chronic disease risk within a healthy population. These opponents noted that the National Academies of Sciences, Engineering, and Medicine had pursued even stronger sodium recommendations for younger children than those levels established when the 2012 rule was finalized. The *Dietary Guidelines, 2020–2025* were not yet published during the proposed rule comment period, but a joint comment from advocacy groups and professional associations expected the updated *Dietary Guidelines* to recommend that children consume a level of sodium below that achieved by Target 2. The respondents asked that USDA wait until after *Dietary Guidelines, 2020–2025* were issued to address sodium levels, and recommended USDA set a ''realistic'' timetable for achieving sodium reduction in the long-term based on the updated *Dietary Guidelines.*

Opponents noted excess sodium intake is associated with higher risk of high blood pressure, heart disease, stroke, atrial fibrillation, aortic dissection, and osteoporosis. They stated the proposed targets could result in children ages 4–13 years old who participate in the NSLP and SBP exceeding the current recommended daily limits for sodium intake. Multiple opponents cited a Centers for Disease Control and Prevention report that found 9 in 10 children consume too much sodium. An advocacy group stated that delaying further sodium reduction is inconsistent with the *Dietary Guidelines,* tested nutritional research, and nutrition recommendations. A professional association argued that the delay of Target 2 and the elimination of the Final Target would harm children's health, citing several sources describing the health risks associated with excess sodium consumption. Several State attorneys general expressed concern that the proposed changes to the sodium limits could worsen health disparities for racial and ethnic minority groups.

Opponents noted many schools have already made healthy and appealing meals with less sodium. They argued the proposed standards would reduce demand for low-sodium products, making it harder for schools to find low-sodium products because the school food industry will be slower to develop and market them. Several opponents argued that schools have successfully reduced sodium in meals to meet Sodium Target 1, and products are already on the market to help schools meet Target 2 and the Final Target. One opponent claimed that popular school pizza brands have reduced sodium levels. They also noted that food manufacturers are engaged in voluntary sodium reduction efforts, and expected these efforts to intensify when the U.S. Food and Drug Administration (FDA) releases voluntary sodium reduction targets for processed, packaged, and restaurant foods. FDA's voluntary sodium reduction targets were released in October 2021. Some opponents encouraged USDA to continue to support schools' efforts to reduce sodium through enhanced training and technical assistance.

Mixed Response

Thirty-four respondents expressed conditional support or opposition, or offered suggestions for improving the proposed sodium standards. Trade associations, State agency employees, a nutritionist, and a couple of individual respondents expressed support for delaying the sodium targets to allow schools and industry more time to achieve gradual sodium reduction. One respondent stressed the importance of acting upon nutrition research related to sodium, but agreed it was appropriate to afford schools more time to reduce sodium. One State agency supported extending Target 1 through SY 2023–2024 and delaying Target 2 to SY 2024–2025, noting that this would allow the food industry more time for product development and reformulation, provide SFAs more time to procure and introduce lower sodium food products, and give students more time to adjust to school meals with lower sodium content. Another State agency supported postponing Target 2 implementation, and supported a ''reexamination,'' but not full removal, of the Final Target. This State agency also encouraged USDA to continue working with the food industry to improve the nutritional profile of foods across the board, not just to the K–12 market, noting that some school districts and residential child care institutions purchase foods through smaller markets and may not have access to major food distributors. An advocacy group expressed a similar view, recommending that Target 2 become the Final Target, pending the final evaluation of FDA's voluntary sodium reduction targets at a later date. Other State agencies expressed similar support for temporarily delaying implementation of Target 2, to allow more time for product reformulation and COVID–19 recovery, but did not comment on the proposal to eliminate the Final Target. One of these State agencies applauded the work by school nutrition professionals in their State to decrease the sodium content of school meals over the past decade, noting that schools continue to develop and utilize recipes that support the gradual reduction of sodium over time.

Several respondents recognized the need to reduce sodium in school meals, but argued that the sodium targets and reduction timelines in the 2012 proposed rule are too aggressive. For example, a school district employee stated their district was able to meet Sodium Target 1, but asserted that Sodium Target 2 would be more difficult to meet, or potentially, unattainable. Some respondents suggested USDA retain Sodium Target 1 indefinitely, or argued that Sodium Target 2 was overly restrictive. A food manufacturer noted that, while it could adjust its formulas to reduce sodium, taste would be compromised.

Transitional Standards and Considerations for Future Rulemaking

USDA agrees with comments that noted the importance of gradually moving towards lower sodium meals in a way that is achievable for schools and the food industry. This final rule maintains Sodium Target 1 for NSLP and SBP through SY 2022–2023, retains Sodium Target 1 for SBP in SY 2023–2024, and institutes a modified Sodium Interim Target 1A for NSLP beginning in SY 2023–2024.[53] These standards, which are meant to be transitional, are shown in the charts below. USDA recognizes the importance of decreasing sodium in school meals, for which the majority of comments advocated. The approach in this final rule positions SFAs on an achievable path toward

[53] USDA fully expects to have new standards in place for SY 2024–2025 and beyond. However, in case of an unanticipated delay, the standards set by this rule will remain legally effective until such time as subsequent standards are promulgated.

further sodium reduction in school meals, and responds to school concerns about product availability, discussed in detail later in this section. As discussed earlier, USDA will promulgate a new rulemaking to address sodium standards in SY 2024–2025 and beyond. Since USDA intends the standards in this final rule as transitional standards, this rule eliminates Target 2 or any stricter sodium standard for SY 2024–2025 and beyond. However, this does not mean USDA intends to permanently eliminate stricter sodium standards in the long-term. Rather, this rule implements transitional sodium standards until USDA develops long-term standards that will further advance nutrition security.

NATIONAL SCHOOL LUNCH PROGRAM TRANSITIONAL SODIUM TIMELINE & LIMITS

Age/grade group	Target 1: Effective July 1, 2022 (mg)	Interim Target 1A: Effective July 1, 2023 (mg)
K–5	<1,230	<1,110
6–8	<1,360	<1,225
9–12	<1,420	<1,280

SCHOOL BREAKFAST PROGRAM TRANSITIONAL SODIUM TIMELINE & LIMITS

Age/grade group	Target 1: Effective July 1, 2022 (mg)
K–5	<540
6–8	<600
9–12	<640

The sodium limits apply to the average lunch and breakfast offered during the school week; they do not apply per day, per meal, or per menu item. This allows menu planners to occasionally offer higher sodium meals or menu items, if these meals or menu items are balanced out with lower sodium meals and menu items throughout school the week.

These transitional standards align with FDA's recent voluntary sodium reduction targets for the food industry. The FDA's goal of supporting reductions in sodium intake is consistent with the *Dietary Guidelines for Americans, 2020–2025* and the *2019 National Academies of Sciences, Engineering, and Medicine Dietary Reference Intakes Report on Sodium and Potassium.*[54] FDA's guidance provides short-term (2.5 year) voluntary sodium reduction targets for food manufacturers, chain restaurants, and food service operators for 163 categories of processed, packaged, and prepared foods.[55] The targets in FDA's guidance, issued in October 2021, seek to support decreasing average U.S. population sodium intake from approximately 3,400 mg to 3,000 mg per day, about a 12 percent reduction. These reductions are anticipated to support a gradual sodium reduction strategy in NSLP and SBP. While FDA is recommending the voluntary targets be met in 2.5 years (April 2024), in advance of that timeframe schools are anticipated to be able to procure additional options that are lower in sodium as the food industry continues reformulation efforts and develops new food products that align with FDA's voluntary targets. The gradual steps schools will take to lower sodium intake in the short term are important to further support reducing children's average sodium intake as recommended by the *Dietary Guidelines.* When issuing its guidance, FDA noted that modest sodium reductions can reduce the risk of diet-related diseases and improve health.[56]

USDA considered FDA's sodium reduction guidance in the context of the school meal standards, which include dietary specifications for specific age/grade groups. USDA also relied on the *Dietary Guidelines, 2020–2025* and the 2009 National Academy of Medicine report, which informed the sodium targets in the 2012 rule. USDA also considered the timeframe for FDA's voluntary short-term sodium reduction targets, as noted above. When examining the daily sodium allocation attributed to each meal, USDA determined that sodium reductions are most needed at lunch. Therefore, USDA is maintaining Sodium Target 1 for breakfast during the two-year timeframe of this transitional rule, which will allow schools to focus their sodium reduction efforts on school lunch. Noting some commenters' concerns with the palatability of lower sodium school meals and to establish feasible sodium reductions in school lunches, USDA set the near-term (Target 1A) reduction at 10 percent, which also aligns with research indicating gradual sodium reductions are less noticeable to consumers.[57]

On average, under Sodium Target 1A, daily sodium amounts for school lunch will be reduced as follows:

- Grades K–5: 120 mg reduction (<1,230 mg to <1,110 mg)
- Grades 6–8: 135 mg reduction (<1,360 mg to <1,225 mg)
- Grades 9–12: 140 mg reduction (<1,420 mg to <1,280 mg)

A 10 percent sodium reduction for NSLP is a reasonable approach in the near-term given a variety of factors, including COVID–19 response and recovery, in school settings, school staffing challenges, and current product availability. It represents an achievable goal that supports gradual sodium reduction. A variety of factors, including implementation of FDA's voluntary reduction targets,

[54] U.S. Food and Drug Administration: *Sodium Reduction.* Available at: *www.fda.gov/SodiumReduction.*

[55] U.S. Food and Drug Administration: *Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods.* October 2021. Available at: *www.fda.gov/SodiumReduction.*

[56] U.S. Food and Drug Administration: *To Improve Nutrition and Reduce the Burden of Disease, FDA Issues Food Industry Guidance for Voluntarily Reducing Sodium in Processed and Packaged Foods.* Available at: *https://www.fda.gov/news-events/press-announcements/improve-nutrition-and-reduce-burden-disease-fda-issues-food-industry-guidance-voluntarily-reducing.*

[57] Institute of Medicine 2010. *Strategies to Reduce Sodium Intake in the United States.* Washington, DC: The National Academies Press. *https://doi.org/10.17226/12818.*

developments in food science, and feedback from State and local stakeholders, will inform USDA's decisions regarding sodium moving forward. As lower sodium products become more widely available in the broader food market and children grow more accustomed to lower sodium foods, issues of palatability may not be as significant a factor in setting NSLP and SBP sodium standards.

Consistent with statutory requirements, USDA's intention is to ensure that the sodium targets for school meals reflect the goals of the current *Dietary Guidelines,* which recommend reducing average sodium intake from current levels. The *Dietary Guidelines* also suggest that small changes matter, and can significantly improve the overall nutritional profile of a meal.[58] USDA considered the sodium recommendations in the current *Dietary Guidelines* among other factors, such as the COVID-related operational and implementation challenges, and determined that the transitional standards in this rule will allow schools to gradually progress toward further sodium reduction in school meals. This approach reflects the sodium targets, which were achieved prior to the pandemic, and includes a moderate further reduction in the NSLP targets, consistent with FDA's guidance for the food industry.

USDA acknowledges that sodium targets must be achievable for most schools based on product availability, and must allow schools to plan appealing meals that encourage consumption and intake of key nutrients that are essential for children's growth and development. This final rule responds to school food professionals, who are concerned about their ability to procure foods that comply with Sodium Target 2 and the Final Sodium Target in the near-term. A 2021 survey of school nutrition directors found that 62 percent of respondents considered product or ingredient availability to be a significant challenge in meeting Sodium Target 2, and 75 percent considered it to be a significant challenge in meeting the Final Sodium Target. Respondents also expressed concern about sodium levels in specific foods and products. For example, when citing challenges in meeting Sodium Target 2, 55 percent of respondents described naturally occurring sodium in foods such as milk, low-fat cheese, and meat as a significant challenge, and 64 percent considered sodium levels in condiments to be a significant challenge.[59] A USDA study found that 70 percent of SFAs planned to purchase lower sodium products in order to meet sodium standards, suggesting availability of products is an important factor in their ability to meet the standards.[60]

Looking ahead, USDA recognizes the need for further sodium reduction. The changes in this final rule, which are intended as transitional standards, will encourage the re-introduction of lower sodium foods and meals to students, and give the food industry additional time to develop and test lower sodium products that are palatable to students. It will allow more time for school food professionals to engage in student taste tests, which help SFAs to make informed decisions regarding well-accepted food products. A USDA study found that obtaining feedback from students via taste testing was the most often-employed strategy for product selection and recipe refinement, according to SFAs.[61] Further, about three-quarters of school food service directors reported that gaining student acceptance of the meal pattern standards was moderately to extremely challenging with respect to maintaining student participation; this makes additional time for recipe refinement important.[62]

These transitional standards are especially needed after COVID–19 operations when many schools were offering grab-and-go meals that included processed, individually wrapped food products to ensure the safe distribution of food to children. Additionally, limited staffing, which made it harder to cook meals from scratch, likely contributed to increased sodium levels during SY 2020–2021 and SY 2021–2022 compared to just prior to the pandemic. A 2021 survey of school nutrition directors found that 47 percent of respondents considered scratch cooking limitations (*e.g.,* staffing, infrastructure, schedule) to be a significant challenge in working towards meeting Sodium Target 2, and 58 percent considered it to be a significant challenge in working towards meeting the Final Sodium Target. USDA recognizes that response and eventual recovery from the effects of the pandemic will take time; SFAs continue to face many challenges that impact the school meal service, including increased food costs, supply chain disruptions, labor shortages, and transportation issues.

USDA is committed to supporting long-term sodium reduction, which is consistent with the goals of the *Dietary Guidelines, 2020–2025* and Healthy People 2030[63] and critical to the healthy development of our Nation's children. As noted, this rule does not implement Sodium Target 2 or the Final Sodium Target for the near-term because this rule represents transitional standards which meaningfully move nutritional standards forward as part of an overall process—which will include further notice-and-comment rulemaking—to continually enhance nutritional security of the school meal programs. However, immediate implementation of significant sodium reduction could potentially lower student acceptance of school meals. Currently, students may be accustomed to eating higher-sodium foods outside of school, and potentially, higher-sodium school meals that may have been served during pandemic operations. Extending Sodium Target 1 and instituting Sodium Interim Target 1A for the NSLP is important for practical reasons. Setting a more practicable approach to sodium reduction allows more time for product reformulation, school menu adjustments, recipe development, personnel training, and changes in student preferences; as noted by comments, these factors are important to successful implementation of further sodium reduction in school meals.

The *Dietary Guidelines* note that taste preferences for salty foods may be established early in life, and that early food preferences can influence later food choices.[64] However, palates can

[58] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans, 2020–2025.* 9th Edition. December 2020. Available at *DietaryGuidelines.gov.*

[59] School Nutrition Association. *Back to School 2021 Report: A Summary of Survey Results.* Available at: *https://schoolnutrition.org/uploadedFiles/News_and_Publications/Press_Releases/Press_Releases/Back-to-School-Report-2021.pdf.*

[60] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *Child Nutrition Program Operations Study (CN–OPS–II): SY 2016–17.* Beyler, Nick, Jim Murdoch, and Charlotte Cabili. Project Officer: Holly Figueroa. Alexandria, VA: June 2021. Available at: *https://fns-prod.azureedge.net/sites/default/files/resource-files/CNOPS-II-SY2016-17.pdf.*

[61] *Successful Approaches to Reduce Sodium in School Meals.* Available at: *https://fns-prod.azureedge.net/sites/default/files/resource-files/Approaches-ReduceSodium-Volume2.pdf.*

[62] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Child Nutrition Program Operations Study (CN–OPS–II): SY 2016–17. Beyler, Nick, Jim Murdoch, and Charlotte Cabili. Project Officer: Holly Figueroa. Alexandria, VA: June 2021.

