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## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Part 106

**[CIS No. 2688–21; DHS Docket No. USCIS–2021–0011]**

**RIN 1615–AC73**

## Implementation of the Emergency Stopgap USCIS Stabilization Act

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** The Department of Homeland Security (DHS) is amending DHS premium processing regulations to codify statutory changes made by the Continuing Appropriations Act, 2021 and Other Extensions Act (Continuing Appropriations Act). The Continuing Appropriations Act included the Emergency Stopgap USCIS Stabilization Act (USCIS Stabilization Act), which amended the Immigration and Nationality Act (INA) by modifying U.S. Citizenship and Immigration Services' (USCIS) authority to provide premium processing services and to establish and collect premium processing fees for those services. This rule amends DHS premium processing regulations by updating the regulations to include the fees established by the USCIS Stabilization Act for immigration benefit requests that were designated for premium processing on August 1, 2020, and establishing new fees and processing timeframes consistent with section 4102(b) of the USCIS Stabilization Act.

**DATES:**

*Effective Date:* This rule is effective on May 31, 2022. The availability of premium processing for newly designated immigration benefit requests will be announced by USCIS in accordance with DHS premium processing regulations and will become available as stated at that time.

*Comment Date:* DHS will only accept comments on the revised information collection Form I–907 described in the Paperwork Reduction Act section of this rule. Comments on the revised information collection must be received on or before May 31, 2022. This comment period applies to the Paperwork Reduction Act section of this rule only; it does not cover the substance of the regulatory changes, future policy associated with premium processing availability, or on any other topic related to this rulemaking beyond the proposed revisions to the impacted information collections.

**ADDRESSES:** All comments on the information collection must be submitted through the Federal eRulemaking Portal: *https://www.regulations.gov*. The comments on the information collection must be identified by DHS Docket No. USCIS 2006–0025 and OMB Control Number 1615–0048. Follow the website instructions for submitting comments. Comments submitted in a manner other than the one listed above, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the information collection requirements and will not receive a response from DHS. Please note that USCIS cannot accept any comments that are hand delivered or couriered. In addition, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. USCIS is also not accepting mailed comments at this time. If you cannot submit your comment by using *https://www.regulations.gov,* please contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at (240) 721–3000 for alternate instructions. Public comments submitted on matters related to this final rule, but not specifically associated with the revised information collections, will not be considered by DHS.

**FOR FURTHER INFORMATION CONTACT:** Connie L. Nolan, Acting Associate Director, Service Center Operations, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240–721–3000.

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### Table of Abbreviations

APA—Administrative Procedure Act
BLS—Bureau of Labor Statistics
CEQ—Council on Environmental Quality
CFR—Code of Federal Regulations
CPI—Consumer Price Index
CPI–U—Consumer Price Index for All Urban Consumers
CRA—Congressional Review Act
DHS—Department of Homeland Security
EB—Employment-Based
E.O.—Executive Order
FR—Federal Register
FY—Fiscal Year
GPO—Government Publishing Office
ICE—Immigration and Customs Enforcement
INA—Immigration and Nationality Act
IT—Information technology
NARA—U.S. National Archives and Records Administration
NEPA—National Environmental Policy Act
NIW—National Interest Waiver
NPRM—Notice of Proposed Rulemaking
OP&S—Office of Policy and Strategy
OMB—Office of Management and Budget
PRD—Policy Research Division
Pub. L.—Public Law
RFA—Regulatory Flexibility Act
RIA—Regulatory Impact Analysis
SBREFA—Small Business Regulatory Enforcement Fairness Act
Secretary—Secretary of Homeland Security

Stat.—U.S. Statutes at Large
UMRA—Unfunded Mandates Reform Act of 1995
U.S.C.—U.S. Code
USCIS—U.S. Citizenship and Immigration Services
USCIS Stabilization Act—Emergency Stopgap USCIS Stabilization Act

## I. Executive Summary

### *A. Purpose of the Regulatory Action*

The purpose of this rulemaking is to amend the DHS premium processing regulations to codify those fees set by the USCIS Stabilization Act under section 286(u)(3)(A) of the INA, 8 U.S.C. 1356(u)(3)(A), and to establish new fees and processing timeframes for new immigration benefit requests, consistent with the conditions and eligibility requirements set forth by section 4102(b)(1) of the USCIS Stabilization Act.

In 2000, Congress added new section 286(u) to the INA, 8 U.S.C. 1356(u), to permit the former Immigration and Naturalization Service to designate certain employment-based immigration benefit requests for premium processing subject to an additional fee.[1] At the time, Congress set the premium processing fee and authorized USCIS to adjust the fee for inflation, as determined by the Consumer Price Index for All Urban Consumers (CPI–U).[2] On this basis, USCIS established premium processing fees and timeframes for certain employment-based petitions, including Form I–129, Petition for a Nonimmigrant Worker, and Form I–140, Immigrant Petition for Alien Workers, in certain visa classifications. Petitioners and applicants request premium processing through filing Form I–907, Request for Premium Processing Service, and paying the appropriate fee.[3]

On October 1, 2020, the Continuing Appropriations Act, which included the USCIS Stabilization Act, was signed into law. The USCIS Stabilization Act set new fees for premium processing of immigration benefit requests that had been designated for premium processing as of August 1, 2020, and expanded DHS authority to establish and collect new premium processing fees, and to use those additional funds for expanded purposes.[4]

### *B. Legal Authority*

The Secretary of Homeland Security's (Secretary) authority for regulatory amendments is found in various provisions of the INA, 8 U.S.C. 1101, *et seq.,* and the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 101, *et seq.* General authority for issuing this rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws, and to establish such regulations as the Secretary deems necessary. In addition, section 286(u) of the INA, 8 U.S.C. 1356(u), provides the Secretary with authority to establish and collect a premium fee for the premium processing of certain immigration benefit types. The Continuing Appropriations Act, 2021 and Other Extensions Act, which was signed into law on October 1, 2020, contains the Emergency Stopgap USCIS Stabilization Act (USCIS Stabilization Act).[5] The USCIS Stabilization Act, among other things, set new fees for immigration benefit requests that were designated for premium processing on August 1, 2020, and expanded USCIS authority to establish and collect additional premium processing fees, and to use those additional funds for expanded purposes, including to provide premium processing services to requestors, to make infrastructure improvements in adjudications processes and the provision of information and services to immigration and naturalization benefit requestors, to respond to adjudication demands, including by reducing the number of pending immigration and naturalization benefit requests, and to otherwise offset the cost of providing adjudication and naturalization services.[6]

### *C. Summary of Costs and Benefits*

The USCIS Stabilization Act increased the fees for premium processing services already available, sets fees for and expands premium processing to additional immigration benefits requests, and provides specific purposes for the premium processing fees.[7] The fees may be used to provide the premium processing services; make infrastructure improvements in adjudications processes and the provision of information and services to immigration and naturalization benefit requestors; respond to adjudication demands, including by reducing the number of pending immigration and naturalization benefit requests; and otherwise offset the cost of providing adjudication and naturalization services.[8] This rule provides DHS with the opportunity to increase revenue in order to make infrastructure improvements and improve processing times, among other purposes.

This expansion of electronic filing to application and benefit requests is a prerequisite so that the premium processing form, Form I–907 (which is not currently available electronically) could be filed electronically with the benefit request form for which premium processing is being requested. USCIS plans to encumber additional IT resources needed to make the I–907 available for electronic filing independent of this rule. USCIS intends to implement expansion of premium processing availability of Forms I–539, I–765 and I–140 as soon as feasible. DHS plans on a phased implementation strategy to allow current premium processing revenue to pay for development and implementation costs associated with expanding availability of the service. DHS plans to implement expansion for certain categories of Forms I–539, I–765 and both of the new I–140 classifications in FY 2022. DHS estimates that it will not be able to expand premium processing to the additional categories of Forms I–539 and I–765 until FY 2025 due to the possibility that premium processing revenues do not yet exist to cover any potential costs associated with expanding premium processing to these additional categories without adversely affecting the processing times of other immigration benefit requests, as directed by Congress. This is explained in greater detail in the ''Government Costs'' section below. The projected implementation plan will allow current premium processing revenue to cover potential costs from the expedited processing of a large volume of new requests.

For the 10-year implementation period of the rule if year one is FY 2021, DHS estimates the annualized cost to be $13 million discounted at 3 percent and $12 million discounted at 7 percent. These costs are from the opportunity costs of time that newly eligible populations of Forms I–140, I–539, and I–765 will incur to request premium processing.

For the 10-year implementation period of the rule, DHS estimates the annualized transfer payments from the

[1] *See* Public Law 106–553, App. B, tit. I, sec. 112, 114 Stat. 2762, 2762A–68 (Dec. 21, 2000); INA sec. 286(u) (2000), 8 U.S.C. 1356(u)(2000).

[2] *Id.*

[3] *See* 66 FR 29682 (Jun. 1, 2001); *see also* 8 CFR 103.7(b)(1)(i)(SS) and (e).

[4] *See* Emergency Stopgap USCIS Stabilization Act, Public Law 116–159, sec. 4102 (Oct. 1, 2020).

[5] USCIS Stabilization Act, Public Law 116–159 (Oct. 1, 2020).

[6] *See id.* at sec. 4102.

[7] *See* USCIS Stabilization Act, Public Law 116–159 (Oct. 1, 2020).

[8] *See id.* at sec. 4102(a)(codified as amended at 8 U.S.C. 1356(u)(4) (2020)).

Form I–129 and Form I–140 fee-paying population, and from newly eligible classifications of Form I–140 petitioners, Form I–539 applicants and Form I–765 applicants to DHS to be $743 million discounted at 3 percent and $729 million discounted at 7 percent due to the increase in filing fees.

This final rule benefits petitioners of Form I–140 (EB–1, multinational executives and managers and EB–2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver) who were previously ineligible for premium processing, but will now be eligible following implementation of this final rule to request expedited review of their petitions. As a result, an adjudicative action would be taken more quickly. This change benefits businesses that previously would have had to wait longer to receive adjudicative action (such as a notice of approval) for an employee. It also benefits applicants of Form I–539 who will have the option to receive a decision on their request for a change of status or extension of stay sooner than before, which may alleviate concern about lapses in their nonimmigrant status. Applicants of Form I–765 would benefit through receipt of an adjudicative decision in a specified timeframe making those applicants eligible to work legally in the United States sooner than they would previously.

*D. Summary of the Major Provisions of This Regulatory Action*

This rule amends DHS premium processing regulations to codify those fees set by the USCIS Stabilization Act in section 286(u)(3)(A) of the INA, 8 U.S.C. 1356(u)(3)(A), as well as the preexisting timeframes for those immigration benefit requests that had been designated for premium processing as of August 1, 2020, and to establish new fees and processing timeframes for new immigration benefit requests, consistent with the conditions and eligibility requirements set forth by section 4102(b)(1) of the USCIS Stabilization Act. This rule further amends DHS premium processing regulations to codify the USCIS Stabilization Act's changes to the process for adjusting premium processing fees at section 286(u)(3)(C) of the INA, 8 U.S.C. 1356(u)(3)(C), according to which such adjustments are permitted on a biennial basis consistent with certain changes to the Consumer Price Index for All Urban Consumers (CPI–U).[9] Finally, any additional changes made by this rule to revise DHS regulations at new 8 CFR 106.4 pertaining to premium processing[10] are made to be consistent with amendments made by the USCIS Stabilization Act.

## II. Background

*A. Current State of DHS Premium Processing Regulations*

On November 14, 2019, DHS published the proposed rule, ''U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,'' in the **Federal Register** proposing to adjust certain immigration and naturalization benefit request fees charged by USCIS.[11] On August 3, 2020, DHS published the final rule with an effective date of October 2, 2020.[12] This effectively transferred DHS premium processing regulations from 8 CFR 103.7(b)(1)(i)(SS) and (e) to the new 8 CFR part 106, specifically 8 CFR 106.4, ''Premium processing service.''

On September 29, 2020, the U.S. District Court for the Northern District of California granted a motion for a preliminary injunction and stay under 5 U.S.C. 705 of the 2020 Fee Schedule Final Rule in its entirety.[13] On October 8, 2020, the U.S. District Court for the District of Columbia also granted a motion for a preliminary injunction and stay under 5 U.S.C. 705 of the 2020 Fee Schedule Final Rule.[14] And, on January 29, 2021, DHS published a notification of preliminary injunction in the **Federal Register** to inform the public of the two preliminary injunctions of the 2020 Fee Schedule Final Rule.[15] The Department continues to comply with the terms of those orders and is not enforcing the regulatory changes set out in the 2020 Fee Schedule Final Rule.

Litigation in *ILRC* v. *Wolf* and *NWIRP* v. *USCIS* is currently stayed through February 14, 2022, to allow DHS to move forward through notice-and-comment rulemaking with a possible new USCIS fee schedule that would rescind and replace the changes made by the 2020 Fee Schedule Final Rule and establish new USCIS fees to recover USCIS operating costs.[16]

USCIS continued to accept the premium processing fees that were in place before October 2, 2020. On October 19, 2020, pursuant to the passage of the USCIS Stabilization Act, USCIS increased those premium processing fees that were in place at that time.[17]

Although DHS is enjoined from implementing or enforcing the 2020 Fee Schedule Final Rule and the rule has been stayed, the regulatory amendments established by the 2020 Fee Schedule Final Rule were incorporated into the Code of Federal Regulations (CFR) on October 2, 2020, by operation of the rule's publication in the **Federal Register** and as the rule instructed.[18] In that regard, DHS has not implemented and is not administering the regulatory changes made by the 2020 Fee Schedule Final Rule, but rather continues to follow the premium processing regulations as provided in the versions of 8 CFR 103.7(b)(1)(i)(SS) and (e) as they existed until October 2, 2020. Nevertheless, 8 CFR part 106 and the other regulatory changes in the 2020 Fee Schedule Final Rule have been codified. Therefore, DHS is using this rule to revise all of the enjoined and stayed regulations pertaining to premium processing at 8 CFR 106.4. Notably, DHS will continue to calculate premium processing timeframes in calendar days rather than business days, as it did before the 2020 Fee Schedule Final Rule and as it continues to do under the terms of the injunctions. Other than superseding the regulatory text set forth by the 2020 Fee Schedule Final Rule related to calculating premium processing timeframes in business days and reverting back to the established USCIS practice of calculating premium processing timeframes using calendar days, all other regulatory changes are

[9] When making the biennial adjustment for premium processing fees pursuant to 8 U.S.C. 1356(u)(3)(C), USCIS will use the Bureau of Labor and Statistics CPI–U All Items as the index for the adjustment. *https://www.bls.gov/news.release/cpi.t01.htm* (last visited Jan. 7, 2022).

[10] Those regulations also track the language that existed at 8 CFR 103.7(b)(1)(i)(SS) and (e) on October 1, 2020 (*i.e.,* prior to the 2020 USCIS Fee Schedule Final Rule).

[11] *See* 84 FR 62280 (Nov. 14, 2019).

[12] U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 85 FR 46788 (Aug. 3, 2020) (2020 Fee Schedule Final Rule).

[13] *Immigrant Legal Resource Center* v. *Wolf,* 491 F. Supp. 3d 520 (N.D. Cal. Sept. 29, 2020) (*ILRC* v. *Wolf*).

[14] *See Northwest Immigrant Rights Project, et al.,* v. *United States Citizenship and Immigration Services, et al.* 496 F. Supp. 3d 31 (D.D.C. Oct. 8, 2020) (*NWIRP* v. *USCIS*).

[15] *See* 86 FR 7493 (Jan. 29, 2021).

[16] *See* Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions, U.S. Citizenship and Immigration Services Fee Schedule, available at *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1615-AC68* (last visited Feb. 8, 2022).

[17] On October 16, 2020, USCIS issued a web alert notifying the public that USCIS would increase fees for premium processing, effective October 19, 2020, as required by the Continuing Appropriations Act, 2021 and Other Extensions Act, Public Law 116–159, signed into law on October 1, 2020. *https://www.uscis.gov/news/premium-processing-fee-increase-effective-oct-19-2020* (last updated Oct. 16, 2020).

[18] *See, e.g.,* 8 CFR part 106.

based upon those changes set forth in the USCIS Stabilization Act.

Because the entirety of 8 CFR part 106, including 8 CFR 106.4, is enjoined and stayed, and the previous DHS premium processing regulations at 8 CFR 103.7(b)(1)(i)(SS) and (e) were removed, DHS will amend 8 CFR 106.4 by revising it in its entirety. This will avoid any confusion as to which DHS premium processing regulations are current and make it clear to the public that the DHS premium processing regulations are wholly contained in 8 CFR 106.4, available as a current reference, and being followed by DHS. Legal citations to the changes being made to DHS premium processing regulations in this preamble will cite to ''8 CFR 106.4'' to comport with the current location of the regulations in the CFR. However, because 8 CFR part 106 has been enjoined and stayed, has not been implemented, and is not being administered by USCIS, the standard of citing to the CFR print edition date may be inaccurate. Therefore, in this rule, when DHS references the no longer existing (but still being followed) 8 CFR 103.7(b)(1)(i)(SS) and (e), DHS will refer to these regulations as they appeared in the CFR on October 1, 2020, and denote by reference to that date in any legal citation (*e.g.,* 8 CFR 103.7(b)(1)(i)(SS) or (e) (Oct. 1, 2020)).

*B. History of DHS Premium Processing Regulations*

The District of Columbia Appropriations Act of 2001 added section 286(u) to the INA, 8 U.S.C. 1356(u), authorizing the collection of a $1,000 ''premium fee,'' in addition to the regular filing fee, from persons seeking expedited processing of eligible employment-based petitions and applications.[19] Based upon this statutory authority, the former Immigration and Naturalization Service issued an interim rule establishing its premium processing service on June 1, 2001.[20] Premium processing allows filers to request 15-day processing of certain employment-based immigration benefit requests if they pay a premium processing fee in addition to the base filing fee and any other applicable fees.[21] This premium processing fee cannot be waived.[22] Premium processing is currently available for certain petitioners filing a Form I–129, Petition for a Nonimmigrant Worker, or a Form I–140, Immigrant Petition for Alien Workers, and seeking certain employment-based classifications. USCIS informs the public by announcements on its website of the dates of availability of premium processing service for specific petitions or applications.[23]

The INA as amended by the District of Columbia Appropriations Act of 2001 provided that premium processing revenue shall be used to fund the cost of offering the service, as well as the cost of infrastructure improvements in adjudications and customer service processes. The INA as amended by the District of Columbia Appropriations Act of 2001 further provided USCIS with explicit authority to adjust the premium processing fee for inflation based on the CPI–U.[24] As such, DHS has periodically adjusted the premium processing fee by the percentage increase in inflation according to the CPI since premium processing's inception.[25] DHS first adjusted the premium processing fee from $1,000 to $1,225 in the 2010 USCIS fee rule.[26] Prior to the USCIS Stabilization Act, DHS last adjusted the premium processing fee to $1,440 in December 2019.[27]

*C. The USCIS Stabilization Act*

On October 1, 2020, the Continuing Appropriations Act, 2021 and Other Extensions Act was signed into law. That enactment contains the USCIS Stabilization Act.[28] The USCIS Stabilization Act amended section 286(u) of the INA, 8 U.S.C. 1356(u), by raising the premium processing fees for immigration benefit types designated for premium processing on or before August 1, 2020, and by expanding the benefit types that may be designated for premium processing service within prescribed limitations, among other changes.[29] These additional changes included redefining the process for adjusting premium processing fees by the CPI and expanding the permissible uses of revenue from the collection of premium processing fees, including improvements to adjudications process infrastructure, responses to adjudication demands, and to otherwise offset the cost of providing adjudication and naturalization services.

On October 16, 2020, USCIS announced it would increase the fees for premium processing, as required by the USCIS Stabilization Act, effective October 19, 2020.[30] As of that date, the fee for Form I–907, Request for Premium Processing Service, increased from $1,440 to $2,500 for all immigration benefit requests that were designated for premium processing as of August 1, 2020, with the exception that the

[19] *See* District of Columbia Appropriations Act of 2001, Public Law 106–553, tit. I, sec. 112, 114 Stat. 2762, 2762A–68 (Dec. 21, 2000).

[20] *See* 66 FR 29682 (Jun. 1, 2001).

[21] *See* 8 CFR 103.7(b)(1)(i)(SS) and (e) (Oct. 1, 2020).

[22] *See* 8 CFR 103.7(b)(1)(i)(SS)(3) (Oct. 1, 2020).

[23] *See* 8 CFR 103.7(b)(1)(i)(SS) and (e) (Oct. 1, 2020); *see also* USCIS, ''How Do I Request Premium Processing?,'' *https://www.uscis.gov/forms/all-forms/how-do-i-request-premium-processing* (last updated Apr. 12, 2021).

[24] *See* INA sec. 286(u) (2000), 8 U.S.C. 1356(u) (2000); Public Law 106–553, App. B, tit. I, sec. 112, 114 Stat. 2762, 2762A–68 (Dec. 21, 2000).

[25] The CPI is issued by the Department of Labor's Bureau of Labor Statistics (BLS) and can be found at *http://www.bls.gov/cpi* (last visited Jan. 7, 2022).

[26] *See* USCIS Fee Schedule; Final Rule, 75 FR 58962, 58978, 58988 (Sept. 24, 2010) (Between June 2001, when Congress established the fee, and June 2010, the CPI–U [All Items] increased by 22.45%. When that percentage increase is applied to the current premium processing fee of $1,000, the adjusted premium processing fee is $1,224 ($1,225 when rounded to the nearest $5.); 8 CFR 103.7(b)(1)(i)(RR) (effective Nov. 23, 2010, codified as amended at 8 CFR 103.7(b)(1)(i)(SS), 81 FR 73292, 73331 (Oct. 24, 2016)).

[27] *See* Adjustment to Premium Processing Fee; Final Rule, 84 FR 58303, (Oct. 31, 2019) (Between June 2001 and August 2019, the CPI–U [All Items] increased by 44.13 percent. When this percentage increase is applied to the June 2001 premium processing fee of $1,000, the adjusted premium processing fee is $1,441.34 ($1,440 when rounded to the nearest $5 increment.); 8 CFR 103.7(b)(1)(i)(SS) (effective Dec. 2, 2019).

[28] *See* USCIS Stabilization Act, Public Law 116–159 (Oct. 1, 2020).

[29] On May 23, 2006, USCIS issued an interim rule changing the premium processing regulations. *See* 71 FR 29571. Under that rule, USCIS would designate petitions and applications for premium processing by publication of notices in the **Federal Register**. That same day, USCIS designated Forms I–539 and I–765 for premium processing by a notice in the **Federal Register**. *See* 71 FR 29662. On September 24, 2010, USCIS changed the manner in which a form would be designated for premium processing. *See* 75 FR 58962. The 2010 rule provides that premium processing designation will be established through the USCIS website. Thus, for a form to be designated for premium processing it must be designated as such on the USCIS website. Forms I–539 and I–765 have not been designated for premium processing on the USCIS website since the 2010 rule became effective and so were not designated on August 1, 2020, nor did USCIS provide premium processing for Forms I–539 and I–765 on or before August 1, 2020. Thus, Forms I–539 and I–765 are not covered by INA sec. 286(u)(3)(A), 8 U.S.C. 1356(u)(3)(A) (relating to ''immigration benefit types designated as eligible for premium processing on or before August 1, 2020.''), as enacted by the USCIS Stabilization Act. USCIS interprets INA sec. 286(u)(3)(A), 8 U.S.C. 1356(u)(3)(A), to refer to immigration benefit requests that were designated pursuant to the premium processing regulations in effect at the time of the statute's enactment. USCIS believes this interpretation is supported by the fact that Congress specifically provided an appropriate fee and processing timeframe for Forms I–539 and I–765 in sec. 4102(b)(1) of the USCIS Stabilization Act, which provides an exception to 5 U.S.C. 553 in establishing an initial fee for those forms. Additionally, because sec. 4102(b)(1) of the USCIS Stabilization Act only applies to INA sec. 286(u)(3)(B) and to those immigration benefit requests designated for premium processing after August 1, 2020, it is clear that Congress intended for Forms I–539 and I–765 to fall under those immigration benefit requests described in INA sec. 286(u)(3)(B) and not INA sec. 286(u)(3)(A).

[30] *See* USCIS, Premium Processing Fee Increase Effective Oct. 19, 2020, *https://www.uscis.gov/news/premium-processing-fee-increase-effective-oct-19-2020* (last updated Oct. 16, 2020).

premium processing fee for petitioners filing Form I–129, Petition for a Nonimmigrant Worker, requesting H–2B or R–1 nonimmigrant status increased from $1,440 to $1,500. USCIS further announced that, while the USCIS Stabilization Act gave USCIS the ability to expand premium processing to additional forms and immigration benefit requests, USCIS was not yet taking such action and that any expansion of premium processing to other forms would be implemented as provided in the legislation.[31]

Through this rulemaking, DHS is amending DHS premium processing regulations to codify those fees set by the USCIS Stabilization Act through enactment of section 286(u)(3)(A) of the INA, 8 U.S.C. 1356(u)(3)(A), as well as the preexisting timeframes for those immigration benefit requests that were designated for premium processing as of August 1, 2020, and to establish new fees and processing timeframes for new immigration benefit requests, consistent with the conditions and eligibility requirements set forth by section 4102(b)(1) of the USCIS Stabilization Act. DHS is also amending DHS premium processing regulations to codify the USCIS Stabilization Act's changes made at section 286(u)(3)(C) of the INA, 8 U.S.C. 1356(u)(3)(C), to the process for adjusting premium processing fees, according to which such adjustments are permitted on a biennial basis consistent with certain changes to the CPI–U.

## III. Discussion of the Changes

Prior to the USCIS Stabilization Act, premium processing provided expedited processing for certain designated classifications that are requested on Form I–129 and Form I–140.[32] USCIS had the authority to designate the classifications of employment-based immigration benefit requests that were eligible for premium processing by announcing on its official internet website (*http://www.uscis.gov*) those immigration benefit requests for which premium processing was available, the dates upon which such availability commenced or ended, and any conditions that applied. Also prior to the USCIS Stabilization Act, the fee and processing timeframes for premium processing were uniform for all designated immigration benefit requests. Specifically, USCIS guaranteed processing for these requests within 15 days to petitioners who chose to pay the additional fee to request this service. The 15-day period would generally begin when USCIS properly received the correct version of Form I–907, Request for Premium Processing Service, with fee, at the correct filing address. Within the 15-day period, USCIS would issue either an approval notice, denial notice, notice of intent to deny, or request for evidence, or open an investigation for fraud or misrepresentation. If USCIS did not take any of the above actions within the 15-day period, USCIS would refund the premium processing fee. If the benefit required the submission of additional evidence or a response to a notice of intent to deny, a new 15-day period would begin when USCIS received a complete response to the request for evidence or notice of intent to deny. The premium processing fee was required to be paid in addition to, and in a separate remittance from, other filing fees, and could not be waived. Finally, the premium processing fee amount could be adjusted annually by notice in the **Federal Register** based on inflation according to the CPI.

While leaving in place the general concept and framework for premium processing that existed prior to its enactment, the USCIS Stabilization Act made significant changes to the INA, amending significant aspects of premium processing that had previously been established by regulation. While maintaining DHS's authority to set reasonable conditions or limitations on premium processing, the USCIS Stabilization Act expanded the immigration benefit types that can be designated for premium processing, to wit: applications to change or extend nonimmigrant status and applications for employment authorization (generally on Form I–539, Application to Extend/Change Nonimmigrant Status, and Form I–765, Application for Employment Authorization, respectively) as well as any other immigration benefit type that DHS deems appropriate for premium processing.[33] This expansion of premium processing to other immigration benefit types generally requires that the initial premium processing fee be established by regulation, with a detailed methodology supporting the proposed premium processing fee amount.[34] However, the USCIS Stabilization Act did identify specific immigration benefit requests to which premium processing could be expanded by final rule without regard to the provisions of 5 U.S.C. 553 as long as the established premium fee and required processing timeframe are consistent with the limitations described therein.[35] These immigration benefit requests and applicable fees and timeframes are:

- Form I–140 requesting EB–1 immigrant classification as a multinational executive or manager or EB–2 immigrant classification as a member of professions with advanced degrees or exceptional ability seeking a national interest waiver (NIW). Fee: $2,500. Timeframe: 45 days;
- Form I–539 requesting a change of status to F–1, F–2, J–1, J–2, M–1, or M–2 nonimmigrant status or a change of status to or extension of stay in E–1, E–2, E–3, H–4, L–2, O–3, P–4, or R–2 nonimmigrant status. Fee: $1,750. Timeframe: 30 days; and
- Form I–765 requesting employment authorization. Fee: $1,500. Timeframe: 30 days.[36]

The primary purpose of this rule is to add these specific benefit types as those designated for premium processing in DHS regulations with both a premium processing fee and required processing timeframe, consistent with the exemption from 5 U.S.C. 553, while further reconciling the premium processing regulations with the other changes made by the USCIS Stabilization Act. In the Executive Orders 12866 and 13563 section of this rule, DHS estimates the number of newly eligible I–140 petitioners, I–539 applicants, or I–765 applicants that may choose to submit a premium processing request. However, as further discussed in section IV.B of this rule, it is difficult for DHS to determine the amount of time and resources specifically needed to accommodate these new requests for premium processing. Therefore, DHS has set the premium processing fees and timeframes for the newly eligible immigration benefit requests to be consistent with the fees and maximum processing timeframes set forth by Congress in section 4102(b)(1) of the USCIS Stabilization Act. As provided by section 4102(b)(2) of the USCIS Stabilization Act and as codified in the new 8 CFR 106.4(f)(2)(ii), the premium processing timeframe for the immigration benefit requests identified in section 4102(b) of the USCIS Stabilization Act will commence on the date that all prerequisites for

[31] *Id.*

[32] A list of immigration benefit requests available for premium processing and when those immigration benefit requests became available for premium processing can be found on USCIS's web page, ''How Do I Request Premium Processing?,'' *https://www.uscis.gov/forms/all-forms/how-do-i-request-premium-processing (last updated Apr. 12, 2021).*

[33] *See* USCIS Stabilization Act, Public Law 116–159 (Oct. 1, 2020).

[34] *See id.* at sec. 4102(a)(codified as amended at 8 U.S.C. 1356(u)(3)(B) (2020)).

[35] *See id.* at sec. 4102(b) (Oct. 1, 2020).

[36] *Id.*

adjudication, the form prescribed by USCIS, and fee(s) are received by USCIS.

DHS is not codifying a definition of the phrase ''prerequisites for adjudication'' in this rule and will determine when the timeframe begins based on the benefit request and what is required to fully adjudicate it, consistent with otherwise applicable regulations. USCIS has been unable to offer premium or expedited services for many of its adjudication and naturalization services because of the difficulty in determining the appropriate fee, staffing levels, time period for adjudication, and other parameters. The USCIS Stabilization Act recognized that it is the requestor's responsibility to provide a complete request before premium processing can begin and that there is inherent ambiguity in defining the appropriate timeframe. DHS interprets ''prerequisites for adjudication'' in section 4102(b) to at least require a complete, fully executed form as prescribed and required by 8 CFR 1.2 and 8 CFR 103.2(a)(7), completed in accordance with the form instructions as required by 8 CFR 103.2(a)(1), and other filing requirements as may be provided in the applicable regulations for the specific benefit request, including receiving all necessary evidence and information from interviews, biometrics submission, and background checks. USCIS may specify additional prerequisites that determine when the timeframe begins when it announces those requests for which premium processing may be requested and any conditions that may apply under 8 CFR 106.4(g).

The USCIS Stabilization Act also established distinct premium processing fees and the authority to establish distinct premium processing timeframes based upon the specific immigration benefit request.[37] With respect to an immigration benefit type designated for premium processing before August 1, 2020, the premium fee was set at $2,500, except that the premium fee for petitioners filing Form I–129 requesting H–2B or R–1 nonimmigrant status was set at $1,500.[38] This rule codifies these changes by specifically defining the premium processing fee and the premium processing timeframe for those immigration benefit types that were designated for premium processing before August 1, 2020. As maintained in the new 8 CFR 106.4(f)(2)(i), the premium processing timeframe for these benefits requests will commence on the date that the form prescribed by USCIS and fee(s) are received by USCIS.

The USCIS Stabilization Act also amended the INA by adding section 286(u)(3)(C), 8 U.S.C. 1356(u)(3)(C), which adjusts the frequency and the manner in which USCIS may periodically adjust the fees for premium processing.[39] The statute now provides that the Secretary may adjust these fees on a biennial basis by the percentage (if any) of the CPI–U[40] for the month of June preceding the date on which such adjustment takes effect exceeds the CPI–U for the same month of the second preceding calendar year.[41] Adjustments to the premium processing fees made in this manner are specifically exempted from notice-and-comment rulemaking.[42] These changes have been codified at new 8 CFR 106.4(d). DHS will maintain its practice of announcing adjustments to the premium processing fees that are not subject to notice and comment (and made pursuant to section 286(u)(3)(C) of the INA, 8 U.S.C. 1356(u)(3)(C)) through publication in the **Federal Register**.[43]

The premium processing regulations require USCIS to communicate which immigrant benefit requests are available for premium processing, the dates upon which availability commences and ends and any conditions that may apply to seeking a request for premium processing.[44] USCIS will maintain this practice. In order to provide USCIS with the flexibility to be adequately responsive to changing customer demands and resource constraints, new 8 CFR 106.4(g) draws on the previous process that USCIS used to announce when premium processing is available and may be requested.[45] In particular, USCIS will announce by its official website those requests for which premium processing of designated benefits is available, the dates when such availability commences or ends, and any conditions that may apply.[46] Such conditions may include establishing a prerequisite to eligibility for the underlying immigration benefit request, as is the case currently where USCIS will only accept a request for premium processing on a petition for temporary nonimmigrant religious worker (R–1 visa) after there has been a successful onsite inspection.[47] Such conditions may also include establishing periods of pendency or specific filing dates necessary for phasing-in expanded premium processing for immigration benefit requests or delaying receipt dates for those immigration benefit requests subject to a numerical limitation (or cap) to determine whether a random selection process (or lottery) may be necessary and to complete such process when required. The use of such prerequisites and conditions is consistent with established USCIS premium processing practices as they existed prior to the USCIS Stabilization Act.

Consistent with the USCIS Stabilization Act, new 8 CFR 106.4(g) further clarifies that USCIS may suspend the availability of premium processing for certain immigration benefit requests if circumstances prevent the agency from being able to complete a significant number of such requests within the applicable processing timeframe.[48] New 8 CFR 106.4(g) also makes clear that the designation of a benefit request for premium processing and establishing the corresponding premium processing fees and timeframes, does not in itself permit a request for premium processing to be filed for an immigration benefit request, but that USCIS must also make premium processing available for each immigration benefit request type. By identifying and establishing those immigration benefit request types designated for premium processing in this rule and the corresponding fees and processing timeframes, consistent with the USCIS Stabilization Act, this rule will allow USCIS to offer and suspend premium processing for designated immigration benefit request types in reaction to customer needs and USCIS workload, when there are circumstances that prevent USCIS from completing the processing of a significant number of premium processing requests within the required timeframes and in accordance with the procedures codified at new 8 CFR 106.4(g).

Relatedly, the USCIS Stabilization Act requires that when DHS implements the availability of premium processing, or expands premium processing to new immigration benefit request types, DHS must ensure that such implementation or expansion does not result in an

[37] *See id.* at sec. 4102(b).

[38] *See id.* at sec. 4102(a)(codified as amended at 8 U.S.C. 1356(u)(3)(A) (2020)).

[39] *See id.* at sec. 4102(a)(codified as amended at 8 U.S.C. 1356(u)(3)(C) (2020)).

[40] *See sup*ra note 9.

[41] *See* USCIS Stabilization Act, Public Law 116–159 (Oct. 1, 2020).

[42] *Id.*

[43] *See* 8 CFR 103.7(b)(1)(i)(SS)(*2*) (Oct. 1, 2020); *See* new 8 CFR 106.4(d).

[44] *See* 8 CFR 103.7(e)(3)(ii) (Oct. 1, 2020).

[45] *See* 8 CFR 103.7(e)(3) (Oct. 1, 2020).

[46] *See* new 8 CFR 106.4(g)(1).

[47] See I–907, Request for Premium Processing Service—Special Instructions, *https://www.uscis.gov/i-907* (last updated Sep. 30, 2021).

[48] *See* USCIS Stabilization Act, sec. 4102(a)(codified as amended at 8 U.S.C. 1356(u)(5)(A) (2020)), Public Law 116–159 (Oct. 1, 2020). *See* new 8 CFR 206.4(g)(2).

increase in processing times for immigration benefit requests not designated for premium processing or an increase in regular processing of immigration benefit requests so designated.[49] Before DHS can implement the expansion of premium processing provided in this rule, DHS must raise sufficient funds to ensure it has the staffing and information technology (IT) resources in place to expand premium processing availability to avoid increasing non-premium processing related processing times. The current processing times for the immigration benefit requests newly designated for premium processing exceed the proposed premium processing timeframes by many months as expected.

DHS generally cannot reallocate staff to adjudicate these immigration benefit requests without adversely affecting processing times for other non-premium processing related immigration benefit requests. Therefore, DHS must hire and train new staff with revenue from current premium processing requests in order to expand expedited adjudication of premium processing consistent with the statutory requirement. Delayed implementation will allow USCIS to maintain a minimum premium revenue carryover balance. USCIS will use the carryover balance to ensure fiscal stability and fund infrastructure and process improvements, such as the expansion of premium services. For these reasons and circumstances, DHS will suspend the availability of premium processing for those immigration benefit requests newly designated for premium processing by this rule and will not make those immigration benefit requests newly designated by this rule immediately available for premium processing upon the effective date of this rule.

In the 2020 Fee Schedule NPRM, DHS changed the way it calculated the 15-day premium processing clock from counting calendar days to counting business days.[50] DHS explained it was necessary to make this change, because of the frequency by which USCIS found it necessary to suspend premium processing for certain categories of employment-based petitions as a result of having to reassign officers to process long-pending non-premium filed petitions and to prevent a lapse in employment authorization for beneficiaries of Form I–129 extension of stay petitions. There were also instances when USCIS could not meet the 15-day premium processing requirement due to surges in petitions accompanied by premium processing requests, which resulted in USCIS having to refund the premium processing fees and incurring additional costs as a result.[51]

In this rule, DHS is removing any reference to calculating premium processing timeframes in business days that were finalized in the 2020 Fee Schedule Final Rule. Following issuance of this rule, DHS intends to continue to calculate premium processing timeframes by counting calendar days. As previously discussed, the 2020 Fee Schedule Final Rule is enjoined and stayed, and the regulations as codified in 8 CFR 106.4 are not being administered by USCIS.

Because the litigation in *ILRC* v. *Wolf* and *NWIRP* v. *USCIS* is currently stayed, and because DHS plans to replace the regulations codified by the 2020 Fee Schedule Final Rule with a new rule, the regulations currently at 8 CFR 106.4 have never been implemented. USCIS currently is not calculating premium processing timeframes in business days, consistent with the terms of the injunctions and stays. Rather, USCIS is calculating premium processing timeframes, as it has always done, by counting calendar days. By removing the reference to business days in the premium processing regulations, the premium processing regulations will be clear and consistent with current practices and requirements and not be a source of confusion to the public.[52]

## IV. Statutory and Regulatory Requirements

### *A. Administrative Procedure Act*

The Administrative Procedure Act (APA) generally requires agencies to issue a proposed rule before issuing a final rule, subject to certain exceptions.[53] As explained below, the changes made in this rule do not require advance notice and opportunity for public comment, because the changes are (1) exempt from the requirements of 5 U.S.C. 553 by section 4102(b)(1) of the USCIS Stabilization Act, (2) exempt from public comment under 5 U.S.C. 553(b)(B) because they merely restate existing law, or (3) exempt as procedural under 5 U.S.C. 553(b)(A).

(1) Statutory Exemption From the Requirements of 5 U.S.C. 553

The USCIS Stabilization Act has exempted DHS from the requirements of 5 U.S.C. 553 when USCIS establishes fees that are consistent with section 4102(b) of the USCIS Stabilization Act. This exemption allows DHS to establish fees consistent with section 4102(b) of the USCIS Stabilization Act by final rule and does not require notice-and-comment rulemaking.[54]

(2) Statutorily Required Changes

The USCIS Stabilization Act made statutory changes to section 286(u) of the INA, 8 U.S.C. 1356(u).[55] DHS has good cause to bypass notice-and-comment procedures when incorporating those nondiscretionary statutory changes made by the USCIS Stabilization Act to section 286(u) of the INA, 8 U.S.C. 1356(u), through conforming changes to the DHS premium processing regulations via this rulemaking. When regulations merely restate the statute they implement (*i.e.,* when the rule does not change the established legal order), the APA does not require the agency to use notice-and-comment procedures. *See* 5 U.S.C. 553(b)(B); *Gray Panthers Advocacy Committee* v. *Sullivan,* 936 F.2d 1284, 1291 (D.C. Cir. 1991); *see also United States* v. *Cain,* 583 F.3d 408, 420 (6th Cir. 2009) (contrasting legislative rules, which require notice-and-comment procedures, ''with regulations that merely restate or interpret statutory obligations,'' which do not); *Komjathy* v. *Nat. Trans. Safety Bd.,* 832 F.2d 1294, 1296 (D.C. Cir. 1987) (when a rule ''does no more than repeat, virtually verbatim, the statutory grant of authority'' notice-and-comment procedures are not required). This exception to notice and comment applies to the portions of this rule that merely restate the fees for those immigration benefit types designated for premium processing on or before August 1, 2020 and the biennial fee adjustment.[56] This exception also applies to the portions of this rule that codify the clarification provided in section 4102(b)(2) of the USCIS Stabilization Act regarding when processing timeframes will commence

[49] *See* USCIS Stabilization Act, sec. 4102(c), Public Law 116–159 (Oct. 1, 2020).

[50] *See* 8 CFR 106.4(a).

[51] *See* U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 FR 62280, 62311–12 (Nov. 14, 2019) (2020 Fee Schedule NPRM).

[52] Counting premium processing timeframes by calendar days is also consistent with the definition of ''day'' in 8 CFR 1.2, which provides that when computing the period of time for taking any action [in chapter I of title 8 of the CFR] including the taking of an appeal, [it] shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period computed falls on a Saturday, Sunday, or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

[53] *See* 5 U.S.C. 553(b).

[54] *See* USCIS Stabilization Act, sec. 4102(b)(1).

[55] *See id.* at sec. 4102(a).

[56] *See* USCIS Stabilization Act, sec. 4102(a); new 8 CFR 106.4(c) and (d).

for those benefit request types described in section 4102(b)(1) of the USCIS Stabilization Act and the manner in which USCIS may suspend premium processing services now codified in section 286(u)(5)(A) of the INA, 8 U.S.C. 1356(u)(5)(A).[57]

(3) Rule of Procedure

This rule is also exempt, in its entirety, from the notice-and-comment requirements of 5 U.S.C. 553, because the rule's provisions are fundamentally procedural in nature. *See* 5 U.S.C. 553(b)(A). *See generally Mendoza* v. *Perez,* 754 F.3d 1002, 1023 (D.C. Cir. 2014) (''Procedural rules do not themselves alter the rights or interests of parties, although they may alter the manner in which the parties present themselves or their viewpoints to the agency. The distinction between substantive and procedural rules is one of degree depending upon whether the substantive effect is sufficiently grave so that notice and comment are needed to safeguard the policies underlying the APA.'' (cleaned up)). This rule describes the process and the procedures that USCIS will employ to make premium processing available to the public. This rule explains that there is premium processing for certain immigration benefit requests, how to submit a request for premium processing, those immigration benefits designated for premium processing and the associated fees, how fees will be adjusted, processing timeframes (including the reversion to calendar days), processing requirements and when fees will be refunded, and how USCIS will communicate the availability of premium processing to the public. This rule communicates the mechanics and processes that USCIS has deemed to be an efficient and practical way to manage and offer a service to those willing to pay a premium to have their immigration benefit requests processed in a more expeditious manner.

*B. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)*

Executive Order (E.O.) 12866 and E.O. 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and to the extent permitted by law, to proceed if the benefits justify the costs. They also direct agencies to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). In particular, E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs (OIRA), within the Office of Management and Budget (OMB), has designated this final rule an economically significant regulatory action under sec. 3(f)(1) of E.O. 12866. Accordingly, OIRA has reviewed this regulation.

(1) Summary

The Continuing Appropriations Act, 2021 and Other Extensions Act, signed into law on October 1, 2020, contained the Emergency Stopgap USCIS Stabilization Act, which set new fees for premium processing of immigration benefit requests that had been designated for premium processing as of August 1, 2020, and expanded USCIS authority to establish and collect new premium processing fees and to use those additional funds for expanded purposes. The purpose of this rulemaking is to amend DHS premium processing regulations for previously designated benefit requests to codify those fees set by the USCIS Stabilization Act in section 286(u)(3)(A) of the INA, 8 U.S.C. 1356(u)(3)(A), and to establish new immigration benefit requests designated for premium processing under section 286(u)(3)(B) of the INA, 8 U.S.C. 1356(u)(3)(B), consistent with those conditions and eligibility requirements set forth by section 4102(b)(1) of the USCIS Stabilization Act.

While DHS is able to assess the costs and benefits of premium processing for the forms and classifications for which it is currently available, it is more difficult to assess when DHS will be able to expand the availability of premium processing to all of the newly designated immigration benefit request types. Due to the statutory requirement that the expansion of availability of premium processing should not result in increased processing times for immigration benefit requests not designated for premium processing or an increase in regular processing of immigration benefit requests so designated, DHS must first raise sufficient funds to ensure it has the staffing and information technology (IT) resources to expand premium processing availability to avoid such an increase to any processing times. The current (non-premium) processing times for the newly designated immigration benefit requests exceed the proposed premium processing timeframes by many months, as expected.

DHS generally is unable to reallocate staff to adjudicate these immigration benefit requests without adversely affecting processing times for other immigration benefit requests. Therefore, DHS must hire and train new staff with revenue from current premium processing requests in order to expand expedited adjudication of premium processing consistent with the statutory requirement that other processing times not be adversely affected.

Furthermore, Section 3401 of the Stabilization Act authorizes USCIS to use fee revenue for the following, competing purposes: To provide premium processing services to requestors, to make infrastructure improvements in adjudications processes and the provision of information and services to immigration and naturalization benefit requestors, to respond to adjudication demands, including by reducing the number of pending immigration and naturalization benefit requests, and to otherwise offset the cost of providing adjudication and naturalization services. Prior to expansion, any revenues in excess of costs generated by premium processing will be used to support other authorized uses. Section 3402 of the Stabilization Act additionally directs USCIS to provide a 5-year plan for improvements in electronic filing, electronic payment, and electronic correspondence resulting in improved processing times for all immigration and naturalization benefit requests. In accordance with these authorizations and directives, DHS has prioritized and is in the process of expanding electronic filing for all applications and benefit requests. Some of the immigration benefit requests newly designated for premium processing are already filed electronically.[58]

The expansion of electronic filing to application and benefit requests is a prerequisite so that the premium processing form, Form I–907, (which is not currently available electronically) could be filed electronically with the benefit request form for which premium processing is being requested. USCIS plans to encumber additional IT resources needed to make the I–907 available for electronic filing independent of this rule. USCIS intends to implement expansion of premium processing availability of Forms I–539, I–765 and I–140 as soon as feasible.

[57] *See* new 8 CFR 106.4(f)(2)(ii) and (g).

[58] USCIS Forms Currently Available to File Online: *https://www.uscis.gov/file-online/forms-available-to-file-online* (last updated Dec. 21, 2021). Of the forms impacted by this rule, USCIS already provides electronic filing of certain Forms I–539 and I–765. However, Form I–907 is not currently available for electronic filing.

DHS plans on a phased implementation strategy to allow current premium processing revenue to pay for development and implementation costs associated with expanding availability of the service. DHS plans to implement expansion for certain categories of Forms I–539, I–765 and both of the new I–140 classifications in FY 2022. DHS estimates that it will not be able to expand premium processing to the additional categories of Forms I–539 and I–765 until FY 2025 due to the possibility that premium processing revenues do not yet exist to cover any potential costs of hiring additional staff to expand premium processing to these additional categories without adversely affecting other benefit's processing times, as directed by Congress. This is explained in greater detail in the ''Government Costs'' section below. The projected implementation plan will allow current premium processing revenue to cover potential costs from the expedited processing of a large volume of new requests.

For the 10-year implementation period of the rule if year one is FY 2021, DHS estimates the annualized cost to be $13 million discounted at 3 percent and $12 million discounted at 7 percent. These costs are from the opportunity costs of time that newly eligible populations of Forms I–140, I–539, and I–765 will incur to request premium processing.

For the 10-year implementation period of the rule, DHS estimates the annualized transfer payments from the Form I–129 and Form I–140 fee-paying population, and from newly eligible classifications of Form I–140 petitioners, Form I–539 applicants and Form I–765 applicants to DHS to be $743 million discounted at 3 percent and $729 million discounted at 7 percent due to the increase in filing fees.

This final rule benefits petitioners of Form I–140 (EB–1, multinational executives and managers and EB–2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver) who were previously ineligible for premium processing to receive a quicker adjudication. This change benefits businesses that previously would have had to wait longer to receive a decision (such as a notice of approval) for an employee. It also benefits applicants of Form I–539 who will have the option to receive a decision on their request for a change of status or extension of stay sooner than before, which may alleviate concern about lapses in their nonimmigrant status. Applicants of Form I–765 would benefit through receipt of an adjudicative decision in a specified timeframe making those applicants eligible to work legally in the United States sooner than they would have previously.

Table 1 provides a more detailed summary of the final rule provisions and their impacts.

TABLE 1—SUMMARY OF PROVISIONS AND IMPACTS OF THE FINAL RULE

| Final rule provisions | Description of change to provision | Estimated costs/transfers of provisions | Estimated benefits of provisions |
|---|---|---|---|
| • Codify fee increases from the Continuing Appropriations Act, 2021 and Other Extensions Act. | • The Continuing Appropriations Act, 2021 and Other Extensions Act, expanded USCIS authority to establish and collect new premium processing fees and to use those additional funds for expanded purposes.<br>• Codifies existing premium processing fees and processing timeframes for certain classifications *requested on* Form I–129 classifications (E–1, E–2, E–3, H–1B, H–3, L–1A, L–1B, LZ, O–1, O–2, P–1, P–1S, P–2, P–2S, P–3, P–3S, Q–1, TN–1, and TN–2) and Form I–140 classifications: EB–1 Aliens of extraordinary ability, EB–1 Outstanding professors and researchers, EB–2 Members of professions with advanced degrees or exceptional ability not seeking a National Interest Waiver, EB–3 Skilled workers, EB–3 Professionals, EB–3 Workers other than skilled workers and professionals ($2,500/15 days).<br>• Codifies existing premium processing fees and processing timeframes for certain classifications requested on Form I–129 classifications H–2B, R–1 ($1,500/15 days). | Quantitative: Petitioners—<br>• Annual transfer payments of $306,448,000 from Form I–129 petitioners to DHS from an increase in filing fees in FY 2021.<br>• Annual estimated transfer payments of $295,113,180 from Form I–129 petitioners to DHS from a projected increase in filing fees in FY 2022 through FY 2030.<br>• Annual transfer payments of $103,111,500 from Form I–140 petitioners to DHS from an increase in filing fees in FY 2021.<br>• Annual estimated transfer payments of $82,872,920 from Form I–140 petitioners to DHS from a projected increase in filing fees in FY 2022 through FY 2030.<br>DHS/USCIS—<br>• None.<br>Qualitative: Petitioners—<br>• None.<br>DHS/USCIS—<br>• None. | Quantitative: Petitioners—<br>• None.<br>DHS/USCIS—<br>• None.<br>Qualitative: Petitioners—<br>• None.<br>DHS/USCIS—<br>• The primary benefit of these provisions to DHS is the opportunity to increase revenue in order to make infrastructure improvements and processing times, among other purposes. |
| • Expansion of premium processing to Form I–140 Classifications: E13, E21 (NIW). | • Establishes a $2,500 premium processing fee and 45-day processing timeframe for newly eligible Form I–140 Classifications: EB–1, multinational executives and managers, and EB–2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver. | Quantitative: Petitioners—<br>• Cost to petitioners completing and filing Form I–907 requests will be approximately $2,934,568 annually in FY 2022 through FY 2030.<br>• Annual transfer payments of $94,427,500 from newly eligible Form I–140 petitioners to DHS due to filing fees in FY 2022 through FY 2030.<br>DHS/USCIS—<br>• None.<br>Qualitative: Petitioners—<br>• None.<br>DHS/USCIS—<br>• None. | Quantitative: Petitioners—<br>• None.<br>DHS/USCIS—<br>• None.<br>Qualitative: Petitioners—<br>• Petitioners requesting benefit requests that were not previously designated for premium processing may now be able to obtain quicker adjudicative action.<br>DHS/USCIS—<br>• The primary benefit of this provision to DHS is the opportunity to increase revenue in order to make infrastructure improvements and processing times, among other purposes. |

TABLE 1—SUMMARY OF PROVISIONS AND IMPACTS OF THE FINAL RULE—Continued

| Final rule provisions | Description of change to provision | Estimated costs/transfers of provisions | Estimated benefits of provisions |
|---|---|---|---|
| • Expansion of premium processing to Form I–539 Classifications: E–1, E–2, E–3, F–1, F–2, H–4, J–1, J–2, L–2, M–1, M–2, O–3, P–4, R–2. | • Establishes a $1,750 premium processing fee and 30-day processing timeframe for newly eligible Form I–539 Classifications: E–1, E–2, E–3, F–1, F–2, H–4, J–1, J–2, L–2, M–1, M–2, O–3, P–4, R–2. | Quantitative: Applicants—<br>• Costs to F–1, F–2, J–1, J–2, M–1, M–2 classification applicants completing and filing Form I–907 requests are estimated to be $296,648 annually starting in FY 2022 through FY 2030.<br>• Costs to E–1, E–2, E–3, L–2, H–4, O–3, P–4, R–2 classification applicants completing and filing Form I–907 requests are estimated to be $3,048,488 annually starting in FY 2025 through FY 2030.<br>• Total Costs to all Form I–539 applicants completing and filing Form I–907 requests are estimated to be $3,345,136 annually starting in FY 2025 through FY 2030.<br>• Annual estimated transfer payments of $17,939,250 from Form I–539 F–1, F–2, J–1, J–2, M–1, M–2 classification applicants completing and filing Form I–907 requests to DHS from filing fees in FY 2022 through FY 2030.<br>• Annual estimated transfer payments of $110,572,000 from Form I–539 E–1, E–2, E–3, L–2, H–4, O–3, P–4, R–2 classification applicants completing and filing Form I–907 requests to DHS from filing fees starting in FY 2025 through FY 2030.<br>• Total transfers from all Form I–539 applicants completing and filing Form I–907 requests are estimated to be $128,511,250 annually starting in FY 2025 through FY 2030.<br>DHS/USCIS—<br>• None.<br>Qualitative: Applicants—<br>• None.<br>DHS/USCIS—<br>• This final rule will require USCIS enhancements to handle the projected volumes of expedited requests without adverse impact to other processing times. | Quantitative: Applicants—<br>• None.<br>DHS/USCIS—<br>• None.<br>Qualitative: Applicants—<br>• Applicants requesting benefit requests that were not previously designated for premium processing may now be able to obtain quicker adjudicative action.<br>DHS/USCIS—<br>• The primary benefit of this provision to DHS is the opportunity to make infrastructure improvements and processing times, among other purposes. |
| • Expansion of premium processing to Form I–765 Categories. | • Establishes a $1,500 premium processing fee and 30-day processing timeframe for newly eligible Form I–765 Categories. | Quantitative: Applicants—<br>• Costs to some applicants completing and filing Form I–907 requests are expected to be approximately $6,486,289 annually starting in FY 2022 through FY 2030 for certain classifications.<br>• Costs to other applicants completing and filing Form I–907 requests are expected to be approximately $3,048,488 annually starting in FY 2025 through FY 2030 for certain classifications.<br>• Total Costs to all Form I–765 applicants completing and filing Form I–907 requests are estimated to be $9,534,777 annually starting in FY 2025 through FY 2030.<br>• Annual estimated transfer payments of $173,370,000 from some applicants completing and filing Form I–907 requests to DHS from filing fees in FY 2022 through FY 2030.<br>• Annual estimated transfer payments of $81,483,000 from some applicants completing and filing Form I–907 requests to DHS from filing fees starting in FY 2025 through FY 2030.<br>• Total transfers from all Form I–765 applicants completing and filing Form I–907 requests are estimated to be $254,853,000 annually starting in FY 2025 through FY 2030.<br>DHS/USCIS—<br>• None.<br>Qualitative: Applicants—<br>• None.<br>DHS/USCIS—<br>• This final rule will require USCIS enhancements to handle the projected volumes of expedited requests without adverse impact to other processing times. | Quantitative: Applicants—<br>• None.<br>DHS/USCIS—<br>• None.<br>Qualitative: Applicants—<br>• Applicants requesting benefit requests that were not previously designated for premium processing will now be able to obtain quicker adjudicative action making those applicants eligible to work legally in the United States sooner than they would have previously.<br>DHS/USCIS—<br>• The primary benefit of this provision to DHS is the opportunity to make infrastructure improvements and processing times, among other purposes. |

In addition to the impacts summarized above, and as required by OMB Circular A–4, Table 2 presents the prepared accounting statement showing the costs and benefits to each individual affected by this final rule.[59]

TABLE 2—OMB A–4 ACCOUNTING STATEMENT
[$ millions, FY 2020]

Time Period: FY 2021 through FY 2030

| Category | Primary estimate | Minimum estimate | Maximum estimate | Source citation |
|---|---|---|---|---|
| **BENEFITS** | | | | |
| Monetized Benefits | N/A | | | Regulatory Impact Analysis (''RIA''). |
| Annualized quantified, but unmonetized, benefits | N/A | N/A | N/A | RIA. |
| Unquantified Benefits | The USCIS Stabilization Act provides specific purposes that the premium processing fees can be used for. Consistent with those permissible purposes, the primary benefit of this rule to DHS is the opportunity to increase revenue to provide the premium processing services; make infrastructure improvements in adjudications processes and information and services to immigration and naturalization benefit requestors; and respond to adjudication demands. | | | RIA. |
| | This final rule benefits petitioners of Form I–140 (EB–1, multinational executives and managers and EB–2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver) who were previously ineligible for premium processing and may now have their petitions reviewed quicker. As a result, an adjudicative action may be taken more quickly. This change benefits businesses that previously would have had to wait longer to receive adjudicative action (such as a notice of approval) for an employee. It also benefits applicants of Form I–539 would receive an adjudicative action on their request for a change of status or extension of stay sooner than before, which may alleviate concern about lapses in their nonimmigrant status. Applicants of Form I–765 would benefit through receipt of an adjudicative decision in a specified timeframe making those applicants eligible to work legally in the United States sooner than they would have previously. | | | |
| **COSTS** | | | | |
| Annualized monetized costs (7%)<br>Annualized monetized costs (3%) | $12.2<br>$12.7 | N/A<br>N/A | N/A<br>N/A | RIA. |
| Annualized quantified, but unmonetized, costs | N/A | | | |
| Qualitative (unquantified) costs | This final rule will require USCIS enhancements to handle the projected volumes of expedited requests without adverse impact to other processing times. DHS must hire and train new staff with revenue from current premium processing requests in order to expand expedited adjudication of premium processing consistent with the statutory requirement that other processing times not be adversely affected. DHS does not know how much it will cost to add new categories to apply for premium processing, and these costs are unquantified. The quantified transfers from Form I–129 and Form I–140 petitioners/applicants to DHS will result in higher revenue collected by USCIS. USCIS anticipates this additional revenue would cover any future expenditures required for staffing and training purposes. | | | RIA. |
| **TRANSFERS** | | | | |
| Annualized monetized transfers (7%)<br>Annualized monetized transfers (3%) | $729.3<br>$743.2 | N/A<br>N/A | N/A<br>N/A | |
| From whom to whom? | From the fee-paying petitioners of Form I–129 and Form I–140 to DHS. | | | |
| From whom to whom? | | | | |
| *Miscellaneous Analyses/Category* | *Effects* | | | *Source Citation* |
| Effects on State, local, or tribal governments | None. | | | RIA. |
| Effects on small businesses | None. | | | RIA. |
| Effects on wages | None. | | | None. |

[59] White House, OMB, *Circular A–4* (Sept. 17, 2003), available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf* (last viewed June 1, 2021).

TABLE 2—OMB A–4 ACCOUNTING STATEMENT—Continued
[$ millions, FY 2020]

Time Period: FY 2021 through FY 2030

| Category | Primary estimate | Minimum estimate | Maximum estimate | Source citation |
|---|---|---|---|---|
| *Miscellaneous Analyses/Category* | *Effects* | | | *Source Citation* |
| Effects on growth | None. | | | None. |

(2) Background

On October 1, 2020, the Continuing Appropriations Act, 2021 and Other Extensions Act, which contained the USCIS Stabilization Act, was signed into law.[60] The USCIS Stabilization Act amended section 286(u) of the INA, 8 U.S.C. 1356(u), to raise the premium processing fees for immigration benefit types designated for premium processing on or before August 1, 2020, and to expand the immigration benefit requests that may be designated for premium processing service within prescribed limitations, among other changes.[61]

Through this rulemaking, DHS is amending DHS premium processing regulations to codify those fees set by the USCIS Stabilization Act in section 286(u)(3)(A) of the INA, 8 U.S.C. 1356(u)(3)(A), and to establish new immigration benefit requests designated for premium processing under section 286(u)(3)(B) of the INA, 8 U.S.C. 1356(u)(3)(B), consistent with those conditions and eligibility requirements set forth by section 4102(b)(1) of the USCIS Stabilization Act.[62]

(3) Population

USCIS' premium processing service currently allows petitioners to pay an additional filing fee to expedite the adjudication of certain employment-based immigration benefit requests. The Continuing Appropriations Act, which included the USCIS Stabilization Act, set new fees for the premium processing of immigration benefit requests designated for premium processing as of August 1, 2020, and provided authority to establish new immigration benefit requests designated for premium processing and the associated fees.[63] This final rule will codify the new fees from the USCIS Stabilization Act into regulation and impose costs related to the newly eligible population filing Form I–907, Request for Premium Processing Service, for those immigration benefit requests designated for premium processing by this rule.