[63] U.S. Department of Health and Human Services. *Nutrition and Healthy Eating.* Available at: *https://health.gov/healthypeople/objectives-and-data/browse-objectives/nutrition-and-healthy-eating.*

[64] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans, 2020–2025.* 9th Edition. December 2020. Available at *DietaryGuidelines.gov.*

also adjust to lower sodium foods.[65] Because the preference for salty foods is a learned preference, the transitional standards in this final rule provide additional time for the overall food marketplace and community public health messaging to take steps to also reduce sodium in the food supply, while encouraging moderate reductions in school lunches. Allowing sodium reduction in schools to be on pace with community sodium reduction strategies, and implementation of the FDA's voluntary short-term sodium reduction targets, will yield a higher likelihood of success. This approach also will allow the opportunity for input from key stakeholders on how sodium reduction in schools can be coordinated with a larger public health effort and with industry research and development, so that children's preference for sodium in foods can gradually change without noticeable changes to the palatability of school meals. In addition, this final rule will provide USDA with additional time to thoughtfully propose a new rule that offers a permanent, achievable reduction in sodium in school meals that continues to be consistent with the goals of the *Dietary Guidelines.*

USDA appreciates that, since 2012, schools have made significant progress in reducing the sodium content of meals. A study published in 2020[66] provides evidence that schools have the ability to provide lower sodium meals that are acceptable to students and do not increase food waste. The study also notes that 9 in 10 children in the United States consume sodium at levels that exceed *Dietary Guidelines* and National Academy of Medicine (formerly the Institute of Medicine) recommendations, and that 1 in 6 children have pre-high blood pressure or high blood pressure, putting them at risk for cardiovascular disease as adults. Because of these health risks, it is important for schools that have the ability to reduce the sodium content of meals to do so. Further, USDA encourages families and communities to support schools' efforts by taking gradual steps to reduce the sodium content of meals offered to children outside of schools when possible. Wholesome school meals are only a part of children's daily food intake, and children will be more likely to eat them if the foods available to them outside of school are also lower in sodium. Helping students adjust their taste preferences requires collaboration between schools, parents and guardians, and communities.

USDA's Team Nutrition and the Institute of Child Nutrition have developed a range of resources and tools for reducing sodium; USDA will continue to provide schools with technical assistance, training resources, recipes, and mentoring to help them offer healthy, lower sodium meals. To support schools, USDA will engage public health organizations to collaborate on messages to educate families and communities about the need for sodium reduction in school meals. Further, USDA will gather feedback on how sodium reduction impacts schools' ability to offer foods from a variety of cultures and regions to avoid negatively impacting the diversity of school meal menus. In addition, USDA Foods will continue to provide food products with no added salt and/or low sodium content for inclusion in school meals. As noted previously, at the local level, 7 CFR 210.12(a) allows students, parents and guardians, and community members to influence menu planning; USDA encourages the school community to provide ideas on sodium reduction strategies. USDA also encourages schools to communicate the importance of reducing sodium in school meals, for example, by sharing nutrition education messages with students in the school cafeteria.

Accordingly, this final rule amends 7 CFR 210.10(f)(3) and 220.8(f) to maintain Sodium Target 1 for NSLP and SBP through SY 2022–2023, as well as for SBP in SY 2023–2024, and implement Sodium Target 1A for NSLP no later than SY 2023–2024. USDA invites public comments on the USDA sodium standards discussed in this final rule, including comments about how USDA can support implementation of those sodium standards. These public comments will help to inform USDA's future rulemaking.

IV. Good Cause

While USDA has extensively considered public comments on this final rule, USDA would have good cause to issue this rule even without soliciting public comment.

USDA believes that good cause exists to implement these transitional standards as an interim final rule due to the immediate need of school operators to begin procurement activities for school meal programs. Since March 2020, USDA and Child Nutrition Program operators have worked tirelessly to ensure children's access to nutritious meals throughout the pandemic, safe reopening of schools, and steps towards resumption of traditional meal service. Most resources have been devoted to such efforts and as explained above, the 2012 standards were not applicable during such period due to COVID-related flexibilities granted by Congress. However, Congress recently revised such flexibilities to end after SY 2021–2022. *See* Section 3102(a) of the Extending Government Funding and Delivering Emergency Assistance Act (Pub. L. 117–43) (amending Section 2202(e) of the Families First Coronavirus Response Act).

In addition, many SFAs plan school menus months in advance of the new school year. For SFAs to make menu planning, procurement, and contract decisions in advance of the school year, they need advance notice of the meal pattern requirements. As shown in the chart below, due to the numerous steps involved, the ICN estimates that the entire procurement process may take up to a year to complete.

PROCUREMENT TIMELINE FOR SCHOOL FOOD SERVICE OPERATORS

Month(s)	Task(s)
August–September	• Begin preparing for procuring items. Planning approximately one year in advance provides sufficient time for preparation for all parties in the food chain.
October–December	• Write specifications. • Project USDA Foods needs. • Fall and winter breaks may impact timeline.

[65] IOM (Institute of Medicine). *Strategies to Reduce Sodium Intake in the United States.* Washington, DC The National Academies Press; 2010.

[66] Juliana F.W. Cohen, Scott Richardson, Christina A. Roberto, Eric B. Rimm, *Availability of Lower-Sodium School Lunches and the Association with Selection and Consumption among Elementary and Middle School Students,* Journal of the Academy of Nutrition and Dietetics, 2020. Available at: *http://www.sciencedirect.com/science/article/pii/S2212267220309710.*

PROCUREMENT TIMELINE FOR SCHOOL FOOD SERVICE OPERATORS—Continued

Month(s)	Task(s)
January	• Develop solicitation document. Include pertinent information about the district; date and time for pre-solicitation conference and solicitation submission; scope of work; time period for the solicitation; any common legalities; ability for price escalations; name brand items; substitutions; discounts, rebates, and applicable credits; communication instructions with the district prior to the closing date; solicitation evaluation criteria. • Plan accordingly to have solicitation document and agenda item at school board meeting. • Modify proposal based on legal counsel's directives. Remember fall and winter breaks may impact the timeline.
February–March	• Propose solicitation document to school board. • Follow internal procedures. • Communicate to distributors and manufacturer and publicly announce the solicitation. • Publicize the solicitation document. • Conduct the solicitation meeting. • Allow a minimum of four weeks for vendors to respond. • Evaluate solicitations based on pre-established criteria and select vendors.
April–May	• Receive School Board approval for the selection of vendor. • Provide information to distributor and/or manufacturer. • Allow longer time for specialty items and name brand items.
June	• Communicate with stakeholders, determine delivery dates, and discuss school opening logistics.
July–August	• Receive products for upcoming school year.

Planning and acting in advance saves time, helps avoid repetitive tasks, and implements cost-effective inventory management, according to the ICN. Once menu planning is complete, schools need lead time to screen products, forecast required food quantities, write product specifications, create solicitation documents, announce the solicitation, and award the contract for the next school year. This final rule is necessary and timely, because for schools to successfully plan and adequately prepare for SY 2022–2023, they need to know the meal pattern requirements immediately. Planning and preparing for the new school year is important not only from an administrative standpoint; it also allows school nutrition professionals to better serve the children who rely on school breakfast and lunch for up to half their dietary intake each school day.[67] Supporting schools' ability to plan ahead is especially important at a time when schools are still facing pandemic-related concerns, such as supply chain disruptions, staff shortages, and financial losses.[68] Importantly, if schools do not have sufficient time to procure foods that comply with the meal pattern standards, they may choose not to participate in the programs or, if they do participate, may be found noncompliant and, depending on the meal pattern violation, ineligible for reimbursement.

V. Summary

In 2012, USDA published a final rule that raised school meal nutrition standards for the first time in more than 15 years. The updated meal patterns were a key component of implementing the Healthy, Hunger-Free Kids Act, which significantly enhanced school meal standards to meet the nutritional needs of children and to safeguard their health and well-being. Most elements of the 2012 regulations have been successfully implemented with measurable, positive effect.[69] Under the updated standards, USDA research found that school lunches were more nutritious compared to lunches from home or other places. For example, students who ate school lunches were more than twice as likely to consume vegetables at lunch compared to students who ate lunches from home or other sources.[70] USDA also found that a majority of SFA directors agreed that the updated standards were helpful in decreasing sodium, increasing dark green and red/orange vegetables, meeting calorie requirements, and increasing whole grains in school meals.[71]

Yet, for several years after publication of the 2012 rule, administrative and legislative action provided flexibility to the milk, whole grains, and sodium requirements. In 2018, USDA published a final rule to revise the requirements for milk, whole grains, and sodium. In April 2020, due to a court decision vacating the 2018 rule, the meal pattern requirements for milk, whole grains, and sodium immediately reverted to the 2012 regulations.

Nevertheless, nationwide meal pattern waivers provided flexibility to allow safe meal service during the COVID–19 pandemic, so the court decision had little practical effect on schools at the time. These waivers will expire on June 30, 2022. However, many schools are not ready to immediately serve meals that meet the milk, whole grains, and sodium requirements from the 2012 rule. Reverting to these requirements, some of which have never been fully in effect, immediately after the waivers expire would be unrealistic and impose unreasonable difficulties on

[67] Karen Weber Cullen, Tzu-An Chen, *The contribution of the USDA school breakfast and lunch program meals to student daily dietary intake,* Preventive Medicine Reports. March 2017. Available at: *https://www.sciencedirect.com/science/article/pii/S2211335516301516.*

[68] School Nutrition Association. *Back to School 2021 Report: A Summary of Survey Results.* Available at: *https://schoolnutrition.org/uploadedFiles/News_and_Publications/Press_Releases/Press_Releases/Back-to-School-Report-2021.pdf.* Continued pandemic-related supply chain disruptions, staff, shortages, and financial sustainability/losses were identified as the top three ''serious concerns'' among survey respondents.

[69] School Nutrition and Meal Cost Study findings suggest that the updated nutrition standards have had a positive and significant influence on the nutritional quality of school meals. Between SY 2009–2010 and SY 2014–2015, ''Healthy Eating Index-2010'' (HEI) scores for NSLP and SBP increased significantly, suggesting that the updated standards significantly improved the nutritional quality of school meals. Over this period, the mean HEI score for NSLP lunches increased from 57.9 to 81.5, and the mean HEI score for SBP breakfasts increased from 49.6 to 71.3. The study is available at: *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.* School Nutrition and Meal Cost Study (OMB Control Number 0584–0596, expiration date 07/31/2017.)

[70] *Lunches Consumed From School Are the Most Nutritious.* Available at: *https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCS_infographic5_SchoolLunchesArethe MostNutritious.pdf.*

[71] *Updated Nutrition Standards Posed Challenges but Achieved Underlying Goals.* Available at: *https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCS_infographic1_ChallengeswithNutritionStandards.pdf.*

schools, undermining their ability to comply with Program requirements. Additionally, schools need more time to respond to and recover from the economic and transformational impacts of meal service during the pandemic.

Considering the comments received on the November 2020 proposed rule, circumstances affecting schools, and the current *Dietary Guidelines,* USDA is finalizing the November 2020 proposed rule with standards targeting three meal requirements for the near-term, which will provide schools with a measured transition to healthier meals. The transitional standards offered in this final rule apply only to the milk, whole grains, and sodium requirements. This final rule will allow NSLP and SBP operators, and some CACFP and SMP operators, to offer flavored, low-fat milk; require at least 80 percent of the weekly grains in the school lunch and breakfast menus to be whole grain-rich; and retain Sodium Target 1 for NSLP and SBP through the end of SY 2022–2023, as well as for SBP beginning in SY 2023–2024, and make a Sodium Interim Target 1A effective for NSLP beginning in SY 2023–2024.

Schools that can meet or exceed these standards do not have to change their menus because of this final rule, and are encouraged to continue exceeding the regulatory standard to provide students with the healthiest meals possible. At the local level, 7 CFR 210.12(a) allows students, parents and guardians, and community members to influence menu planning. The local school wellness policy (7 CFR 210.31) also provides an important opportunity to influence the school nutrition environment at large; USDA encourages community members to support their local school's efforts to provide students with nutritious school meals. In addition, 7 CFR 210.19(e) allows State agencies discretion to set additional requirements that are not inconsistent with the minimum nutrition standards for school meals.

Looking ahead, USDA will promulgate a new rulemaking regarding nutritional requirements for school meals that comprehensively considers the goals of the *Dietary Guidelines, 2020–2025,* recent nutrition science, and the needs of children who may experience food and nutrition insecurity. USDA also commits to providing stakeholders with a meaningful opportunity to offer comments on a new proposed rule and will fully consider all comments. USDA intends to propose and finalize a new rule that demonstrates the Department's commitment to nutrition to be effective by SY 2024–2025.

Meanwhile, USDA will continue to provide schools with technical assistance, training resources, and mentoring to help them offer nutritious meals that students enjoy. In addition, USDA Foods will continue to provide whole grain-rich products and products with no added salt and/or low sodium content for inclusion in school meals. USDA invites the public to comment on the content of this final rule, as well as provide comments that will inform the future rulemaking that will offer the next steps towards better nutrition for America's school children.

Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

As required for all rules that have been designated as Significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this final rule. It follows this rule as an Appendix. The following summarizes the conclusions of the regulatory impact analysis:

Need for Action: This final rule will establish transitional standards to support the continued provision of nutritious school meals while USDA updates the meal pattern standards to reflect the *Dietary Guidelines for Americans, 2020–2025,* and as schools recover from the pandemic. USDA will develop updated standards through a new rulemaking for implementation in school year (SY) 2024–2025 and beyond, based on current nutrition science and public input on how to build on the success of school meals in supporting healthy eating and improved dietary outcomes. The COVID–19 pandemic impacted the entire Nation, but schools faced challenges adjusting to widespread closures, online and hybrid learning, and supply chain issues that affected the school meal service and the broader school environment. Many operators will need to reacquaint themselves with the 2012 standards after several years of Congressional, regulatory, and administrative interventions, followed by two years of meal pattern flexibilities provided in response to the public health emergency. As a result of these interventions and COVID–19 nationwide waivers, the 2012 whole grain-rich requirement and Sodium Target 2 have not been fully implemented, and the 2012 milk requirements have not been fully implemented in over five years. This final rule establishes transitional requirements for milk whole grains, and sodium to respond to the needs of schools as they recover from the challenges of COVID–19, while also taking measured steps towards improving nutritional quality of meals offered.

Benefits: This rule builds on the major achievements schools have already made improving school meals to support healthy diets for school children. Schools would face extreme challenges immediately returning to the 2012 standards from COVID–19 operations, which would be compounded by supply chain disruptions and staffing concerns. This rule will implement a modified Sodium Target 1A for NSLP, which will support schools with a gradual transition to lower sodium meals. USDA also increased the percentage of whole grain-rich offerings required from 50 percent in the proposed rule to 80 percent in this final rule to recognize the need to continued progress in school meal nutrition. This rule provides achievable standards while USDA engages in more comprehensive long-term rulemaking to further update the meal standards.