Table 3 shows the estimated total receipts received and refunds issued by USCIS for Form I–907 from fiscal year (''FY'') 2017 through FY 2021. During this period, total annual receipts for Form I–907 ranged from a low of 307,981 in FY 2017 to a high of 412,836 in FY 2019. Based on a 5-year annual average, DHS estimates the annual receipts for Form I–907 to be 365,521. In addition, the total number of refunds issued for Form I–907 decreased to 151 in FY 2021 from a high of 1,055 in FY 2017, with a 5-year annual average of 457 Form I–907 issued refunds. USCIS presents data on refunds issued by USCIS because USCIS currently guarantees processing for these requests within 15 days to petitioners who chose to pay the additional fee to request this service. The 15-day period generally begins when USCIS properly receives the correct version of Form I–907, Request for Premium Processing Service, with fee, at the correct filing address. Within the 15-day period, USCIS will issue either an approval notice, denial notice, notice of intent to deny, or request for evidence, or open an investigation for fraud or misrepresentation. If the benefit request requires the submission of additional evidence or a response to a notice of intent to deny, a new 15-day period begins when USCIS receives a complete response to the request for evidence or notice of intent to deny. The premium processing fee is required to be paid in addition to, and in a separate remittance from, other filing fees, and cannot be waived. If USCIS did not take any of the above actions within the 15-day processing service timeframe, USCIS refunds the premium processing fee.

This rule allows USCIS up to 45-days for premium processing of Form I–140 requesting EB–1 immigrant classification as a multinational executive or manager or EB–2 immigrant classification as member of professions with advanced degrees or exceptional ability seeking a national interest waiver (NIW) and allows USCIS up to 30 days for premium processing of Form I–539 and Form I–765. This change from the standard premium processing timeframe of 15 days reduces the risk that expansion of premium processing to new populations would result in a disproportionate increase in refunds beyond the levels shown in Table 3. This expansion in timeframe will not result in longer wait times for individuals requesting premium processing since the affected population is only a relatively small percentage of people whose adjudication would have required more time (0.1-percent) and therefore would have been refunded. As a result of this final rule, USCIS refunds will not increase for individuals requesting premium processing.

TABLE 3—FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE, RECEIPTS AND REFUNDS ISSUED, FY 2017 THROUGH FY 2021

| FY | Form I–907 receipts | | | Form I–907 refunds * | | |
|---|---|---|---|---|---|---|
| | Form I–129 | Form I–140 | Total | Form I–129 | Form I–140 | Total |
| 2017 | 236,499 | 71,482 | 307,981 | 968 | 87 | 1,055 |
| 2018 | 292,294 | 78,215 | 370,509 | 123 | 101 | 224 |
| 2019 | 333,160 | 79,676 | 412,836 | 255 | 48 | 303 |
| 2020 | 276,052 | 64,264 | 340,316 | 499 | 51 | 550 |
| 2021 | 300,200 | 97,275 | 397,475 | 42 | 109 | 151 |

[60] *See* USCIS Stabilization Act, Public Law 116–159 (Oct. 1, 2020).

[61] *Id.*

[62] *Id.*

[63] *Id.*

TABLE 3—FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE, RECEIPTS AND REFUNDS ISSUED, FY 2017 THROUGH FY 2021—Continued

| FY | Form I–907 receipts | | | Form I–907 refunds * | | |
|---|---|---|---|---|---|---|
| | Form I–129 | Form I–140 | Total | Form I–129 | Form I–140 | Total |
| Total | 1,438,205 | 390,912 | 1,829,117 | 1,887 | 396 | 2,283 |
| 5-year Average | 287,641 | 78,182 | 365,823 | 377 | 79 | 457 |

Source: USCIS, OP&S PRD, CLAIMS3 and ELIS database, October 13, 2021.
**Notes:** * The report reflects the most up-to-date data available at the time the system was queried. Any duplicate case information has been removed.

Table 4 shows the percentage of the eligible Form I–140 petitioners who chose to submit a premium processing request from FY 2017 through FY 2021. The following classifications are currently designated for premium processing: EB–1 Aliens of extraordinary ability, EB–1 Outstanding professors and researchers, EB–2 Members of professions with advanced degrees or exceptional ability not seeking a National Interest Waiver, EB–3 Skilled workers, EB–3 Professionals, and EB–3 Workers other than skilled workers and professionals.[64] Currently not all Form I–140 petitioners are eligible for premium processing, therefore DHS only discusses the percentage of those who are eligible for premium processing compared to the total number of premium processing requests submitted. The population in Table 3 consist of all Form I–140 petitions that are submitted with a Form I–907. However, in FY 2020 of the 64,264 receipts 35,367 were ineligible and 28,897 were eligible. In FY 2020 there were 129,536 total receipts for Form I–140. Of those 64,501 are currently ineligible and 65,035 are eligible for premium processing. The 5-year annual average percentage of eligible Form I–140 petitioners who chose to submit a premium processing request was 52 percent. In FY 2021, there were significantly more Form I–140 petitions submitted compared to previous years; however, the percentage of Form I–140 petitions filed with a Form I–907 has stayed consistent over the past 5 years.

TABLE 4—FORM I–140 RECEIPTS ELIGIBLE FOR PREMIUM PROCESSING, FY 2017 THROUGH FY 2021

| FY | Total Form I–140 petitions eligible for premium processing | Total Form I–140 petitions submitted with Form I–907 | Percentage of Form I–907 receipts |
|---|---|---|---|
| 2017 | 60,255 | 32,674 | 54 |
| 2018 | 62,266 | 35,875 | 58 |
| 2019 | 70,218 | 34,898 | 50 |
| 2020 | 65,035 | 28,897 | 44 |
| 2021 | 112,070 | 58,359 | 52 |
| Total | 369,844 | 190,703 | |
| 5-year Annual Average | 73,969 | 38,141 | 52 |

Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), CLAIMS3 and ELIS database, October 13, 2021.
**Note:** Form I–140 eligible petitioners include the following classifications are currently designated for premium processing: EB–1 Aliens of extraordinary ability, EB–1 Outstanding professors and researchers, EB–2 Members of professions with advanced degrees or exceptional ability not seeking a National Interest Waiver, EB–3 Skilled workers, EB–3 Professionals, and EB–3 Workers other than skilled workers and professionals.

Table 5 shows the percentage of the eligible Form I–129 petitioners who chose to submit a premium processing request along with their Form I–129 petitions from FY 2017 through FY 2021. The 5-year annual average percentage of eligible Form I–129 petitioners who choose to submit a premium processing request was 53-percent.

TABLE 5—FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE, FILED WITH FORM I–129, PETITION FOR A NONIMMIGRANT WORKER, FY 2017 THROUGH FY 2021

| FY | Total Form I–129 receipts | Total Form I–129 petitions submitted with Form I–907 | Percentage of Form I–907 receipts that come with Form I–129 |
|---|---|---|---|
| 2017 | 530,812 | 236,499 | 45 |
| 2018 | 548,950 | 292,296 | 53 |
| 2019 | 551,840 | 333,160 | 60 |
| 2020 | 555,093 | 274,864 | 50 |
| 2021 | 531,818 | 300,200 | 56 |

[64] *See* ''How Do I Request Premium Processing?'' *https://www.uscis.gov/forms/all-forms/how-do-i-request-premium-processing* (last updated Apr. 12, 2021).

TABLE 5—FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE, FILED WITH FORM I–129, PETITION FOR A NONIMMIGRANT WORKER, FY 2017 THROUGH FY 2021—Continued

| FY | Total Form I–129 receipts | Total Form I–129 petitions submitted with Form I–907 | Percentage of Form I–907 receipts that come with Form I–129 |
|---|---|---|---|
| Total | 2,718,513 | 1,437,019 | |
| 5-year Annual Average | 543,703 | 287,404 | 53 |

Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), CLAIMS3 and ELIS database, October 13, 2021.

To estimate the probability that an eligible petitioner may choose to request premium processing, DHS computes a ratio of the 5-year annual average number of requests to the 5-year annual average number of eligible petitioners. Table 6 shows that of those currently eligible for premium processing, 53-percent chose to submit a premium processing request. For purposes of this analysis, DHS assumes that demand rate will carry forward and will use this percentage to estimate the possible adoption volumes of the newly eligible Form I–539 and I–765 applicants.

TABLE 6—PERCENTAGE OF PREMIUM PROCESSING REQUESTS, FY 2017 THROUGH FY 2021

| | 5-year annual average of Forms submitted with Form I–907 | 5-year annual average of total receipts by Form | Percentage of Form I–907 receipts |
|---|---|---|---|
| Form I–140 | 38,141 | 73,969 | 52 |
| Form I–129 | 287,404 | 543,703 | 53 |
| Total | 325,545 | 617,672 | 53 |

Source: USCIS Analysis.

(4) Costs, Transfers, and Benefits of the Final Rule

(a) Form I–129, Petition for a Nonimmigrant Worker, Transfer Payments

Currently, petitioners requesting certain benefits on Form I–129, Petition for a Nonimmigrant Worker, are eligible to also submit a request for premium processing with their immigration benefit request. Table 7 shows the population of petitioners who submitted Form I–907 with Form I–129 [65] based on the corresponding nonimmigrant classifications from FY 2017 through FY 2021. The USCIS Stabilization Act increased the premium processing fees for Form I–129. The premium processing fee for H–2B or R–1 nonimmigrant status was increased from $1,440 to $1,500, an increase of $60, which represents a 4.2-percent increase. The premium fee for all other available Form I–129 classifications (E–1, E–2, E–3, H–1B, H–3, L–1A, L–1B, LZ, O–1, O–2, P–1, P–1S, P–2, P–2S, P–3, P–3S, Q–1, TN–1, and TN–2) was increased from $1,440 to $2,500, and increase of $1,060, which represents a 73.6-percent increase. Because the fee for premium processing for the Form I–129 H–2B and R–1 classifications was increased by a different amount than for all other Form I–129 classifications, the data for the Form I–129 H–2B and R–1 classifications data was separated from the data for all other classifications. During this period, total annual receipts for Form I–907 with Form I–129 H–2B or R–1 classifications ranged from a low of 7,067 in FY 2020 to a high of 11,764 in FY 2021. Based on a 5-year annual average, DHS estimates the annual receipts from Form I–907 filed with Form I–129 H–2B or R–1 classifications to be 9,024.

During this period, total annual receipts for Form I–907 filed with all other available Form I–129 classifications (E–1, E–2, E–3, H–1B, H–3, L–1A, L–1B, LZ, O–1, O–2, P–1, P–1S, P–2, P–2S, P–3, P–3S, Q–1, TN–1, and TN–2) ranged from a low of 227,289 in FY 2017 to a high of 322,656 in FY 2019. Based on a 5-year annual average, DHS estimates the annual receipts for Form I–907 associated with all other Forms I–129 to be 287,404, which represents 78.6-percent of all filed Form I–907 receipts.[66]

TABLE 7—FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE, FILED WITH FORM I–129, PETITION FOR A NONIMMIGRANT WORKER, FY 2017 THROUGH FY 2021

| FY | Form I–129 H–2B or R–1 request receipts | Form I–129 all other visa request receipts * | Total Form I–907 receipts |
|---|---|---|---|
| 2017 | 9,210 | 227,289 | 236,499 |
| 2018 | 9,127 | 283,169 | 292,296 |
| 2019 | 10,504 | 322,656 | 333,160 |
| 2020 | 7,067 | 267,797 | 274,864 |

[65] *See* Instructions for Petition for Nonimmigrant Worker. Form I–129. OMB No. 1615–0009 Expires Sept. 30, 2021. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf* (last updated Mar. 10, 2021).

[66] Calculation: 287,404 Total I–129 Forms filed with an I–907 (See Table 5—Total Form I–129 Petitions submitted with Form I–907) divided by 365,823 Total Form I–907 filed = 78.6 percent.

TABLE 7—FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE, FILED WITH FORM I–129, PETITION FOR A NONIMMIGRANT WORKER, FY 2017 THROUGH FY 2021—Continued

| FY | Form I–129 H–2B or R–1 request receipts | Form I–129 all other visa request receipts * | Total Form I–907 receipts |
|---|---|---|---|
| 2021 | 11,764 | 288,436 | 300,200 |
| Total | 47,672 | 1,389,347 | 1,437,019 |
| 5-year Annual Average | 9,534 | 277,869 | 287,404 |

Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), CLAIMS3 and ELIS database, October 13, 2021.
* **Note:** All other includes the following classifications: E–1, E–2, E–3, H–1B, H–2A, H–3, L–1A, L–1B, LZ, O–1, O–2, P–1, P–1S, P–2, P–2S, P–3, P–3S, Q–1, TN–1, and TN–2.
H–2B or R–1 equals 3.3% and All other I–129 equals 96.7%. of Total Form I–907 Receipts filed with a Form I–129 petition.

On October 1, 2020, the Continuing Appropriations Act, which included the USCIS Stabilization Act, was signed into law. The USCIS Stabilization Act set new fees for premium processing of immigration benefit requests that had been designated for premium processing as of August 1, 2020, and expanded DHS authority to establish and collect new premium processing fees, and to use those additional funds for expanded purposes.[67] Table 7 shows that in FY 2021 when the fee was increased, Form I–129 petitioners were still willing to pay for premium processing. This provides suggestive evidence that petitioners' demand for premium processing is insensitive to the price increases effected by this rule. Consequently, projections of demand for expanded premium processing presented in this analysis do not anticipate a quantifiable price response.

The fee for premium processing for those petitioners requesting H–2B or R–1 nonimmigrant status was increased from $1,440 to $1,500, an increase of $60, which represents a 4.2-percent increase.[68] DHS collected an additional $705,840[69] from the new, higher premium processing fees associated with Form I–129 requests from the H–2B or R–1 nonimmigrant status fee paying population in annual transfer payments for FY 2021 to DHS. The fee for all other Form I–129 petitioners requesting premium processing was increased from $1,440 to $2,500, an increase of $1,060, which represents a 73.6- percent increase. DHS collected an additional $305,742,160[70] in transfer payments from premium processing requestors filing Form I–129 for all other visa classifications to DHS in FY 2021. The total increase in transfer payments from the Form I–129 fee-paying population to DHS in FY 2021 was $306,448,000 as shown in Table 8.

TABLE 8—FEES FOR FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE, FILED WITH FORM I–129, PETITION FOR A NONIMMIGRANT WORKER, FY 2021

| Period of analysis | FY 2021 | Fee | Total |
|---|---|---|---|
| Pre-Appropriations Act (Baseline Costs) | 11,764 | $1,440 | $16,940,160 |
| Post-Appropriations Act | 11,764 | 1,500 | 17,646,000 |
| Change in Transfer Payments for Form I–129 H–2B or R–1 | | | 705,840 |
| Pre-Appropriations Act (Baseline Costs) | 288,436 | 1,440 | 415,347,840 |
| Post-Appropriations Act | 288,436 | 2,500 | 721,090,000 |
| Change in Transfer Payments for Form I–129 All Other * | | | 305,742,160 |
| Total Change in Transfer Payments for Form I–129 in FY 2021 | | | 306,448,000 |

Source: USCIS Analysis.
* **Note:** All other includes the following classifications (E–1, E–2, E–3, H–1B, H–2A, H–3, L–1A, L–1B, LZ, O–1, O–2, P–1, P–1S, P–2, P–2S, P–3, P–3S, Q–1, TN–1, and TN–2).

DHS estimates the new premium processing fees associated with Form I–129 requests for H–2B or R–1 nonimmigrant status will result in $572,040[71] in additional annual transfer payments from the Form I–129 H–2B and R–1 fee-paying population to DHS. The fee for all other Form I–129 petitioners requesting premium processing was increased from $1,440 to $2,500, an increase of $1,060. DHS estimates increased annual transfer payments from premium processing requestors filing Form I–129 for all other visa classifications to DHS will be $294,541,140 in FY 2022 through FY 2030.[72] The total annual increased transfer payments from the Form I–129 fee-paying population to DHS is $295,113,180 from a projected increase in filing fees in FY 2022 through FY

[67] *See* USCIS Stabilization Act, Public Law 116–159 (Oct. 1, 2020).

[68] *See id.;* On October 16, 2020, USCIS issued a web alert notifying the public that USCIS would increase fees for premium processing, effective October 19, 2020, as required by the Continuing Appropriations Act, 2021 and Other Extensions Act, Public Law 116–159, signed into law on October 1, 2020. *https://www.uscis.gov/news/premium-processing-fee-increase-effective-oct-19-2020* (last updated Oct. 16, 2020).

[69] Calculation: 11,764 annual Form I–129 H–2B or R–1 applications * $60 ($1,500 fee − $1,440) = $705,840.

[70] Calculation: 288,436 annual Form I–129 applications for other than H–2B and R–1 status * $1,060 ($2,500 fee − $1,440) = $305,742,160.

[71] Calculation: 9,534 average annual Form I–129 H–2B or R–1 applications * $60 ($1,500 fee − $1,440) = $572,040.

[72] Calculation: 277,869 average annual Form I–129 applications for other than H–2B and R–1 status * $1,060 ($2,500 fee − $1,440) = $294,541,140.

2030, shown in Table 9. From a societal perspective, the opportunity cost measures represent social costs, while the filing fees represent transfers from applicants to the government.[73]

TABLE 9—FEES FOR FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE, FILED WITH FORM I–129, PETITION FOR A NONIMMIGRANT WORKER, FY 2022 THROUGH FY 2030

| Period of analysis | 5-Year annual average (FY 2017 through FY 2021) | Fee | Total |
|---|---|---|---|
| Pre-Appropriations Act (Baseline Costs) | 9,534 | $1,440 | $13,728,960 |
| Post-Appropriations Act | 9,534 | 1,500 | 14,301,000 |
| Annual Change in Transfer Payments for Form I–129 H–2B or R–1 | | | 572,040 |
| Pre-Appropriations Act (Baseline Costs) | 277,869 | 1,440 | 400,131,360 |
| Post-Appropriations Act | 277,869 | 2,500 | 694,672,500 |
| Annual Change in Transfer Payments for Form I–129 All Other * | | | 294,541,140 |
| Total Annual Change in Transfer Payments for Form I–907 in FY 2022 through FY 2030 | | | 295,113,180 |

Source: USCIS Analysis.
* **Note:** All other includes the following classifications (E–1, E–2, E–3, H–1B, H–2A, H–3, L–1A, L–1B, LZ, O–1, O–2, P–1, P–1S, P–2, P–2S, P–3, P–3S, Q–1, TN–1, and TN–2).

(b) Form I–140, Immigrant Petition for Alien Workers, Transfer Payments

Table 10 shows the population of petitioners who submitted Form I–907, Request for Premium Processing Service, with Form I–140, Immigrant Petition for Alien Workers,[74] based on the corresponding employment-based (EB) classifications that are currently designated for premium processing. The following classifications are currently designated for premium processing: EB–1 Aliens of extraordinary ability (E11), EB–1 Outstanding professors and researchers (E12), EB–2 Members of professions with advanced degrees or exceptional ability not seeking a National Interest Waiver E21 (non-NIW), EB–3 Skilled workers (E31), EB–3 Professionals (E32), and EB–3 Workers other than skilled workers and professionals (EW3).[75]

Table 10 also shows the number of Form I–140 receipts filed with Form G–28, Notice of Entry of Appearance as Attorney or Accredited Representative (Form G–28) from FY 2017 through FY 2021. The number of Form G–28 submissions allows USCIS to estimate the cost of time for a petitioner or representative to file each form, which is addressed in the next section of this analysis. During FY 2017 through FY 2021, total annual receipts from Form I–907 filed with Form I–140 ranged from a low of 57,969 in FY 2020 to a high of 88,109 in FY 2021. Based on a 5-year annual average, DHS estimates the annual receipts of Form I–907 filed with Form I–140 to be 71,569.

TABLE 10—FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE FILED WITH FORM I–140, IMMIGRANT PETITION FOR ALIEN WORKERS AND THE NUMBER OF FORMS G–28 FILED WITH THOSE FORMS I–907, FY 2017 THROUGH FY 2021

| FY | Form I–907 receipts received with a Form I–140 | Form G–28 receipts received with a Form I–140 and Form I–907 | Percentage of Forms I–140 requesting premium processing and filed by an attorney or other representative (Form G–28) |
|---|---|---|---|
| 2017 | 71,482 | 65,453 | 92 |
| 2018 | 78,215 | 73,168 | 94 |
| 2019 | 79,676 | 73,144 | 92 |
| 2020 | 64,264 | 57,969 | 90 |
| 2021 | 97,275 | 88,109 | 91 |
| Total | 390,912 | 357,843 | |
| 5-year Annual Average | 78,182 | 71,569 | 92 |

Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), CLAIMS3 and ELIS database, October 13, 2021.

[73] *See* Instructions for Petition for Nonimmigrant Worker. Form I–129. OMB No. 1615–0009 Expires Sept. 30, 2021. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf* (last updated Mar. 10, 2021). The USCIS Stabilization Act did not change the time burden to complete any of the classifications for Form I–129, nor form fee. The public reporting burden for this collection of information is in the form instructions.

[74] *See* Instructions for Petition for Alien Workers. Form I–140. OMB No. 1615–0015 Expires June 30, 2022. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/i-140instr.pdf* (last updated Sep. 30, 2020).

[75] *See* ''How Do I Request Premium Processing?'' *https://www.uscis.gov/forms/all-forms/how-do-i-request-premium-processing* (last updated Apr. 12, 2021).

Effective October 1, 2020, the USCIS Stabilization Act increased the fee for premium processing of all designated classifications (Classifications: E11, E12, E21 (non-NIW), E31, E32, EW3) available with Form I–140, from $1,440 to $2,500, an increase of $1,060.[76]

Using the population from FY 2021 of 97,275 applicants, DHS estimates that as a result of the fee increase the additional premium processing annual transfer payments from the Form I–140 fee-paying population to DHS was $103,111,500 in FY 2021, shown in Table 11. Consistent with demand for Form I–129 premium processing, DHS observed an increase in premium processing requests associated with Form I–140 in FY 2021 following implementation of the fee increase. This corroborates the agency's experience that requestors are insensitive to the price increases effected by this rule, and will continue to file for premium processing.

TABLE 11—FEES FOR FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE, CURRENTLY FILED WITH FORM I–140, IMMIGRANT PETITION FOR ALIEN WORKERS *

| Period of analysis | FY 2021 | Fee | Total |
|---|---|---|---|
| Pre-Appropriations Act (Baseline Costs) | 97,275 | $1,440 | $140,076,000 |
| Post-Appropriations Act | 97,275 | 2,500 | 243,187,500 |
| Total Transfer Payments | | | 103,111,500 |

Source: USCIS Analysis.
* **Note:** Classifications: E11, E12, E21 (non-NIW), E31, E32, EW3.

Using the historical 5-year annual average from FY 2017 through FY 2021 of 78,182 applicants, DHS estimates that as a result of the increase in filing fees for premium processing the additional annual transfer payments from the Form I–140 fee-paying population to DHS will be $82,872,920 a projected in FY 2022 through FY 2030 shown in Table 12. From a societal perspective, the opportunity cost measures represent social costs, while the filing fees represent transfers from applicants to the government.[77]

TABLE 12—FEES FOR FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE, CURRENTLY FILED WITH FORM I–140, IMMIGRANT PETITION FOR ALIEN WORKERS *

| Period of Analysis | 5-Year annual average (FY 2017 through FY 2021) | Fee | Total |
|---|---|---|---|
| Pre-Appropriations Act (Baseline Costs) | 78,182 | $1,440 | $112,582,080 |
| Post-Appropriations Act | 78,182 | 2,500 | 195,455,000 |
| Total Transfer Payments | | | 82,872,920 |

Source: USCIS Analysis.
* **Note:** Classifications: E11, E12, E21 (non-NIW), E31, E32, EW3.

This final rule allows USCIS 45-days for premium processing of currently eligible Form I–140 requests, instead of the existing 15-day timeframe. While USCIS is unable to determine how many of the 79 Form I–140 premium processing refunds issued under the 15-day timeframe (Table 3) would be able to have their Request for Premium Processing completed as a result of this change, this would result in a reduction of the expected transfer of refunded revenues from the government, back to those petitioners.

(c) Form I–140, Immigrant Petition for Alien Workers Newly Eligible Population, Costs & Transfer Payments

The following classifications are currently designated for premium processing: EB–1 Aliens of extraordinary ability, EB–1 Outstanding professors and researchers, EB–2 Members of professions with advanced degrees or exceptional ability not seeking a National Interest Waiver, EB–3 Skilled workers, EB–3 Professionals, EB–3 Workers other than skilled workers and professionals.[78] In this final rule, DHS is adding two new employment-based classifications that will be designated for premium processing when filing Form I–140. DHS is including EB–1, multinational executives and managers, and EB–2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver. Petitioners of Form I–140 (EB–1, multinational executives and managers and EB–2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver) who were previously ineligible for premium processing may be able to have their petitions reviewed more quickly. As a result, an adjudicative action may be taken more quickly. This change will come at a cost of time and money for this new population.

Table 13 shows the total receipts received for Form I–140 EB–1,

[76] *See* USCIS Stabilization Act; On October 16, 2020, USCIS issued a web alert notifying the public that USCIS would increase fees for premium processing, effective October 19, 2020, as required by the Continuing Appropriations Act, 2021 and Other Extensions Act, Public Law 116–159, signed into law on October 1, 2020. *https://www.uscis.gov/news/premium-processing-fee-increase-effective-oct-19-2020* (last updated Oct. 16, 2020).

[77] *See* Instructions for Petition for Alien Workers. Form I–140. OMB No. 1615–0015 Expires June 30, 2022. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/i-140instr.pdf* (last updated Sep. 30, 2020). The USCIS Stabilization Act did not change the time burden to complete any of the classifications for Form I–140, nor form fee. The public reporting burden for this collection of information is in the form instructions.

[78] *See* ''How Do I Request Premium Processing?'' *https://www.uscis.gov/forms/all-forms/how-do-i-request-premium-processing* (last updated Apr. 12, 2021).

multinational executives, and managers, and Form I–140 EB–2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver for FY 2017 through FY 2021. During this period, total annual receipts for Form I–140 with these classifications ranged from a low of 64,501 in FY 2020 to a high of 79,135 in FY 2017. Based on a 5-year annual average, DHS estimates the annual receipts for Form I–140 with these two classifications to be 72,637.

TABLE 13—FORM I–140, IMMIGRANT PETITION FOR ALIEN WORKERS, RECEIPTS BY CLASSIFICATION, FY 2017 THROUGH FY 2021

| FY | EB–1, multinational executives, and managers receipts | EB–2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver receipts | Total |
|---|---|---|---|
| 2017 | 16,708 | 62,427 | 79,135 |
| 2018 | 13,595 | 61,652 | 75,247 |
| 2019 | 12,492 | 65,711 | 78,203 |
| 2020 | 11,222 | 53,279 | 64,501 |
| 2021 | 10,182 | 55,916 | 66,098 |
| Total | 64,199 | 298,985 | 363,184 |
| 5-year Annual Average | 12,840 | 59,797 | 72,637 |

Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), CLAIMS3 and ELIS database, October 13, 2021.

DHS recognizes that not all eligible petitioners will submit a premium processing request, and therefore, DHS uses the current percentage of premium processing requests compared to the number of total receipts from the currently eligible population, 52-percent, as a proxy of the number of newly eligible petitioners that will submit a premium processing request with Form I–140. DHS estimates 37,771 petitioners (52 percent of the newly eligible population of 72,637) would submit a premium processing request with their I–140 petition, as shown in Table 14.

TABLE 14—ESTIMATED OF PREMIUM PROCESSING REQUESTS FOR NEWLY ELIGIBLE FORM I–140, IMMIGRANT PETITION FOR ALIEN WORKERS

| Percent of total newly eligible Form I–140 petitioners | Newly eligible Form I–140 petitioners |
|---|---|
| 52 | 37,771 |

Source: USCIS Analysis.

Petitioners who file Form I–140 with a Form G–28 would use a lawyer or accredited representative to complete any related immigration benefit requests or forms. Based on the data from Table 10, 92 percent of Form I–140 petitions were filed with a Form G–28, while the remaining 8 percent of Form I–140 petitions are filed without a Form G–28.[79] Table 15 shows the total estimated population of petitioners who would choose to file Form I–140 requesting premium processing with an in-house or outsourced lawyer using a Form G–28[80] and the total estimated population of petitioners who would file Form I–140 requesting premium processing with a Human Resources Specialist.

TABLE 15—ESTIMATED NEWLY ELIGIBLE FORM I–140, IMMIGRANT PETITION FOR ALIEN WORKERS, POPULATIONS WITH AND WITHOUT FORM G–28, NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR ACCREDITED REPRESENTATIVE

| Percent | Estimated Form I–140 requesting premium processing filed by an attorney or other representative (Form G–28) (92% of 37,771) | Estimated Form I–140 requesting premium processing filed by an HR specialist (8% of 37,771) | Total |
|---|---|---|---|
| Population of Newly Eligible Form I–140 Petitioners filing for Premium Processing by Filer Type (52%) | 34,749 | 3,022 | 37,771 |

Source: USCIS Analysis.

[79] Calculation: 100 percent – 92 percent filing with Form G–28 = 8 percent only filing Form I–140.

[80] DHS uses an outsourced lawyer recognizing that not all entities will have in-house counsel and may need to hire outside counsel.

In order to estimate the opportunity costs of time for completing and filing Form I–907, DHS assumes that a petitioner will use a human resources (HR) specialist, an in-house lawyer, or an outsourced lawyer to prepare Form I–907 petitions.[81] DHS uses the mean hourly wage of $33.38 for HR specialists to estimate the opportunity cost of the time for preparing and submitting Form I–907.[82] Additionally, DHS uses the mean hourly wage of $71.59 for in-house lawyers to estimate the opportunity cost of the time for preparing and submitting Form I–140.[83]

DHS accounts for worker benefits when estimating the total costs of compensation by calculating a benefits-to-wage multiplier using the U.S. Department of Labor, BLS report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. DHS estimates that the benefits-to-wage multiplier is 1.45 and, therefore, is able to estimate the full opportunity cost per petitioner, including employee wages and salaries and the full cost of benefits such as paid leave, insurance, retirement, etc.[84] DHS multiplied the average hourly U.S. wage rate for HR specialists and in-house lawyers by 1.45 to account for the full cost of employee benefits, for a total of $48.40[85] per hour for an HR specialist and $103.81[86] per hour for an in-house lawyer. DHS recognizes that a firm may choose, but is not required, to outsource the preparation of these petitions and, therefore, presents two wage rates for lawyers. To determine the full opportunity costs of time if a firm hired an outsourced lawyer, DHS multiplied the average hourly U.S. wage rate for lawyers by 2.5 for a total of $178.98[87] to approximate an hourly wage rate for an outsourced lawyer[88] to prepare and submit Form I–907.[89]

To estimate the opportunity cost of time to complete and file Form I–907, DHS applies the estimated time burden (0.58 hours) to the newly eligible population and compensation rates of those who may file with or without a lawyer.[90] Table 16 shows the estimated annual opportunity cost of time for newly eligible Form I–140 petitioners employing an in-house or outsourced lawyer to complete and file Form I–907 requests. DHS does not know the exact number of petitioners who will choose an in-house or an outsourced lawyer, but assumes it may be a 50/50 split and therefore provides an average. These opportunity costs of time for Form I–140 petitioners who request premium processing using an attorney or other representative are estimated to range from $2,092,230 to $3,607,238 with an average of $2,849,734.

TABLE 16—AVERAGE OPPORTUNITY COSTS OF TIME TO NEWLY ELIGIBLE FORM I–140 PETITIONERS REQUESTING PREMIUM PROCESSING FILING WITH AN ATTORNEY OR OTHER REPRESENTATIVE

| | Newly eligible population of petitioners filing with a lawyer<br>A | Time burden to complete Form I–907 (hours)<br>B | Cost of time<br>C | Total opportunity cost<br>D = (A × B × C) |
|---|---|---|---|---|
| In House Lawyer ($103.81/hr.) | 34,749 | 0.58 | $103.81 | $2,092,230 |
| Outsourced Lawyer ($178.98/hr.) | 34,749 | 0.58 | 178.98 | 3,607,238 |
| Average | | | | 2,849,734 |

Source: USCIS Analysis.

To estimate the remaining opportunity cost of time for a HR specialist filing Form I–907 without a lawyer, DHS applies the estimated public reporting time burden (0.58 hours) to the compensation rate of an HR specialist. For those newly eligible, shown in Table 17, DHS estimates the total annual opportunity cost of time to HR specialists completing and filing Form I–907 requests will be approximately $84,834.

[81] USCIS limited its analysis to HR specialists, in-house lawyers, and outsourced lawyers to present estimated costs. However, USCIS understands that not all entities employ individuals with these occupations and, therefore, recognizes equivalent occupations may also prepare and file these petitions.

[82] *See* Bureau of Labor Statistics, U.S. Department of Labor, ''Occupational Employment Statistics, May 2020, Human Resources Specialist.'' Available at *https://www.bls.gov/oes/2020/may/oes131071.htm.* Accessed April 13, 2021.

[83] *See* Bureau of Labor Statistics, U.S. Department of Labor, ''Occupational Employment Statistics, May 2020, Lawyers.'' Available at *https://www.bls.gov/oes/2020/may/oes231011.htm.* Accessed April 13, 2021.

[84] The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour)/(Wages and Salaries per hour) ($38.60 Total Employee Compensation per hour)/($26.53 Wages and Salaries per hour) = 1.454964 = 1.45 (rounded). *See* U.S. Department of Labor, Bureau of Labor Statistics, Economic News Release, *Employer Cost for Employee Compensation (December 2020), Table 1. Employer Costs for Employee Compensation by ownership* (Dec. 2020), available at *https://www.bls.gov/news.release/archives/ecec_03182021.htm.* (last visited March. 31, 2021). The ECEC measures the average cost to employers for wages and salaries and benefits per employee hour worked.

[85] Calculation: $33.38 * 1.45 = $48.40 total wage rate for HR specialist.

[86] Calculation: $71.59 * 1.45 = $103.81 total wage rate for in-house lawyer.

[87] Calculation: $71.59 * 2.5 = $178.98 total wage rate for an outsourced lawyer.

[88] The DHS analysis in, ''Exercise of Time-Limited Authority to Increase the Fiscal Year 2018 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program'' (83 FR 24905, May 31, 2018), available at *https://www.federalregister.gov/documents/2018/05/31/2018-11732/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2018-numerical-limitation-for-the,* used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney wages.

The DHS ICE rule, ''Final Small Entity Impact Analysis: Safe-Harbor Procedures for Employers Who Receive a No-Match Letter'' at G–4 (Aug. 25, 2008), available at *https://www.regulations.gov/document/ICEB-2006-0004-0922* also uses a multiplier. The methodology used in the Final Small Entity Impact Analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this rule, pages 143–144.

[89] The DHS analysis in, ''Exercise of Time-Limited Authority to Increase the Fiscal Year 2018 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program'' (83 FR 24905, May 31, 2018), available at *https://www.federalregister.gov/documents/2018/05/31/2018-11732/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2018-numerical-limitation-for-the,* used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney wages.

Also, the analysis for a DHS ICE rule, ''Final Small Entity Impact Analysis: Safe-Harbor Procedures for Employers Who Receive a No-Match Letter'' at G–4 (Aug. 25, 2008), available at *https://www.regulations.gov/document/ICEB-2006-0004-0922* used a multiplier. The methodology used in the Final Small Entity Impact Analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this rule, pages 143–144.

[90] *See* Instructions for Request for Premium Processing Service. Form I–907. OMB No. 1615–0048 Expires July 31, 2022. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/i-907instr.pdf* (last updated Sep. 30, 2020).

TABLE 17—OPPORTUNITY COSTS OF TIME TO NEWLY ELIGIBLE FORM I–140 PETITIONERS FOR FILING FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE WITHOUT AN ATTORNEY OR ACCREDITED REPRESENTATIVE

| | Newly eligible population<br>A | Time burden to complete Form I–907 (hours)<br>B | HR specialist's opportunity cost of time (48.40/hr.)<br>C | Total opportunity cost of time<br>D = (A × B × C) |
|---|---|---|---|---|
| Estimate of Eligible Form I–140 Petitions (52%) | 3,022 | 0.58 | $48.40 | $84,834 |

Source: USCIS Analysis.

The costs to the petitioners newly eligible to file Form I–907 with a Form I–140 as a result of this rule is estimated to be $2,934,568, as shown Table 18. From a societal perspective, the opportunity cost measures represent social costs, while the filing fees represent transfers from applicants to the government.[91]

TABLE 18—TOTAL COSTS TO NEWLY ELIGIBLE FORM I–140 PETITIONERS FOR FILING FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE

| | Opportunity cost of time to complete and to file Form I–907 (lawyers), Table 16<br>A | Opportunity cost of time to complete and file Form I–907 (HR specialists), Table 17<br>B | Total cost<br>D = (A + B + C) |
|---|---|---|---|
| Estimate of Eligible Form I–140 Petitions (52%) | $2,849,734 | $84,834 | $2,934,568 |

Source: USCIS Analysis.

In Table 19, DHS estimates that as a result of the increase in filing fees for Form I–907, Request for Premium Processing Service, the additional annual transfer payments from the new Form I–140 fee-paying population to DHS will be $94,427,500.

TABLE 19—NEW FILING FEES TO FORM I–140 PETITIONERS FOR FILING FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE

| | Newly eligible population<br>A | New filing fees for Form I–907<br>B | Total filing fees from Form I–907<br>C = (B × A) |
|---|---|---|---|
| Estimate of Eligible Form I–140 Petitions (52%) | 37,771 | $2,500 | $94,427,500 |

Source: USCIS Analysis.

(d) Form I–539, Application To Extend/Change Nonimmigrant Status, Costs & Transfer Payments

In this final rule, DHS is now adding Form I–539, Application to Extend/Change Nonimmigrant Status, to the types of immigration benefit requests that are eligible for premium processing. While Form I–539 is used for many nonimmigrants categories who may apply for an extension of stay or a change of status, premium processing will now be extended to Form I–539 requestors changing status to F–1, F–2, J–1, J–2, M–1, or M–2 nonimmigrant status or a change of status or extension of stay in E–1, E–2, E–3, H–4, L–2, O–3, P–4, or R–2 nonimmigrant status.

Table 20 shows the total receipts received for Form I–539 for FY 2017 through FY 2021 and the number of Form I–539 receipts filed with an attorney or accredited representative using Form G–28. The number of Form G–28 submissions allows USCIS to estimate the numbers of forms that are filed by an attorney or accredited representative. This in turn, allows USCIS to estimate the opportunity cost of time depending on the type of filer. During this period, total annual receipts for Form I–539 ranged from a low of 227,120 in FY 2019 to a high of 441,920 in FY 2020. Based on a 5-year annual average, DHS estimates the annual receipts for Form I–539 to be 284,345, with 49 percent of Forms I–539 being filed by an attorney or accredited representative.

[91] *See* Instructions for Petition for Alien Workers. Form I–140. OMB No. 1615–0015 Expires June 30, 2022. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/i-140instr.pdf* (last updated Sep. 30, 2020). The USCIS Stabilization Act did not change the time burden to complete any of the classifications for Form I–140, nor form fee. The public reporting burden for this collection of information is in form instructions.

TABLE 20—USCIS RECEIPTS OF FORM I–539, APPLICATION TO EXTEND/CHANGE NONIMMIGRANT STATUS, WITH THE NUMBER OF G–28, NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR ACCREDITED REPRESENTATIVE, RECEIVED, FY 2017 THROUGH FY 2021

| FY | Receipts | Form G–28 | Percentage of Forms I–539 filed with Form G–28 |
|---|---|---|---|
| 2017 | 233,306 | 121,855 | 52 |
| 2018 | 233,437 | 130,654 | 56 |
| 2019 | 227,120 | 130,435 | 57 |
| 2020 | 441,920 | 166,298 | 38 |
| 2021 | 285,941 | 148,779 | 52 |
| Total | 1,421,724 | 698,021 | 49 |
| 5-year Annual Average | 284,345 | 139,604 | 49 |

Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), CLAIMS3 and ELIS database, October 13, 2021.

DHS does not know how many newly eligible Form I–539 applicants will choose to submit a premium processing request since this population has not previously been eligible to file for premium processing. DHS recognizes that not all eligible petitioners will submit a premium processing request. Table 21 shows the 5-year annual average for the classifications that are now eligible for premium processing along with the number of forms that are filed with a Form G–28 for FY 2017 through FY 2021. Overall, 49 percent [92] of Form I–539 applications will now be eligible for premium processing. Form I–539 F–1, F–2, J–1, J–2, M–1, M–2 classifications account for 14 percent [93] of the newly eligible population and are students and exchange visitors. Form I–539 E–1, E–2, E–3, L–2, H–4, O–3, P–4, R–2 classifications are employment visas and account for the remaining 86 percent [94] of the newly eligible population of Form I–539 filers.

TABLE 21—USCIS 5-YEAR ANNUAL AVERAGE OF FORM I–539 RECEIPTS, APPLICATION TO EXTEND/CHANGE NONIMMIGRANT STATUS BY CLASSIFICATION AND FILE WITH OR WITHOUT A FORM G–28, FY 2017 THROUGH FY 2021

| Form I–539 classifications | Form I–539 filed with Form G–28 | Form I–539 filed without Form G–28 | Total Form I–539 receipts |
|---|---|---|---|
| F–1 | 22,180 | 55,680 | 77,860 |
| F–2 | 2,640 | 6,161 | 8,801 |
| J–1 | 209 | 1,033 | 1,242 |
| J–2 | 132 | 529 | 661 |
| M–1 | 333 | 7,773 | 8,106 |
| M–2 | 14 | 24 | 38 |
| F–1, F–2, J–1, J–2, M–1, M–2 Total | 25,508 | 71,200 | 96,708 |
| E–1 | 601 | 99 | 700 |
| E–2 | 10,985 | 1,966 | 12,951 |
| E–3 | 2,340 | 417 | 2,757 |
| H–4 | 372,202 | 131,452 | 503,654 |
| L–2 | 53,545 | 7,617 | 61,162 |
| O–3 | 6,825 | 1,004 | 7,829 |
| P–4 | 875 | 443 | 1,318 |
| R–2 | 4,470 | 1,236 | 5,706 |
| E–1, E–2, E–3, L–2, H–4, O–3, P–4, R–2 Total | 451,843 | 144,234 | 596,077 |
| Total of all Classifications | 477,351 | 215,434 | 692,785 |
| 5-year Annual Average of all Classifications | 95,470 | 43,087 | 138,557 |

Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), CLAIMS3 and ELIS database, October 13, 2021.

Table 21 shows that of the 138,557 newly eligible applicants, DHS calculated that 19,342 would be applying for F–1, F–2, J–1, J–2, M–1, M–2 classifications (14%), and the remaining 119,215 would be applying for E–1, E–2, E–3, L–2, H–4, O–3, P–4, R–2 classifications (86%). Since Form I–539 applicants have never been eligible to request premium processing, DHS has no historical data to determine how many of the newly eligible population

[92] Calculation: 5-year Annual Average Total Newly Eligible Form I–539 applicants/5-year Annual Average of Total Form I–539 Receipts = 138,557 (Table 21)/284,345 (Table 20) = 49%.

[93] Calculation: F, J, and M Total/Total of all Classifications = 96,708/692,785 = 14%.

[94] Calculation: All Other Total/Total of all Classifications = 596,077/692,785 = 86%.

will take advantage of premium processing. Therefore, DHS uses the 53 percent average of Forms I–129 and I–140 that request premium processing for this newly eligible population as a proxy.

Of the 19,342 newly eligible applicants for F–1, F–2, J–1, J–2, M–1, M–2 classifications, DHS estimates that 10,251 applicants (53 percent of the eligible population) may submit a premium processing request along with their Form I–539 application. Of the 119,215 newly eligible applicants for E–1, E–2, E–3, L–2, H–4, O–3, P–4, R–2 classifications, DHS estimates that 63,184 applicants (53 percent of the eligible population) may submit a premium processing request along with their Form I–539 application as shown in Table 22. DHS is planning to begin accepting premium processing requests from F–1, F–2, J–1, J–2, M–1, M–2 classifications beginning in FY 2022. DHS anticipates accepting premium processing requests from E–1, E–2, E–3, L–2, H–4, O–3, P–4, R–2 classifications by FY 2025.

TABLE 22—ESTIMATED USCIS 5-YEAR ANNUAL AVERAGE FORM I–539, APPLICATION TO EXTEND/CHANGE NON-IMMIGRANT STATUS, POPULATIONS FILED WITH AND WITHOUT FORM G–28 NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR ACCREDITED REPRESENTATIVE, FY 2017 THROUGH FY 2021

| Classification type | Estimated Form I–539 filed with Form G–28 | Estimated Form I–539 filed without Form G–28 | Total |
|---|---|---|---|
| F–1, F–2, J–1, J–2, M–1, M–2 classifications | 2,704 | 7,547 | 10,251 |
| E–1, E–2, E–3, L–2, H–4, O–3, P–4, R–2 classifications | 47,895 | 15,289 | 63,184 |
| Total | 50,599 | 22,836 | 73,435 |

Source: U.S. Citizenship and Immigration Services, Office of Performance and Quality, C3 Consolidated via SAS, queried October 13, 2021.

In order to estimate the opportunity costs of time for completing and filing Form I–907, DHS assumes that an applicant will use an in-house or outsourced lawyer or will prepare Form I–907 request themselves. Many of the individuals using Form I–539 F–1, F–2, J–1, J–2, M–1, M–2 classifications may file forms on their own because they are students, professors, research scholars, trainees or interns, teachers, camp counselors, au pairs, and summer work travel exchange visitors, and may not choose to hire a lawyer.[95] Table 22 shows the total population of applicants who chose to file Form I–539 with and without an attorney or accredited representative using Form G–28 by classification.

To estimate the new opportunity cost of time for Form I–539 applicants to file Form I–907, DHS applies the estimated time burden (0.58 hours)[96] of Form I–907 to the newly eligible population and compensation rates of who may file, with or without a lawyer. For newly eligible applicants of Form I–539, Table 23 shows the estimated annual opportunity cost of time to applicants who use an in-house or outsourced lawyer to complete and file Form I–907 requests of $4,149,578.

TABLE 23—OPPORTUNITY COSTS OF TIME TO FORM I–539 APPLICANTS WHO FILE FORM I–907 WITH AN ATTORNEY OR ACCREDITED REPRESENTATIVE

| | Affected population<br>A | Time burden to complete Form I–907 (hours)<br>B | Hourly wage<br>C | Total opportunity cost<br>D = (A × B × C) |
|---|---|---|---|---|
| F–1, F–2, J–1, J–2, M–1, M–2 Classifications: | | | | |
| In-House Lawyer ($103.81/hr.) | 2,704 | 0.58 | 103.81 | 162,807 |
| Outsourced Lawyer ($178.98/hr.) | 2,704 | 0.58 | 178.98 | 280,698 |
| Average Opp. Cost of in-house and Outsourced Lawyer | 2,704 | | | 221,753 |
| E–1, E–2, E–3, L–2, H–4, O–3, P–4, R–2 Classifications: | | | | |
| In-House Lawyer ($103.81/hr.) | 47,895 | 0.58 | 103.81 | 2,883,748 |
| Outsourced Lawyer ($178.98/hr.) | 47,895 | 0.58 | 178.98 | 4,971,903 |
| Average Opp. Cost of in-house and Outsourced Lawyer | 47,895 | | | 3,927,826 |
| Total Opportunity cost of time for all Classifications | | | | 4,149,578 |

Source: USCIS Analysis.

To estimate the new opportunity costs of time for students and exchange visitors applying for F, J or M classifications, USCIS uses an average total rate of compensation based on the effective minimum wage. DHS assumes that the following classifications: F–1, academic student, J–1, exchange visitor, J–2 spouse or child of J–1 exchange

[95] USCIS recognizes that professors, teachers, and research scholars in the J–1 and J–2 visa categories may not hire lawyers and may not file these forms themselves. USCIS recognizes that these forms may be filed by an HR Specialist or some other equivalent occupation at the sponsoring entity on behalf of these applicants. However, for the simplicity of this analysis, USCIS includes these categories as filing themselves which may result in a slight underestimation in the opportunity costs of time for the J category.

[96] *See* Instructions for Request for Premium Processing Service. Form I–907. OMB No. 1615–0048 Expires July 31, 2022. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/i-907instr.pdf* (last updated Sep. 30, 2020).

visitor, M–1 vocational student, and M–2 spouse or child of an M–1 vocational student are young with limited work experience/education and would therefore have lower wages. As reported by The New York Times ''[t]wenty-nine states and the District of Columbia have state-level minimum hourly wages higher than the federal [minimum wage],'' as do many city and county governments. Analysis by The New York Times estimates that ''the effective minimum wage in the United States . . . [was] $11.80 an hour in 2019.'' [97] DHS relies on this more robust minimum wage of $11.80 as an estimate of the opportunity cost of time. In order to estimate the fully loaded wage rates, to include benefits, USCIS used the benefits-to-wage multiplier of 1.45 and multiplied it by the prevailing minimum hourly wage rate. The fully loaded hourly wage rate for someone earning the effective minimum wage rate is $17.11.[98] Therefore, DHS estimates that the opportunity cost for each petitioner is $9.92 per response for those petitions.[99]

DHS accounts for worker benefits when estimating the total costs of compensation by calculating a benefits-to-wage multiplier using the U.S. Department of Labor, BLS report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. DHS estimates that the benefits-to-wage multiplier is 1.45 and, therefore, is able to estimate the full opportunity cost per petitioner, including employee wages and salaries and the full cost of benefits such as paid leave, insurance, retirement, and other benefits.[100] DHS uses the mean hourly wage of $27.07 per hour [101] for all occupations to estimate the opportunity cost of time for this population in this analysis. DHS calculates the total rate of compensation as $39.25 per hour, where the mean hourly wage is $27.07 per hour worked and average benefits are $12.18 per hour.[102]

To estimate the new opportunity costs of time for a Form I–539 applicant filing Form I–907 to request premium processing, DHS applies the estimated public reporting time burden (0.58 hours) to the newly eligible population and compensation rate of the applicant. Therefore, for those newly eligible, as shown in Table 24, DHS estimates the total annual opportunity cost of time to F–1, F–2, J–1, J–2, M–1, M–2 classification applicants completing and filing Form I–907 requests is $74,895 and the opportunity cost of time for E–1, E–2, E–3, L–2, H–4, O–3, P–4, R–2 classification applicants is $348,054. DHS estimates the total opportunity cost of time for the affected population of Form I–539 applicants filing Form I–907 of $422,949 as shown in Table 24.

TABLE 24—OPPORTUNITY COSTS OF TIME TO FORM I–539 APPLICANTS FOR FILING FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE

| | Affected population<br>A | Time burden to complete Form I–907 (hours)<br>B | Petitioner cost of time<br>C | Total opportunity cost of time to file Form I–907<br>D = (A x B x C) |
|---|---|---|---|---|
| F–1, F–2, J–1, J–2, M–1, M–2 classifications | 7,547 | 0.58 | $17.11 | $74,895 |
| E–1, E–2, E–3, L–2, H–4, O–3, P–4, R–2 classifications | 15,289 | 0.58 | 39.25 | 348,054 |
| Total | 22,836 | | | 422,949 |

Source: USCIS Analysis.

DHS estimates the total additional annual cost beginning in FY 2022 to F–1, F–2, J–1, J–2, M–1, M–2 classification applicants completing and filing Form I–907 requests are expected to be $296,648 shown in Table 25. Note that this cost includes an average opportunity cost time for lawyers, which assumes half of the applicants use an in house lawyer and half the applicants use an outsourced lawyer.

TABLE 25—TOTAL COSTS TO FORM I–539 F–1, F–2, J–1, J–2, M–1, M–2 CLASSIFICATION APPLICANTS FOR FILING FORM I–907, REQUEST FOR PREMIUM PROCESSING

| | |
|---|---|
| Average Opportunity Cost Time for Lawyers to Complete Form I–907 | $221,753 |
| Average Opportunity Cost Time for Students to Complete Form I–907 | 74,895 |
| Total Cost | 296,648 |

Source: USCIS Analysis.

[97] ''Americans Are Seeing Highest Minimum Wage in History (Without Federal Help)'' Ernie Tedeschi, The New York Times, April 24, 2019. Accessed at *https://www.nytimes.com/2019/04/24/upshot/why-america-may-already-have-its-highest-minimum-wage.html* (last visited June 25, 2020).

[98] Calculation: (Effective Minimum Wage Rate) $11.80 × (Benefits-to-wage multiplier) 1.45 = $17.11 per hour.

[99] Calculation: (Effective Wage) $17.11 × (Estimated Opportunity of Cost to file Form I–907) 0.58 = $9.92.

[100] The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour)/(Wages and Salaries per hour) ($38.60 Total Employee Compensation per hour)/($26.53 Wages and Salaries per hour) = 1.454964 = 1.45 (rounded). *See* U.S. Department of Labor, BLS, Economic News Release, *Employer Cost for Employee Compensation (December 2020), Table 1. Employer Costs for Employee Compensation by ownership* (Dec. 2020), available at *https://www.bls.gov/news.release/archives/ecec_03182021.htm.* (last visited Mar. 31, 2021).

[101] *See* BLS, U.S. Department of Labor, ''Occupational Employment Statistics, May 2020, All Occupations.'' Available at *https://www.bls.gov/oes/2020/may/oes_nat.htm#00-0000* Accessed Apr. 13, 2021. (last visited Apr. 29, 2021).

[102] The calculation of the weighted mean hourly wage for applicants: $27.07 per hour *1.45 benefits-to-wage multiplier = $39.25 (rounded) per hour.

DHS estimates the total additional annual cost beginning in FY 2025 to E–1, E–2, E–3, L–2, H–4, O–3, P–4, R–2 classification applicants completing and filing Form I–907 requests are expected to be $4,275,880 shown in Table 26. From a societal perspective, the opportunity cost measures represent societal costs, while the filing fees represent transfers from applicants to the government.[103]

TABLE 26—TOTAL COSTS TO FORM I–539 E–1, E–2, E–3, L–2, H–4, O–3, P–4, R–2 APPLICANTS FOR FILING FORM I–907, REQUEST FOR PREMIUM PROCESSING

| | |
|---|---|
| Average Opportunity Cost Time for Lawyers to Complete Form I–907 | $3,927,826 |
| Average Opportunity Cost Time for Workers to Complete Form I–907 | 348,054 |
| Total Cost | 4,275,880 |

Source: USCIS Analysis.

In Table 27, DHS uses the estimated new population to complete Form I–907. DHS estimates that as a result of the increase in filing fees for Form I–907, Request for Premium Processing Service, the additional annual transfer payments from the new Form I–539 F–1, F–2, J–1, J–2, M–1, M–2 classification fee-paying population to DHS will be $17,939,250 in FY 2022.

DHS also estimates that annual transfer payments from Form I–539 E–1, E–2, E–3, L–2, H–4, O–3, P–4, R–2 classification applicants who request premium processing by filing Form I–907 to DHS will be $110,572,000 in FY 2025.

TABLE 27—FILING FEES FOR FORM I–539 APPLICANTS FOR FILING FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE

| | Newly eligible population (A) | New fees for Form I–907 (B) | Fees for filing Form I–907 C = (A x B) |
|---|---|---|---|
| Estimate of Eligible Form I–539 Petitions (53%) Students | 10,251 | $1,750 | $17,939,250 |
| Estimate of Eligible Form I–539 Petitions (53%) Workers | 63,184 | 1,750 | 110,572,000 |
| Total | 73,435 | 1,750 | 128,511,250 |

Source: USCIS Analysis.

(e) Form I–765, Application for Employment Authorization, Costs & Transfer Payments

In this final rule, DHS is including Form I–765, Application for Employment Authorization, to the list of immigration benefit requests permitted to apply for premium processing. Table 28 shows the total receipts received for Form I–765 for FY 2017 through FY 2021. Table 28 also shows the number of Form I–765 receipts filed with an attorney or accredited representative using Form G–28. The number of Form G–28 submissions allows USCIS to estimate the number of Forms I–765 that are filed by an attorney or accredited representative and thus estimate the opportunity costs of time for an applicant, attorney or accredited representative to file each form. From FY 2017 through FY 2021, total annual receipts for Form I–765 ranged from a low of 2,005,591 in FY 2020 to a high of 2,588,827 in FY 2021. Based on a 5-year annual average, DHS estimates the annual average receipts of Form I–765 to be 2,259,872 with 48 percent of applications filed by an attorney or accredited representative.

TABLE 28—FORM I–765 APPLICATION FOR EMPLOYMENT AUTHORIZATION, RECEIPTS RECEIVED BY USCIS, WITH FORM G–28 NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR ACCREDITED REPRESENTATIVE, FY 2017 THROUGH FY 2021

| FY | Form I–765 receipts | Form G–28 receipts received with a form I–765 receipt | Form G–28 receipts received without form I–765 receipt | Percent of Form I–765 receipts filed with a form G–28 receipt |
|---|---|---|---|---|
| 2017 | 2,372,692 | 1,077,974 | 1,294,718 | 45 |
| 2018 | 2,140,985 | 947,711 | 1,193,274 | 44 |
| 2019 | 2,191,145 | 1,052,774 | 1,138,371 | 48 |
| 2020 | 2,005,712 | 1,027,689 | 978,023 | 51 |
| 2021 | 2,588,827 | 1,355,324 | 1,233,503 | 52 |
| Total | 11,299,361 | 5,461,472 | 5,837,889 | |

[103] *See* Instructions for Application to Extend/Change Nonimmigrant Status. Form I–539. OMB No. 1615–0003 Expires Nov. 30, 2021. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/i-539instr.pdf* (last updated Mar. 10, 2021). The USCIS Stabilization Act did not change the time burden to complete any of the classifications for Form I–539, nor form fees. The public reporting burden for this collection of information is in the form instructions.

TABLE 28—FORM I–765 APPLICATION FOR EMPLOYMENT AUTHORIZATION, RECEIPTS RECEIVED BY USCIS, WITH FORM G–28 NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR ACCREDITED REPRESENTATIVE, FY 2017 THROUGH FY 2021—Continued

| FY | Form I–765 receipts | Form G–28 receipts received with a form I–765 receipt | Form G–28 receipts received without form I–765 receipt | Percent of Form I–765 receipts filed with a form G–28 receipt |
|---|---|---|---|---|
| 5-year Annual Average | 2,259,872 | 1,092,294 | 1,167,578 | 48 |

Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), CLAIMS3 and ELIS database, October 18, 2021.

DHS does not know how many newly eligible Form I–765 applicants will choose to submit a premium processing request because this population has not previously been eligible to file for premium processing.

DHS is prioritizing premium processing for some Form I–765 categories. DHS anticipates to begin premium processing Employment Authorization Documents for students applying for Optional Practical Training (OPT) and exchange visitors beginning in FY 2022. Table 29 shows the estimated populations that will be eligible for premium processing. Based on a 5-year annual average, DHS estimates the annual average receipts of Form I–765 eligible categories to be 218,076 beginning in FY 2022. DHS also estimates that the annual average receipts of Form I–765 for the additional categories to be 102,495 beginning in 2025 based on a 5-year annual average. DHS identifies a final expanded eligibility group consisting of an additional 1,136,691 applicants that could be covered under this rule; however due to the size and nature of this group, DHS does not have immediate plans for when premium processing will be implemented for them. Lastly, DHS excludes remaining categories that USCIS has no current plans to expand to implement premium processing for.

TABLE 29—FORM I–765 CLASSIFICATIONS BY EXPECTED IMPLEMENTATION, FY 2017 THROUGH FY 2021

| FY | Form I–765 receipts eligible in 2022 | Form I–765 receipts eligible in 2025 | Form I–765 receipts unsure of implementation | Form I–765 receipts unlikely categories to be eligible for premium processing | Total |
|---|---|---|---|---|---|
| 2017 | 237,072 | 96,806 | 1,112,502 | 926,065 | 2,372,445 |
| 2018 | 235,622 | 100,316 | 977,641 | 827,050 | 2,140,629 |
| 2019 | 226,275 | 110,743 | 1,165,725 | 686,547 | 2,189,290 |
| 2020 | 207,550 | 110,449 | 1,056,139 | 625,570 | 1,999,708 |
| 2021 | 183,859 | 94,160 | 1,371,449 | 945,495 | 2,594,963 |
| Total | 1,090,378 | 512,474 | 5,683,456 | 4,010,727 | 11,297,035 |
| 5-year Annual Average | 218,076 | 102,495 | 1,136,691 | 802,145 | 2,259,407 |

Source: U.S. Citizenship and Immigration Services, Office of Performance and Quality, C3 Consolidated via SAS, queried October 2021.
* **Note:** Totals is this table are .1% off from Table 28 due to different pull dates of the data.

Since Form I–765 applicants have never been eligible to request premium processing, DHS has no historical data to determine how many of the newly eligible population will take advantage of premium processing. Therefore, DHS uses the 53- percent average of Forms I–129 and I–140 developed in Table 6, that request premium processing for this newly eligible population as a proxy.

DHS understands that some Form I–765 classifications are already on a congressionally mandated or regulatory clock to adjudicate their forms in 30–90 days and therefore it would not be reasonable to assume these applicants would pay the additional fee to submit a premium processing request. Some Form I–765 applicants for asylum-based categories may also be submitting Form I–539 concurrently so they may not be interested in paying for premium processing twice. DHS also recognizes that some classifications could be more interested in faster adjudication times and may submit premium processing requests at a rate more consistent with the estimates applied to the other populations in this analysis. While EAD eligibility categories are not effective predictors of future likelihood to request premium processing, applying the assumptions above to the Form I–765 data by eligibility category yields a more consistent approximation of potential population requesting premium processing for their EADs.[104] Using 53-percent as a proxy, DHS estimates that 115,580 applicants (53-percent of the eligible population) out of the 218,076 employment authorization document applicants who apply annually may submit a premium processing request with their Form I–765 application beginning in FY 2022.[105] DHS also estimates that 54,322 applicants (53-percent of the eligible population) out of the 102,495 employment authorization document applicants who apply annually may submit a premium processing request with their Form I–765 application beginning in FY 2025.[106]

In order to estimate the opportunity costs of time for completing and filing

[104] *See* Form I–765, Application for Employment Authorization, All Receipts, Approvals, Denials Grouped by Eligibility Category and Filing Type at *https://www.uscis.gov/sites/default/files/document/reports/I-765_Application_for_Employment_FY03-20.pdf.* USCIS, OPQ, C3 Consolidated via SAS, queried Oct 2020. (accessed 10/15/2021)

[105] Calculation: 218,076 applicants * 53 percent = 115,580.