Costs: USDA estimates this final rule will save schools $0.15 cent per meal or $1.1 billion annually compared to directly moving to the 2012 standards for milk, whole grains, and sodium in SY 2022–2023. Absent this rule it is estimated to cost $1.3 billion annually or $0.18 per meal for schools to move immediately to the 2012 milk, whole grains, and sodium requirements. The increased costs to schools under the 2012 standards are primarily due to the requirement to procure entirely whole grain-rich offerings, which are estimated to be more expensive than enriched items, and the stricter sodium standards, which require additional food and labor costs to support scratch cooking as industry currently does not offer enough compliant products. Relative to current school year operations, this rule is estimated to

potentially increase costs to schools by $187 million annually or about $0.03 per meal. These are mostly driven by the move to the requirement that at least 80 percent of grains offered must be whole grain-rich and increases in food and labor costs for schools that still need to meet Sodium Target 1 and Target 1A. Costs to offer low-fat, flavored milk as an option are due to low-fat, flavored milk being slightly more expensive than fat-free, flavored varieties.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities. Because this interim final rule adds flexibility to current Child Nutrition Program regulations, the changes implemented through this final rule are expected to benefit small entities operating meal programs under 7 CFR parts 210, 215, 220, and 226.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a major rule, as defined by 5 U.S.C. 804(2).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments, and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at *http://www.bea.gov/iTable*) in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments, or the private sector of $146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The NSLP, SMP, SBP, and the CACFP are listed in the Catalog of Federal Domestic Assistance under NSLP No. 10.555, SMP No. 10.556, SBP No. 10.553, and CACFP No. 10.558, respectively, and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (see 2 CFR chapter IV). Since the Child Nutrition Programs are State-administered, USDA's FNS Regional Offices have formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operations. This provides USDA with the opportunity to receive regular input from program administrators and contributes to the development of feasible program requirements.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132. The Department has considered the impact of this final rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of the interim final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed the final rule, in accordance with Department Regulation 4300–004, Civil Rights Impact Analysis, to identify and address any major civil rights impacts the final rule might have on minorities, women, and persons with disabilities. A comprehensive Civil Rights Impact Analysis (CRIA) was conducted on the final rule, including an analysis of participant data and provisions contained in the final rule. The CRIA outlines outreach and mitigation strategies to lessen any possible civil rights impacts. The CRIA concludes by stating that FNS believes the promulgation of this final rule will impact SFAs and CACFP institutions and facilities by adding transitional meal pattern standards. Additionally, participants in the NSLP, SBP, SMP, and CACFP may be impacted if transitional meal pattern standards are taken by SFAs and CACFP institutions and facilities. However, FNS finds that the implementation of mitigation strategies and monitoring by the FNS Civil Rights Division and FNS Child Nutrition Programs may lessen these impacts. If deemed necessary, the FNS Civil Rights Division will propose further mitigation and outreach to alleviate impacts that may result from the implementation of the final rule.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments, or proposed legislation. Additionally, other policy statements or actions that have substantial direct effects on one or more Indian Tribes, the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes also require consultation.

After reviewing the final rule, the Office of Tribal Relations (OTR) has determined that there are multiple issues that could warrant tribal consultation such as the milk requirement and not allowing flexibility for complete exclusion of dairy (not just lactose-free dairy) products and inclusion of completely different traditional sources of calcium, and the grain requirement not having flexibility for having certain indigenous foods for carbohydrates that are not grains (such as wild rice, amaranth, etc.).

Recognizing that there have been difficulties associated with the COVID–19 pandemic and because these are transitional standards, OTR approves the final rule on the condition that there is robust consultation on the forthcoming proposed rule related to school nutrition standards to ensure that indigenous views and dietary concerns are fully taken into account.

If a tribe requests consultation in the future, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires the Office of Management and Budget (OMB) to approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

This rule contains information collections that have been approved by OMB under OMB #0584–0006 (7 CFR part 210, National School Lunch Program), expires 7/31/2023; OMB #0584–0012 (7 CFR part 220, School Breakfast Program), expires 4/30/2022; OMB #0584–0005 (7 CFR part 215, Special Milk Program for Children), expires 7/31/2022; and OMB #0584–0055 (7 CFR part 226, Child and Adult Care Food Program), expired 2/29/2020. Although the CACFP information collection has expired, USDA is planning to reinstate it and has published a 60-Day Notice. Revisions are underway and USDA expects to submit it to OMB for review soon. The provisions of this rule do not impose new or existing information collection requirements subject to approval by the OMB under the Paperwork Reduction Act of 1994.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Grant programs—education, Grant program—health, Infants and children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 210, 215, 220, and 226 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.10:

■ a. Revise the table in paragraph (c) introductory text; and

■ b. Revise paragraphs (c)(2)(iv)(B), (d)(1)(i), and (f)(3).

The revisions read as follows:

§ 210.10 Meal requirements for lunches and requirements for afterschool snacks.

* * * * *

(c) * * *

TABLE 1 TO PARAGRAPH (c) INTRODUCTORY TEXT—LUNCH MEAL PATTERN

Food components	Grades K–5	Grades 6–8	Grades 9–12
	Amount of Food[a] per Week (minimum per day)		
Fruits (cups)[b]	2½ (½)	2½ (½)	5 (1)
Vegetables (cups)[b]	3¾ (¾)	3¾ (¾)	5 (1)
Dark green[c]	½	½	½
Red/Orange[c]	¾	¾	1¼
Beans and peas (legumes)[c]	½	½	½
Starchy[c]	½	½	½
Other[c d]	½	½	¾42
Additional Vegetables to Reach Total[e]	1	1	1½
Grains (oz eq)[f]	8–9 (1)	8–10 (1)	10–12 (2)
Meats/Meat Alternates (oz eq)	8–10 (1)	9–10 (1)	10–12 (2)
Fluid milk (cups)[g]	5 (1)	5 (1)	5 (1)
Other Specifications: Daily Amount Based on the Average for a 5-Day Week			
Min-max calories (kcal)[h]	550–650	600–700	750–850
Saturated fat (% of total calories)[h]	<10	<10	<10

TABLE 1 TO PARAGRAPH (c) INTRODUCTORY TEXT—LUNCH MEAL PATTERN—Continued

	Grades K–5	Grades 6–8	Grades 9–12
	(minimum per day)		
Sodium Interim Target 1 (mg) [h]	≤1,230	≤1,360	≤1,420
Sodium Interim Target 1A (mg) [h i]	≤1,110	≤1,225	≤1,280
Trans fat [h]	Nutrition label or manufacturer specifications must indicate zero grams of *trans* fat per serving.		

[a] Food items included in each group and subgroup and amount equivalents. Minimum creditable serving is ⅛ cup.
[b] One-quarter cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% full-strength.
[c] Larger amounts of these vegetables may be served.
[d] This category consists of "Other vegetables" as defined in paragraph (c)(2)(iii)(E) of this section. For the purposes of the NSLP, the "Other vegetables" requirement may be met with any additional amounts from the dark green, red/orange, and beans/peas (legumes) vegetable subgroups as defined in paragraph (c)(2)(iii) of this section.
[e] Any vegetable subgroup may be offered to meet the total weekly vegetable requirement.
[f] At least 80 percent of grains offered weekly must meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched.
[g] All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk may be flavored or flavored, provided that unflavored milk is offered at each meal service.
[h] Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, *trans* fat, and sodium. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent are not allowed.
[i] Sodium Interim Target 1A must be met no later than July 1, 2023 (SY 2023–2024).

* * * * *

(2) * * *

(iv) * * *

(B) *Daily and weekly servings.* The grains component is based on minimum daily servings plus total servings over a 5-day school week. Schools serving lunch 6 or 7 days per week must increase the weekly grains quantity by approximately 20 percent (⅕) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (⅕) for each day less than 5. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in FNS guidance. Eighty (80) percent of grains offered weekly must meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched.

* * * * *

(d) * * *

(1) * * *

(i) Schools must offer students a variety (at least two different options) of fluid milk. All milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk with higher fat content is not allowed. Low-fat or fat-free lactose-free and reduced-lactose fluid milk may also be offered. Milk may be unflavored or flavored, provided that unflavored milk is offered at each meal service.

* * * * *

(f) * * *

(3) *Sodium.* School lunches offered to each age/grade group must meet, on average over the school week, the levels of sodium specified in the following table within the established deadlines:

TABLE 4 TO PARAGRAPH (f)(3)—NATIONAL SCHOOL LUNCH PROGRAM SODIUM TIMELINE & LIMITS

Age/grade group	Target 1: effective July 1, 2022 (mg)	Interim target 1A: effective July 1, 2023 (mg)
K–5	≤1,230	≤1,110
6–8	≤1,360	≤1,225
9–12	≤1,420	≤1,280

* * * * *

§ 210.11 [Amended]

■ 3. In § 210.11, in paragraphs (m)(1)(ii), (m)(2)(ii), and (m)(3)(ii) add the words "flavored or" before the word "unflavored".

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

■ 4. The authority for part 215 continues to read as follows:

Authority: 42 U.S.C. 1772 and 1779.

■ 5. In § 215.7a, revise paragraphs (a) introductory text and (a)(3) to read as follows:

§ 215.7a Fluid milk and non-dairy milk substitute requirements.

* * * * *

(a) *Types of fluid milk.* All fluid milk served in the Program must be pasteurized fluid milk which meets State and local standards for such milk, have vitamins A and D at levels specified by the Food and Drug Administration, and must be consistent with State and local standards for such milk. Lactose-free and reduced-lactose milk that meet the fat content and flavor specifications for each age group may also be offered. Fluid milk must also meet the following requirements:

* * * * *

(3) *Children 6 years old and older.* Children 6 years old and older must be served low-fat (1 percent fat or less) or fat-free (skim) milk. Milk may be flavored or unflavored.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

■ 6. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 7. In § 220.8, revise the table in paragraph (c) introductory text and revise paragraphs (c)(2)(iv)(B), (d), and (f)(3) to read as follows:

§ 220.8 Meal requirements for breakfasts.

(c) * * *

* * * * *

TABLE 1 TO PARAGRAPH (c) INTRODUCTORY TEXT—BREAKFAST MEAL PATTERN

Food components	Grades K–5	Grades 6–8	Grades 9–12
	Amount of Food [a] per Week (minimum per day)		
Fruits (cups) [b c]	5 (1)	5 (1)	5 (1)
Vegetables (cups) [b c]	0	0	0
Dark green	0	0	0
Red/Orange	0	0	0
Beans and peas (legumes)	0	0	0
Starchy	0	0	0
Other	0	0	0
Grains (oz eq) [d]	7–10 (1)	8–10 (1)	9–10 (1)
Meats/Meat Alternates (oz eq) [e]	0	0	0
Fluid milk [f] (cups)	5 (1)	5 (1)	5 (1)
Other Specifications: Daily Amount Based on the Average for a 5-Day Week			
Min-max calories (kcal) [g h]	350–500	400–550	450–600
Saturated fat (% of total calories) [h]	<10	<10	<10
Sodium Target 1 (mg)	≤540	≤600	≤640
Trans fat [h]	Nutrition label or manufacturer specifications must indicate zero grams of *trans* fat per serving.		

[a] Food items included in each group and subgroup and amount equivalents. Minimum creditable serving is ⅛ cup.
[b] One-quarter cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% full-strength.
[c] Schools must offer 1 cup of fruit daily and 5 cups of fruit weekly. Vegetables may be substituted for fruits, but the first two cups per week of any such substitution must be from the dark green, red/orange, beans/peas (legumes), or "Other vegetables" subgroups, as defined in § 210.10(c)(2)(iii) of this chapter.
[d] At least 80 percent of grains offered weekly must meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched. Schools may substitute 1 oz. eq. of meat/meat alternate for 1 oz. eq. of grains after the minimum daily grains requirement is met.
[e] There is no meat/meat alternate requirement.
[f] All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk may be unflavored or flavored, provided that unflavored milk is offered at each meal service.
[g] The average daily calories for a 5-day school week must be within the range (at least the minimum and no more than the maximum values).
[h] Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, *trans* fat, and sodium. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent milk fat are not allowed.

* * * * *

(2) * * *

(iv) * * *

(B) *Daily and weekly servings.* The grains component is based on minimum daily servings plus total servings over a 5-day school week. Schools serving breakfast 6 or 7 days per week must increase the weekly grains quantity by approximately 20 percent (⅕) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (⅕) for each day less than 5. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in FNS guidance. At least 80 percent of grains offered weekly must meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched.

* * * * *

(d) *Fluid milk requirement.* Breakfast must include a serving of fluid milk as a beverage or on cereal or used in part for each purpose. Schools must offer students a variety (at least two different options) of fluid milk. All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk with higher fat content is not allowed. Low-fat or fat-free lactose-free and reduced-lactose fluid milk may also be offered. Milk may be flavored or unflavored, provided that unflavored milk is offered at each meal service. Schools must also comply with other applicable fluid milk requirements in § 210.10(d) of this chapter.

* * * * *

(f) * * *

(3) *Sodium.* School breakfasts offered to each age/grade group must meet, on average over the school week, the levels of sodium specified in the following table:

TABLE 3 TO PARAGRAPH (f)(3)—SCHOOL BREAKFAST PROGRAM SODIUM LIMITS

Age/grade group	Target 1 (mg)
K–5	≤540
6–8	≤600
9–12	≤640

* * * * *

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 8. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

■ 9. In § 226.20, revise paragraph (a)(1) and the tables to paragraphs (c)(1) through (3) to read as follows:

§ 226.20 Requirements for meals.

(a) * * *

(1) *Fluid milk.* Fluid milk must be served as a beverage or on cereal, or a combination of both. Lactose-free and reduced-lactose milk that meet the fat content and flavor specifications for each age group may also be offered.

(i) *Children 1 year old.* Unflavored whole milk must be served.

(ii) *Children 2 through 5 years old.* Either unflavored low-fat (1 percent) or unflavored fat-free (skim) milk must be served.

(iii) *Children 6 years old and older.* Low-fat (1 percent fat or less) or fat-free (skim) milk must be served. Milk may be unflavored or flavored.

(iv) *Adults.* Low-fat (1 percent fat or less) or fat-free (skim) milk must be served. Milk may be unflavored or flavored. Six ounces (weight) or ¾ cup (volume) of yogurt may be used to fulfill the equivalent of 8 ounces of fluid milk once per day. Yogurt may be counted as either a fluid milk substitute or as a meat alternate, but not as both in the same meal.

* * * * *

(c) * * *

(1) * * *

TABLE 2 TO PARAGRAPH (c)(1)—CHILD AND ADULT CARE FOOD PROGRAM BREAKFAST

[Select the appropriate components for a reimbursable meal]

Food components and food items [1]	Minimum quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 [2] (at-risk afterschool programs and emergency shelters)	Adult participants
Fluid Milk [3]	4 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces.
Vegetables, fruits, or portions of both [4]	¼ cup	½ cup	½ cup	½ cup	½ cup.
Grains (oz. eq.) [5 6 7 8]	½ ounce equivalent	½ ounce equivalent	1 ounce equivalent	1 ounce equivalent	2 ounce equivalents.

Endnotes:

[1] Must serve all three components for a reimbursable meal. Offer versus serve is an option for at-risk afterschool participants.

[2] Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs.

[3] Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent fat or less) or unflavored fat-free (skim) milk for children two through five years old. Must be unflavored or flavored fat-free (skim) or low-fat (1 percent fat or less) milk for children 6 years old and older and adults. For adult participants, 6 ounces (weight) or ¾ cup (volume) of yogurt may be used to meet the equivalent of 8 ounces of fluid milk once per day when yogurt is not served as a meat alternate in the same meal.

[4] Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

[5] At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.

[6] Meat and meat alternates may be used to meet the entire grains requirement a maximum of three times a week. One ounce of meat and meat alternates is equal to one ounce equivalent of grains.

[7] Refer to FNS guidance for additional information on crediting different types of grains.

[8] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

(2) * * *

TABLE 3 TO PARAGRAPH (c)(2)—CHILD AND ADULT CARE FOOD PROGRAM LUNCH AND SUPPER

[Select the appropriate components for a reimbursable meal]

Food components and food items [1]	Minimum quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 [2] (at-risk afterschool programs and emergency shelters)	Adult participants
Fluid Milk [3]	4 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces.[4]
Meat/meat alternates (edible portion as served):					
Lean meat, poultry, or fish	1 ounce	1½ ounces	2 ounces	2 ounces	2 ounces.
Tofu, soy products, or alternate protein products [5].	1 ounce	1½ ounces	2 ounces	2 ounces	2 ounces.
Cheese	1 ounce	1½ ounces	2 ounces	2 ounces	2 ounces.
Large egg	½	¾	1	1	1.
Cooked dry beans or peas	¼ cup	⅜ cup	½ cup	½cup	½ cup.
Peanut butter or soy nut butter or other nut or seed butters.	2 Tbsp	3 Tbsp	4 Tbsp	4 Tbsp	4 Tbsp.
Yogurt, plain or flavored unsweetened or sweetened [6].	4 ounces or ½ cup	6 ounces or ¾ cup	8 ounces or 1 cup	8 ounces or 1 cup	8 ounces or 1 cup.
The following may be used to meet no more than 50% of the requirement:					
Peanuts, soy nuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternates (1 ounce of nuts/seeds = 1 ounce of cooked lean meat, poultry, or fish).	½ ounce = 50%	¾ ounce = 50%	1 ounce = 50%	1 ounce = 50%	1 ounce = 50%.
Vegetables [7 8]	⅛ cup	¼ cup	½ cup	½ cup	½ cup.
Fruits [7 8]	⅛ cup	¼ cup	¼ cup	¼ cup	½ cup.
Grains (oz eq) [9 10 11]	½ ounce equivalent	½ ounce equivalent	1 ounce equivalent	1 ounce equivalent	2 ounce equivalents.

Endnotes:

[1] Must serve all five components for a reimbursable meal. Offer versus serve is an option for at-risk afterschool and adult participants.

[2] Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs.

[3] Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent fat or less) or unflavored fat-free (skim) milk for children two through five years old. Must be unflavored or flavored fat-free (skim) or low-fat (1 percent fat or less) milk for children 6 years old and older and adults. For adult participants, 6 ounces (weight) or ¾ cup (volume) of yogurt may be used to meet the equivalent of 8 ounces of fluid milk once per day when yogurt is not served as a meat alternate in the same meal.

[4] A serving of fluid milk is optional for suppers served to adult participants.

[5] Alternate protein products must meet the requirements in Appendix A to Part 226 of this chapter.
[6] Yogurt must contain no more than 23 grams of total sugars per 6 ounces.
[7] Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.
[8] A vegetable may be used to meet the entire fruit requirement. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.
[9] At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards the grains requirement.
[10] Refer to FNS guidance for additional information on crediting different types of grains.
[11] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

(3) * * *

TABLE 4 TO PARAGRAPH (c)(3)—CHILD AND ADULT CARE FOOD PROGRAM SNACK

[Select the appropriate components for a reimbursable meal]

Food components and food items [1]	Minimum quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 [2] (at-risk afterschool programs and emergency shelters)	Adult participants
Fluid Milk [3]	4 fluid ounces	4 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces.
Meat/meat alternates (edible portion as served):					
Lean meat, poultry, or fish	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce
Tofu, soy products, or alternate protein products [4].	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Cheese	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Large egg	½	½	½	½	½.
Cooked dry beans or peas	⅛ cup	⅛ cup	⅛ cup	⅛ cup	⅛ cup.
Peanut butter or soy nut butter or other nut or seed butters.	1 Tbsp	1 Tbsp	2 Tbsp	2 Tbsp	2 Tbsp.
Yogurt, plain or flavored unsweetened or sweetened [5].	2 ounces or ¼ cup	2 ounces or ¼ cup	4 ounces or ½ cup	4 ounces or ½ cup	4 ounces or ½ cup.
Peanuts, soy nuts, tree nuts, or seeds	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Vegetables [6]	½ cup	½ cup	¾ cup	¾ cup	½ cup.
Fruits [6]	½ cup	½ cup	¾ cup	¾ cup	½ cup.
Grains (oz. eq.) [7 8 9]	½ ounce equivalent	½ ounce equivalent	1 ounce equivalent	1 ounce equivalent	1 ounce equivalent.

Endnotes:
[1] Select two of the five components for a reimbursable snack. Only one of the two components may be a beverage.
[2] Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs.
[3] Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent fat or less) or unflavored fat-free (skim) milk for children two through five years old. Must be unflavored or flavored fat-free (skim) or low-fat (1 percent fat or less) milk for children 6 years old and older and adults. For adult participants, 6 ounces (weight) or ¾ cup (volume) of yogurt may be used to meet the equivalent of 8 ounces of fluid milk once per day when yogurt is not served as a meat alternate in the same meal.
[4] Alternate protein products must meet the requirements in Appendix A to part 226 of this chapter.
[5] Yogurt must contain no more than 23 grams of total sugars per 6 ounces.
[6] Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.
[7] At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards the grains requirement.
[8] Refer to FNS guidance for additional information on crediting different types of grains.
[9] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

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Cynthia Long,

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Appendix

Note: This appendix will not appear in the Code of Regulations.

Regulatory Impact Analysis

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

I. Statement of Need

USDA is finalizing its November 25, 2020, proposed rulemaking regarding child nutrition meal pattern requirements. Considering comments received, circumstances caused by the COVID–19 pandemic, and current dietary science, this final rule will establish transitional [72] standards to support the continued provision of nutritious school meals while USDA updates the meal pattern standards to more comprehensively reflect the *Dietary Guidelines for Americans, 2020–2025* and as schools recover from the pandemic. USDA will develop updated standards through a new rulemaking for implementation in school year (SY) 2024–2025 and beyond, based on current nutrition science and public input on how to build on the success of school meals in supporting healthy eating and improved dietary outcomes. This final rule will implement three transitional standards to provide immediate relief to schools during the return to traditional school meal service following extended use of COVID–19 flexibilities. The COVID–19 pandemic impacted the entire Nation, but schools faced challenges adjusting to widespread closures, online and hybrid learning, and supply chain issues that affected the school meal service and the broader school environment.While USDA is committed to the service of nutritious meals through its programs, USDA also appreciates that the challenges facing schools are ongoing, and some schools are not prepared to fully meet the milk, whole grains, and sodium requirements from the 2012 rule in SY 2022–2023.[73] Many operators will need to reacquaint themselves with the 2012 standards after several years of Congressional, regulatory, and administrative interventions, followed by two years of meal

[72] As noted in the preamble, standards in this rule will be effective only during the interim period before the new standards are promulgated. USDA intends the new rulemaking to be completed in time for SY2024–2025, but in the unlikely event of a delay, the standards in this final rule would remain in effect until such new rulemaking is completed. Since USDA intends to establish new meal pattern requirements for SY 2024–2025 and beyond, the standards in this will be referenced to as ''transitional'' in this rule.

[73] ***Federal Register***: *Nutrition Standards in the National School Lunch and School Breakfast Programs.*

pattern flexibilities provided in response to the public health emergency. As a result of these interventions and COVID–19 nationwide waivers, the 2012 whole grain-rich requirement and Sodium Target 2 have not been fully implemented, and the 2012 milk requirements have not been fully implemented in over five years. To meet this need, USDA is taking a two-stage approach to updating the school meal nutrition standards:[74]

1. This final rule, which will establish standards for milk, whole grains, and sodium, is the first stage. These standards will respond to the needs of schools as they recover from the challenges of COVID–19, while also taking measured steps towards improving nutritional quality of meals offered.

2. USDA intends to issue a proposed rule in fall 2022 which will address school meal nutrition standards for SY 2024–2025 and beyond. The new rulemaking will advance permanent standards that further demonstrate USDA's commitment to nutritious school meals and that are consistent with the goals of the *Dietary Guidelines for Americans, 2020–2025* and nutrition science, as required by the National School Lunch Act.

The revised standards in this final rule are intended to be transitional, and apply only to the milk, whole grains, and sodium requirements. This final rule:

- Allows NSLP and SBP operators and some CACFP and SMP providers to offer flavored, low-fat milk.
- Requires at least 80 percent of the weekly grains in the school lunch and breakfast menus to be whole grain-rich.
- Maintains Sodium Target 1 for NSLP and SBP through SY 2022–2023, as well as for SBP in SY 2023–2024, and implements Sodium Target 1A for NSLP no later than SY 2023–2024.

Schools that can meet or exceed these transitional standards do not have to change their menus because of this final rule. USDA invites the public to comment on the content of this final rule, as well as provide comments to inform the future rulemaking. This includes comments that may assist in a comprehensive assessment of impacts of the areas addressed in this rule.

II. Comments

USDA received four substantive comments on the economic summary from the proposed rule. All comments expressed concern that a full analysis of long-term health impacts of the proposed changes was not included. Respondents also voiced concerns about USDA not engaging with medical stakeholders to fully understand the health impacts of changing the 2012 standards for milk, whole grains, and sodium. There was particular concern with the proposed sodium changes.

USDA Response: USDA recognizes the need for updated standards to align with the goals of the *Dietary Guidelines for Americans, 2020–2025.* The two-stage regulatory process will allow time for USDA to engage with a variety of medical stakeholders. This final rule will serve as a transition to updated nutrition standards; a new rulemaking will include input from various stakeholders through public comments to assist in an in-depth assessment of potential impacts. Additionally, in SY 2023–2024, this rule will implement Sodium Target 1A for NSLP, which will support schools with a gradual transition to lower-sodium meals. This target is a 10 percent reduction from Sodium Target 1 for NSLP and represents an achievable goal while acknowledging the importance of gradual sodium reduction. A variety of factors, including implementation of FDA's voluntary reduction targets, developments in food science, and feedback from State and local stakeholders, will inform USDA's decisions regarding sodium moving forward.[75] USDA also increased the percentage of whole grain-rich offerings required from 50 percent in the proposed rule to 80 percent in this final rule. This recognizes the importance of whole grains in a nutritious diet while also acknowledging the near-term challenges of offering all whole grain-rich items.

III. Summary of Impacts

The estimated impacts of this rule reflect shifts in food purchases and labor resources incurred by schools for school meal production. There are no additional Federal revenues provided in this rule and schools will need to make menu modifications within current resources. The impacts of these shifts are quantified for this analysis to demonstrate the potential food and labor costs to schools as well as markets due to changes in purchasing patterns. The analyses provide the impact to schools of moving straight to the 2012 standards, which absent this rule would go into effect in SY 2022–2023 as well as the impact to schools of moving to the standards in this rule from current operations.

USDA estimates this final rule will save[76] schools $0.15 cent per meal or $1.1 billion annually compared to directly moving to the 2012 standards for milk, whole grains, and sodium in SY 2022–2023.[77] Absent this rule it is estimated to cost $1.3 billion annually or $0.18 per meal for schools to move immediately to the 2012 milk, whole grains, and sodium requirements. The costs to schools are due to increased costs to procure entirely whole grain-rich offerings as well as increases in both food and labor costs to support scratch cooking to immediately comply with the Sodium Final Target.

Currently in SY 2021–2022, schools unable to meet the NSLP and SBP standards due to the pandemic can request targeted meal pattern waivers from their State agency, including for the milk, whole grains, and sodium requirements. Schools will need to transition from operating under the COVID–19 waivers to meeting the milk, whole grain and sodium requirements in this rule starting in SY 2022–2023. Relative to the current school year operations, this rule is estimated to potentially increase costs to schools by $187 million annually or about $0.03 per meal.[78] Most of these estimated costs are due to the requirement to offer at least 80 percent of grain offerings as whole grain-rich and for some schools that still need to meet Sodium Target 1 and Sodium Target 1A. USDA estimates whole grain-rich items to be more expensive than enriched items as schools shift to purchase more whole grain-rich items. Estimated costs associated with sodium are a result of increases in food and labor costs for schools that still need to meet Sodium Target 1 and Target 1A. Costs to offer low fat flavored milk as an option are due to low fat flavored milk being slightly more expensive than fat free flavored varieties.

The $0.15 per meal savings provided by this rule is the cost of $0.18 per meal to return to the 2012 standards minus the $0.03 per meal costs associated with the requirements in this rule.[79] The changes in this rule are achievable and realistic for schools and recognize the need for strong nutrition standards in school meals. USDA intends to have updated regulations that further align school meal nutrition standards with the goals of the *Dietary Guidelines for Americans, 2020–2025* in place by SY 2024–2025. This analysis provides five-year cost streams to project potential impacts.

[74] As discussed in the preamble to the final rule, USDA considers the final rule to be a logical outgrowth of the proposed rule. However, even without the proposed rule and logical outgrowth, USDA determines there is good cause to publish these transitional standards as an interim final rule and is requesting comments on the transitional standards. Publication of these transitional standards by January 2022 is necessary for SY 2022–2023. Schools need to know the meal pattern requirements to procure the appropriate foods.

[75] To learn more about the U.S. Food and Drug Administration's efforts to lower sodium in the U.S. food supply, visit: *www.fda.gov/SodiumReduction.*

[76] Except where noted in the participation impacts, the terms ''costs'' and ''savings'' are used in this analysis to describe the school level shifts in food purchases and labor associated with school meal production.

[77] The 2012 standards do not permit flavored low-fat milk, require all grains to be whole grain-rich, and require schools to meet the Sodium Final Target in SY 2022–2023.

[78] If all flavored fat-free milk is substituted with flavored low-fat milk, and schools regressed in whole grain-rich progress compared to SY 2014–2015, this rule is estimated to cost $665 million the first year or $0.09 more per meal.

[79] The 2012 standards do not permit low fat flavored milk which USDA estimates to be slightly more expensive than fat free flavored varieties. This slightly reduces the savings generated due to this rule as this rule permits low fat flavored. Voluntary incurring of a cost is likely associated with benefits that are difficult to quantify—potentially, in this case, including reduced food waste.

TABLE 1—STREAM OF QUANTIFIABLE COSTS TO SCHOOLS

	Fiscal Year ($ millions)					
	2022	2023	2024	2025	2026	Total
NOMINAL COST STREAM						
MILK	$2	$13	$13	$14	$14	$56
80% WHOLE GRAIN-RICH	−48	−303	−309	−315	−321	−1,296
SODIUM TARGET 1 AND 1A	−125	−780	−795	−811	−827	−3,338
TOTAL	−171	−1,069	−1,090	−1,112	−1,134	−4,577
DISCOUNTED COST STREAM						
3 PERCENT	−171	−1,038	−1,028	−1,018	−1,008	−4,263
7 PERCENT	−171	−999	−952	−908	−865	−3,896

As required by OMB Circular A–4, in Table 2 below, the Department has prepared an accounting statement showing the annualized estimates of benefits, costs, and transfers associated with the provisions of this final rule. In the next section, an impact analysis is provided of each change.

TABLE 2—ACCOUNTING STATEMENT

	Range	Estimate	Year dollar	Discount rate (percent)	Period covered
Benefits: *Qualitative:* Provides achievable updates to the milk, whole grain-rich, and sodium standards to transition from COVID–19 operations.					
Annualized Monetized (millions/year)	n.a.	n.a.	n.a.	n.a.	FY 2022–2026
Costs incurred by schools: *Qualitative:* This final rule provides updates to the milk, whole grain-rich and sodium requirements for schools. The changes in this rule are achievable standards as schools move from COVID–19 operations to typical meal service. The estimated savings are generated from schools moving to the standards in this rule instead of moving to the 2012 meal standards. The estimated potential impacts are provided to quantify the changes in purchasing patterns and labor hours to meet these requirements.					
Annualized Monetized ($millions/year)	Total	−$830 −877	2020 2020	7 3	FY 2022–2026
Federal costs: *Qualitative and Quantitative:* There are no estimated change in Federal reimbursement levels associated with this rule. It is assumed participation will not measurably change from the baseline approximated by the status quo. However, if this rule is not issued then (reflecting the same analytic baseline against which the school cost savings, above, are estimated) there is an estimated reduction due to schools leaving the NSLP and SBP due to difficulties returning to the 2012 standards. These figures are presented in the impact analysis.					
Annualized Monetized ($millions/year)	n.a.	n.a.	n.a.	n.a.	FY 2022–2026

IV. Section by Section Analysis

This final rule provides standards related to milk, whole grains, and sodium that will set clear programmatic parameters as schools return to traditional meal service after over two years of serving meals under pandemic conditions. The Administration plans to propose new standards later in the year, after a robust engagement process with program stakeholders. Absent this rule, schools must return to the milk, whole grains, and sodium regulations from the 2012 rule, which:

- Allowed flavoring only in fat-free milk in the NSLP and SBP.
- Required that at least half of the grains offered in the NSLP be whole grain-rich (meaning the grain product contains at least 50 percent whole grains and the remaining grain content of the product must be enriched) in SY 2012–2013 and one year later in the SBP; and required that effective SY 2014–2015, all grains offered in both programs be whole grain-rich; and
- Required schools participating in the NSLP and SBP to reduce the sodium content of meals offered on average over the school week by meeting progressively lower sodium targets over a 10-year period. The 2012 rule directed SFAs to meet Sodium Target 1 by SY 2014–2015, Sodium Target 2 by SY 2017–2018, and the Sodium Final Target by SY 2022–2023.