[106] Calculation: 102,495 applicants * 53 percent = 54,322.

a Form I–907 submitted with a Form I–765, DHS assumes that to prepare, complete, and file these forms an applicant will use either an in-house lawyer, outsourced lawyer, or will do so themselves. Based on the data from Table 30, 48-percent of Form I–765 applications were filed with an attorney or accredited representative using Form G–28, with 52- percent [107] of Form I–765 applications being filed without a Form G–28. DHS will apply these same percentages to applicants requesting premium processing with a Form I–765, expecting that 48-percent will use an attorney or accredited representative and 52- percent will file the Form I–907 themselves. Table 30 shows the total population by percentage for applicants who may choose to file Form I–765 with and without Form G–28.

TABLE 30—ESTIMATED FORM I–765, APPLICATION FOR EMPLOYMENT AUTHORIZATION, POPULATIONS FILING WITH AND WITHOUT FORM G–28, NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR ACCREDITED REPRESENTATIVE

| Percent | Estimated Form I–765 filed with Form G–28<br>A | Estimated Form I–765 filed without Form G–28<br>B | Total<br>C = (A + B) |
|---|---|---|---|
| Estimate of Eligible Form I–765 Petitions in 2022 (53%) | 60,102 | 55,478 | 115,580 |
| Estimate of Eligible Form I–765 Petitions in 2025 (53%) | 28,247 | 26,075 | 54,322 |

Source: USCIS Analysis.

To estimate the opportunity costs of time to file a Form I–907 to accompany a Form I–765 using an attorney or accredited representative, DHS applies the estimated public reporting time burden (0.58 hours) to the population who will be eligible for premium processing beginning in FY 2022. Table 31 shows the estimated annual opportunity costs of time to complete and file Form I–907 with a Form I–765 if filed by an in-house lawyer or outsourced lawyer. The opportunity cost of time is $4,928,911 based on a simple average of the cost for an in-house lawyer and an outsourced lawyer.

TABLE 31—TOTAL OPPORTUNITY COSTS OF TIME TO AN ATTORNEY OR ACCREDITED REPRESENTATIVE TO COMPLETE AND FILE FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE WITH A FORM I–765 BEGINNING IN FY 2022

| | Estimate of eligible Form I–765 petitions filed with Form G–28<br>A | Time burden to complete Form I–907 (hours)<br>B | Hourly wage rate<br>C | Total opportunity cost<br>D = (A × B × C) |
|---|---|---|---|---|
| In-House Lawyer ($103.81/hr.) | 60,102 | 0.58 | $103.81 | $3,618,729 |
| Outsourced Lawyer ($178.98/hr.) | 60,102 | 0.58 | 178.98 | 6,239,092 |
| Average | 60,102 | ..... | ..... | 4,928,911 |

Source: USCIS Analysis.

To estimate the opportunity costs of time to complete and file Form I–907 with a Form I–765 without an attorney or accredited representative, DHS applies the estimated public reporting time burden (0.58 hours) [108] to the newly eligible population and compensation rate of the applicant. Therefore, for those newly eligible, as shown in Table 32, DHS estimates the total annual opportunity costs of time to applicants completing and filing Form I–907 to be $1,557,378.

TABLE 32—OPPORTUNITY COSTS TO FORM I–765, APPLICATION FOR EMPLOYMENT AUTHORIZATION, APPLICANTS FOR FILING FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE BEGINNING IN FY 2022

| | Newly eligible population<br>A | Time burden to complete Form I–907 (hours)<br>B | HR specialist cost of time ($/hr.)<br>C | Total opportunity cost<br>D = (A × B × C) |
|---|---|---|---|---|
| Estimate of Eligible Form I–765 Petitions | 55,478 | 0.58 | $48.40 | $1,557,378 |

Source: USCIS Analysis.

[107] Calculation: 100 percent – 48 percent filing with Form G–28 = 52 percent only filing Form I–765.

[108] *See* Instructions for Request for Premium Processing Service. Form I–907. OMB No. 1615–0048 Expires July 31, 2022. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/i-907instr.pdf* (last updated Sep. 30, 2020).

To estimate the opportunity cost of time to file a Form I–907 to accompany a Form I–765 using an attorney or accredited representative, DHS applies the estimated public reporting time burden (0.58 hours) [109] to the population who will be eligible for premium processing beginning in FY 2025 and compensation rates of filers. Table 33 shows the estimated annual opportunity costs of time to complete and file Form I–907 with a Form I–765 if filed by an in-house lawyer or outsourced lawyer. The opportunity cost of time is $2,316,511 based on a simple average of the cost for an in-house lawyer and an outsourced lawyer.

TABLE 33—TOTAL OPPORTUNITY COSTS OF TIME TO AN ATTORNEY OR ACCREDITED REPRESENTATIVE TO COMPLETE AND FILE FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE WITH A FORM I–765 BEGINNING IN FY 2025

| | Estimate of eligible Form I–765 petitions filed with Form G–28<br>A | Time burden to complete Form I–907 (hours)<br>B | Hourly wage rate<br>C | Total opportunity cost<br>D = (A × B × C) |
|---|---|---|---|---|
| In House Lawyer ($103.81/hr.) | 28,247 | 0.58 | $103.81 | $1,700,746 |
| Outsourced Lawyer ($178.98/hr.) | 28,247 | 0.58 | 178.98 | 2,932,276 |
| Average | 28,247 | | | 2,316,511 |

Source: USCIS Analysis.

To estimate the opportunity cost of time to complete and file Form I–907 with a Form I–765 without an attorney or accredited representative, DHS applies the estimated public reporting time burden (0.58 hours) to the population who will be eligible for premium processing beginning in FY 2025 and compensation rate of the applicant. For those newly eligible, shown in Table 34, DHS estimates the total annual opportunity cost of time to applicants completing and filing Form I–907 to be $731,977.

TABLE 34—OPPORTUNITY COSTS TO FORM I–765, APPLICATION FOR EMPLOYMENT AUTHORIZATION, APPLICANTS FOR FILING FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE BEGINNING IN FY 2025

| | Newly eligible population<br>A | Time burden to complete Form I–907 (hours)<br>B | HR specialist cost of time ($/hr.)<br>C | Total opportunity cost<br>D = (A × B × C) |
|---|---|---|---|---|
| Estimate of Eligible Form I–765 Petitions (53%) | 26,075 | 0.58 | $48.40 | $731,977 |

Source: USCIS Analysis.

Using the population estimates, DHS next calculates the total costs for the new Form I–765 population to complete and file premium processing requests using Form I–907. DHS estimates the total annual cost to applicants completing and filing Form I–907 requests to be $6,486,289 beginning in FY 2022, and $3,048,488 beginning in FY 2025 as shown in Table 35. From a societal perspective, the opportunity cost measures represent social costs, while the filing fees represent transfers from applicants to the government.[110]

TABLE 35—ANNUAL COSTS TO FORM I–765 APPLICANTS FOR COMPLETING AND FILING FORM I–907, REQUEST FOR PREMIUM PROCESSING SERVICE

| | Opportunity cost of time completing Form I–907 (lawyer), Table 31<br>A | Opportunity cost of time completing Form I–907 (applicant), Table 32<br>B | Annual cost<br>D = (A + B + C) |
|---|---|---|---|
| Estimate of Eligible Form I–765 Petitions (53%) beginning in FY 2022 | $4,928,911 | $1,557,378 | $6,486,289 |
| Estimate of Eligible Form I–765 Petitions (53%) beginning in FY 2025 | 2,316,511 | 731,977 | 3,048,488 |
| Total | | | $9,534,777 |

Source: USCIS Analysis.

[109] *See* Instructions for Request for Premium Processing Service. Form I–907. OMB No. 1615–0048 Expires July 31, 2022. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/i-907instr.pdf* (last updated Sep. 30, 2020).

[110] *See* Instructions for Application for Employment Authorization. Form I–765. OMB No. 1615–0040 Expires July 31, 2022. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf* (last updated Aug. 25, 2020). The USCIS Stabilization Act did not change the time burden to complete any of the classifications for Form I–765, nor form fee. The public reporting burden for this collection of information is in the pdf above.

In Table 36, DHS uses the population estimates from above to calculate the transfer payments for the newly eligible Form I–765 population to DHS. DHS estimates that annual transfer payments from Form I–765 applicants requesting request premium processing using Form I–907 will be $173,370,000 to DHS.

TABLE 36—FEES TO FORM I–765 APPLICANTS REQUESTING PREMIUM PROCESSING USING FORM I–907 BEGINNING IN FY 2022

| | Newly eligible population<br>A | New fees for Form I–907<br>B | Fees to file Form I–907<br>C = (B × A) |
|---|---|---|---|
| Estimate of Eligible Form I–765 Petitions | 115,580 | $1,500 | $173,370,000 |

Source: USCIS Analysis.

In Table 37, DHS uses the population estimates from above to calculate the transfer payments from the newly eligible Form I–765 population to DHS. DHS estimates that annual transfer payments from Form I–765 applicants requesting request premium processing using Form I–907 will be $81,483,000 to DHS.

TABLE 37—FEES TO FORM I–765 APPLICANTS REQUESTING PREMIUM PROCESSING USING FORM I–907 BEGINNING IN FY 2025

| | Newly eligible population<br>A | New fees for Form I–907<br>B | Fees to file Form I–907<br>C = (B × A) |
|---|---|---|---|
| Estimate of Eligible Form I–765 Petitions (53%) | 54,322 | $1,500 | $81,483,000 |

Source: USCIS Analysis.

(f) Government Costs of This Final Rule

This final rule will require USCIS enhancements to handle the projected volumes of expedited requests without adverse impact to other processing times. The costs of these enhancements are not estimated but are expected to be covered by the fee increases (transfers) from Form I–129 and Form I–140 petitioners/applicants that request premium processing. DHS does not know how much it will cost to add new categories to apply for premium processing, and these costs are unquantified.

The USCIS Stabilization Act prohibits USCIS from making premium processing available if it adversely affects processing times for immigration benefit requests not designated for premium processing or the regular processing of immigration benefit requests so designated. Therefore, USCIS must first raise sufficient funds to ensure it has the staffing and IT resources to expand premium processing availability. In addition to covering the costs of providing expanded premium processing services, the Stabilization Act authorizes USCIS to spend additional revenue collected as a result of this rule on infrastructure improvements in adjudication processes and information services, reducing the number of pending immigration and naturalization benefit requests or otherwise offsetting the cost of providing services.

In accordance with directives outside the scope of this rulemaking, DHS has prioritized and is in the process of expanding electronic filing for all applications and benefit requests. Some of the immigration benefit requests newly designated for premium processing are already filed electronically.[111] Specifically, Forms I–539 and I–765 are both currently available for electronic filing. However, premium processing requests through Form I–907 are currently still paper based. USCIS would need to make systems changes to give users the ability to file premium processing requests with the relevant underlying form that is electronically available. This expansion of electronic filing of the premium processing form is a prerequisite to expanding the availability of premium processing to newly designated immigration benefit requests without adversely affecting processing times for other benefits. DHS must hire and train new staff with revenue from current premium processing requests in order to expedite adjudication of premium processing for the newly eligible population, consistent with the statutory requirement, that other processing times not be adversely affected.

Because the Act authorizes USCIS to use additional revenue for other improvements and, separately, directs USCIS to semi-annually advise appropriate Congressional Committees of progress on a 5-year plan for infrastructure improvements. For the purpose of this Regulatory Impact Analysis, DHS assumes expanded premium processing to start in FY 2022 for the additional Form I–140 categories, as well as certain categories of Form I–539 and Form I–765. DHS also assumes some additional Form I–539 and Form I–765 categories will start in FY 2025 due to the possibility that revenues do not yet exist to cover any potential costs without adversely affecting other benefit's processing times, as directed by Congress.

As expected, the current processing times for the newly designated immigration benefit requests generally exceed the proposed premium processing timeframes by many months. USCIS generally cannot reallocate staff to adjudicate these immigration benefit requests without adversely affecting processing times, for other immigration benefit requests. Therefore, USCIS must hire and train new staff to handle the expanded availability of premium processing, requiring time and resources.

Future revenues from premium processing are expected to exceed future costs, accomplishing Congress' intention in authorizing the expansion

[111] Forms Available to File Online *https://www.uscis.gov/file-online/forms-available-to-file-online* (last updated Dec. 12, 2021).

of premium processing. USCIS is unable to hire additional employees in anticipation of a potential surge in upgrades to pending petitions and applications unless the funds are already available, to pay for those employees. If USCIS were to make premium processing available for a high volume of petitions/applications with a significant backlog and without the staff on hand to take appropriate action within the applicable processing timeframe, then USCIS would be required to refund the premium processing fees.

While potential costs to USCIS of expanding premium processing without harm to non-premium processing times are volume-dependent and difficult to quantify, the above projections suggest that the described implementation plan is expected to generate adequate resources to cover the costs required to support the expansion of premium processing without risk to non-premium processing times.

(g) Benefits to the Federal Government

The USCIS Stabilization Act provides specific purposes that the premium processing fees can be used for. Consistent with those permissible purposes, the premium processing fees collected will be used to provide the premium processing services; make infrastructure improvements in adjudications processes and the provision of information and services to immigration and naturalization benefit requestors; and respond to adjudication demands, including by reducing the number of pending immigration and naturalization benefit requests. The primary benefit of this rule to DHS is the opportunity to increase revenue needed to make improvements in adjudication processes. For example, increases in revenue will allow USCIS to pay for infrastructure improvements, like overhead (such as facility costs, IT equipment and systems, or other expenses) and pay the salaries and benefits of current and new clerical staff, officers, and managers to provide premium processing services and improve agency response to adjudicative demands.

(h) Qualitative Benefits to Petitioners and Applicants

Petitioners of Form I–140 (EB–1, multinational executives and managers and EB–2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver) who were previously ineligible for premium processing may be able to have their petitions reviewed quicker. As a result, an adjudicative action may be taken more quickly. This change benefits businesses that previously would have had to wait longer to receive adjudicative action (such as a notice of approval) for an employee. Other benefits that may accrue to beneficiaries of Form I–140 petitions generally include INA section 204(j) portability eligibility, *see* 8 CFR 245.25, priority date retention, *see* 8 CFR 204.5(e), and AC21-based H–1B extension eligibility, *see* 8 CFR 214.2(h)(13)(iii)(E). Benefits also may accrue to H–4 dependents who may become eligible for employment pursuant to the I–140 petition approval, *see* 8 CFR 214.2(h)(9)(iv) and 274a.12(c)(26), and to beneficiaries (principal and derivative) under 8 CFR 204.5(p). and 274a.12(c)(35).

Form I–539 applicants may now receive an adjudicative action on their request for a change of status or extension of stay sooner than before, which may alleviate concern about lapses in their nonimmigrant status. This will provide students and trainees greater predictability in processing timeframes so that they may change their status and start school or training on time. The greater predictability will also allow applicants to plan international travel as these applicants are considered to have abandoned their application if they leave the United States while their application is pending. In addition, applicants who may work or apply for work authorization pursuant to their status may do so more quickly than they could without premium processing.

Applicants of Form I–765 may now benefit through receipt of an adjudicative decision in a specified timeframe making those applicants eligible to work legally in the United States sooner than they would have previously. This will allow applicants to start working sooner rather than having to wait for the full processing time period before seeking employment. This could result in cost savings to some applicants who would have had to wait to receive wages without premium processing. This could also result in additional tax revenue to be collected by the government if these workers enter the labor force earlier than they would have otherwise.

(i) Final Costs and Transfer Payments of the Final Rule

Undiscounted Costs and Transfer Payments

DHS summarizes the annual transfer payments from Form I–129 and I–140 petitioners to DHS. Table 38 details the annual transfer payments of this final rule from the Form I–129 and Form I–140 fee-paying population for FY 2021 to DHS was $409,559,500 in FY 2021, due to the increase in filing fees.

TABLE 38—SUMMARY OF TRANSFER PAYMENTS FROM FEE-PAYING FORM I–129 AND FORM I–140 PETITIONERS TO DHS IN FY 2021

| Description | Increase in transfer payments |
|---|---|
| Form I–129, Petition for a Nonimmigrant Worker | $306,448,000 |
| Form I–140, Immigrant Petition for Alien Workers * | 103,111,500 |
| Annual Transfers (undiscounted) | 409,559,500 |

* **Note:** Currently designated eligible Form I–140 Classifications: E11, E12, E21 (non-NIW), E31, E32, EW3.

DHS summarizes the estimated annual transfer payments from currently eligible Form I–129 and I–140 petitioners to DHS, and the estimated annual transfer payments from newly eligible classification Form I–140 petitioners, Form I–539 applicants, and Form I–765 applicants to DHS. Table 39 details that the estimated annual transfer payments of this final rule from the currently eligible Form I–129, Form I–140 and newly eligible Form I–140, Form I–539 and Form I–765 fee-paying population to DHS will be $663,722,850 due to the increase in filing fees for year 2 through 4 of this analysis, FY 2022 through FY 2024.

TABLE 39—SUMMARY OF ESTIMATED TOTAL TRANSFER PAYMENTS FROM FEE-PAYING FORM I–129 AND FORM I–140 PETITIONERS AND NEWLY ELIGIBLE FORM I–140 PETITIONERS, FORM I–539 APPLICANTS AND FORM I–765 APPLICANTS TO DHS IN THIS FINAL RULE, FY 2022 THROUGH FY 2024

| Description | Estimated annual transfer payments |
|---|---|
| Form I–129, Petition for a Nonimmigrant Worker | $295,113,180 |
| Form I–140, Immigrant Petition for Alien Workers * | 82,872,920 |
| Newly Eligible Form I–140, Immigrant Petition for Alien Workers,* Transfers | 94,427,500 |
| Form I–539, Application to Extend/Change Nonimmigrant Status, Transfers | 17,939,250 |
| Form I–765, Application for Employment Authorization, Transfers | 173,370,000 |
| Annual Transfers (undiscounted) | 663,722,850 |

* **Note:** Currently designated eligible Form I–140 Classifications: E11, E12, E21 (non-NIW), E31, E32, EW3.

DHS also presents the total annual transfers from the petitioners and applicants who may be able to request premium processing in FY 2025. The newly eligible applicants and petitioners are those that may be able to file Form I–907 with their Forms I–539 (application to extend/change nonimmigrant status, E–1, E–2, E–3, H–4, L–2, O–3, P–4, or R–2 classifications), and additional classifications of Form I–765. Table 40 details that the total annual transfer of this final rule from newly eligible premium processing requestors will be $192,055,000 to DHS due to the expected additional filing fees for year 5 through 10 of this analysis, FY 2025 through FY 2030.

TABLE 40—SUMMARY OF ESTIMATED TOTAL ANNUAL TRANSFERS IN THIS FINAL RULE AFTER FY 2025

| Filing fees | Estimated annual fees |
|---|---|
| Form I–539, Application to Extend/Change Nonimmigrant Status, Transfers | $110,572,000 |
| Form I–765, Application for Employment Authorization, Transfers | 81,483,000 |
| Total Annual Transfers (undiscounted) | 192,055,000 |

DHS presents the total annual costs to the petitioners and applicants who may now be able to request premium processing beginning in FY 2022. The newly eligible applicants and petitioners may be able to file Form I–907 with their Forms I–539 (application to extend/change nonimmigrant status, F–1, F–2, J–1, J–2, M–1, or M–2 classifications, certain classifications of Form I–765, and I–140 (EB–1, multinational executives and managers, and EB–2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver). Table 41 details the total annual costs of this final rule to premium processing requestors of $9,717,505.

TABLE 41—SUMMARY OF ESTIMATED TOTAL ANNUAL COSTS IN THIS FINAL RULE BEGINNING IN FY 2022

| Opportunity costs of time | Estimated annual cost |
|---|---|
| Newly Eligible Form I–140, Immigrant Petition for Alien Workers,* Opportunity Costs. | $2,934,568. |
| Form I–539, Application to Extend/Change Nonimmigrant Status, Opportunity Costs. | $296,648. |
| Form I–765, Application for Employment Authorization, Opportunity Costs | $6,486,289. |
| Government Costs of Providing Premium Processing to Newly Eligible Populations. | Unquantified. |
| Total Annual Costs (undiscounted) | $9,717,505 + Government Costs. |

* **Note:** Form I–140 EB–1, multinational executives and managers, and EB–2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver.

DHS presents the total annual costs to the petitioners and applicants who may now be able to request premium processing in FY 2025. The newly eligible applicants and petitioners may be able to file Form I–907 with their Forms I–539 (application to extend/change nonimmigrant status, E–1, E–2, E–3, H–4, L–2, O–3, P–4, or R–2 classifications), and additional classifications of Form I–765. Table 42 details the total annual costs of this final rule to premium processing requestors of $7,324,368.

TABLE 42—SUMMARY OF ESTIMATED TOTAL ANNUAL COSTS IN THIS FINAL RULE AFTER FY 2025

| Opportunity costs of time and filing fees | Estimated annual cost |
|---|---|
| Form I–539, Application to Extend/Change Nonimmigrant Status, Costs | $4,275,880. |
| Form I–765, Application for Employment Authorization, Costs | $3,048,488. |

TABLE 42—SUMMARY OF ESTIMATED TOTAL ANNUAL COSTS IN THIS FINAL RULE AFTER FY 2025—Continued

| Opportunity costs of time and filing fees | Estimated annual cost |
|---|---|
| Government Costs of Providing Premium Processing to Newly Eligible Populations. | Unquantified. |
| Total Annual Costs (undiscounted) | $7,324,368 + Government Costs. |

Discounted Costs and Transfer Payments

The Continuing Appropriations Act, 2021 and Other Extensions Act, signed into law on October 1, 2020, contained the Emergency Stopgap USCIS Stabilization Act, which set new fees for premium processing of immigration benefit requests that had been designated for premium processing as of August 1, 2020, and expanded USCIS authority to establish and collect new premium processing fees and to use those additional funds for expanded purposes. Table 43 shows the transfer payments from Form I–129 and Form I–140 premium processing requestors to DHS over the 10-year implementation period of this final rule. DHS used the actual transfer payments for FY 2021, and estimated FY 2022 through FY 2030 based on the 5-year annual average populations. The table also shows the estimated annual transfer payments from newly eligible classification Form I–140 petitioners, Form I–539 applicants, and Form I–765 applicants to DHS for some classifications beginning in FY 2022, and for other classifications in FY 2025. DHS estimates the total annualized transfer payments to be $743,160,614 discounted at 3 percent and $729,337,131 discounted at 7 percent.

TABLE 43—TOTAL UNDISCOUNTED AND DISCOUNTED TRANSFER PAYMENTS OF THIS FINAL RULE

| FY | Total estimated transfers<br>$409,559,500 (undiscounted FY 2021)<br>$663,722,850 (undiscounted FY 2022 through FY 2024)<br>$855,777,850 (undiscounted FY 2025 through FY 2030) | |
|---|---|---|
| | Discounted at 3 percent | Discounted at 7 percent |
| 2021 | $397,630,583 | $382,765,888 |
| 2022 | 625,622,443 | 579,721,242 |
| 2023 | 607,400,430 | 541,795,553 |
| 2024 | 589,709,156 | 506,350,984 |
| 2025 | 738,201,491 | 610,157,780 |
| 2026 | 716,700,477 | 570,240,916 |
| 2027 | 695,825,705 | 532,935,435 |
| 2028 | 675,558,937 | 498,070,500 |
| 2029 | 655,882,463 | 465,486,449 |
| 2030 | 636,779,091 | 435,034,064 |
| Total | 6,339,310,776 | 5,122,558,811 |
| Annualized Cost | 743,160,614 | 729,337,131 |

In this Regulatory Impact Analysis, DHS is projecting a phased implementation and estimates the costs starting in FY 2022 for certain classifications and FY 2025 for additional new classifications, which is explained in greater detail in the ''Government Costs'' section of this analysis. This phased implementation will allow current premium processing revenue to cover potential costs from the expedited processing of a large volume of new requests Table 44 shows the cost over the 10-year implementation period of this final rule if some of these newly designated immigration benefit requests are available in FY 2022 and some are not available for premium processing until FY 2025. DHS estimates the annualized cost to be $12,744,217 discounted at 3 percent and $12,216,562 discounted at 7 percent. DHS is using a phased implementation plan for the annualized cost estimate for this rule. The costs to the government are not estimated or included in these totals but are expected to be covered by the fee increases (transfers) from currently eligible Form I–129 and Form I–140 petitioners/applicants that request premium processing.

TABLE 44—TOTAL UNDISCOUNTED AND DISCOUNTED COSTS OF THIS FINAL RULE WITH DELAYED IMPLEMENTATION

[Primary]

| FY | Total estimated costs | |
|---|---|---|
| | $9,717,505 (undiscounted FY 2022 through FY 2024) $17,041,872 (undiscounted FY 2025 through FY 2030) | |
| | Discounted at 3 percent | Discounted at 7 percent |
| 2021 | $0 | $0 |
| 2022 | 9,159,680 | 8,487,645 |
| 2023 | 8,892,893 | 7,932,378 |
| 2024 | 8,633,877 | 7,413,438 |
| 2025 | 14,700,468 | 12,150,619 |
| 2026 | 14,272,300 | 11,355,719 |
| 2027 | 13,856,601 | 10,612,821 |
| 2028 | 13,453,011 | 9,918,525 |
| 2029 | 13,061,176 | 9,269,649 |
| 2030 | 12,680,753 | 8,663,224 |
| Total | 82,024,310 | 61,970,557 |
| Annualized Cost | 12,744,217 | 12,216,562 |

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking. This rule is exempt from notice-and-comment rulemaking. Therefore, a regulatory flexibility analysis is not required for this rule.

*D. Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act)*

The Congressional Review Act (CRA) was included as part of SBREFA by section 804 of SBREFA, Public Law 104–121, 110 Stat. 847, 868, *et seq.* OIRA has determined that this rule is a major rule as defined by the CRA. DHS has complied with the CRA's reporting requirements and has sent this final rule to Congress and to the Comptroller General as required by 5 U.S.C. 801(a)(1).

*E. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule, that includes any Federal mandate that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.[112] This rule is exempt from the written statement requirement, because DHS did not publish a notice of proposed rulemaking for this rule.

In addition, the inflation-adjusted value of $100 million in 1995 is approximately $178 million in 2021 based on the Consumer Price Index for All Urban Consumers (''CPI–U'').[113] This final rule does not contain a Federal mandate as the term is defined under UMRA.[114] The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

*F. Executive Order 13132 (Federalism)*

This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of E.O. 13132, 64 FR 43255 (Aug. 4, 1999), this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

*G. Executive Order 12988 (Civil Justice Reform)*

This rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. DHS has determined that this final rule meets the applicable standards provided in section 3 of E.O. 12988.

*H. National Environmental Policy Act*

DHS Directive 023–01 Rev. 01 (Directive) and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) establish the policies and procedures that DHS and its components use to comply with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality

[112] *See* 2 U.S.C. 1532(a).

[113] *See* U.S. Department of Labor, BLS, ''Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. city average, all items, by month,'' available at *https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202112.pdf* (last visited Jan. 13, 2022). Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the current year (2021); (2) Subtract reference year CPI–U from current year CPI–U; (3) Divide the difference of the reference year CPI–U and current year CPI–U by the reference year CPI–U; (4) Multiply by 100 = [(Average monthly CPI–U for 2021 − Average monthly CPI–U for 1995)/(Average monthly CPI–U for 1995)] * 100 = [(270.970 − 152.383)/152.383] * 100 = (118.587/152.383) * 100 = 0.77821673 * 100 = 77.82 percent = 78 percent (rounded). Calculation of inflation-adjusted value: $100 million in 1995 dollars * 1.78 = $178 million in 2021 dollars.

[114] The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6).

(CEQ) regulations for implementing NEPA.[115]

The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (''categorical exclusions'') that experience has shown do not have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement.[116]

The Instruction Manual establishes categorical exclusions that DHS has found to have no such effect.[117] Under DHS NEPA implementing procedures, for an action to be categorically excluded it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.[118]

This rule codifies in regulation the USCIS Stabilization Act, which amended USCIS authority to provide premium processing services and to establish and collect premium processing fees for those services and only amends DHS premium processing regulations to codify those fees set by the USCIS Stabilization Act, as well as the pre-existing timeframes for previously designated immigration benefit requests, and to establish new fees and processing timeframes for the new immigration benefit requests that are now designated for premium processing.

DHS has determined that this rule clearly fits within categorical exclusions A3(a) and (b) in Appendix A of the Instruction Manual established for rules of a strictly administrative or procedural nature, and rules that implement, without substantive change, statutory or regulatory requirements.

This rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this rule is categorically excluded from further NEPA review.

*I. Family Assessment*

DHS has reviewed this rule in line with the requirements of section 654 of the Treasury and General Government Appropriations Act, 1999,[119] enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.[120] DHS has systematically reviewed the criteria specified in section 654(c)(1), by evaluating whether this regulatory action: (1) Impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) only financially impacts families, if at all, to the extent such impacts are justified; (6) may be carried out by State or local government or by the family; or (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the agency determines a regulation may negatively affect family well-being, then the agency must provide an adequate rationale for its implementation.

DHS has determined that the implementation of this regulation will not negatively affect family well-being and will not have any impact on the autonomy or integrity of the family as an institution.

*J. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–12, DHS must submit to OMB, for review and approval, any reporting requirements inherent in a rule, unless they are exempt. *See* Public Law 104–13, 109 Stat. 163 (May 22, 1995). The Information Collection Table 45 below shows the summary of forms that are part of this rulemaking.

TABLE 45—INFORMATION COLLECTION CHANGES ASSOCIATED WITH THIS FINAL RULE

| OMB control No. | Form No. and title | Type of information collection |
|---|---|---|
| 1615–0048 | Form I–907, Request for Premium Processing Service. | Revision of a Currently Approved Collection. |
| 1615–0003 | Form I–539, Application to Extend/Change Nonimmigrant Status. | No material or non-substantive change of a Currently Approved Collection. |
| 1615–0040 | Form I–765, Application for Employment Authorization. | No material of non-substantive change of a Currently Approved Collection. |
| *1615–0009* | Form I–129, Petition for a Nonimmigrant Worker. | No material or non-substantive change to a currently approved collection. |
| *1615–0015* | Form I–140, Immigrant Petition for an Alien Worker. | No material or non-substantive change to a currently approved collection. |

USCIS will revise one information collection in association with this rulemaking action (see table above where the Type of Information Collection column states: ''Revision of a Currently Approved Collection''). This final rule will also require non-substantive edits to the forms listed above where the Type of Information Collection column states, ''No material/non-substantive change to a currently approved collection.'' Accordingly, USCIS has submitted a Paperwork Reduction Act Change Worksheet, Form OMB 83–C, and amended information collection instruments to OMB for review and approval in accordance with the PRA.

USCIS Form I–907

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of this final rule. All submissions received must include the OMB Control Number 1615–0048 in the body of the letter, the agency name, and Docket No. USCIS–2006–0025. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2006–0025. To avoid duplicate submissions, please only

[115] 40 CFR parts 1500 through 1508.

[116] 40 CFR 1507.3(e)(2)(ii) and 1501.4.

[117] *See* Appendix A, Table 1.

[118] Instruction Manual section V.B(2)(a) through (c).

[119] *See* 5 U.S.C. 601 note.

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

submit comments according to the instructions specified in this rule. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Premium Processing Service.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–907; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses the data collected on this form to process a request for premium processing. The form serves the purpose of standardizing requests for premium processing and ensures that basic information required to assess eligibility is provided by the applicant or employer/petitioner.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–907 is 815,773 and the estimated hour burden per response is 0.58 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 473,148 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $202,923,534.

**List of Subjects in 8 CFR Part 106**

Fees, Immigration.