As noted earlier, full implementation of the 2012 meal pattern requirements for milk, whole grains, and sodium has been delayed due to legislative, regulatory, and administrative actions, and the COVID–19 pandemic. This section assesses the impact of this rule as well as the impact absent this rule, which would restore the above 2012 standards for milk, whole grains, and sodium.

A. Key Assumptions

USDA conducted a comprehensive study on the school meal programs in SY 2014–2015 called the *School Nutrition and Meal Cost Study.* Data from this study are the most current available on the status of schools meeting the nutrition standards.[80] The following impact analyses use SY 2014–2015 data as applicable and more recent information to make assumptions to estimate the status. Additionally, data on the value of school district acquisitions are from the *School Food Purchase Study* reflecting SY 2009–2010. This is the most current school district food acquisition data available and

[80] USDA started to collect data for the next iteration of the School Nutrition Meal Cost study which is the comprehensive assessment of the school meal program in SY 2019–2020. Data collection was stopped due to COVID–19 pandemic and the resulting school closures. The study is now planned to collect data in SY 2022–2023.

figures from this study are inflated to reflect current prices. However, the distribution of the types of foods school districts purchase may have shifted during the implementation of the 2012 standards and more recently due to COVID–19 operations.

The analyses assume Congress will not override these final standards for the milk, whole grains, and sodium requirements in the near-term. The base analyses also assume that after two and one-half years of serving meals through COVID–19 waivers, school meal participation will normalize to be consistent with service levels in FY 2019. Simulation of different participation levels are presented in the *Uncertainty Section.*

This analysis also assumes that due to the plan to revise these standards via another rulemaking that there will not be any measurable health or nutritional impact of the changes in this rule. This rule builds on the major achievements schools already made improving school meals to support healthy diets for school children. Schools have made significant progress towards healthier school meals. Between SY 2009–2010 and SY 2014–2015, ''Healthy Eating Index–2010'' (HEI–2010) scores of diet quality for NSLP and SBP increased significantly. Over this period, the mean HEI–2010 score for NSLP lunches increased from 57.9 to 81.5 out of a possible 100 points, and the mean HEI–2010 score for SBP breakfasts increased from 49.6 to 71.3 out of a possible 100 points. These significant increases in HEI are driven by the full suite of the 2012 standards including higher scores for fruits and vegetables and reduction in empty calories.

HEI–2010 scores also greatly improved for whole grains. In SY 2014–2015, the HEI–2010 component score for whole grains in NSLP lunches served improved significantly from SY 2009–2010 to SY 2014–2015, by 71 percentage points (from 25 to 95 percent of the maximum score). Similarly, for SBP breakfasts served, the score for whole grains increased by 58 percentage points (from 38 to 96 percent of the maximum score) over the same timeframe.[81]

In SY 2014–2015, the HEI–2010 score for sodium improved significantly from a score of 10 percent of the maximum score to 27 percent of the maximum score, which reflects the majority of schools meeting Sodium Target 1 in the first-year schools were required to meet Sodium Target 1. From SY 2009–2010 to SY 2014–2015, the average sodium content of NSLP lunches decreased between 15 percent and 21 percent and SBP breakfasts decreased between 10 percent to 15 percent. By comparison, from SY 2004–2005 to SY 2009–2010, sodium levels for NSLP lunches and SBP breakfasts decreased by 2 percent and 11 percent, respectively.[82]

While the HEI–2010 scores for meals offered significantly improved after implementation of the 2012 meal standards, the HEI–2010 scores for the lunches and breakfasts consumed by students participating in NSLP and SBP in SY 2014–2015 were significantly higher than nonparticipants. Students who ate a school lunch were more likely to consume milk, fruits, and vegetables and less likely to consume desserts, snack items, and non-milk beverages at lunch than students who ate lunch from home or other places. NLSP lunches consumed had significantly higher HEI–2010 scores compared to lunches consumed from home or other places (80 percent versus 65 percent out of a possible 100 points). The lunches consumed by NSLP participants received significantly higher scores than the lunches consumed by matched nonparticipants for total vegetables (52 percent of the maximum score versus 38 percent), whole grains (100 percent versus 63 percent), and dairy (100 percent versus 69 percent). Additionally, lunches consumed by NSLP participants were lower in calories, total fat, and saturated fat than lunches consumed by matched nonparticipants. Breakfasts consumed by SBP participants contained significantly larger amounts of fruit and whole grains than breakfasts consumed by matched nonparticipants and had a significantly higher HEI–2010 score than breakfasts consumed by matched nonparticipants (66.1 percent versus 58.9 percent).[83] School meals serve as a critical source of nutrition for the nation's children especially for children in low-income households.[84]

The HEI measures alignment with the *Dietary Guidelines of Americans,* which are set based on nutrition recommendations and evidence of health benefits. Research has shown that closer alignment with the Dietary Guidelines reduces the risk of obesity related chronic diseases.[85] The improvements in HEI scores further demonstrate the extension of the current health benefits realized by the 2012 standards to date and the importance of starting healthy eating habits early.

Early in the COVID–19 pandemic, many schools transitioned to serving meals under the Summer Food Service Program, which operates under a separate, simpler meal pattern. In SY 2021–2022, schools were still able to offer all meals free, but through the Seamless Summer Option, which uses the NSLP and SBP meal patterns. This transitioned schools back to the healthier school meals that are traditionally offered during the school year. However, supply chain disruptions created additional challenges, and many schools needed waivers for specific meal pattern requirements, including milk, whole grains, and sodium. It is expected that the overall positive nutritional impacts of the 2012 meal standards will continue to benefit school children as this rule makes achievable adjustments to strengthen the meal standards while balancing the need to support schools during transition from COVID–19 operations and supply chain disruptions. This rule builds on the significant progress schools already made in implementing the 2012 standards.

Absent this rule, schools would be required to meet the 2012 standards, which would not permit flavored low-fat milk, require all grains to be whole grain-rich, and require schools to meet the Sodium Final Target in SY 2022–2023. While these requirements would further nutritional improvements in school meals, many schools would not be able to fully meet these requirements in the near term. This is particularly true for the Sodium Final Target. The time needed to successfully lower sodium levels in school meals will vary considerably. For certain products, lowering sodium levels in school meals may be quicker and for other products it may require more time. This transitional rule will give schools more time to work to identify student preferences through combination of practices including taste tests, tailoring menu options, promoting healthy choices, and making incremental menu changes.[86]

Implementing the Sodium Final Target would require a significant reduction over an extremely short period of time, which would not be achievable for both industry and schools. The 2012 sodium reduction timeline was never fully implemented due to a long history of administrative and legislative actions that delayed implementation of Sodium Target 2. It is unrealistic to expect full implementation of the 2012 standards for milk, whole grains, and sodium and the associated nutritional improvement to be realized in SY 2022–2023 due to the significant challenges facing schools and industry in the near term. As USDA commences subsequent rulemaking to propose and finalize long-term standards, the nutritional impacts resulting from changes to the milk, whole grains, and sodium requirements will be reexamined and included in the process. USDA welcomes any

[81] These improvements were made with on average schools offering 70 percent of grain offerings as whole grain-rich. In SY 2014–2015, one quarter (27 percent) of weekly lunch menus met the new requirement, which was first implemented in SY 2014–2015. The majority (87 percent) of weekly lunch menus met the requirements from the prior school year—that at least 50 percent of grains be whole grain-rich.

[82] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[83] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes by Mary Kay Fox, Elizabeth Gearan, Charlotte Cabili, Dallas Dotter, Katherine Niland, Liana Washburn, Nora Paxton, Lauren Olsho, Lindsay LeClair, and Vinh Tran. Project Officer: John Endahl. Alexandria, VA: April 2019.

[84] A higher percentage of income-eligible NSLP participants consumed any items from the vegetables, fruit, milk products, and mixed dish categories compared with income-eligible nonparticipants: Unreleased USDA report using 2011–2016 National Health and Nutrition Examination Survey (NHANES) data to examine the relationship between estimated program participation, diet quality, indicators of nutrition and health, food consumption patterns, and nutrient intakes.

[85] *Dietary Guidelines for Americans, 2020–2025.*

[86] Gordon, E.L., Morrissey, N., Adams, E., Wieczorek, A. Glenn, M.E., Burke, S. & Connor, P. (2019). Successful Approaches to Reduce Sodium in School Meals Final Report. Prepared by 2M Research under Contract No. AG–3198–P–15–0040. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service.

additional information that should be considered on the nutritional impacts of the milk, whole grains, and sodium requirements in this rule.

B. Impacts

Milk Standard

In this final rule, USDA allows NSLP and SBP operators the option to offer flavored low-fat milk and requires unflavored milk to be offered at each meal service. This flavored milk standard will be extended to beverages for sale during the school day and will also apply in the SMP and CACFP for participants ages 6 years and older. The decision to allow flavored low-fat milk reflects concerns about declining milk consumption and the importance of the key nutrients provided by milk for school-aged children.[87] Menu planners must make necessary adjustments in the weekly menu to account for the additional calories and fat content associated with offering flavored low-fat milk. This final rule does not change the upper caloric and fat limits specified in the 2012 rule or the requirement to offer a variety (at least two choices) of fluid milk in the NSLP and SBP.

Unflavored low-fat and flavored fat-free milks were the most frequently offered varieties on daily menus in SY 2014–2015. The change in this rule may result in SFAs substituting flavored fat-free milk varieties with flavored low-fat varieties. About 91 percent of daily NSLP menus and 76 percent of daily SBP menus offered flavored fat-free milk.[88] The cost for eight ounces of flavored low-fat milk is on average about $0.02 higher than flavored fat-free milk.[89] If across all NSLP and SBP menus, all flavored low-fat milk was substituted with flavored fat-free milk, it would cost about $126 million more a year. Not all schools will want to make this substitution as the change must be made within current resources and caloric and fat limits. Based on the most current data available, about 8 percent of school districts requested an exemption to serve flavored low-fat milk.[90] Using the average number of children per school district,[91] it is estimated that about 9 percent of daily NSLP and SBP menus include flavored low-fat milk through exemptions or flexibilities. USDA estimates this to be about $13 million more a year in the value spent on milk.

TABLE 3—ESTIMATED IMPACT OF PURCHASING LOW FAT FLAVORED MILK

[Millions]

Substitution level	Estimated annual cost
MAXIMUM—REPLACE ALL FAT FREE FLAVORED WITH LOW FAT FLAVORED	$126
MINIMUM—9 PERCENT OF DAILY MENUS REPLACED FAT FREE WITH LOW FAT FLAVORED (BASED ON EXEMPTION DATA)	13

Most milk producers likely supply both varieties, which minimizes actual industry impacts. The additional cost of flavored low-fat milk may result in purchasing pattern shifts in school districts choosing to serve flavored low-fat milk. USDA estimates that this final rule will increase the milk cost and/or transfers from anywhere between $13 million and $126 million. Absent this rule, there would be a reduction in milk costs of the same range due to the restriction on offering flavored low-fat milk.[92]

Whole Grain-Rich Standard

Starting in SY 2022–2023, this final rule will require that at least 80 percent of the grains offered in the NSLP and SBP meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched. The 2012 final rule required all grains to be whole grain-rich by SY 2014–2015; however, this requirement was never fully implemented due to a long history of administrative and legislative actions, including exemptions that began in the first year of implementation. In SY 2014–2015, the first year in which all grains were required to be whole grain-rich, only 27 percent of weekly lunch menus met this requirement. However, the majority (87 percent) of weekly lunch menus offered at least 50 percent of the grains as whole grain-rich. In SBP, about half of all weekly breakfast menus offered only whole grain-rich grains, while 95 percent offered at least 50 percent of the grains as whole grain-rich. Despite some challenges, schools have made considerable progress offering whole grain-rich products. On average, in SY 2014–2015, 70 percent of the weekly menus offered at least 80 percent of the grain items as whole grain-rich for both breakfast and lunch.[93] This rule recognizes this progress and the nutritional importance of whole grains, while still providing support for schools facing challenges serving all grain items as whole grain-rich.

This analysis is based on the price difference between whole grain-rich items and enriched grain items to calculate the impact associated with changing the whole grain-rich requirement. The 2012 final meal standards rule Regulatory Impact Analysis estimated that whole grain-rich items cost 34 percent more than enriched grain items.[94] While this is an older analysis, it is still the most current available. However, there are other more recent data points that suggest that this price difference is likely lower due to wider availability of whole grain-rich items. Over 85 percent of the grain offerings in NSLP and SBP in SY 2014–2015 were whole grain-rich. This suggests most items are whole grain-rich, but certain grains may be more difficult to find in acceptable whole grain-rich form, including commonly offered items such as croutons, biscuits, and rolls.[95] Additionally, during the period in which schools needed an exemption if they were unable to meet the requirement to offer all grains as whole grain-rich, use of the exemption was relatively low. According to an unpublished USDA study, as of SY 2017–2018, 28 percent of SFAs requested an exemption for the whole grain-rich requirement in at least one school year. In SY 2017–2018, 24 percent requested an exemption. The availability of whole grain-rich products through USDA Foods and the commercial market has increased significantly since the implementation of the 2012 meal standards. Additionally, there was no consistent significant difference in the cost per meal between schools that offered at least 50 percent whole grain-rich items and schools that offered under 50 percent. There was also no significant difference in the meal

[87] *https://www.gpo.gov/fdsys/pkg/FR-2017-11-30/pdf/2017-25799.pdf.*

[88] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et.al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[89] U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, School Food Purchase Study-III, by Nick Young et al. Project Officer: John R. Endahl, Alexandria, VA: March 2012.

[90] Based on unpublished USDA data: Child Nutrition Program Operations study year 3.

[91] There were no significant characteristics of these school district suggesting that smaller or larger districts requesting the exemption. This analysis assumes that about 57 percent of children enrolled in the 8 percent of districts requesting an exemption participate in the NSLP and about 30 percent participate in the SBP.

[92] Voluntary incurring of a cost is likely associated with benefits that are difficult to quantify—potentially, in this case, including reduced food waste.

[93] Based on an internal USDA analysis using data from: U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[94] Footnote in the CACFP rule provides the citation for the 34% as it was based on an internal USDA analysis and it is not in the published 2012 meal standards rule *https://www.regulations.gov/document/FNS-2011-0029-4304.*

[95] These were the items that school districts requested exemptions to serve based on informal USDA data.

costs for schools meeting the overall grain quantity requirement.[96]

For these reasons, this analysis estimates a price increase of 15 percent for whole grain-rich items over enriched grain items to estimate the impact of serving more whole grain-rich items. Using data from the SY 2009–2010 School Food Purchase Study III, which collects data on the value of school district food acquisitions,[97] a weighted average price per ounce of grains is calculated. This price per ounce is then adjusted by the Producer Price Index for grains to account for inflation since these data were collected. The adjusted price per ounce is $0.10. As noted, this analysis assumes whole grain-rich items are estimated to cost 15 percent more than the estimated $0.10 per ounce of grain. This means that it costs $0.015 more on average for an ounce of whole grain-rich grains compared to an ounce of enriched grains.

TABLE 4—PRICE PER POUND FOR GRAIN ITEMS FROM SCHOOL FOOD PURCHASE STUDY III

Grain item group	$ Value purchased	Pounds purchased	Price per pound	Price per oz
BREAD & ROLLS	$465,505,505	406,629,005	$1.1448	$0.0715
PASTA & NOODLES	22,795,477	24,500,911	0.9304	0.0581
RICE, BARLEY & OTHER GRAINS	17,626,092	18,115,017	0.9730	0.0608
TOTAL WEIGHTED	505,927,074	449,244,933	1.1262	0.0704

Schools must offer a minimum quantity of grains daily and weekly for both lunch and breakfast; these requirements vary for the three age/grade groups. For the 9–12 age/grade group, the minimum quantity of grain that must be offered per week is 10 oz equivalent, which is the sum of the daily quantity requirement of 2 oz equivalents. For the K–5 and 6–8 age/grade groups, the required weekly quantity is higher than the daily totals summed across the week.[98] The average weighted daily quantity of grains necessary to meet the average weekly requirement across all age/grade groups and NSLP and SBP is 1.68 oz equivalents (or 8.44 oz equivalents across the week). The 1.68 oz equivalents of whole grain-rich grains a day is estimated to cost $0.025 (1.68 × $0.015) more than the cost of 1.68 oz equivalents of enriched grain items. This price difference applied to the number of additional grain oz equivalents that schools will need to offer as whole grain-rich to meet the requirements of this final rule, multiplied by the number of meals, provides an estimated value of the cost to transition more offerings to whole grain-rich.

TABLE 5—OUNCE EQUIVALENTS AT EACH WHOLE GRAIN-RICH LEVEL

Whole grain-rich requirement percentage	Total weekly ounce equivalents required
100 PERCENT (2012 REQUIREMENT)	8.44
80 PERCENT (THIS FINAL RULE)	6.75
50 PERCENT (PRIOR REQUIREMENT)	4.22
75 PERCENT (ESTIMATED CURRENT LEVEL)	6.33

The range of costs are built on two separate sets of assumptions. The high estimated cost level assumes that because the 2012 whole grain-rich requirement was never fully implemented, all schools moved back to the requirement to offer half of grains as whole grain-rich which was the requirement in the proposed rule. This is likely an overestimate due to the significant progress schools and the food industry have made since SY 2012–2013. The low estimated scenario, which is the expected scenario, uses the information to-date on whole grain-rich progress and assumes that on average schools are currently offering 75 percent grain items as whole grain-rich. This uses the information that 70 percent of weekly menus at schools were already offering at least 80 percent of grain items as whole grain-rich in SY 2014–2015.

These estimated costs may be incurred by the school district and/or within the grain market in the form of purchases of additional whole grain-rich varieties. Schools may shift away from items that are not preferred as whole grain-rich and substituting different whole grain-rich items. This could potentially reduce variety and impact the manufacturers of these items, possibly resulting in loss of some of the school market or increased costs to develop successful whole grain-rich options.

Table 6 shows the costs associated with moving fully to 2012 standard that all grains are whole grain-rich and moving to the 80 percent threshold in this rule from both estimated starting points (75 percent and 50 percent of grains as whole grain-rich). These are the costs if this rule is not issued, and schools must return to the 2012 standard of exclusively offering whole grain-rich items. The costs associated with moving to the 80 percent threshold are the costs of this rule.

TABLE 6—ESTIMATED COSTS OF INCREASING WHOLE GRAIN-RICH ITEMS

[Millions]

Whole grain-rich requirement	Expected annual cost (increasing from 75 percent WGR)	High annual cost (increasing from 50 percent WGR)
INCREASING TO 80 PERCENT	$76	$454

[96] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 3: School Meal Costs and Revenues by Christopher Logan, Vinh Tran, Maria Boyle, Ayesha Enver, Matthew Zeidenberg, and Michele Mendelson. Project Officer: John Endahl. Alexandria, VA: April 2019.

[97] U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, School Food Purchase Study-III, by Nick Young et al. Project Officer: John R. Endahl, Alexandria, VA: March 2012.

[98] This assumes a 5-day school week and the daily quantity for K–5 and 6–8 age/grade groups is 1 oz equivalents and the weekly requirement is 8 oz equivalents for NSLP and 7 oz equivalents for SBP.

TABLE 6—ESTIMATED COSTS OF INCREASING WHOLE GRAIN-RICH ITEMS—Continued

[Millions]

Whole grain-rich requirement	Expected annual cost (increasing from 75 percent WGR)	High annual cost (increasing from 50 percent WGR)
INCREASING TO 100 PERCENT	379	757

Without this final rule, schools would be required to meet the 2012 requirement to offer all grains as whole grain-rich. Compared to the 2012 requirement, this rule is estimated to save $303 million annually by instead requiring 80 percent of grains offered to be whole grain-rich.

Sodium Standard

The 2012 Final Rule directed schools to meet Sodium Target 1 by SY 2014–2015, Sodium Target 2 by SY 2017–2018, and the Sodium Final Target by SY 2022–2023. This rule extends Sodium Target 1 through the end of SY 2022–2023 for both NSLP and SBP and requires compliance with Sodium Target 1A for NSLP starting in SY 2023–2024. In the absence of this rule, schools would be required to implement the Sodium Final Target for both NSLP and SBP in SY 2022–2023.

In SY 2014–2015, the first year Target 1 was scheduled to take effect, 72 percent of all average weekly NSLP menus, and 67 percent of all average weekly SBP menus, met Target 1.[99] According to the USDA study on Successful Approaches to Reduce Sodium in School Meals,[100] schools, Food Service Management Companies, and manufacturers noted that it was possible to meet Target 1 with foods already developed but to implement the subsequent targets, schools will likely need to move to more scratch cooking. Almost 80 percent of schools do some scratch cooking and 70 percent of schools do on-site preparation, where the school prepares meals on-site for serving only at that school.[101] This suggests that schools in general have the structure to conduct some scratch cooking, but that reductions in sodium may result in more labor-intensive food preparations and/or additional infrastructure needs.

There was no significant difference between the cost per meal for schools that were meeting Target 1 and those that were not meeting Target 1.[102] Given that most schools were able to meet Target 1 with available food or with few changes to meal-preparation, this finding is not surprising, but may not be sustained as further sodium Targets are implemented. The need for more labor-intensive food preparation, including scratch cooking, would likely continue until lower sodium products are more readily available in the school food market, which will take time.

Industry members reported in the USDA study on Successful Approaches to Reduce Sodium in School Meals that to be successful in reducing sodium, taste tests with students are critical before mass production. Industry reported that this process can take time and if not done correctly may result in increased plate waste or students choosing not to participate in school meals. If school meals taste markedly different than foods that students eat outside of school, which may have much more sodium, it can be difficult to gain their acceptance of the foods served in schools.

About three-quarters of school food service directors reported in SY 2016–2017 that gaining student acceptance of the new standards was moderately to extremely challenging with respect to maintaining student participation.[103] Returning to the 2012 standards in SY 2022–2023 will not allow for sufficient time for industry to continue to successfully reduce sodium levels in products for the school market.

The Final Sodium Target in the 2012 standards was meant to be achieved over a period of ten years while meeting two interim sodium Targets. Sodium Target 2 was a 20 percent reduction from Sodium Target 1. The Sodium Final Target was another 25 percent reduction from Sodium Target 2 and a 40 percent reduction from Sodium Target 1.[104] Like the 2012 whole grain-rich requirement, schools were never required to fully adhere to the 2012 sodium reduction timeline due to a long history of administrative and legislative actions. The immediacy of going straight to the Sodium Final Target when the gradual sodium reduction did not occur as intended, compounded by the COVID–19 pandemic, will likely be extremely difficult due to the drastic reduction required over a short period of time. Meeting the Sodium Final Target would be a 35 percent drop on average for NSLP and SBP from sodium levels in prepared meals in SY 2014–2015.[105]

Industry has made great strides in producing lower sodium products since the implementation of the 2012 standards and USDA Foods increased lower sodium offerings; however, additional time is necessary for industry to adjust and continue to formulate lower sodium products. The FDA, in October 2021, released voluntary sodium reduction targets for the food industry. The FDA's guidance provides voluntary short-term (2.5 year) sodium reduction targets for food manufacturers, chain restaurants, and food service operators for 163 categories of processed, packaged, and prepared foods. The targets in the FDA's guidance seek to support decreasing average U.S. population sodium intake from approximately 3,400 mg to 3,000 mg per day, about a 12 percent reduction. While FDA is recommending the voluntary targets be met in 2.5 years, in advance of that timeframe schools are anticipated to be able to procure additional options that are lower in sodium as the food industry continues reformulation efforts and develops new food products that align with FDA's voluntary targets.[106]

The USDA study on Successful Approaches to Reduce Sodium in School Meals also noted that reducing sodium can be challenging, especially when using pre-packaged products, which may result in schools no longer purchasing these items.[107] Combination entrees and accompaniments contributed the most (61 percent) to the

[99] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et.al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[100] Gordon, E.L., Morrissey, N., Adams, E., Wieczorek, A. Glenn, M.E., Burke, S & Connor, P. (2019). Successful Approaches to Reduce Sodium in School Meals Final Report. Prepared by 2M Research under Contract No. AG–3198–P–15–0040. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service.

[101] Standing, Kim, Joe Gasper, Jamee Riley, Laurie May, Frank Bennici, Adam Chu, and Sujata Dixit-Joshi. Special Nutrition Program Operations Study: State and School Food Authority Policies and Practices for School Meals Programs School Year 2012–13. Project Officer: John R. Endahl. Prepared by Westat for the U.S. Department of Agriculture, Food and Nutrition Service, October 2016.

[102] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 3: School Meal Costs and Revenues by Christopher Logan, Vinh Tran, Maria Boyle,Ayesha Enver, Matthew Zeidenberg, and Michele Mendelson. Project Officer: John Endahl. Alexandria, VA: April 2019.

[103] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Child Nutrition Program Operations Study (CN–OPS–II): SY 2016–17. Beyler, Nick, Jim Murdoch, and Charlotte Cabili. Project Officer: Holly Figueroa. Alexandria, VA: June 2021.

[104] Percent decreases are based on the sum of Sodium Target lunch and breakfast requirements.

[105] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals by Elizabeth Gearan, Mary Kay Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019.

[106] U.S. Food and Drug Administration: *Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods.* October 2021 *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-voluntary-sodium-reduction-goals.*

[107] Gordon, E.L., Morrissey, N., Adams, E., Wieczorek, A. Glenn, M.E., Burke, S & Connor, P. (2019). Successful Approaches to Reduce Sodium in School Meals Final Report. Prepared by 2M Research under Contract No. AG–3198–P–15–0040. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service.

sodium levels of prepared foods, specifically sandwiches with plain meat and poultry, condiments, and toppings.[108] This may financially impact the manufacturers of these products if they are not able to successfully reduce the sodium levels of products sold to schools.

This final rule maintains Sodium Target 1 for NSLP and SBP through SY 2022–2023, retains Sodium Target 1 for SBP in SY 2023–2024, and institutes a modified Sodium Interim Target 1A for NSLP beginning in SY 2023–2024.[109] USDA set the near-term Target 1A reduction at 10 percent, which also aligns with research indicating gradual sodium reductions are less noticeable to consumers.[110] Target 1A is about a 1 percent to 5 percent decrease from sodium levels in prepared meals in SY 2014–2015 for K–5 and 9–12 age grade groups and a 2 percent increase for 6–8 age/grade group.[111]

TABLE 8—SODIUM TARGET 1 AND 1A AND AVERAGE WEEKLY SODIUM LEVELS FOR PREPARED MEALS

Age/grade group	Sodium Target 1 NSLP	SY 2014–2015 NSLP average sodium levels[112]	% Difference from Sodium Target 1	Target 1A NSLP	% Difference from Sodium Target 1A
K–5	1,230	1,125	−9	1,110	−1
6–8	1,360	1,200	−12	1,225	2
9–12	1,420	1,345	−5	1,280	−5
	Sodium Target 1 SBP	SY 2014–2015 SBP average sodium levels[113]	% Difference from Sodium Target 1		
K–5	540	505	−6		
6–8	600	564	−6		
9–12	640	584	−9		

To estimate the impacts associated with additional sodium reduction, this analysis focuses on the increased need for scratch cooking due to immediate sodium reduction timeframe which does not allow for sufficient time for product development as noted earlier. Scratch cooking is one method to reduce sodium levels and over time can be successfully integrated into a comprehensive sodium reduction plan along with incorporating more lower sodium products into menus. Schools would be able to balance scratch cooking with lower sodium products as industry continues to formulate lower sodium foods. The requirement of the Sodium Final Target going into effect immediately in SY 2022–2023 absent this rule will require schools to move straight to cooking more recipes from scratch. As schools prepare more foods on site, labor costs will increase as prepackaged foods are substituted with scratch cooked foods and schools will need to increase time spent on food preparation. This may require hiring more school food service staff and/or reallocating responsibilities. In addition to labor impacts, the types of foods schools purchase will likely change due to reducing the prepackaged foods and increasing ingredient-based items to support sodium reduction. For example, the USDA study on Successful Approaches to Reduce Sodium in School Meals found that school districts in the study reported serving more fresh fruits and vegetables to reduce sodium content. This may cause a reduction in food costs if items purchased to scratch cook are less expensive; however, these costs may be offset by the quantity needed or additional foods purchased to prepare meals from scratch.

Food and labor costs account for the vast majority (45 percent each for a total of 90 percent) of the average cost to produce a school lunch for a school district. Other reported direct costs are the remaining 10 percent. This distribution is similar for SBP breakfasts.[114] To simulate the potential increase in costs due to changes to the Sodium Targets, this analysis focuses on the estimated increase in labor costs, however food costs are also estimated to proportionally increase based on the distribution of food and labor costs in a school meal.[115]

To capture current scratch cooking practices to estimate the potential increase in scratch cooking and the corresponding impacts, data from USDA's Farm to School Census[116] are used. While the Farm to School Census does not represent all school districts, it does encompass the majority: 65 percent of school districts reported that they participated in at least one Farm to School activity in SY 2018–2019. The distribution of prevalence of scratch cooking from the Farm to School Census is assumed across the 97,000 schools for this analysis.[117] In this respect, these estimates may overstate the current scratch cooking levels with the assumption that school districts participating in Farm to School activities may be more likely to prepare more recipes from scratch.

[108] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals by Elizabeth Gearan, Mary Kay Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019.

[109] As noted in the preamble, when examining the daily sodium allocation attributed to each meal, USDA determined that sodium reductions are most needed at lunch. Therefore, USDA is maintaining Sodium Target 1 for breakfast during the two-year timeframe of this transitional rule, which will allow schools to focus their sodium reduction efforts on school lunch.

[110] Institute of Medicine 2010. *Strategies to Reduce Sodium Intake in the United States.* Washington, DC: The National Academies Press. *https://doi.org/10.17226/12818.*

[111] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals by Elizabeth Gearan, Mary Kay Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019.

[112] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et.al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[113] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et.al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[114] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 3: School Meal Costs and Revenues by Christopher Logan, Vinh Tran, Maria Boyle, Ayesha Enver, Matthew Zeidenberg, and Michele Mendelson. Project Officer: John Endahl. Alexandria, VA: April 2019.

[115] This distribution of food, labor, and other has remained consistent between the two study time periods (SY 2005–2006 and SY 2015–2015). The School Lunch and Breakfast Cost Study—II in SY 2005–2006 and School Nutrition Meal Cost study in SY 2014–2015.

[116] Bobronnikov, E. et al. (2021). Farm to School Grantee Report. Prepared by Abt Associates, Contract No. AG–3198–B–16–0015. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Ashley Chaifetz.

[117] Applying this distribution to schools assumes no significant variation in scratch cooking by school district characteristics.