Accordingly, the Department of Homeland Security amends part 106 of chapter I of title 8 of the Code of Federal Regulations as follows:

## PART 106—USCIS Fee Schedule

■ 1. The authority citation for part 106 is revised to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1254a, 1254b, 1304, 1356; Pub. L. 107–609; 48 U.S.C. 1806; Pub. L. 115–218; Pub. L. 116–159.

■ 2. Section 106.4 is revised to read as follows:

### § 106.4 Premium processing service.

(a) *General.* A person may submit a request to USCIS for premium processing of certain immigration benefit requests, subject to processing timeframes and fees, as described in this section.

(b) *Submitting a request.* A request must be submitted on the form and in the manner prescribed by USCIS in the form instructions. If the request for premium processing is submitted together with the underlying immigration benefit request, all required fees in the correct amount must be paid. The fee to request premium processing service may not be waived and must be paid in addition to, and in a separate remittance from, other filing fees.

(c) *Designated benefit requests and fee amounts.* Benefit requests designated for premium processing and the corresponding fees to request premium processing service are as follows:

(1) Application for classification of a nonimmigrant described in section 101(a)(15)(E)(i), (ii), or (iii) of the INA—$2,500.

(2) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(i)(b) of the INA or section 222(a) of the Immigration Act of 1990, Public Law 101–649—$2,500.

(3) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(ii)(b) of the INA—$1,500.

(4) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(iii) of the INA—$2,500.

(5) Petition for classification of a nonimmigrant described in section 101(a)(15)(L) of the INA—$2,500.

(6) Petition for classification of a nonimmigrant described in section 101(a)(15)(O)(i) or (ii) of the INA—$2,500.

(7) Petition for classification of a nonimmigrant described in section 101(a)(15)(P)(i), (ii), or (iii) of the INA—$2,500.

(8) Petition for classification of a nonimmigrant described in section 101(a)(15)(Q) of the INA—$2,500.

(9) Petition for classification of a nonimmigrant described in section 101(a)(15)(R) of the INA—$1,500.

(10) Application for classification of a nonimmigrant described in section 214(e) of the INA—$2,500.

(11) Petition for classification under section 203(b)(1)(A) of the INA—$2,500.

(12) Petition for classification under section 203(b)(1)(B) of the INA—$2,500.

(13) Petition for classification under section 203(b)(2)(A) of the INA not involving a waiver under section 203(b)(2)(B) of the INA—$2,500.

(14) Petition for classification under section 203(b)(3)(A)(i) of the INA—$2,500.

(15) Petition for classification under section 203(b)(3)(A)(ii) of the INA—$2,500.

(16) Petition for classification under section 203(b)(3)(A)(iii) of the INA—$2,500.

(17) Petition for classification under section 203(b)(1)(C) of the INA—$2,500.

(18) Petition for classification under section 203(b)(2) of the INA involving a waiver under section 203(b)(2)(B) of the INA—$2,500.

(19) Application under section 248 of the INA to change status to a classification described in section 101(a)(15)(F), (J), or (M) of the INA—$1,750.

(20) Application under section 248 of the INA to change status to be classified as a dependent of a nonimmigrant described in section 101(a)(15)(E), (H), (L), (O), (P), or (R) of the INA, or to extend stay in such classification—$1,750.

(21) Application for employment authorization—$1,500.

(d) *Fee adjustments.* The fee to request premium processing service may be adjusted by notice in the **Federal Register** on a biennial basis based on the percentage by which the Consumer Price Index for All Urban Consumers for the month of June preceding the date on which such adjustment takes effect exceeds the Consumer Price Index for All Urban Consumers for the same month of the second preceding calendar year.

(e) *Processing timeframes.* The processing timeframes for a request for premium processing are as follows:

(1) Application for classification of a nonimmigrant described in section 101(a)(15)(E)(i), (ii), or (iii) of the INA—15 days.

(2) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(i)(b) of the INA or section 222(a) of the Immigration Act of 1990, Public Law 101–649—15 days.

(3) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(ii)(b) of the INA—15 days.

(4) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(iii) of the INA—15 days.

(5) Petition for classification of a nonimmigrant described in section 101(a)(15)(L) of the INA—15 days.

(6) Petition for classification of a nonimmigrant described in section 101(a)(15)(O)(i) or (ii) of the INA—15 days.

(7) Petition for classification of a nonimmigrant described in section 101(a)(15)(P)(i), (ii), or (iii) of the INA—15 days.

(8) Petition for classification of a nonimmigrant described in section 101(a)(15)(Q) of the INA—15 days.

(9) Petition for classification of a nonimmigrant described in section 101(a)(15)(R) of the INA—15 days.

(10) Application for classification of a nonimmigrant described in section 214(e) of the INA—15 days.

(11) Petition for classification under section 203(b)(1)(A) of the INA—15 days.

(12) Petition for classification under section 203(b)(1)(B) of the INA—15 days.

(13) Petition for classification under section 203(b)(2)(A) of the INA not involving a waiver under section 203(b)(2)(B) of the INA—15 days.

(14) Petition for classification under section 203(b)(3)(A)(i) of the INA—15 days.

(15) Petition for classification under section 203(b)(3)(A)(ii) of the INA—15 days.

(16) Petition for classification under section 203(b)(3)(A)(iii) of the INA—15 days.

(17) Petition for classification under section 203(b)(1)(C) of the INA—45 days.

(18) Petition for classification under section 203(b)(2) of the INA involving a waiver under section 203(b)(2)(B) of the INA—45 days.

(19) Application under section 248 of the INA to change status to a classification described in section 101(a)(15)(F), (J), or (M) of the INA—30 days.

(20) Application under section 248 of the INA to change status to be classified as a dependent of a nonimmigrant described in section 101(a)(15)(E), (H), (L), (O), (P), or (R) of the INA, or to extend stay in such classification—30 days.

(21) Application for employment authorization—30 days.

(f) *Processing requirements and refunds.* (1) USCIS will issue an approval notice, denial notice, a notice of intent to deny, or a request for evidence within the premium processing timeframe.

(2) Premium processing timeframes will commence:

(i) For those benefits described in paragraphs (e)(1) through (16) of this section, on the date the form prescribed by USCIS, together with the required fee(s), are received by USCIS.

(ii) For those benefits described in paragraphs (e)(17) through (21) of this section, on the date that all prerequisites for adjudication, the form prescribed by USCIS, and fee(s) are received by USCIS.

(3) In the event USCIS issues a notice of intent to deny or a request for evidence, the premium processing timeframe will stop. The premium processing timeframe as specified in paragraphs (e)(1) through (21) of this section will start over on the date that USCIS receives a response to the notice of intent to deny or the request for evidence.

(4) Except as provided in paragraph (f)(5) of this section, USCIS will refund the premium processing service fee but continue to process the case if USCIS does not take adjudicative action described in paragraph (f)(1) of this section within the applicable processing timeframe as required in paragraph (e) of this section.

(5) USCIS may retain the premium processing fee and not take an adjudicative action described in paragraph (f)(1) of this section on the request within the applicable processing timeframe, and not notify the person who filed the request, if USCIS opens an investigation for fraud or misrepresentation relating to the immigration benefit request.

(g) *Availability.* (1) USCIS will announce by its official internet website, currently *http://www.uscis.gov,* the benefit requests described in paragraph (c) of this section for which premium processing may be requested, the dates upon which such availability commences or ends, and any conditions that may apply.

(2) USCIS may suspend the availability of premium processing for immigration benefit requests designated for premium processing if circumstances prevent the completion of processing of a significant number of such requests within the applicable processing timeframe.

**Alejandro N. Mayorkas,**

*Secretary, U.S. Department of Homeland Security.*

[FR Doc. 2022–06742 Filed 3–29–22; 8:45 am]

BILLING CODE 9111–97–P

## DEPARTMENT OF ENERGY

## 10 CFR Part 430

**[EERE–2017–BT–TP–0024]**

**RIN 1904–AE01**

## Energy Conservation Program: Test Procedure for Microwave Ovens

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

**ACTION:** Final rule.

**SUMMARY:** In this final rule, DOE is amending its test procedure for microwave oven standby mode and off mode to provide additional specifications for the test conditions related to clock displays and network functions. DOE is not prescribing an active mode test procedure for microwave ovens at this time.

**DATES:** The effective date of this rule is April 29, 2022. The final rule changes will be mandatory for product testing starting September 26, 2022. The incorporation by reference of certain other publications listed in this rulemaking was approved by the Director of the Federal Register on December 17, 2012.

**ADDRESSES:** The docket, which includes **Federal Register** notices, public meeting 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.

A link to the docket web page can be found at *www.regulations.gov/docket?D=EERE-2017-BT-TP-0024.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

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

**FOR FURTHER INFORMATION CONTACT:** Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1943. Email: *MWO2017TP0024@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 287–1445. Email: *Celia.Sher@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** DOE maintains the following previously approved incorporation by reference in 10 CFR part 430:

International Electrotechnical Commission Standard 62301 (Second Edition), (''IEC 62301), ''Household electrical appliances—Measurement of standby power,'' (Edition 2.0 2011–01).

Copies of the second edition of IEC 62301 can be obtained from the International Electrotechnical Commission webstore or by going to *www.webstore.iec.ch/home.*

See section IV.N of this document for a discussion of this standard.

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## I. Authority and Background

Microwave ovens are included in the list of ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6292(a)(10)) DOE's energy conservation standards for microwave ovens are currently prescribed at title 10 of the Code of Federal Regulations (''CFR'') 430.32(j). DOE's test procedures for microwave ovens are prescribed at 10 CFR 430.23(i) and appendix I to subpart B of 10 CFR part 430 (''appendix I''). The following sections discuss DOE's authority to establish test procedures for microwave ovens and relevant background information regarding DOE's consideration of test procedures for this product.

### *A. Authority*

The Energy Policy and Conservation Act, as amended (''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. These products include microwave ovens, the subject of this document. (42 U.S.C. 6292(a)(10))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

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

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

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use (as determined by the Secretary) and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. (*Id.*) Any such amendment must consider the most current versions of the International Electrotechnical Commission (''IEC'') Standard 62301 [3] and IEC Standard 62087 [4] as applicable. (42 U.S.C. 6295(gg)(2)(A))

If DOE determines that a test procedure amendment is warranted, it must publish a proposed test procedure and offer the public an opportunity to present oral and written comments on it. (42 U.S.C. 6293(b)(2))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including microwave ovens, 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

[1] All references to EPCA in this document refer to the statute as amended through the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021).

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

[3] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[4] IEC 62087, *Methods of measurement for the power consumption of audio, video, and related equipment* (Edition 3.0, 2011–04).

use cycle or period of use. (42 U.S.C. 6293(b)(1)(A)) If the Secretary determines, on his own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. DOE is publishing this final rule in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

*B. Background*

DOE's test procedure for microwave ovens is codified at appendix I, titled ''Uniform Test Method for Measuring the Energy Consumption of Cooking Products.'' The microwave oven test procedure measures energy use in standby mode and off mode but does not include an active mode test.

On January 18, 2018, DOE published a request for information (''January 2018 RFI'') describing the requirements for the microwave oven test procedure and requesting information on certain topics related to microwave oven displays and clocks, and whether amendments were needed to address microwave ovens with network functions, which may affect the standby mode energy consumption. DOE also discussed the previous active mode test procedure proposal from a NOPR published February 4, 2013 (''February 2013 NOPR''; 78 FR 7940) and requested information on the feasibility of pursuing active cooking mode and fan-only mode test methods for microwave-only ovens and convection microwave ovens. 83 FR 2566.

On November 14, 2019, DOE published a NOPR (''November 2019 NOPR''), in which it responded to comments received in response to the January 2018 RFI and proposed to amend the standby mode test procedure by specifying that connected units are to be tested with network functions disabled; and that units with clock displays are to be tested with the display on, unless the product powers down the clock display automatically and provides no available setting to allow the consumer to prevent the clock display from powering down automatically. 84 FR 61836, 61839–61840. DOE also initially determined that an active mode test that produced repeatable and representative results without being unduly burdensome was not available, and therefore did not propose to incorporate an active mode test. 84 FR 61836, 61841. DOE held a public meeting via a webinar to present the proposed amendments and provide stakeholders an opportunity to comment.[5]

DOE received comments in response to the November 2019 NOPR from the interested parties listed in Table I.1.

TABLE I.1—WRITTEN COMMENTS RECEIVED IN RESPONSE TO NOVEMBER 2019 NOPR

| Organization(s) | Reference in this NOPR | Organization type |
|---|---|---|
| Association of Home Appliance Manufacturers | AHAM | Trade Association. |
| (Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison; collectively, the California Investor-Owned Utilities. | CA IOUs | Utility Association. |
| Natural Resources Defense Council, Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, National Consumer Law Center, Consumer Federation of America, Northwest Energy Efficiency Alliance. | NOPR Joint Commenters | Efficiency Organizations. |
| Whirlpool Corporation | Whirlpool | Manufacturer. |

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[6]

On August 3, 2021, DOE published a supplemental notice of proposed rulemaking (''August 2021 SNOPR''), in which DOE revised its November 2019 NOPR proposal for testing microwave ovens with a connected function and specified explicitly that if means for disabling the network functions are not provided, the microwave oven will be tested with the network function in the factory default setting or in the as-shipped condition. 86 FR 41759, 41762.

DOE received comments in response to the August 2021 SNOPR from the interested parties listed in Table I.2.

TABLE I.2—WRITTEN COMMENTS RECEIVED IN RESPONSE TO AUGUST 2021 SNOPR

| Organization(s) | Reference in this NOPR | Organization type |
|---|---|---|
| Association of Home Appliance Manufacturers | AHAM | Trade Association. |
| Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison; collectively, the California Investor-Owned Utilities. | CA IOUs | Utility Association. |
| Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Consumer Federation of America, National Consumer Law Center, Northwest Energy Efficiency Alliance. | SNOPR Joint Commenters | Efficiency Organizations. |
| Underwriters Laboratories | UL | Efficiency Organization. |

[5] The transcript of the public meeting is available at *www.regulations.gov/document?D=EERE-2017-BT-TP-0024-0011.*

[6] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to amend test procedures for microwave ovens. (Docket No. EERE–2017–BT–TP–0024, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

## II. Synopsis of the Final Rule

In this final rule, DOE amends appendix I as follows:

- Adds the introductory note; and
- Amends the current microwave oven standby mode test procedure by adding specifications for the status of network functions and clock displays during testing.

The adopted amendments are summarized in Table II.1 compared to the current test procedure, as well as the reason for the adopted change.

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE

| Current DOE test procedure | Amended test procedure | Attribution |
|---|---|---|
| No introductory note to communicate effective compliance dates | Introductory note provides instructions on compliance dates | Improve ease of compliance |
| Referenced paragraph 5.2 of IEC 62301 (Second Edition), which specifies that the product must be tested in accordance with manufacturer's instructions or using default settings if no instructions are available. If there are no instructions and if default settings are not indicated, then the microwave oven is tested as supplied. | Specifies that the microwave oven must be tested with the clock display on, regardless of the manufacturer's instruction or default setting or supplied setting, unless the clock display powers down automatically and the product provides no setting that allows the consumer to prevent such automatic power down. | To improve representativeness. |
| Did not include instructions for or require the measurement of energy use associated with connected functionality, but may have captured the energy use associated with connected functionality if such features were enabled by default or if manufacturer instructions specified that the connected features be turned on. | Specifies that if present, connected functionality must be disabled per manufacturer's instructions. If it cannot be disabled by the end-user, then the basic model must be tested in the factory 'default' setting or in the as-shipped condition. | To prevent, when possible, unintended measurement of energy use associated with connected functionality, and thereby ensure reproducibility and comparability of test results. |

DOE has determined, as discussed in section III.H of this document, that of the amendments described in section III and adopted in this document, the direction requiring connected functions to be disabled will result in a lowered energy use for microwave ovens that ship with connected functions enabled by default but includes ways for the user to turn it off. DOE did not identify any basic model that will require retesting and recertification as a result of DOE's adoption of the amendment. DOE has also determined that the test procedure will not be unduly burdensome to conduct. Discussion of DOE's actions are addressed in detail in section III of this document.

The effective date for the amended test procedure adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedure beginning 180 days after the publication of this final rule.

## III. Discussion

In this test procedure final rule, DOE is adopting some of the proposed changes to appendix I from the November 2019 NOPR and the August 2021 SNOPR. The test procedure established in this final rule improves the representativeness and repeatability for microwave oven standby mode and off mode testing, which is discussed further in section III.C of this document. As discussed in the November 2019 NOPR (84 FR 61836, 61840–61841) and section III.B of this document, DOE is not establishing an active mode test procedure for microwave ovens in this final rule.

### *A. Scope of Applicability*

This rulemaking applies to microwave ovens, which DOE defines as a category of cooking products that is a household cooking appliance consisting of a compartment designed to cook or heat food by means of microwave energy, including microwave ovens with or without thermal elements designed for surface browning of food and convection microwave ovens. This includes any microwave oven(s) component of a combined cooking product. 10 CFR 430.2. DOE is not amending the scope of the microwave oven test procedure.

### *B. Updates to Industry Standards*

The test procedure for microwave ovens at appendix I incorporates by reference certain provisions of the first and second editions of IEC 62301 [7] regarding test conditions, equipment, setup, and methods for measuring standby mode and off mode power consumption. In the November 2019 NOPR, DOE requested comments on the degree to which the DOE test procedure should consider and be harmonized further with IEC 62301 (Second Edition). DOE also requested comments on whether and to what degree DOE should consider and harmonize the Federal test procedure for microwaves with other industry standards such as IEC 60705 Ed. 4.2. 84 FR 61844, 61845.

In response to the November 2019 NOPR, AHAM reiterated its opinion that the current level of IEC standards harmonization is appropriate, and DOE should not require the clocks and displays to be on during testing or incorporate active mode test provisions. (AHAM, No. 15 at pp. 4–5) Whirlpool expressed its support of AHAM's comments and agrees that DOE should not incorporate IEC 60705 Ed. 4.2 active mode test methods. (Whirlpool, No. 16 at p. 1)

DOE further reviewed IEC 62301 and did not identify any additional provisions in the industry test procedure that would be appropriate for or improve the DOE test procedure. As such, DOE maintains its current level of harmonization with IEC 62301.

Additionally, for the reasons discussed in section III.B of this document, DOE is not establishing an active mode test procedure for microwave ovens. Consideration of harmonization with IEC 60705 Ed. 4.2 is therefore unwarranted at this time.

### *C. Active Mode Test Methods*

In the November 2019 NOPR, DOE initially determined that incorporating an active mode test procedure for microwave ovens based on IEC Standard 60705 ''Household microwave ovens—Methods for measuring performance'' Edition 4.2 (''IEC 60705 Ed. 4.2'') would

[7] The average power sampling method used for non-stable standby load in the second edition of IEC 62301 would conflict with DOE's current average power approach, which is referenced from the first edition of IEC 62301.

be unduly burdensome, stating that the expected increase in testing cost resulting from increased testing time and the potential need for new laboratory equipment and facility upgrades would not be justified, especially because the circumstances that previously led DOE to determine that an active mode energy conservation standard for microwave oven would not be technologically feasible and economically justified [8] have not changed substantially. 84 FR 61836, 61841.

In response to the November 2019 NOPR, AHAM expressed its support of DOE's proposed decision to not include active mode energy testing for microwave ovens, stating it would be unduly burdensome to conduct with minimal benefit to energy savings. AHAM estimated a five to six times increase in testing time as well as a significant amount of additional cost to acquire new equipment and update facilities. AHAM further commented that because no technology options can yet reduce microwave ovens' active mode energy use, and no other countries require an active mode test procedure, DOE should not amend the test procedure at this time. (AHAM, No. 15 at pp. 2–3) [9] Whirlpool expressed its support of AHAM's comments by stating that it agrees that DOE should not incorporate IEC 60705 Ed. 4.2 active mode test methods. (Whirlpool, No. 16 at p. 1)

The CA IOUs and the NOPR Joint Commenters support establishment of an active mode test procedure. The CA IOUs referred to a 2014 study [10] that found 80 percent of microwave ovens' annual unit energy consumption occurs in active mode. (CA IOUs, No. 14 at p. 2) The NOPR Joint Commenters asserted, based in part on data from DOE, that 90 percent of a microwave oven's annual energy use is consumed in active mode.[11] (NOPR Joint Commenters, No. 13 at p. 2) The NOPR Joint Commenters stated that that the least energy efficient model consumes 32 percent more energy to heat test loads when compared to the most efficient model. (*Id.*) The CA IOUs and NOPR Joint Commenters recommended that DOE consider adopting the active mode test procedure prescribed in IEC 60705 Ed. 4.2, with the CA IOUs stating that DOE's current test procedure does not measure the representative energy efficiency of models with new features such as ''inverter microwaves.'' (CA IOUs, No. 14 at p. 2) The NOPR Joint Commenters recommended DOE further investigate the IEC 60705 Ed. 4.2 test procedure, by measuring testing time, estimating test burden, and exploring potential modifications to determine the associated testing burden. (NOPR Joint Commenters, No. 13 at pp. 2–3) The NOPR Joint Commenters commented that while test burden can be a concern, DOE's responsibility is not to minimize all possible testing burdens irrespective of all other factors. (NOPR Joint Commenters, No. 13 at p. 3)

As an initial matter, DOE will adopt industry test standards as DOE test procedures for covered products and equipment, unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that equipment during a representative average use cycle. 10 CFR part 430 subpart C appendix A section 8(c) (*see also* 42 U.S.C. 6293(b)(3)). As explained in the following paragraphs, DOE has determined that adoption of IEC 60705 Ed. 4.2 would not meet the statutory requirements.

The CA IOUs suggested DOE consider inverter technology. DOE considered both the circumstances under which this technology can be more efficient and data DOE obtained from testing inverter-based microwaves under the 2006 version of IEC 60705. The NOPR Joint Commenters suggested DOE consider the newer 4.2 edition of IEC 60705. After comparing the 2006 and 4.2 editions and considering the data and the circumstances under which inverter technology can improve efficiency, DOE declines to adopt an active mode test procedure. Inverter power supplies have the potential to improve cooking efficiency when microwave ovens operate at less than 100-percent power. However, IEC 60705 Ed. 4.2 would not capture any such efficiency because it measures cooking efficiencies only at full power. DOE tested inverter-based microwave ovens according to the 2006 version of IEC 60705 and found there was no correlation to allow DOE to draw a conclusion about their efficiencies compared to non-inverter units at full power.[12] (See chapter 5 of the 2008 Technical Support Document) DOE's test results from IEC 60705–2006 remain valid because the testing methodologies used in IEC 60705–2006 and IEC 60705 Ed. 4.2 are substantively the same. DOE has thoroughly analyzed IEC 60705 Ed. 4.2, and found the changes since the 2006 version were mostly editorial, with additional minor edits to measurement requirements and ambient condition tolerances.

DOE declines to incorporate IEC 60705 Ed. 4.2 as an active mode test procedure because doing so would not capture the potential energy efficiency improvements of the inverter technology at less than 100-percent power loading conditions. Another obstacle to measuring energy usage at less than full load is a lack of data about consumer usage. To develop a test procedure that measures active mode energy efficiency during a representative average use cycle or period of use that includes operation at less than full load (*i.e.,* operation at less than maximum power), DOE would need consumer usage data on microwave use at less than full load to define a representative average use cycle. DOE neither has nor is aware of such data. DOE does not adopt a test procedure for measuring active mode energy consumption in this rulemaking for two reasons. First, IEC 60705 Ed. 4.2 does not capture the potential energy efficiency improvements of inverter technology. Second, there is no data to develop a test procedure that would provide representative measurements of such potential improvements. Further, DOE maintains its determination that requiring manufacturers to use an active mode measurement for microwave ovens, with its costs from increased

[8] In a final rule published on April 8, 2009, DOE concluded that an active mode energy conservation standard for microwave ovens would not be economically justified. In particular, the benefits of energy savings would be outweighed by the large decrease in the net present value of consumer impacts, the economic burden on many consumers, and the large capital conversion costs that could result in a reduction in industry net present value for manufacturers. 74 FR 16040, 16087.

[9] A notation in the form ''AHAM, No. 15 at pp. 2–3'' identifies a written comment: (1) Made AHAM; (2) recorded in document number 15 that is filed in the docket of this test procedure rulemaking (Docket No. EERE–2017–BT–TP–0024, available for review at *www.regulations.gov*); and (3) which appears on pages 2–3 of document number 15.

[10] Teddy Kisch, Arshak Zakarian, and Nate Dewart. ''Literature Review of Miscellaneous Energy Loads (MELs) in Residential Buildings.'' (CALMAC Study ID: SCE0360.01) Available at *www.calmac.org/publications/MEL_Literature_Review_6_10_14.pdf.*

[11] In a prior investigation of an active mode test procedure DOE estimated that approximately 75 percent of the annual energy use of microwaves is the result of active mode use. *See* 78 FR 7940, 7950. DOE understands the value presented by NOPR Joint Commenters is based on the current microwave-only and countertop microwave oven standby energy standard, which is different from the estimated 2.7 W average standby power for all microwave ovens, as used by DOE's original analysis from 2013.

[12] U.S. Department of Energy, Notice of Proposed Rulemaking Technical Support Document (TSD): Residential Dishwashers, Dehumidifiers, Cooking Products, and Commercial Clothes Washers (Oct. 2008) Chapter 5, Section 5.6.1.3. This document is available at: *www.regulations.gov/document?D=EERE-2006-STD-0127-0070.*

testing time and additional laboratory equipment, would be unduly burdensome.

*D. Standby Mode and Off Mode Test Methods*

1. Displays and Clocks

DOE proposed in the November 2019 NOPR that for microwave ovens that provide consumers the ability to turn the clock on or off, the unit must be configured such that the clock display remains on at all times during testing, unless the clock powers down automatically and the product provides no available setting for the consumer to prevent the automatic powering-down of the clock. 84 FR 61836, 61842. The proposed amendment to configure the clock and for the clock to remain on would apply regardless of manufacturer instruction, the default setting, or the supplied setting (as specified in paragraph 5.2 of IEC 62301 (Second Edition), which is referenced in section 2.1.1 [13] of appendix I for setup instructions). In proposing this amendment, DOE cited a prior energy conservation standard proposed rule in which manufacturers stated that consumers expect that a microwave oven equipped with a display should show clock time while in standby mode. *Id.,* referencing 73 FR 62034, 62080 (Oct. 17, 2008). DOE initially determined that this proposed additional direction would improve the representativeness and reproducibility of the test results. *Id.* In the November 2019 NOPR, DOE requested comment on this proposal to require keeping the clock display on during testing, including whether this update would result in additional test burden. DOE also requested comment on consumer habits regarding the use of clock displays that can optionally be turned on or off. *Id.*

AHAM commented that it does not support DOE's proposal to keep the clock display on during testing, stating that doing so is unnecessary, unjustified, and not consistent with international test procedures. (AHAM, No. 15 at p. 2) AHAM further commented that requiring the clock to be left on during standby testing would deviate from the international approach, with no evidence to support that the change is necessary. AHAM stated that the current test is repeatable, reproducible, representative, not unduly burdensome to conduct, and that DOE should not deviate from the existing test procedure without supporting data. (AHAM, No. 15 at p. 3)

As noted, EPCA requires DOE to measure the energy consumption of microwave ovens during a representative average use cycle. (42 U.S.C. 6293(b)(3)) As stated, previous manufacturer comments indicated that consumers expect a microwave oven equipped with a display to display the clock time while in standby mode. 73 FR 62034, 62080 (Oct. 17, 2008). DOE has found no evidence, nor did commenters provide any such evidence, that this consumer expectation has changed since then. Accordingly, requiring the clock display to be powered on during standby testing produces test results that are more representative of a microwave's average use cycle than the prior test procedure. For these reasons, DOE amends section 2.1.1 of appendix I to specify that the clock display must be on during testing, regardless of manufacturer's instructions or default setting or supplied setting. The clock display must remain on during testing, unless the clock display powers down automatically with no option for the consumer to override this function.

DOE notes that microwave ovens with displays may be categorized into two types: Those whose standby power consumption varies as a function of the displayed time and those whose standby power does not. This amendment will not affect the repeatability or reproducibility of the test procedure for either type.

For microwave ovens whose standby power varies as a function of displayed time, this amendment will not impact the repeatability or reproducibility of the test procedure because the current test procedure already requires the display clock to be on. Specifically, section 3.1.1.1 of appendix I already requires that for such units, the clock time be set to 3:23 at the end of the stabilization period as specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition) with power consumption data to be recorded using the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes after an additional stabilization period until the clock time reaches 3:33. DOE concluded from its own testing that this approach captures the power consumption of such units in a manner that is repeatable and representative of actual use. 76 FR 12825, 12839.

For microwave ovens whose standby power consumption does not vary as a function of the time displayed, the instruction for testing microwave ovens with the display and clock on simply requires that the clock be turned on at the beginning of the test with no further amendments required to the test method. DOE has not received any indication, either in the past or in response to the 2019 NOPR that compliance with these instructions may impact the repeatability and reproducibility of the test procedure or be overly burdensome.

To analyze potential retest and recertification concerns due to this amendment, DOE identified 35 microwave ovens from various manufacturers that could potentially be tested and certified with their clock displays turned off during standby mode. DOE found that 31 of the units (approximately ninety percent) would have to be certified with the clock display on. These units either included instructions for how to turn on the clock display or the display is already on by default. The amendment to test with the display on would not apply to the remaining four units because they contained auto-power down features that could not be disabled. Based on this review, DOE determines microwave ovens with displays that are explicitly required to be on during testing under the amended test procedure must already be tested with them on.

2. Connected Functions

DOE is aware of microwave ovens on the market with ''connected'' (*i.e.,* network) functionality that use either Bluetooth® or Wi-Fi to communicate with other cooking products, such as a range, or with a consumer, either via voice commands or a smartphone or other device. Such a feature could consume additional energy use, depending on how it is implemented in the product's controls.

Under DOE's current test procedure,[14] section 2.1.1 of appendix I specified that a microwave oven must be installed in accordance with paragraph 5.2 of IEC 62301 (Second Edition), which states that the product must be prepared and set up in accordance with manufacturer's instructions; and if no instructions are available, then the unit must be tested using factory or default settings, or, in case such settings are not indicated, the product must be tested as supplied. As such, even though appendix I did not include instructions for or require the measurement of any

[13] Since the publication of the November 2019 NOPR, DOE published the August 18, 2020 test procedure withdrawal rule for cooking products which, among other things, renumbered section 2.1.3 to 2.1.1 in appendix I. 85 FR 50757. DOE updated its reference accordingly in the August 2021 SNOPR.

[14] The term 'current test procedure' refers to the version of appendix I as modified by the August 18, 2020 test procedure withdrawal rule for cooking products. 85 FR 50757.

energy use associated with connected functionality, the current test procedure may have unintentionally captured the energy use associated with connected functionality through the way it measures standby mode and off mode power. Specifically, section 2 of appendix I could measure that energy use if such features were enabled by default or if manufacturers' instructions specified that the connected features be turned on. However, the current test procedure would not measure that energy use if manufacturers did not provide such an instruction and the product shipped with connected features disabled.