TALBE 7—PERCENT OF SCHOOL DISTRICTS BY PERCENT OF SCRATCH COOKED RECIPES

[Farm to School Census data]

Prevalence	Percent of schools
<25% RECIPES MADE FROM SCRATCH	40
26–50% RECIPES MADE FROM SCRATCH	32
51–75% RECIPES MADE FROM SCRATCH	19
76–100% RECIPES MADE FROM SCRATCH	10

This analysis assumes that 2 hours a day of additional labor is needed to increase scratch cooking to meet the Sodium Final Target.[118] This could be achieved by hiring a new employee for 10 hours a week or shifting staff for schools already conducting some scratch cooking. Using the average of the Bureau of Labor Statistics series on total compensation for service occupations related to leisure and hospitality and the accommodation and food service workers series, an hourly rate of $15.43 is used to estimate the wage rate of the additional food service staff to perform the additional scratch cooking.[119] This is an additional $30.85 a school day for scratch cooking or $5,553 a year for one school. Multiplying this across all schools provides an estimated $538 million for all schools to increase labor for scratch cooking for 2 additional hours a day. This calculates to $0.07 more a meal for the increase in labor. This $0.07 per meal cost is then scaled by prevalence of scratch cooking across recipes and the estimated labor costs are then doubled to account for the proportional increase in food costs. This analysis assumes that about 7.5 billion school meals (5 billion lunches and 2.5 billion breakfasts) are served in SY 2022–2023. It is assumed that about 10 percent of these meals are served in schools that are already cooking 76 percent to 100 percent of their recipes from scratch and will not have measurable costs associated with moving to the Sodium Final Target in SY 2022–2023. The remaining 90 percent of meals are served in schools that must incur some additional labor and food costs to reduce current sodium levels.

This analysis assumes, based on early implementation progress, most schools are already meeting Sodium Target 1 and can meet Target 1A with reasonable menu changes. In SY 2014–2015, the first year the Sodium Target 1 went into effect, 72 percent of the schools were meeting this requirement for NSLP and 13 percent were within 10 percent of meeting Target 1 for NSLP. For SBP, 67 percent were meeting Target 1 and just over 10 percent were within 10 percent of meeting Target 1. Average prepared sodium levels were already 5 percent to 12 percent lower than the Target 1 limits for NSLP and 6 percent to 9 percent lower for SBP. Average NSLP sodium levels in SY 2014–2015 were also very close to Target 1A.

To capture any schools that are not currently meeting Target 1 or Target 1A, this analysis assumes that 10 percent of meals are served in schools that will need to make changes to their current menus to incorporate lower sodium products. Target 1 was meant to be mostly met with products currently available, but these schools may also need to slightly increase scratch cooking or change preparation practices. This analysis assumes that these schools will need to allow for one more labor hour a day to facilitate the menu changes needed to achieve Target 1 and Target 1A. This is estimated to cost about $98 million more in labor and food to bring these schools to Targets 1 and 1A in SY 2022–2023.

Absent this rule, schools would be required to move to the Sodium Final Target. For this analysis it is assumed if schools are cooking more than 75 percent of recipes from scratch, the Sodium Final Target is achievable. This is supported by the assumption that scratch cooking would reduce combination entrées and condiments, which USDA research finds contribute the most sodium to school meals. Based on the prevalence of scratch cooking, it is assumed that about 80 percent meals are served in schools that will need to increase labor by two full hours per day. The remaining 20 percent of meals are served in schools that will need to increase labor by one hour per day, because these schools are already making between 51 percent and 75 percent of recipes from scratch. It is estimated that it would cost about $975 million in food and labor costs to achieve the Sodium Final Target in SY 2022–2023. This is a per meal increase of $0.13.

TABLE 9—ESTIMATED COSTS BY SODIUM TARGET

[Millions]

Target	Average hours of additional labor per day	Estimated labor costs	Estimated food costs	Estimated total costs
TARGET 1 IN SY 2022–2023; TARGET 1A IN SY 2023–2024	1.0	$49	$49	$98
FINAL TARGET IN SY 2022–2023	1.8	438.5	438.5	877

This analysis does not take into consideration the costs of purchasing additional equipment and/or kitchen renovations to support scratch cooking or the challenges of immediately moving to the Sodium Final Target without enough time to implement successful strategies to reduce sodium. The school districts in the USDA study on Successful Approaches to Reduce Sodium in School Meals reported that scratch cooking and fresh produce preparation required space for preparing foods, adequate storage space including freezer and refrigeration space, proper cafeteria line display and service equipment, and maintenance or upgrading of kitchen equipment for efficient mass preparation of items. Smaller SFAs and those with older cafeteria equipment especially noted these challenges. It is unlikely that schools would be able to procure the necessary equipment to support the increases in scratch cooking in time for SY 2022–2023 due to the procurement process timeframe, which has been further delayed by supply chain disruptions. School size and urbanicity were also associated with SFAs' abilities to procure lower sodium foods and to utilize effective menu planning strategies. Small, rural SFAs reported fewer resources available for purchasing and preparing lower sodium foods, while large, urban SFAs were able to procure more low-sodium items at a lower cost and reported having access to a larger number of suppliers, which enabled them to use more effective menu planning strategies. This is further supported by smaller school districts (less than 500 students enrolled) and rural school districts on average serving

[118] This is just for the base analysis. The Uncertainties section provides a sensitivity analysis of other labor hour options. The additional 2 hours is for preparing breakfasts and lunches. It is likely that lunch preparation will account for a larger share of the 2 hours. The two hours is loosely modeled from the higher average of 51 minutes spent of food preparation from the American Time Use Survey. *American Time Use Survey Home Page (bls.gov).*

[119] Full compensation series is less granular that wage series, the two closest series are used to estimate the labor rates for additional food service staff dedicated to cooking.

meals with significantly higher sodium levels in SY 2014–2015.[120]

As noted, sodium reduction must be implemented over time to allow for successful product reformulation while balancing increased scratch cooking. Taste testing was the most used approach for gaining student acceptance of lower sodium items. School districts reported experiencing challenges in gaining student acceptance, but indicated that they were often successful when using a combination of supportive approaches such as performing taste tests to identify student preferences, tailoring menu options to cultural and regional preferences, promoting healthy food choices through education and communication materials, and implementing menu changes incrementally.

Many districts also engaged parents, staff, and community members in taste tests, nutrition education, and other promotional activities to increase buy-in.[121] According to an analysis of 2011–2016 National Health and Nutrition Examination Survey (NHANES) data, almost all school children (94 percent) had usual sodium intakes that exceed the Chronic Disease Risk Reduction (CDRR) level.[122] [123] This is a widespread issue and strategies must be implemented by industry and schools over time for success.

Given that these strategies are meant to be implemented over time, schools will not be able to pivot quickly to these strategies in SY 2022–2023, particularly given the challenges they will face in shifting off of COVID–19 operations. This is also compounded by the current labor shortages school districts and the entire food service industry are facing as employees left jobs during the pandemic.[124] Prior to the pandemic schools expressed concerns about staffing levels especially in smaller school districts where staff may be responsible for multiple jobs.[125] The pandemic intensified staffing issues for schools and many are currently experiencing shortages and increases in labor rates. Additional burden is currently placed on schools due to the time needed to manage procurement and menu changes in response to the supply chain disruptions. The immediacy of moving to the Sodium Final Target in SY 2022–2023 does not allow schools sufficient time to set up the necessary infrastructure to achieve the sodium reduction required for the Sodium Final Target.

Participation Impacts

This final rule is not anticipated to measurably impact school meal participation due to the changes to the milk, whole grains, and sodium requirements. As noted earlier, this rule provides realistic goals for schools still transitioning from COVID–19 operations and encountering supply chain issues. The COVID–19 meal service levels were lower than typical in the early part of the pandemic when most schools shut down and transitioned to grab-and-go sites to ensure continuity of school meals for children. As schools opened and more children attended school in person, meals served started to move closer to pre-pandemic levels.[126] Through the COVID–19 nationwide waivers, schools have been able to offer free meals to all children to facilitate COVID–19 safety precautions. As schools transition back to typical operations, there may be some uncertainty in participation levels, which may pose challenges in projecting quantities of foods to purchase. This rule is sensitive to the types of foods schools already typically have available to purchase to meet the meal standards. While this rule is not expected to significantly impact program participation, it does support schools and allows additional time for schools to gauge meal program participation post-COVID.

Absent this rule, schools would be required to meet the 2012 standards, most notably meeting the Sodium Final Target requirement, which is a significant reduction in sodium levels. This would pose an extreme challenge for most schools as the full sodium reduction timeline from the 2012 standards was never fully implemented and schools were never required to meet targets below Sodium Target 1. Without this rule, some schools may leave the programs, as the benefits of participation are outweighed by the resources needed to meet program requirements.

It is unlikely that schools will leave the programs due to the milk and whole grain-rich requirements in the 2012 standards due to improved product availability and current progress. However, moving straight to the Sodium Final Target without gradual reduction in sodium levels through product availability and increased scratch cooking is unrealistic and may result in schools dropping out the programs. As noted earlier, smaller (less than 500 enrolled students) and rural schools had significantly higher sodium levels and face additional challenges due to insufficient resources and lack of product availability. Schools that already receive low levels of federal reimbursement due to less free and reduced-price-certified students may not find the benefits of the programs worth the additional resources needed to abruptly meet the Sodium Final Target. To assess the potential number of schools that would drop out of the school meal programs if the 2012 standards immediately went into effect next school year, smaller schools with low levels of free and reduced-price-certified children (less than 25 percent) are targeted in estimating this unintentional impact.

Just under 5 percent of schools nationwide have less than 500 students enrolled and less than 25 percent free and reduced-price-certified children. This is about 4,500 schools estimated to drop out of the school meal programs absent this rule. About 25 percent of these schools are in rural areas. There are estimated to be about 1.4 million children enrolled in these schools with about 214,000 children approved for free and reduced-price meals.[127] USDA estimates there are about 814,000 daily NSLP participants and 428,000 daily SBP participants in these schools.[128] Federal reimbursements are estimated to decrease by an estimated $180 million the first year (or about 1 percent of total NSLP and SBP meal reimbursements) due to schools dropping out of the NSLP and SBP and children losing access to school meal benefits.

TABLE 10—ANNUAL REDUCTION IN FEDERAL REIMBURSEMENTS DUE TO SCHOOLS LEAVING NSLP AND SBP

[Millions]

FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	5-Year
−$3	−$179	−$184	−$190	−$195	−$751

[120] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals by Elizabeth Gearan, Mary Kay Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019.

[121] Gordon, E.L., Morrissey, N., Adams, E., Wieczorek, A. Glenn, M.E., Burke, S. & Connor, P. (2019). Successful Approaches to Reduce Sodium in School Meals Final Report. Prepared by 2M Research under Contract No. AG–3198–P–15–0040. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service.

[122] Reducing sodium intakes above the CDRR is expected to reduce the risk of chronic disease.

[123] Unreleased USDA report using 2011–2016 National Health and Nutrition Examination Survey (NHANES) data to examine the relationship between estimated program participation, diet quality, indicators of nutrition and health, food consumption patterns, and nutrient intakes.

[124] Employment in leisure and hospitality is down by 1.4 million, or 8.2 percent, since February 2020. *The Employment Situation—October 2021 (bls.gov).*

[125] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 1: School Meal Program Operations and School Nutrition Environments by Sarah Forrestal, Charlotte Cabili, Dallas Dotter, Christopher W. Logan, Patricia Connor, Maria Boyle, Ayseha Enver, and Hiren Nissar. Project Officer: John Endahl. Alexandria, VA: April 2019.

[126] According to FNS administrative data on meals served across NSLP, SBP, and SFSP, October 2020 meals were only 65 percent of total October 2019 meals. May 2021 meals were 86 percent of May 2019 meals service.

[127] Based on an internal USDA analysis using nationally representative data from the School Nutrition Meal Cost study on school characteristics.

[128] Using national participation rates of 57 percent for NSLP and 30 percent for SBP.

While this is a savings for the Federal government in meal reimbursements, it transfers the costs of preparing school meals to the households. Given the time it takes to prepare meals and higher food costs due to inflation and not being able to purchase foods in bulk, it is likely that the costs to the households would be higher than just the Federal reimbursement levels. Lunches consumed from school are, on average, the most nutritious compared to lunches from home or other places, and students consuming school lunch were more likely to consume milk, fruits, vegetables than students who did not eat a school lunch.[129] It would take additional time and resources for households to prepare lunches that are equivalent in nutritional value. This could pose hardships for households, especially for those with children approved for free or reduced-price meals.

Summary

As noted earlier, this rule is intended to support the transition from COVID–19 operations and to allow time for a more long-term comprehensive rulemaking process to further update the standards to reflect the *Dietary Guidelines for Americans, 2020–2025*.[130] This rule makes adjustments from the proposed rule to continue efforts to improve the nutrition of school meals while maintaining operational feasibility. Most of the impacts associated with this rule are in the form of shifts in purchasing patterns and costs incurred by the schools to procure additional products to meet the standards and increases in labor. Costs in this section may not actually be incurred but reflect the potential value of the changes in this rule and impacts absent this rule.

TABLE 11—ESTIMATED ANNUAL INCREASE AND REDUCTION IN SCHOOL COSTS

[Millions]

ESTIMATED ANNUAL COSTS MOVING TO 2012 STANDARDS	
MILK (NO LOW FAT FLAVORED)	−$13
100 PERCENT WHOLE GRAIN-RICH	378
SODIUM FINAL TARGET	975
TOTAL	1,341
PER MEAL	0.18
ESTIMATED ANNUAL COSTS OF FINAL RULE	
MILK (LOW FAT FLAVORED ALLOWED)	13
80 PERCENT WHOLE GRAIN-RICH	76
SODIUM TARGET 1 AND 1A	98
TOTAL	187
PER MEAL	0.03
ESTIMATED ANNUAL REDUCTIONS WITH FINAL RULE COMPARED TO 2012 STANDARDS	
MILK (LOW FAT FLAVORED ALLOWED)	13
80 PERCENT WHOLE GRAIN-RICH	−303
SODIUM TARGET 1 AND 1A	−780
TOTAL	−1,069
PER MEAL	−0.15

If the 2012 standards for milk, whole grain, and sodium are fully implemented in SY 2022–2023, it will cost schools $0.18 cents per lunch and breakfast in food and labor costs. Impacts to the market will be similar in magnitude as purchasing patterns shift to encompass more whole grain-rich items and ingredients for scratch cooking. The shifts would primarily occur from enriched to whole grain-rich products to the meet the grain requirement and from prepackaged foods with higher sodium levels to other food, such as more fruits and vegetables and ingredients to support more scratch cooking. The milk purchases will shift away from flavored low-fat to flavored fat-free varieties, which will offset total costs since flavored low-fat varieties are slightly more expensive than flavored fat-free varieties. Total annual costs associated with restoring the 2012 standards in SY 2022–2023 are estimated at $1.3 billion the first year to make this transition based on progress to-date in implementing the 2012 standards. If progress regressed from SY 2014–2015 due to uncertainty in the requirements over the years and COVID–19 impacts, costs are estimated to be closer to $1.7 billion the first year or $0.24 more per breakfast and lunch.

Estimated annual costs associated with moving to the requirements in this rule are $187 million the first year or $0.03 more per lunch and breakfast. These costs are associated with purchasing flavored low-fat milk and more whole grain-rich products. There are also some costs associated with schools that still need to move to Target 1 for NSLP and SBP and Target 1A for NSLP in SY 2023–2024 through purchasing shifts to lower sodium products and increases in scratch cooking. If all flavored fat-free milk is substituted with flavored low-fat milk, and schools regressed in whole grain-rich progress compared to SY 2014–2015, this rule is estimated to cost $665 million the first year or $0.09 more per meal.

This rule is estimated to reduce impacts to schools by $0.15 per meal or $1.1 billion in the first year by reducing the requirement from serving exclusively whole grain-rich products to 80 percent whole grain-rich products and holding Sodium Target 1 for SY 2022–2023 for NSLP and SBP and moving to Target 1A for NSLP in SY 2023–2024. There is an increase in costs due to allowing flavored low-fat milk, which tends to cost slightly more than flavored fat-free milk.[131]

This rule provides achievable standards while USDA engages in more comprehensive long-term rulemaking to further update the

[129] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes by Mary Kay Fox, Elizabeth Gearan, Charlotte Cabili, Dallas Dotter, Katherine Niland, Liana Washburn, Nora Paxton, Lauren Olsho, Lindsay LeClair, and Vinh Tran. Project Officer: John Endahl. Alexandria, VA: April 2019.

[130] The new final rule is anticipated to be in effect in time for SY 2024–2025.

[131] Voluntary incurring of a cost is likely associated with benefits that are difficult to quantify—potentially, in this case, including reduced food waste.

meal standards. These costs assume relatively stable participation over the 5-years with SY 2022–2023 projected to return to pre-pandemic meal service levels.

TABLE 12—ESTIMATED 5-YEAR COSTS AND REDUCTION

[Millions]

	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	5-Year
ESTIMATED COSTS MOVING TO 2012 STANDARDS						
MILK (NO FLAVORED LOW-FAT)	−$2	−$13	−$13	−$14	−$14	−$56
100 PERCENT WHOLE GRAIN-RICH	61	378	386	394	402	1,620
SODIUM FINAL TARGET	156	975	995	1,015	1,035	4,176
TOTAL	$214	$1,341	$1,367	$1,395	$1,423	$5,740
ESTIMATED COSTS OF FINAL RULE						
MILK (FLAVORED LOW-FAT ALLOWED)	2	13	13	14	14	56
80 PERCENT WHOLE GRAIN-RICH	12	76	77	79	80	324
SODIUM TARGET 1 AND 1A	16	98	100	102	104	421
TOTAL	30	187	191	195	199	802
ESTIMATED REDUCTION IN COSTS DUE TO FINAL RULE						
MILK (FLAVORED LOW-FAT ALLOWED)	2	13	13	14	14	56
80 PERCENT WHOLE GRAIN-RICH	−48	−303	−309	−315	−321	−1,296
SODIUM TARGET 1 AND 1A	−125	−780	−795	−811	−827	−3,338
TOTAL	−171	−1,069	−1,090	−1,112	−1,134	−4,577

The number of schools dropping out of the programs will reduce the number of meals served if 2012 standards are restored. This will reduce the costs associated with returning to the 2012 standards by 3 percent or an annual reduction of $40 million due to schools dropping out of the school meal programs and less children participating.

TABLE 13—INTERACTION BETWEEN 2012 STANDARDS COST AND SCHOOLS LEAVING NSLP AND SBP

[Millions]

FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	5-Year
$208	$1,300	$1,326	$1,354	$1,382	$5,362

Uncertainties

School Meal Student Participation

As noted earlier, participation for the base estimates is assumed to mirror pre-pandemic levels and then stabilize at a rate of about a 2 percent increase from year to year. Long-term participation impacts of the pandemic are unknown, and a full rebound may not occur. There is also the chance participation will increase as most schools have been offering meals at no charge to students. Households may have realized the benefits of school meals during the pandemic, which may cause children to participate at higher rates even as schools return to standard operations. This sensitivity analysis assumes a participation increase and decrease of 5 percent to measure the impact of participation changes on the estimated impacts of this rule and returning to the 2012 standards absent this rule. This analysis does not take into consideration potential economies of scale: As more meals are served, schools may be able to reduce costs through bulk purchasing and preparing meals at a lower per meal cost. These costs are compared to the base analysis costs for the first year of $1.3 billion to return to the 2012 standards and $187 million for this final rule.

TABLE 14—PROJECTED COSTS BY PARTICIPATION CHANGE

[Millions]

	1-Year	5-Year
ESTIMATED COSTS MOVING TO 2012 STANDARDS		
5 PERCENT PARTICIPATION INCREASE	$1,408	$6,292
5 PERCENT PARTICIPATION DECREASE	1,274	4,928
ESTIMATED COSTS OF FINAL RULE		
5 PERCENT PARTICIPATION INCREASE	197	879
5 PERCENT PARTICIPATION DECREASE	178	689

Grain Cost Difference

The base analysis assumed that there is currently about a 15 percent price increase for whole grain-rich items compared to enriched grain items. This assumption was based on decreasing the 34 percent assumed mark up in whole grain-rich prices in the Regulatory Impact Analysis for the 2012 rule. Most of the grain items offered in school meals in SY 2014–2015 were whole grain-rich, as USDA Foods and the broader school food industry have increased whole grain offerings over the years. This reduction was assumed to be about half the 34 percent; however, this was adjusted based on data supporting a reduction in the 34 percent but unable to be quantified. The impacts estimated below are based on a 30 percent and 5 percent price increase for whole grain-rich products compared to enriched grain products. This gives a sense of the potential range of costs associated with the whole grain-rich requirements in this rule, and in the 2012 rule. These estimates are compared to the base analysis estimates of $379 million to go to the 2012 standards and $76 million for this rule.

TABLE 15—ESTIMATED COSTS OF INCREASING WHOLE GRAIN-RICH ITEMS BY WHOLE GRAIN-RICH COST INCREASE LEVEL

[Millions]

Requirement change	Expected annual cost (increasing from 75 percent WGR)	High annual cost (increasing from 50 percent WGR)
ASSUMING A 30 PERCENT COST INCREASE FOR WHOLE GRAIN-RICH ITEMS		
INCREASING TO 100 PERCENT	$757	$1,513
INCREASING TO 80 PERCENT	$151	908
ASSUMING A 5 PERCENT COST INCREASE FOR WHOLE GRAIN-RICH ITEMS		
INCREASING TO 100 PERCENT	126	252
INCREASING TO 80 PERCENT	25	151

Labor Hours for Scratch Cooking

As noted, until lower sodium products are more readily available in the school food market, USDA expect that schools would rely on more labor-intensive food preparation, including scratch cooking, to meet lower sodium standards. The assumption that it would take about 2 hours a day to increase scratch cooking to support sodium reduction was based on a general concept that about an hour is spent on food preparation and clean up a day.[132] For the sake of the base analysis, this time is doubled to two hours to reflect the average increased time for bulk scratch cooking across schools. This may be an underestimate especially absent this rule and requiring schools to quickly pivot to scratch cooking possibly for the first time. It may take longer to plan recipes and successfully prepare meals as well as obtain the necessary equipment, resources, and staff to support additional scratch cooking. This analysis increases the labor hours to 20 hours per week or 4 hours per day to estimate the increased costs for additional hours dedicated to scratch cooking.

TABLE 16—ESTIMATED INCREASE IN SODIUM COSTS FOR 4 HOURS/DAY

Target	Estimated labor costs	Estimated food costs	Estimated total costs
TARGET 1 IN SY 2022–2023; TARGET 1A IN SY 2023–2024	$97	$97	$194
FINAL TARGET IN SY 2022–2023	877	877	1,754

D. Benefits

This final rule aligns with progress implementing the 2012 meal standards and provides schools the ability to transition from COVID–19 operations. It is not expected schools will need to make significant modifications to their typical operations and resources to meet the requirements in this final rule. This rule is to support schools recovering from significant supply chain disruptions, which have made it difficult to obtain food needed to meet certain meal pattern requirements and provide the necessary time for USDA to make long term changes to continue to improve the nutritional content of school meals.

School meals are an important source of food for almost 30 million children each school day and have served as critical nutrition support during the COVID–19 pandemic. During the COVID–19 pandemic, about 1 in 10 adults (25 million) reported that they or their families have sometimes or often not had enough food to eat in the last 7 days. Food hardship rates were higher for Black and Hispanic adults, with 1 and 5 Black adults, and 1 in 6 Hispanic adults, reporting that they or their families have sometimes or often not had enough to eat in the last 7 days. Families with children were also more likely to experience hardship, with 49 percent more frequent reports of food insufficiency compared to those without children. Schools served an important source of food assistance during the pandemic. Families reporting receiving free meals or groceries during the last 7 days reported schools as the most common source of this assistance.[133]

The nutrition content of school meals has already significantly increased and is leading to long term dietary improvements among school children. As noted earlier, total HEI–2010 scores for lunches consumed were higher for NSLP participants, regardless of income, compared to nonparticipants, and NSLP participants' lunches had higher scores for of dairy, whole grains, and vegetables and lower concentrations of refined grains and empty calories.[134] Another study that evaluated diet quality trends by food source among U.S. children and adults and by different sociodemographic subgroups found that the quality of foods (meals, snacks, and beverages) consumed from school improved significantly without population disparities. These findings suggest that the 2012 meal standards produced significant, specific, and equitable changes in dietary quality of school foods. The increase in dietary quality of foods consumed from school was primarily driven by significant improvement in scores

[132] *Table A–1. Time spent in detailed primary activities and percent of the civilian population engaging in each activity, averages per day by sex, 2019 annual averages (bls.gov).*

[133] USDA internal analysis of the Census Household Pulse data: *Household Pulse Survey Data Tables (census.gov).*

[134] Gearan EC, Monzella K, Jennings L, Fox MK. Differences in Diet Quality between School Lunch Participants and Nonparticipants in the United States by Income and Race. Nutrients. 2021;12(12):3891. *https://www.mdpi.com/2072-6643/12/12/3891.*

for whole grains, saturated fat, and sodium.[135]

This final rule maintains and advances these nutritional improvements while USDA works to further strengthen the school meal pattern requirements through a permanent rulemaking based on a comprehensive review of the *Dietary Guidelines for Americans, 2020–2025.* Taking time to incorporate the latest science is imperative. The *Dietary Guidelines* note that taste preference for salty foods may be established early in life, and that early food preference can influence later food choices. In adults, there is moderate to strong evidence for a causal and intake-response relationship between sodium intake and cardiovascular risk factors, including hypertension.[136] Reducing daily sodium intake down to the CDRR reduces these risks and would particularly benefit groups with higher prevalence and risk for hypertension and cardiovascular disease, including older adults and certain racial and ethnic groups, particularly non-Hispanic Black groups. In SY 2014–2015 about 73 percent of Non-Hispanic Black children usually participated in NSLP and about 46 percent participated in SBP. On average, elementary school participation was higher than middle and high school participation in both the NSLP and SBP [137] stressing the importance of building on the success of school meals in supporting healthy eating.

Returning to the 2012 standards in SY 2022–2023 would be unrealistic for schools, with an estimated $1.3 billion in food and labor costs to support more scratch cooking and food purchases shifts but also from an operational standpoint. Standing up increased scratch cooking takes time to execute successfully, including time for students to provide feedback through taste tests and other activities to increase acceptance. Manufacturers need time to test and reformulate whole grain-rich and lower sodium products for the school market for schools to employ a comprehensive sodium reduction plan.

The COVID–19 nationwide waivers significantly changed program operations, and time is needed to transition back to typical meal service. The timing of this rule is important as it provides time for schools to transition, but also leverages the important lessons from the pandemic on the importance of strong nutrition standards. The COVID–19 pandemic and corresponding school closures greatly disrupted the lives of children, likely resulting in increased stress, irregular mealtimes, less access to nutritious foods, increased screen time, and fewer opportunities for physical activity. Families already disproportionally affected by obesity risk factors likely had additional interruptions in income, food, and other social factors that impact obesity risk and health [138] [139] This rule is estimated to potentially require $187 million in additional resources or changes in purchasing patterns to implement; however, it saves an estimated $0.15 per meal if schools were required to fully meet all 2012 standards in SY 2022–2023. Schools would face extreme challenge immediately returning to the 2012 standards from COVD–19 operations which would be compounded by the supply chain disruptions. This rule strikes the necessary balance in operational feasibility and recognizing the critical need to maintain strong achievable school nutrition standards during this transition period to continue to improve the diets of school children.

E. Alternatives

Whole Grain-Rich Requirement at 60 Percent

One consideration when developing this rule was to set a requirement that schools must offer at least 60 percent of grain offerings as whole grain-rich instead of 80 percent. As noted earlier, in SY 2014–2015, schools were on average serving about 70 percent of grains as whole grain-rich. While the 60 percent threshold would likely be easier to meet, it could be a step back in whole grain-rich progress. If all schools regressed back to the requirement that only half of grain offerings had to be whole grain-rich, the 60 percent would have slightly increased progress. USDA has no evidence to suggest that schools regressed in whole grain-rich offerings before the pandemic and recognizes the important role whole grains play in a nutritious diet. Using the same methodology as the base whole grain-rich analysis, it would cost about $151 million for schools to move to 60 percent of grain offerings as whole grain-rich. This estimate assumes that all schools moved back to the requirement of just half of grains offering as whole grain-rich. This is equivalent to the $454 million for all schools to move from half of grain offerings as whole grain-rich to 80 percent whole grain-rich offerings.

TABLE 17—ESTIMATED COSTS OF INCREASING WHOLE GRAIN-RICH ITEMS

[Millions]

Threshold	Expected annual cost (increasing from 75 percent WGR)	High annual cost (increasing from 50 percent WGR)
INCREASING TO 100 PERCENT	$378	$757
INCREASING TO 80 PERCENT	76	454
INCREASING TO 60 PERCENT	0	151

Sodium Target 1 for SY 2022–2023 and Sodium Target 2 for SY 2023–2024

Another consideration during the decision process for this rule was to require schools to meet Sodium Target 1 in SY 2022–2023 and move to Sodium Target 2 in SY 2023–2024. As noted earlier, the sodium timeline from the 2012 standards was never fully implemented and schools have only been required to reach Sodium Target 1. Sodium Target 2 for SBP is about a 10 percent reduction from Sodium Target 1 and a 24 percent reduction for NSLP. Average sodium levels for prepared SBP breakfasts in SY 2014–2015 were about 2 percent to 5 percent higher than Sodium Target 2, and average sodium levels for NSLP lunches were about 14 percent to 20 percent higher than Sodium Target 2. This would still be a substantial reduction for schools to achieve in one school year. Originally, Sodium Target 2 was meant to go into effect 3 years after schools were required to meet Sodium Target 1. These difficulties would be compounded by prolonged uncertainty regarding the Sodium Targets, industry needing more time to reformulate products with lower sodium levels, and the challenges schools may face transitioning from COVID–19 operations and supply chain disruptions. Using the same methodology as the base sodium estimates, it is estimated that schools would require at least 1 hour a day of additional scratch cooking to meet Sodium Target 2 as well as the equivalent amount to support changes in purchasing patterns. It is estimated to cost

[135] Liu J, Micha R, Li Y, Mozaffarian D. Trends in Food Sources and Diet Quality Among US Children and Adults, 2003–2018. JAMA Netw Open. 2021;4(4):e215262. doi:10.1001/jamanetworkopen.2021.5262.

[136] National Academies of Sciences, Engineering, and Medicine 2019. Dietary Reference Intakes for Sodium and Potassium. Washington, DC: The National Academies Press. *https://doi.org/10.17226/25353.*

[137] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes by Mary Kay Fox, Elizabeth Gearan, Charlotte Cabili, Dallas Dotter, Katherine Niland, Liana Washburn, Nora Paxton, Lauren Olsho, Lindsay LeClair, and Vinh Tran. Project Officer: John Endahl. Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[138] Andrew G. Rundle1,2, Yoosun Park3, Julie B. Herbstman4, Eliza W. Kinsey1, and Y. Claire Wang, COVID–19–Related School Closings and Risk of Weight Gain Among Children.

[139] Lange SJ, Kompaniyets L, Freedman DS, et al. Longitudinal Trends in Body Mass Index Before and During the COVID–19 Pandemic Among Persons Aged 2–19 Years—United States, 2018–2020. MMWR Morb Mortal Wkly Rep 2021;70:1278–1283. DOI: *http://dx.doi.org/10.15585/mmwr.mm7037a3.*

about $244 million in labor and the same amount in food costs for a total of $488 million for schools to reach Sodium Target 2. Along with the costs to reach Target 2, it would cost an additional $98 million for 10 percent of schools to comply with Target 1. This is an annual total of $585 million for food and labor costs for schools to meet Sodium Target 2. The base analysis estimate for this rule only included the $98 million for the 10 percent of meals to reach Target 1 and Target 1A.

TABLE 18—ESTIMATED COSTS BY SODIUM TARGET

[Millions]

Target	Average hours of additional labor per day	Estimated labor costs	Estimated food costs	Estimated total costs
TARGET 1 IN SY 2022–2023; TARGET 1A IN SY 2023–2024	1.0	$49	$49	$98
FINAL TARGET IN SY 2022–2023	1.8	438.5	438.5	877
TARGET 2 IN SY 2023–2024	1.0	244	244	488

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