In the November 2019 NOPR, DOE proposed to add an explicit requirement to test microwave oven standby mode and off mode energy consumption with connected features disabled. DOE also proposed that if a connected function cannot be disabled per manufacturer's instructions, the energy use from such connected functions need not be reported to DOE nor used in determining compliance with the applicable energy conservation standards. 84 FR 61836, 61843. DOE also recognized that alternative approaches could be considered to address the issue of microwaves that do not provide a means for disabling connected functionality. One such approach DOE suggested was to require the energy use of the network function to be measured and subtracted from the standby mode energy measurement. *Id.* However, DOE initially determined that it did not have enough information on products with connected features to design a representative and appropriate test procedure because these products are relatively new, with limited market presence and field use. *Id.* DOE also stated that for a unit that is connected to the internet, the energy use of the product could depend on the speed and configuration of an internet connection. In addition, based on a review of manufacturer websites and user manuals of various appliances, as well as testing conducted at DOE and third-party laboratories, connected features are implemented in a variety of ways across different brands. *Id.* Therefore, DOE initially concluded that it did not have enough information to establish a representative configuration for testing connected functions repeatably. DOE requested comment on the proposed requirements for testing microwave ovens with connected functions disabled, including the example alternative approach. *Id.*

DOE received comments from interested parties on this proposal, which DOE addressed in the August 2021 SNOPR. Based on consideration of these comments, DOE proposed in the August 2021 SNOPR a modified approach for testing microwave ovens with connected functions that cannot be disabled. Specifically, DOE proposed in the August 2021 SNOPR that if network functions cannot be disabled, then the microwave oven is tested with the network function in the factory default setting or in the as-shipped condition. 86 FR 41759, 41762. DOE requested comment on this revised proposal. *Id.*

AHAM expressed support for the revised proposal that if manufacturers do not provide instructions on how to disable connected functions, connected functions should be tested in either the default setup condition, or as-shipped condition. However, AHAM suggested that use of the word ''disable'' may imply that power consumption by the components that provide connected functionality must be zero, and that a low but non-zero value may lead to confusion and inaccurate testing. AHAM stated that IEC 62301 uses the term ''low power mode'' and that DOE should use this term instead to capture scenarios where components that provide connected functions have been deactivated but continue to consume relatively low but non-zero amount of power and contribute towards standby power measurements. (AHAM, No. 18 at p. 2) AHAM further noted that because connected functions are still evolving, IEC's low power mode definition would allow both flexibility and clarity for DOE's microwave oven test procedure. (*Id.*)

UL also supported DOE's revised proposal for testing microwave ovens with connected functions and suggested that DOE specifically refer to the UL 923 [15] standard, which UL stated contains requirements that user instructions be provided to allow the consumer to identify the means to enable and disable smart-enabled operation at the appliance, including an illustration depicting the location of the actuating means with information on how to enable or disable the function. (UL, No. 21 at p. 1)

The SNOPR Joint Commenters, however, noted that although DOE's modified proposal would be useful, during actual use these functions are not likely to be disabled if they were shipped in an enabled state. The SNOPR Joint Commenters stated that under these conditions, testing microwave ovens with these functions disabled would be unrepresentative. They urged DOE to require that all microwave ovens be tested in the as-shipped condition, which they asserted would make the measurements more representative. The SNOPR Joint Commenters further suggested that DOE investigate ways to measure the power consumption of connected functions, asserting that these functions are becoming more prevalent and that capturing connected functions' power consumption can better inform consumers as well as incentivize manufacturers. (SNOPR Joint Commenters, No. 19 at pp. 1–2)

The CA IOUs suggested that DOE test all microwave ovens in the as-shipped condition without modification, to prevent wasteful energy use. The CA IOUs also suggested that DOE consider adding disclosure in the public certification requirements of whether connected functions are turned off during testing. They stated that making this information public would provide several benefits, through providing useful data for future rulemakings, promoting better purchasing decisions, and allowing consumers to make informed decisions about the energy performance of models relative to one another. (CA IOUs, No. 20 at pp. 1–2)

Regarding AHAM's comment on use of the term ''disabled'', DOE does not agree that the term ''disable'' implies that the power consumption must be zero. The wording implemented in this final rule specifies that ''If the microwave oven can communicate through a network (*e.g.,* Bluetooth® or internet connection), disable the network function, if it is possible to disable it by means provided in the manufacturer's user manual, for the duration of testing.'' No implication regarding the resulting power consumption is intended by this instruction. DOE also notes that use of the term ''disabled'' in this manner is consistent with the clothes dryer test procedures as amended by the final rule published October 8, 2021.[16] 86 FR 56608.

Regarding consideration of the term ''low power mode'' as used by IEC 62301, DOE developed its low-power mode definitions and test provisions in the final rule published on October 31, 2012 (77 FR 65941) consistent with the requirements of EPCA. EPCA requires DOE to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, while considering the most

[15] UL 923, *Microwave Cooking Appliances,* Edition 7, available at *https://standardscatalog.ul.com/ProductDetail.aspx?productId=UL923.*

[16] The October 2021 consumer clothes dryers test procedure final rule is available online at: *www.regulations.gov/document/EERE-2014-BT-TP-0034-0039.*

current version of IEC 62301; (42 U.S.C. 6295(gg)(2)(A)). EPCA also requires DOE to ensure that any test procedures shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product or equipment during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2))

DOE has determined that it would not be appropriate to reference UL 923, which provides requirements for user instructions, as UL suggested. The UL 923 test procedure provisions regarding connected functionality address how to test a product based on the features and capabilities presented on the product and/or information provided in the user instructions. As stated, EPCA requires DOE to establish test procedures that are reasonably designed to produce test results, which measure energy efficiency and energy use during a representative average use cycle or period of use, while being not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The purpose of the test procedure is not to impose requirements regarding the consumer operation of a product, or give preference to any specific implementations of connected functionality. Manufacturers can choose what information to include in the user instructions and the format of these instructions at their own discretion.

In response to the CA IOUs and SNOPR Joint Commenters' comments on connected functions, DOE reiterates that it lacks sufficient data to design a test procedure that measures the energy use associated with connected functions that is representative of average use, as required by EPCA. (See 42 US.C. 6293(b)(3)) DOE reemphasizes that, as stated in the November 2019 NOPR, for a unit that is connected to the internet, the speed and configuration of an internet connection could also impact the energy consumed by the device. 84 FR 61836, 61843. Connected features in microwave ovens are also implemented in a variety of ways across different brands. Further, the design and operation of these features is continuously evolving as the nascent market begins to grow for these products. DOE is not aware of any data available, nor did interested parties provide any such data, regarding the consumer use of connected features. Without such data, DOE cannot establish a representative test configuration for assessing the energy consumption of connected functionality for microwave ovens. Therefore, DOE is finalizing its proposal to require explicitly disabling connected functions, where possible. However, DOE agrees that there are benefits to manufacturers' reporting whether a microwave oven basic model includes connected functions and the status of such functions during testing. As such, in a separate rulemaking DOE may consider changing the certification and reporting requirements for microwave ovens to require manufacturers to provide this information.

In summary, DOE amends section 2.1.1 of appendix I to specify that if the microwave oven can communicate through a network (*e.g.,* Bluetooth® or internet connection), and it is possible to disable that function by means provided in the manufacturer's user manual, the network function must be disabled for the duration of testing. If the network function cannot be disabled, or means for disabling the function are not provided in the manufacturer's user manual, then the unit must be tested with the network function in the factory default setting or in the as-shipped condition as instructed in Section 5, paragraph 5.2 of IEC 62301 (Second Edition).

*E. Integrated Annual Energy Consumption Metric*

EPCA requires DOE to incorporate the active mode, standby mode, and off mode energy use values into a single energy use metric, unless it is technically infeasible to do so. (42 U.S.C. 6295(gg)(2)(A)) Because, in the November 2019 NOPR, DOE did not propose an active mode test procedure, which is required when developing a single energy use metric, DOE found that consideration of an integrated metric was technically infeasible and thus moot. Therefore, DOE did not propose to make any changes to the existing metric for microwave oven energy consumption in the November 2019 NOPR. 84 FR 61836, 61843. AHAM supported DOE's proposal to not include an active mode test procedure and thereby maintain the current metric. (AHAM, No. 15 at p. 4) For the aforementioned reasons, DOE maintains the microwave oven energy consumption metric without the introduction of an integrated annual energy consumption metric in this final rule.

*F. Section Title and Cross-References*

In this final rule, DOE is not adopting the changes proposed in the November 2019 NOPR to correct two cross-references and add a title that distinguishes test procedure provisions by the type of energy supplied. Since the publication of the November 2019 NOPR, DOE also published a test procedure withdrawal rule for cooking products on August 18, 2020 (''August 2020 Withdrawal Rule'') that amended appendix I to remove the two cross-references altogether and obviated the need to add a section title that separates test instructions based on the energy supplied. 85 FR 50757.

*G. Effective and Compliance Dates*

The effective date for the adopted test procedure amendment will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 180 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2)) EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

In the November 2019 NOPR, DOE proposed to remove the introductory note in appendix I which referenced a June 14, 2017, date after which any representations related to energy or power consumption of cooking products must be based upon results generated under the test procedure. As this date had passed, the introductory note was no longer needed.

Since the publication of the November 2019 NOPR, DOE published the August 2020 Withdrawal Rule that also amended appendix I. 85 FR 50757. Among other things, that withdrawal rule amended appendix I to remove the introductory note. 85 FR 50757, 50766.

In this final rule, DOE is adding an introductory note communicating the effective and compliance dates of amendments made in the rule.

*H. Test Procedure Costs*

In this document, DOE amends the current test procedure for microwave ovens by adding a requirement that clock displays be turned on during testing, notwithstanding the requirements in section 2.1.1 of appendix I, which references paragraph 5.2 of IEC 62301 (Second Edition). That is, DOE makes the following changes from the current requirements of section 2.1.1 of appendix I: Configure the unit such that the clock display remains on

during testing, regardless of manufacturer's instructions or default setting or supplied setting, unless the clock display powers down automatically with no option for the consumer to override this function. DOE also provides specific direction that a unit with a connected function is tested with the connected function disabled during testing, if possible. Since the test procedure as amended by this final rule does not add any substantive changes to the testing process, DOE has determined that it would not result in increased testing costs. DOE also performed a review of microwave ovens currently certified in DOE's Compliance Certification Database (''CCD'') and did not find any examples of basic models that would require retesting and recertification as a result of these amendments.

## IV. Procedural Issues and Regulatory Review

### *A. Review Under Executive Order 12866 and 13563*

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (''FRFA'') for any final rule where the agency was first required by law to publish a proposed rule 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 (Aug. 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 final rule under the provisions of the Regulatory Flexibility Act, and the procedures and policies published on February 19, 2003. DOE certifies that this final rule does not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

The Small Business Administration (''SBA'') considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers or earns less than the average annual receipts specified in 13 CFR part 121. The threshold values set forth in these regulations use size standards and codes established by the North American Industry Classification System (''NAICS'').[17] The NAICS code for microwave ovens is 335220, major household appliance manufacturing. The SBA sets a threshold of 1,500 employees or fewer for an entity to be considered as a small business for this category.

DOE identified manufacturers using DOE's Compliance Certification Database (''CCD''),[18] the California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS''),[19] and prior microwave oven rulemakings. DOE used the publicly available information and subscription-based market research tools (*e.g.,* reports from Dun & Bradstreet[20]) to identify original equipment manufacturers (''OEMs'') of the covered product. DOE initially identified 48 distinct companies that manufacture or import microwave ovens. Of these 48 companies, DOE identified 19 OEMs. Of the 19 OEMs, DOE identified two domestic manufacturers of microwave ovens that met the SBA definition of a ''small business.''

This final rule amends appendix I by (1) adding the introductory note and (2) adding specifications for the status of network functions and clock displays during testing. The test procedure as amended by this final rule does not add any substantive changes to the testing process. Furthermore, DOE performed a review of microwave ovens currently certified in the CCD and did not find any examples of basic models that would require retesting and recertification as a result of these amendments. Therefore, DOE has determined that the proposed amendments in this final rule would not result in additional testing costs for any manufacturers, including small businesses. For this reason, DOE concludes and certifies that this final rule does not have a significant economic impact on a substantial number of small entities and the preparation of a FRFA is not warranted. DOE has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

[17] 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 January 10, 2022).

[18] DOE's Compliance Certification Database is available at: *www.regulations.doe.gov/certification-data* (last accessed January 10, 2022).

[19] California Energy Commission's MAEDbS is available at *cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx* (last accessed January 10, 2022).

[20] *app.dnbhoovers.com.*

*C. Review Under the Paperwork Reduction Act of 1995*

Manufacturers of microwave ovens 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 microwave ovens. (*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.

DOE is not amending the certification or reporting requirements for microwave ovens in this final rule. Instead, DOE may consider proposals to amend the certification requirements and reporting for microwave ovens under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

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.

*D. Review Under the National Environmental Policy Act of 1969*

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for microwave ovens. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

*E. Review Under Executive Order 13132*

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999), imposes certain requirements on 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 examined this final rule and determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final 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, this final 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 regulatory action resulting 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 final 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 final rule will 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 will 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). 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 final 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 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 significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action 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 adopted modifications to the test procedure for microwave ovens in this final rule do not incorporate any new commercial standard. DOE has previously consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of the incorporation by reference of IEC 62301 (First Edition) and IEC 62301 (Second Edition) in appendix I to subpart B of part 430 and received no comments objecting to their use. There are no changes to the incorporation in this final rule.

*M. Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*N. Description of Materials Incorporated by Reference*

In this final rule, DOE does not incorporate by reference any new industry standard. The incorporation by reference of IEC 62301 (First Edition) and IEC 62301 (Second Edition) in appendix I to subpart B of part 430 has already been approved by the Director of the Federal Register and there are no changes to the incorporation in this final rule.

## V. Approval of the Office of the Secretary

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

## List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

## Signing Authority

This document of the Department of Energy was signed on March 23, 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 March 23, 2022.

**Treena V. Garrett,**

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

For the reasons stated in the preamble, DOE amends part 430 of chapter II of title 10, Code of Federal Regulations as set forth below:

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Appendix I to subpart B of part 430 is amended by:

■ a. Adding an introductory note; and

■ b. Revising section 2.1.1;

The addition and revision read as follows:

**Appendix I to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Cooking Products**

**Note:** After September 26, 2022, representations made with respect to the energy use of microwave ovens must fairly disclose the results of testing pursuant to this appendix.

On or after April 29, 2022 and prior to September 26, 2022 representations, including compliance certifications, made with respect to the energy use of microwave ovens must fairly disclose the results of testing pursuant to either this appendix or appendix I as it appeared at 10 CFR part 430, subpart B, in the 10 CFR parts 200 to 499 edition revised as of January 1, 2020. Representations made with respect to the energy use of microwave ovens within that range of time must fairly disclose the results of testing under the selected version. Given that after September 26, 2022 representations with respect to the energy use of microwave ovens must be made in accordance with tests conducted pursuant to this appendix, manufacturers may wish to begin using this test procedure as soon as possible.

* * * * *

2.1.1 *Microwave ovens, excluding any microwave oven component of a combined cooking product.* Install the microwave oven in accordance with the manufacturer's instructions and connect to an electrical supply circuit with voltage as specified in section 2.2.1 of this appendix. Install the microwave oven in accordance with Section 5, Paragraph 5.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes. If the microwave oven can communicate through a network (*e.g.,* Bluetooth® or internet connection), disable the network function, if it is possible to disable it by means provided in the manufacturer's user manual, for the duration of testing. If the network function cannot be disabled, or means for disabling the function are not provided in the manufacturer's user manual, test the microwave oven with the network function in the factory default setting or in the as-shipped condition as instructed in Section 5, paragraph 5.2 of IEC 62301 (Second Edition). Configure the unit such that the clock display remains on during testing, regardless of manufacturer's instructions or default setting or supplied setting, unless the clock display powers down automatically with no option for the consumer to override this function. Install a watt meter in the circuit that meets the requirements of section 2.8.1.2 of this appendix.

* * * * *

[FR Doc. 2022–06451 Filed 3–29–22; 8:45 am]

BILLING CODE 6450–01–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG–2022–0093]**

**RIN 1625–AA00**

## Safety Zone; Atlantic Intracoastal Waterway, Swansboro, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the Atlantic Intracoastal Waterway (AICW) and Queen Creek near Swansboro, Onslow County, NC. The safety zone is necessary to enhance the safety of mariners and participants during a mass-rescue training exercise. Entry of vessels or persons into this safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) North Carolina or a designated representative.

**DATES:** This rule is effective from 8 a.m. April 19, 2022, through 4 p.m. April 21, 2022.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov*, type USCG–2022–0093 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Ken Farah, Waterways Management Division, U.S. Coast Guard; telephone 910–772–2221, email *ncmarineevents@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. It would be impracticable and contrary to the public interest to publish an NPRM because we must establish this safety zone by April 19, 2022, to protect persons, vessels, and participants against the hazards associated with operations during the full-scale training exercise. This exercise involves both surface vessels and aircraft and will simulate search and rescue operations for persons in the water and other areas on land at different points within the designated area. Due to the dynamic nature of this exercise, non-participants should stay clear of the area.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to public interest because immediate action is needed to protect persons, vessels, and participants against the hazards associated with operations during the mass-rescue training exercise.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port North Carolina (COTP) has determined potential hazards associated with operations during a planned mass rescue training exercise starting April 19, 2022, is a safety concern for anyone transiting the designated training area of the AlCW and Queen Creek in the vicinity of Hammocks Beach State Park in Onslow County, NC, because the training will involve persons in the water. This rule is necessary to protect persons, vessels, and participants from the hazards associated with the full scale mass rescue operations training exercise.

### IV. Discussion of the Rule

This rule establishes a safety zone April 19–21, 2022, to be enforced from 8 a.m. through 4 p.m. daily. The safety zone will include all navigable waters of Queen Creek, Parrot Swamp, the Atlantic Intracoastal Waterway (AICW), Bogue Sound, and White Oak River within a line between the following latitudes and longitudes: starting at Queen Creek Road Bridge at N 34°41′03″, W 077°10′17″; then Southeast along the shoreline to N 34°40′38″, W 077°09′47″; then Southwest to N 34°40′20″, W 077°10′10″; then Southeast

to N 34°40′06″, W 077°09′51″; then Northeast to N 34°40′21″, W 077°09′37″; then Southeast to the AICW at N 34°39′51″, W 077°09′07″; then Southwest along the shoreline to N 34°39′12″, W 077°09′52″; then Southwest to N 34°38′41″, W 077°09′32″; then Northeast to Bogue Sound Daybeacon 45B at N 34°40′32″, W 077°06′26″; then Northwest to the White Oak River Bridge at N 34°41′15″, W 077°07′02″; then Southwest to Hammocks Beach State Park at N 34°40′11″, W 077°08′36″; then Northwest to Queen Creek Road Bridge at N 34°41′15″, W 077°10′03″; then Southwest to the point of origin. Due to the location of the exercise, the safety zone will close a portion of the AICW, Queen Creek, and other waters in the vicinity to vessel traffic. This area is typically used by recreational boaters. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative while the zone is being enforced. To request permission to transit the area, mariners can contact Coast Guard Sector North Carolina Command Center at telephone number (910) 343–3882 or on-scene representatives on VHF–FM marine band radio channel 16 (156.8 MHz).

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the size, location, and duration of the safety zone, which will impact a designated area of the AICW and Queen Creek in Onslow County, NC. Vessel traffic will not be able to safely transit around this safety zone. However, the eight hour enforcement periods should not overly burden any vessel or entity because it is not an area normally used for commercial vessel traffic and recreational vessel traffic is lower at this time of the year. The Coast Guard will issue a Broadcast Notice to Mariners about the safety zone and this rule to notify vessels in the region of the establishment of this regulation. The rule also allows vessels to request permission from the COTP or a designated representative to enter the zone if necessary.

### *B. Impact on Small Entities*

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

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

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

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

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

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a Safety Zone lasting eight hours on two consecutive days that prohibits entry into portions of Queen Creek, Parrot Swamp, the Atlantic Intracoastal Waterway (AICW), Bogue Sound, and White Oak River in the vicinity of Hammocks Beach Park in Onslow County, NC. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01,

Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0093 to read as follows:

**§ 165.T05–0093 Safety Zone; Atlantic Intracoastal Waterway, Swansboro, NC**

(a) *Definitions.* For the purposes of this section—

*Captain of the Port* means the Commander, Coast Guard Sector North Carolina.

*Representative* means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port.

*Participant* means an individual or vessel involved with the training exercise.

(b) *Location.* The following area is a safety zone: All navigable waters of Queen Creek, Parrot Swamp, the Atlantic Intracoastal Waterway (AICW), Bogue Sound, and White Oak River within a line between the following latitudes and longitudes: starting at Queen Creek Road Bridge at N 34°41′03″, W 077°10′17″; then Southeast along the shoreline to N 34°40′38″, W 077°09′47″; then Southwest to N 34°40′20″, W 077°10′10″; then Southeast to N 34°40′06″, W 077°09′51″; then Northeast to N 34°40′21″, W 077°09′37″; then Southeast to the AICW at N 34°39′51″, W 077°09′07″; then Southwest along the shoreline to N 34°39′12″, W 077°09′52″; then Southwest to N 34°38′41″, W 077°09′32″; then Northeast to Bogue Sound Daybeacon 45B at N 34°40′32″, W 077°06′26″; then Northwest to the White Oak River Bridge at N 34°41′15″, W 077°07′02″; then Southwest to Hammocks Beach State Park at N 34°40′11″, W 077°08′36″; then Northwest to Queen Creek Road Bridge at N 34°41′15″, W 077°10′03″; then Southwest to the point of origin.

(c) *Regulations.* (1) The general regulations governing safety zones in § 165.23 apply to the area described in paragraph (b) of this section.

(2) With the exception of the participants, entry into or remaining in this safety zone is prohibited unless authorized by the COTP North Carolina or a designated representative.

(3) All vessels within this safety zone when this section becomes effective must depart the zone immediately.

(4) The COTP North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina, at telephone· number 910–343–3882.

(5) The Coast Guard can be contacted on VHF–FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced 8 a.m. through 4 p.m. each day from April 19, 2022, through April 21, 2022.

Dated: March 23, 2022.

**Matthew J. Baer,**

*Captain, U.S. Coast Guard, Captain of the Port North Carolina.*

[FR Doc. 2022–06715 Filed 3–29–22; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R01–OAR–2022–0089; FRL–9546–02–R1]**

### Air Plan Approval; Connecticut; Negative Declaration for the Oil and Gas Industry

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final action.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. The revision provides the State's determination, via a negative declaration, that there are no facilities within its borders subject to EPA's 2016 Control Technique Guideline (CTG) for the oil and gas industry. The intended effect of this action is to approve this item into the Connecticut SIP. This action is being taken under the Clean Air Act.

**DATES:** This final action is effective on April 29, 2022.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2022–0089. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

**FOR FURTHER INFORMATION CONTACT:** Eric Rackauskas, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. (617) 918–1628, email *rackauskas.eric@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. Background and Purpose
II. Final Action
III. Statutory and Executive Order Reviews

### I. Background and Purpose

On February 9, 2022 (87 FR 7410), EPA published a notice of proposed rulemaking (NPRM) for the State of Connecticut.

The NPRM proposed approval of a SIP revision by the Connecticut Department of Energy and Environmental Protection (DEEP) that

included a negative declaration for the 2016 Oil and Natural Gas Industry Control Techniques Guidelines (CTG). The term ''negative declaration'' means that the State has explored whether any facilities subject to the applicability requirements of the CTG exist within the State and concluded that there are no such sources within its borders. This is consistent with EPA's understanding of where sources subject to the Oil and Natural Gas Industry CTG are located. The formal SIP revision was submitted by Connecticut on December 29, 2020.

Other specific requirements of the Connecticut negative declaration for the 2016 Oil and Natural Gas Industry CTG and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

## II. Final Action

EPA is approving Connecticut's negative declaration for the 2016 Oil and Natural Gas Industry CTG as a revision to the Connecticut SIP.

## III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 Clean Air Act; 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, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 23, 2022.

**David Cash,**

*Regional Administrator, EPA Region 1.*

[FR Doc. 2022–06580 Filed 3–29–22; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 130403320–4891–02; RTID 0648–XB868]**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; 2022–2023 Recreational Fishing Season for Black Sea Bass

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

**ACTION:** Temporary rule; recreational season length.

**SUMMARY:** NMFS announces that the length of the recreational fishing season for black sea bass in the exclusive economic zone (EEZ) of the South Atlantic will extend throughout the species' 2022–2023 fishing year. Announcing the length of recreational season for black sea bass is one of the accountability measures (AMs) for the recreational sector. This announcement allows recreational fishers to maximize their opportunity to harvest the recreational annual catch limit (ACL) for black sea bass during the fishing season while managing harvest to protect the black sea bass resource.

**DATES:** This rule is effective from 12:01 a.m. eastern time on April 1, 2022, through March 31, 2023, unless changed by subsequent notification in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Nikhil Mehta, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *nikhil.mehta@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The South Atlantic snapper-grouper fishery includes black sea bass south of 35°15.9′ N latitude and is managed under the

Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The South Atlantic Fishery Management Council prepared the FMP and the FMP is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The recreational fishing year for black sea bass is April 1 through March 31. The recreational AM for black sea bass requires that before the April 1 start date of each recreational fishing year, NMFS projects the length of the recreational fishing season based on when NMFS projects the recreational ACL will be met, and announces the recreational season end date in the **Federal Register** (50 CFR 622.193(e)(2)). The purpose of this AM is to have a more predictable recreational season length while still constraining harvest at or below the recreational ACL to protect the stock from experiencing adverse biological consequences.

The recreational ACL for the 2020–2021 black sea bass fishing year is 310,602 lb (140,887 kg), gutted weight, 366,510 lb (166,246 kg), round weight. The recreational ACL was set through the final rule for Abbreviated Framework Amendment 2 to the FMP (84 FR 14021, April 9, 2019).

NMFS estimates that recreational landings for the 2022–2023 fishing year will be less than the 2020–2021 recreational ACL. To make this determination, NMFS compared recreational landings in the last 3 fishing years (2018/2019, 2019/2020, and 2020/2021) to the recreational ACL for the 2022–2023 black sea bass fishing year. Recreational landings in each of the past 3 fishing years have been substantially less than the 2022–2023 recreational ACL; therefore, recreational landings are projected to be less than the 2022–2023 recreational ACL. Accordingly, the recreational sector for black sea bass is not expected to close during the fishing year as a result of reaching its ACL, and the season end date for recreational fishing for black sea bass in the South Atlantic EEZ south of 35°15.9′ N latitude is March 31, 2021.

## Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of South Atlantic black sea bass and is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws.

This action is taken under 50 CFR 622.193(e)(2) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement the notice of the recreational season length constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because prior notice and opportunity for public comment on this temporary rule is unnecessary. Such procedures are unnecessary, because the rule establishing the AM has already been subject to notice and comment and all that remains is to notify the public of the recreational season length.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: March 24, 2022.

**Ngagne Jafnar Gueye,**

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

[FR Doc. 2022–06702 Filed 3–29–22; 8:45 am]

BILLING CODE 3510–22–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 201209–0332; RTID 0648–XB687]**

## Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer From MD to NC

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

**ACTION:** Notification; quota transfers.

**SUMMARY:** NMFS announces that the State of Maryland is transferring a portion of its 2021 commercial bluefish quota to the State of North Carolina. This quota adjustment is necessary to comply with the Atlantic Bluefish Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised commercial bluefish quotas for Maryland and North Carolina.

**DATES:** Effective March 25, 2022 through December 31, 2021.

**FOR FURTHER INFORMATION CONTACT:** Laura Hansen, Fishery Management Specialist, (978) 281–9225.

**SUPPLEMENTARY INFORMATION:** Regulations governing the Atlantic bluefish fishery are found in 50 CFR 648.160 through 648.167. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.162, and the final 2021 allocations were published on December 16, 2020 (85 FR 81421).

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan (FMP) published in the **Federal Register** on July 26, 2000 (65 FR 45844), and provided a mechanism for transferring bluefish quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can request approval to transfer or combine bluefish commercial quota under § 648.162(e)(1)(i) through (iii). The Regional Administrator must approve any such transfer based on the criteria in § 648.162(e). In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether: The transfer or combinations would preclude the overall annual quota from being fully harvested; the transfer addresses an unforeseen variation or contingency in the fishery; and the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Act.

Maryland is transferring 10,000 lb (4,536 kg) to North Carolina through mutual agreement of the states. This transfer was requested to ensure that North Carolina would not exceed their 2021 state quota. The revised bluefish quotas for 2021 are: Maryland 33,084 lb (15,007 kg) and North Carolina, 1,082,377 lb (490,958 kg).

## Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.162(e)(1)(i) through (iii), which was issued pursuant to section 304(b), and is exempted from review under Executive Order 12866.

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

**Ngagne Jafnar Gueye,**

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

[FR Doc. 2022–06723 Filed 3–25–22; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No.: 220325–0078]**

**RIN 0648–BL13**

## Fisheries of the Northeastern United States; Framework Adjustment 34 to the Atlantic Sea Scallop Fishery Management Plan

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

**ACTION:** Final rule.

**SUMMARY:** NMFS approves and implements the measures included in Framework Adjustment 34 to the Atlantic Sea Scallop Fishery Management Plan as adopted and submitted by the New England Fishery Management Council. Framework 34 establishes scallop specifications and other measures for fishing years 2022 and 2023. This action incorporates the new specifications-setting methodology and other changes developed in Amendment 21 to the Atlantic Sea Scallop Fishery Management Plan into the fishing year 2022 specifications. In addition, Framework 34 implements measures to protect small scallops, promote scallop recruitment in the mid-Atlantic, and reduce bycatch of flatfish. This final rule addresses regulatory text that is unnecessary, outdated, or unclear. This action is necessary to prevent overfishing and improve both yield-per-recruit and the overall management of the Atlantic sea scallop resource.

**DATES:** Effective April 1, 2022, except for amendatory instruction 7 (removing and reserving § 648.60(a)), which is effective May 31, 2022.

**ADDRESSES:** The Council has prepared an Environmental Assessment (EA) for this action that describes the measures contained in Framework Adjustment 34 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and other considered alternatives and analyzes the impacts of these measures and alternatives. The Council submitted Framework 34 to NMFS that includes the EA, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and a Regulatory Impact Review (RIR). Copies of supporting documents used by the New England Fishery Management Council, including the EA and RIR, are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: *https://www.nefmc.org/library/framework-34-1.*

**FOR FURTHER INFORMATION CONTACT:** Travis Ford, Fishery Policy Analyst, (978) 281–9233.

**SUPPLEMENTARY INFORMATION:**

### Background

The New England Fishery Management Council adopted Framework 34 to the Atlantic Sea Scallop FMP on December 9, 2021. The Council submitted Framework 34, including an EA, for NMFS approval on March 10, 2022. NMFS published a proposed rule for Framework 34 on February 15, 2022 (87 FR 8543). To help ensure that the final rule would be implemented before the start of the fishing year on April 1, 2022, the proposed rule included a 15-day public comment period that closed on March 2, 2022.

On January 12, 2022, NMFS published Amendment 21 to the Atlantic Sea Scallop FMP (87 FR 1688). Amendment 21 makes several changes to the management, including specifications-setting methodology, of the Northern Gulf of Maine (NGOM) and limited access general category (LAGC) individual fishing quota (IFQ) components. Framework 34 incorporates these new specifications-setting methodology and other changes developed in Amendment 21 into the fishing year 2022 specifications.

NMFS has approved all of the measures in Framework 34 recommended by the Council, as described below. This final rule implements Framework 34, which sets scallop specifications and other measures for fishing years 2022 and 2023, including changes to the catch, effort, and quota allocations and adjustments to the rotational area management program for fishing year 2022, measures to reduce bycatch of flatfish, and default specifications for fishing year 2023. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) allows NMFS to approve, partially approve, or disapprove measures proposed by the Council based on whether the measures are consistent with the FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. NMFS generally defers to the Council's policy choices unless there is a clear inconsistency with the law or the FMP. Details concerning the development of these measures were contained in the preamble of the proposed rule and are not repeated here. This final rule also addresses regulatory text that is unnecessary, outdated, or unclear consistent with section 305(d) of the Magnuson-Stevens Act.

*Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACL), Annual Catch Targets (ACT), Annual Projected Landings (APL) and Set-Asides for the 2022 Fishing Year, and Default Specifications for Fishing Year 2023*

The Council set the OFL based on a fishing mortality (F) of 0.61, equivalent to the F threshold updated through the Northeast Fisheries Science Center's most recent scallop benchmark stock assessment that was completed in September 2020. The ABC and the equivalent total ACL for each fishing year are based on an F of 0.45, which is the F associated with a 25-percent probability of exceeding the OFL. The Council's Scientific and Statistical Committee (SSC) recommended scallop fishery ABCs of 56.7 million lb (25,724 mt) for 2022 and 51.1 million lb (23,200 mt) for the 2023 fishing year, after accounting for discards and incidental mortality. The SSC will reevaluate and potentially adjust the ABC for 2023 when the Council develops the next framework adjustment.

Table 1 outlines the scallop fishery catch limits.

TABLE 1—SCALLOP CATCH LIMITS (mt) FOR FISHING YEARS 2022 AND 2023 FOR THE LIMITED ACCESS AND LAGC IFQ FLEETS

| Catch limits | 2022 (mt) | 2023 (mt) [1] |
|---|---|---|
| ABC/ACL (discards removed) | 25,724 | 23,200 |

TABLE 1—SCALLOP CATCH LIMITS (mt) FOR FISHING YEARS 2022 AND 2023 FOR THE LIMITED ACCESS AND LAGC IFQ FLEETS—Continued

| Catch limits | 2022 (mt) | 2023 (mt) [1] |
|---|---|---|
| Incidental Landings | 23 | 23 |
| RSA | 578 | 578 |
| Observer Set-Aside | 257 | 232 |
| ACL for fishery | 24,865 | 22,367 |
| Limited Access ACL | 23,498 | 21,137 |
| LAGC Total ACL | 1,368 | 1,230 |
| LAGC IFQ ACL (5 percent of ACL) | 1,243 | 1,118 |
| Limited Access with LAGC IFQ ACL (0.5 percent of ACL) | 124 | 112 |
| Limited Access ACT | 20,365 | 18,318 |
| NGOM Set-Aside | 282 | 221 |
| APL (after set-asides removed) | 14,251 | ([1]) |
| Limited Access APL (94.5 percent of APL) | 13,467 | ([1]) |
| Total IFQ Annual Allocation (5.5 percent of APL) [2] | 784 | 588 |
| LAGC IFQ Annual Allocation (5 percent of APL) [2] | 713 | 534 |
| Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) [2] | 71 | 53 |
| ABC/ACL (discards removed) | 25,724 | 23,200 |

[1] The catch limits for the 2023 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2023 that will be based on the 2022 annual scallop surveys.
[2] As a precautionary measure, the 2023 IFQ and annual allocations are set at 75 percent of the 2022 IFQ Annual Allocations.

This action deducts 1.275 million lb (578 mt) of scallops annually for 2022 and 2023 from the ABC for use as the Scallop RSA to fund scallop research. Participating vessels are compensated through the sale of scallops harvested under RSA projects. Of the 1.275 million lb (578 mt) allocation, NMFS has already allocated 153,834 lb (69,778 kg) to previously-funded multi-year projects as part of the 2021 RSA awards process. NMFS reviewed proposals submitted for consideration of 2022 RSA awards and announced project selections on March 16, 2022. Details on the 2022 RSA awards can be found on our website here: *https://www.fisheries.noaa.gov/new-england-mid-atlantic/science-data/sea-scallop-research-set-aside-projects-selected-2022-2023.*

This action also deducts 1 percent of the ABC for the industry-funded observer program to help defray the cost to scallop vessels that carry an observer. The observer set-aside is 257 mt for 2022 and 232 mt for 2023. The Council may adjust the 2023 observer set-aside when it develops specific, non-default measures for 2023. In fishing year 2022, the compensation rates for limited access vessels in open areas fishing under days-at-sea (DAS) is 0.08 DAS per DAS fished. For access area trips, the compensation rate is 200 lb (90.7 kg), in addition to the vessel's possession limit for the trip for each day or part of a day an observer is onboard.

For LAGC IFQ trips less than 24 hours, a vessel will be able to harvest the trip limit and the daily compensation rate on the observed trip, or the vessel could harvest any unfished compensation on a subsequent trip while adhering to the commercial possession limit. LAGC IFQ vessels may possess an additional 200 lb (90.7 kg) per trip on trips less than 24 hours when carrying an observer.

Amendment 21 made LAGC IFQ vessels eligible for additional compensation when carrying an observer on board and fishing trips longer than 24 hours. For fishing year 2022, the daily compensation rate of 200 lb (90.7 kg) will be prorated at 12-hour increments for trips exceeding 24 hours. The amount of compensation a vessel could receive on 1 trip would be capped at 2 days (48 hours) and vessels fishing longer than 48 hours will not receive additional compensation allocation. For example, if the observer compensation rate is 200 lb/day (90.7 kg/day) and an LAGC IFQ vessel carrying an observer departs on July 1 at 2200 and lands on July 3 at 0100, the length of the trip would equal 27 hours, or 1 day and 3 hours. In this example, the LAGC IFQ vessel would be eligible for 1 day plus 12 hours of compensation allocation, *i.e.,* 300 lb (136 kg).

Amendment 21 also expanded the scallop industry-funded observer program to monitor directed scallop fishing in the NGOM by using a portion of the NGOM allocation to off-set monitoring costs. For NGOM trips, a vessel will be able to harvest the trip limit and the daily compensation rate on the observed trip. NGOM vessels may possess an additional 125 lb (56.7 kg) per trip when carrying an observer.

NMFS may adjust the compensation rate throughout the fishing year, depending on how quickly the fleets are using the set aside. The Council may adjust the 2023 observer set-aside when it develops specific, non-default measures for 2023.

*Open Area Days-at-Sea (DAS) Allocations*

This action implements vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (*i.e.,* full-time, part-time, and occasional) for 2022 and 2023 (Table 2). The 2022 DAS allocations are the same as those allocated to the limited access fleet in 2021. Framework 34 sets 2023 DAS allocations at 75 percent of fishing year 2022 DAS allocations as a precautionary measure. This is to avoid over-allocating DAS to the fleet in the event that the 2023 specifications action is delayed past the start of the 2023 fishing year. The allocations in Table 2 exclude any DAS deductions that are required if the limited access scallop fleet exceeds its 2021 sub-ACL.

TABLE 2—SCALLOP OPEN AREA DAS ALLOCATIONS FOR 2022 AND 2023

| Permit Category | 2022 | 2023 (Default) |
|---|---|---|
| Full-Time | 24.00 | 18.00 |
| Part-Time | 9.60 | 7.20 |

TABLE 2—SCALLOP OPEN AREA DAS ALLOCATIONS FOR 2022 AND 2023—Continued

| Permit Category | 2022 | 2023 (Default) |
|---|---|---|
| Occasional | 2.00 | 1.50 |

*Changes to Fishing Year 2022 Sea Scallop Access Area Boundaries*

For fishing year 2022 and the start of 2023, Framework 34 keeps Nantucket Lightship-South-Deep Access Area (NLS–S–D), Closed Area II (CAII), and Closed Area I Access Area (CAI) open as access areas. However, Framework 34 does not allocate any additional landings from CAI for the limited access fleet (see below).

*Fishing Year 2022 Sea Scallop Closed Area Boundaries*

Framework 34 keeps the Closed Area II-East (CAII–E) Closed Area closed to scallop fishing. This action also closes the New York Bight Scallop Rotational Area (Table 3) to scallop fishing to optimize growth of the several scallop year classes within the closure area and to support scallop fishing in years following the 2022 fishing year.

TABLE 3—NEW YORK BIGHT SCALLOP CLOSED AREA

| Point | N latitude | W longitude |
|---|---|---|
| NYB1 | 40°00′ | 73°20′ |
| NYB2 | 40°00′ | 72°30′ |
| NYB3 | 39°20′ | 72°30′ |
| NYB4 | 39°20′ | 73°20′ |
| NYB1 | 40°00′ | 73°20′ |

This action also closes the Nantucket Lightship-West (NLSW) Scallop Rotational Area (Table 4). The Council is closing this area to support the growth of this year class of small scallops in the absence of fishing pressure.

TABLE 4—NANTUCKET LIGHTSHIP-WEST SCALLOP CLOSED AREA

| Point | N latitude | W longitude |
|---|---|---|
| NLSW1 | 40°43.44′ | 70°20′ |
| NLSW2 | 40°43.44′ | 70°00′ |
| NLSW3 | 40°43.44′ | 69°30′ |
| NLSW4 | 40°20′ | 69°30′ |
| NLSW5 | 40°20′ | 70°00′ |
| NLSW6 | 40°26.63′ | 70°20′ |
| NLSW1 | 40°43.44′ | 70°20′ |

*Mid-Atlantic Scallop Rotational Area Reverting to Open Area*

Framework 34 reverts the Mid-Atlantic Scallop Rotational Area (MAAA) to part of the open area. This area was previously managed as part of the area rotation program, but it no longer meets the criteria for either closure or controlled access. This area will become part of the open area and could be fished as part of the DAS program or on LAGC IFQ trips. Because fishing year 2021 carryover access area fishing will continue in the MAAA until May 30, 2022, this area would not revert to open area until May 31, 2022.

*Stellwagen Bank Scallop Rotational Area Reverting to NGOM Area*

Framework 34 reverts the Stellwagen Bank Scallop Rotational Area to part of the NGOM. This area was closed in 2020 to protect a substantial number of small scallops. Framework 34 opens this area to NGOM fishing because those small scallops have now recruited into the fishery.

*Full-Time Limited Access Allocations and Trip Possession Limits for Scallop Access Areas*

Table 5 provides the limited access full-time allocations for all of the access areas for the 2022 fishing year and the first 60 days of the 2023 fishing year. These allocations could be landed in as many trips as needed, so long as vessels do not exceed the possession limit (also in Table 5) on any one trip.

TABLE 5—SCALLOP ACCESS AREA FULL-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2022 AND 2023

| Rotational access area | Scallop possession limit | 2022 Scallop allocation | 2023 Scallop allocation (default) |
|---|---|---|---|
| Closed Area II | 15,000 lb (6,804 kg) per trip | 30,000 lb (13,608 kg) | 15,000 lb (6,804 kg). |
| Nantucket Lightship-South-Deep | 15,000 lb (6,804 kg) per trip | 15,000 lb (6,804 kg) | 0 lb (0 kg). |
| Total | | 45,000 lb (20,412 kg) | 15,000 lb (6,804 kg). |

*Changes to the Full-Time Limited Access Vessels' One-for-One Access Area Allocation Exchanges*

Framework 34 allows full-time limited access vessels to exchange access area allocation in 7,500-lb (3,402-kg) increments. The owner of a vessel issued a full-time limited access scallop permit is able to exchange unharvested scallop pounds allocated into an access area for another full-time limited access vessel's unharvested scallop pounds allocated into another access area. For example, a full-time vessel may exchange 7,500 lb (3,402 kg) from one access area for 7,500 lb (3,402 kg) allocated to another full-time vessel for another access area. Further, a full-time vessel may exchange 15,000 lb (6,804 kg) from one access area for 15,000 lb (6,804 kg) allocated to another full-time vessel for another access area. One-for-one access area allocations for part-time limited access vessels must occur in the increments of a possession limit, *i.e.,* 9,000 lb (4,082 kg).

*Part-Time Limited Access Allocations and Trip Possession Limits for Scallop Access Areas*

Table 6 provides the limited access part-time allocations for all of the access areas for the 2022 fishing year and the first 60 days of the 2023 fishing year. These allocations could be landed in as many trips as needed, so long as the vessels do not exceed the possession limit (also in Table 6) on any one trip.

TABLE 6—SCALLOP ACCESS AREA PART-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2022 AND 2023

| Rotational access area | Scallop possession limit | 2022 Scallop allocation | 2023 Scallop allocation (default) |
|---|---|---|---|
| Closed Area II | 9,000 lb (4,082 kg) per trip | 9,000 lb (4,082 kg) | 9,000 lb (4,082 kg). |
| Nantucket Lightship-South-Deep | 9,000 lb (4,082 kg) per trip | 9,000 lb (4,082 kg) | 0 lb (0 kg). |
| Total | | 18,000 lb (8,165 kg) | 9,000 lb (4,082 kg). |

*Closed Area I Only for RSA and LAGC IFQ Trips*

Because of the limited amount of biomass in CAI to support a full limited access trip, Framework 34 will not allocate any landings from CAI to the limited access fleet. CAI will only be available for the LAGC access area trips and RSA compensation fishing.

*LAGC Measures*

*1. ACL and IFQ Allocation for LAGC Vessels with IFQ Permits.* For LAGC vessels with IFQ permits, this action implements a 1,368-mt ACL for 2022 and a 1,230-mt default ACL for 2023 (see Table 1). These sub-ACLs have no associated regulatory or management requirements but provide a ceiling on overall landings by the LAGC IFQ fleets. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. The annual allocation to the LAGC IFQ-only fleet for fishing years 2022 and 2023 based on APL would be 713 mt for 2022 and 534 mt for 2023 (see Table 1). Each vessel's IFQ would be calculated from these allocations based on APL.

*2. ACL and IFQ Allocation for Limited Access Scallop Vessels with IFQ Permits.* For limited access scallop vessels with IFQ permits, this action implements a 124-mt ACL for 2022 and a default 112-mt ACL for 2023 (see Table 1). These sub-ACLs have no associated regulatory or management requirements but provide a ceiling on overall landings by this fleet. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. The annual allocation to limited access vessels with IFQ permits would be 71 mt for 2022 and 53 mt for 2023 (see Table 1). Each vessel's IFQ would be calculated from these allocations based on APL.

*3. LAGC IFQ Trip Allocations for Scallop Access Areas.* Framework 34 allocates LAGC IFQ vessels a fleet-wide number of trips in CAI and NLS–S–D for fishing year 2022 and default trips in the CAI for fishing year 2023 (see Table 7). The scallop catch associated with the total number of trips for all areas combined (1,071 trips) for fishing year 2022 is equivalent to the 5.5 percent of total projected catch from access areas.

TABLE 7—FISHING YEARS 2022 AND 2023 LAGC IFQ TRIP ALLOCATIONS FOR SCALLOP ACCESS AREAS

| Scallop access area | 2022 | 2023 [1] |
|---|---|---|
| Closed Area I | 714 | 357 |
| Nantucket Lightship-South-Deep | 357 | 0 |
| Total | 1,071 | 357 |

[1] The LAGC IFQ access area trip allocations for the 2023 fishing year are subject to change through a future specifications action or framework adjustment.

*4. NGOM Scallop Fishery Landing Limits.* This action implements total allowable landings (TAL) in the NGOM of 661,387 lb (300,000 kg) for fishing year 2022 and 504,384 (228,785 kg) default NGOM TAL for fishing year 2023. This action deducts 25,000 lb (11,340 kg) of scallops annually for 2022 and 2023 from the NGOM TAL to increase the overall Scallop RSA that funds scallop research. In addition, this action deducts 1 percent of the NGOM ABC from the NGOM TAL for fishing years 2022 and 2023 to support the industry-funded observer program to help defray the cost to scallop vessels that carry an observer (Table 8).

Amendment 21 developed landing limits for all permit categories in the NGOM and established an 800,000-lb (362,874-kg) NGOM Set-Aside trigger for the NGOM directed fishery, with a sharing agreement for access by all permit categories for allocation above the trigger. Allocation above the trigger (*i.e.,* the NGOM APL) will be split 5 percent for the NGOM fleet and 95 percent for limited access and LAGC IFQ fleets. Framework 34 sets an NGOM Set-Aside of 621,307 lb (281,820 kg) for fishing year 2022 and a default NGOM

Set-Aside of 465,980 lb (211,365 kg) for fishing year 2023. Because the NGOM Set-Aside for fishing years 2022 and 2023 is below the 800,000-lb (362,874-kg) trigger, Framework 34 does not allocate any landings to the NGOM APL. Table 8 describes the breakdown of the NGOM TAL for the 2022 and 2023 (default) fishing years.

TABLE 8—NGOM SCALLOP FISHERY LANDING LIMITS FOR FISHING YEAR 2022 AND 2023

| Landings limits | 2022 | 2023[1] |
|---|---|---|
| NGOM TAL | 661,387 lb (300,000 kg) | 504,384 (228,785 kg). |
| 1 percent NGOM ABC for Observers | 15,080 lb (6,840 kg) | 13,404 (6,080 kg). |
| RSA Contribution | 25,000 lb (11,340 kg) | 25,000 lb (11,340 kg). |
| NGOM Set-Aside | 621,307 lb (281,820 kg) | 465,980 lb (211,365 kg). |
| NGOM APL | 0 lb (0 kg) | |

[1] The landings limits for the 2023 fishing year are subject to change through a future specifications action or framework adjustment.

*5. Scallop Incidental Landings Target TAL.* This action implements a 50,000-lb (22,680-kg) scallop incidental landings target TAL for fishing years 2022 and 2023 to account for mortality from vessels that catch scallops while fishing for other species and ensure that F targets are not exceeded. The Council and NMFS may adjust this target TAC in a future action if vessels catch more scallops under the incidental target TAC than predicted.

*RSA Harvest Restrictions*

This action allows vessels participating in RSA projects to harvest RSA compensation from the NLS–S–D, CAI, CAII and the open area. However, to reduce bycatch of flatfish on Georges Bank, vessels may only harvest RSA compensation from Closed Area II from June 1, 2021, through August 14, 2021. All vessels are prohibited from harvesting RSA compensation pounds in all other access areas. Vessels are prohibited from fishing for RSA compensation in the NGOM unless the vessel is fishing an RSA compensation trip using NGOM RSA allocation that was awarded to an RSA project. Finally, Framework 34 prohibits the harvest of RSA from any access areas under default 2023 measures. At the start of 2023, RSA compensation may only be harvested from open areas. The Council will re-evaluate this default prohibition measure in the action that would set final 2023 specifications.

*Regulatory Corrections Under Regional Administrator Authority*

This rule includes four revisions to address regulatory text that is unnecessary, outdated, or unclear. In addition, this rule includes changes to regulatory text that would allow NMFS to implement measures developed in Amendment 21 to the Atlantic Sea Scallop FMP for fishing year 2022. Specifically, these changes would implement regulations that expand the scallop industry-funded observer program to monitor directed scallop fishing in the NGOM by using a portion of the NGOM allocation to off-set monitoring costs. These revisions are consistent with section 305(d) of the Magnuson-Stevens Act, which provides authority to the Secretary of Commerce to promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. The first revisions, at §§ 648.11(k)(1), (k)(2)(i) and (iii), (k)(5) introductory text, (k)(5)(i) introductory text, (k)(5)(i)(C), (k)(5)(ii), and (k)(6) and 648.52(h) make changes that require vessels fishing in the NGOM to participate in the observer program and allow vessels to possess the additional observer compensation allocation when carrying an observer. Amendment 21 expanded the scallop industry-funded observer program to monitor directed scallop fishing in the NGOM by using a portion of the NGOM allocation to off-set monitoring costs. The second revision at § 648.52(g) modified an example of an LAGC IFQ vessel exceeding the possession limit to defray the cost for observers to comport with the proration changes provided in Amendment 21. The third revision at §§ 648.53(a)(7) and 648.62(a)(3) changes the term ''scallop incidental catch'' to ''scallop incidental landings'' to more accurately describe the catch limit. The fourth revision at § 648.53(b) clarifies that DAS allocations are determined by applying estimates of open area landings per unit effort projected through the specifications or framework adjustment processes used to set annual allocations and dividing that amount among vessels in the form of DAS calculated. Finally, in paragraphs § 648.59(a)(2) and (b)(3) the terms ''scallop rotational closed area'' and ''scallop rotational access area'' are added for consistency throughout the regulations.

**Comments and Responses**

We received one comment in support of this action. However, while the individual supported the conservation objectives of the action, she expressed concern about the projected decline in revenue for the fleet. We have determined that the measures in Framework 34 are optimal for the fishery because they would minimize risks associated with stock biomass uncertainties while protecting small scallops for future harvest.

*Changes From the Proposed Rule*

We made two changes from that proposed rule consistent with section 305(d) of the Magnuson-Stevens Act. First, we edited regulatory text at § 648.52(g) to update references to the observer set-aside and to clarify an example of an LAGC IFQ vessel retaining an allowance of scallops in addition to the possession limit to defray the cost for observers. Second, we added regulatory text at § 648.52(h) to clarify that a NGOM vessel with an observer on board may retain, per observed trip, an allowance of scallops in addition to the possession limit, as established by the Regional Administrator, to defray the cost of carrying an observer.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act and other applicable law.

The Office of Management and Budget has determined that this rule is not significant pursuant to E.O. 12866.

This final rule does not contain policies with federalism or ''takings'' implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This action does not contain any collection-of-information requirements subject to the Paperwork Reduction Act (PRA).

The Assistant Administrator for Fisheries has determined that the need to implement the measures of this rule in an expedited manner is necessary to

achieve conservation objectives for the scallop fishery and certain fish stocks. This constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in the date of effectiveness and to make the final Framework 34 measures effective on April 1, 2022.

The 2022 fishing year begins on April 1, 2022. If Framework 34 is delayed beyond April 1, certain default measures, including access area designations, DAS, IFQ, research set-aside and observer set-aside allocations, would automatically be put into place. Most of these default allocations were set more conservatively than what would be implemented under Framework 34. Under default measures, each full-time vessel has 18 DAS and one access area trip for 18,000 lb (8,165 kg) in the MAAA. However, Framework 34 will not allocate effort into the MAAA. Framework 34 has payback measures should a vessel harvest any of its default allocation in this area. Pursuant to 5 U.S.C. 553(d)(1), we waive the 30-day delay in effectiveness because this action relieves restrictions by providing full-time vessels with an additional 6 DAS (24 DAS total) and 27,000 lb (12,247 kg) in access area allocations (45,000 lb (20,412 kg) total). Further, LAGC IFQ vessels will receive an additional 72-mt (784-mt total) allocation and 500 access area trips spread out across 2 access areas (1,071 trips total). Accordingly, this action prevents more restrictive aspects of the default measures from going into place. Framework 34 could not have been put into place sooner to allow for a 30-day delayed effectiveness because the information and data necessary for the Council to develop the framework was not available in time for this action to be forwarded to NMFS and implemented by April 1, 2022, the beginning of the scallop fishing year. Delaying the implementation of this action for 30 days would delay positive economic benefits to the scallop fleet and could negatively impact the access area rotation program by delaying fishing in access areas that should be available.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has completed a final regulatory flexibility analysis (FRFA) in support of Framework 34. The FRFA incorporates the IRFA, a summary of the significant issues raised by public comments in response to the IRFA, NMFS responses to those comments, a summary of the analyses completed in the Framework 34 EA, and the preamble to this final rule. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in Framework 34 and in the preambles to the proposed rule and this final rule and are not repeated here. All of the documents that constitute the FRFA are available from NMFS and/or the Council, and a copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**).

*A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments*

We received one comment from an individual who supported the conservation objectives of the action but expressed concern about the projected decline in revenue for the fleet. She did not directly reference the IRFA. We have determined that the measures in Framework 34 are optimal for the fishery because they would minimize risks associated with stock biomass uncertainties while protecting small scallops for future harvest.

*Description and Estimate of Number of Small Entities to Which the Rule Would Apply*

These regulations would apply to all vessels with limited access and LAGC scallop permits, and there would be economic impacts to small entities. Those impacts are described in detail in the draft of Framework 34, specifically, in the IRFA (Section 7.2) and in the Economic and Social Impacts section (Section 6.6). Framework 34 (Section 5.6) provides extensive information on the number of vessels that are affected by this action, their home and principal state, dependency on the scallop fishery, and revenues and profits (see **ADDRESSES**). There were 316 vessels that held full-time limited access permits in 2020, including 250 dredge, 55 small-dredge, and 11 scallop trawl permits. In the same year, there were also 30 part-time limited access permits in the sea scallop fishery. No vessels were issued occasional scallop permits in 2020. In 2019, NMFS reported that there were a total of 300 IFQ-only permits, with 212 issued and 88 in Confirmation of Permit History. There were a total of 110 NGOM permits issued in 2019. About 102 of the IFQ vessels and 47 NGOM vessels actively fished for scallops in fishing year 2020. The remaining IFQ permit holders likely leased out scallop IFQ allocations with their permits in Confirmation of Permit History. Section 6.6 of Framework 34 provides extensive information on the number and size of vessels that would be affected by the proposed regulations, their home and principal state, dependency on the scallop fishery, and revenues and profits (see **ADDRESSES**).

For RFA purposes, NMFS defines a small business in a shellfish fishery as a firm that is independently owned and operated with receipts of less than $11 million annually (see 50 CFR 200.2). Individually permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by the proposed action. Furthermore, multiple permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of this analysis, ''ownership entities'' are defined as those entities with common ownership as listed on the permit application. Only permits with identical ownership are categorized as an ''ownership entity.'' For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one ''ownership entity,'' that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be considered a separate ''ownership entity'' for the purpose of this analysis.

On June 1 of each year, ownership entities are identified based on a list of all permits for the most recent complete calendar year. The current ownership dataset is based on the calendar year 2020 permits and contains average gross sales associated with those permits for calendar years 2018 through 2020. Matching the potentially impacted 2020 fishing year permits described above (limited access and LAGC IFQ) to calendar year 2020 ownership data results in 177 distinct ownership entities for the limited access fleet and 89 distinct ownership entities for the LAGC IFQ fleet. Based on the Small Business Administration guidelines, 170 of the limited access distinct ownership entities and 89 LAGC IFQ entities are categorized as small. Seven limited access entities and no LAGC IFQ entities are categorized as large entities. There were 44 distinct small business entities with NGOM permits in 2020 permits.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule*

This action contains no new collection-of-information, reporting, or recordkeeping requirements. This proposed rule does not require specific action on behalf of regulated entities other than to ensure they stay within the specifications that are set.

*Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes*

During the development of Framework 34, NMFS and the Council considered ways to reduce the regulatory burden on, and provide flexibility for, the regulated entities in this action. For instance, Framework 34 allows full-time limited access vessels to exchange access area allocation in 7,500-lb (3,402-kg) increments. This provides more flexibility to limited access vessel owners by allowing them to exchange partial trips to better fit their fishing practices. In addition, Framework 34 increases the opportunity for LAGC IFQ vessels to operate in access areas by allowing LAGC IFQ vessels to fish access area trips that would have been allocated to Closed Area II (an offshore area difficult for the LAGC fleet access) in Closed Area I (an area closer to shore). This could have potentially slight positive impacts on the resource overall by spreading effort out and providing more access in areas with higher catch rates. It also could potentially reduce total area swept since the LAGC IFQ component would have the opportunity to fish on high densities of scallops in access areas. This is expected to help reduce fishing times and lower trips costs. Further, this is expected to limit steam time and lower overall trips costs across the entire LAGC IFQ component. Alternatives to the measures in this final rule are described in detail in Framework 34, which includes an EA, RIR, and IRFA (see **ADDRESSES**). The measures implemented by this final rule minimize the long-term economic impacts on small entities to the extent practicable. The only alternatives for the prescribed catch limits that were analyzed were those that met the legal requirements to implement effective conservation measures. Specifically, catch limits must be derived using SSC-approved scientific calculations based on the Scallop FMP. Moreover, the limited number of alternatives available for this action must also be evaluated in the context of an ever-changing FMP, as the Council has considered numerous alternatives to mitigating measures every fishing year in amendments and frameworks since the establishment of the FMP in 1982.

Overall, this rule minimizes adverse long-term impacts by ensuring that management measures and catch limits result in sustainable fishing mortality rates that promote stock rebuilding, and as a result, maximize optimal yield. The measures implemented by this final rule also provide additional flexibility for fishing operations in the short-term.

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency will publish one or more guides to assist small entities in complying with the rule and will designate such publications as ''small entity compliance guides.'' The agency will explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a bulletin to permit holders that also serves as a small entity compliance guide was prepared. This final rule and the guide (*i.e.,* bulletin) will be sent via email to the Greater Atlantic Regional Fisheries Office scallop email list and are available on the website at: *https://www.fisheries.noaa.gov/action/framework-adjustment-34-atlantic-sea-scallop-fishery-management-plan.* Hard copies of the guide and this final rule will be available upon request (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 25, 2022.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

## Subpart A—General Provisions

■ 2. In § 648.11:
■ a. Revise paragraphs (k)(1) and (k)(2)(i);
■ b. Add paragraph (k)(2)(iii);
■ c. Revise paragraphs (k)(5) introductory text and (k)(5)(i) introductory text;
■ d. Add paragraph (k)(5)(i)(C); and
■ e. Revise paragraphs (k)(5)(ii) and (k)(6).

The revisions and additions read as follows:

**§ 648.11 Monitoring coverage.**

* * * * *

(k) * * *

(1) *General.* Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (a) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access, LAGC IFQ, and LAGC NGOM permits are required to comply with the additional notification requirements specified in paragraph (k)(2) of this section. When NMFS notifies the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area, Open Area, or NGOM as specified in paragraph (k)(3) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip without an observer if the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (k)(3) and (k)(4)(ii) of this section.

(2) * * *

(i) *Limited access vessels.* Limited access vessel owners, operators, or managers shall notify NMFS by telephone not more than 10 days prior to the beginning of any scallop trip of the time, port of departure, open area, NGOM, or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge, scallop trawl, or general category vessel.

* * * * *

(iii) *LAGC vessels fishing NGOM.* LAGC IFQ and NGOM vessel owners, operators, or managers must notify the NMFS by telephone by 0001 hr of the Thursday preceding the week (Sunday through Saturday) that they intend to start a NGOM scallop trip and must include the port of departure. NMFS may select up to two trips to be covered by an observer during the specified week (Sun-Sat). The owner, operator, or vessel manager must notify NMFS of any trip plan changes at least 48 hr prior to vessel departure.

* * * * *

(5) *Cost of coverage.* Owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit or reduced DAS accrual rate. The owners of vessels that carry an observer may be compensated with a reduced DAS accrual rate for limited access open area scallop trips or additional scallop catch per day for limited access Sea Scallop Access Area trips or additional catch per open area or access area trip for LAGC IFQ trips or additional catch per NGOM trip in order to help defray the cost of the observer, under the program specified in §§ 648.53 and 648.60.

(i) Observer service providers shall establish the daily rate for observer coverage on a scallop vessel on an Access Area trip or open area DAS or IFQ trip or NGOM trip consistent with paragraphs (k)(5)(i)(A) and (B), respectively, of this section.

* * * * *

(C) *NGOM scallop trips.* For purposes of determining the daily rate in the NGOM for observed scallop trips on a limited access or LAGC vessel, regardless of the status of the industry-funded observer set-aside, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where ''day'' is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, which would equate to 1 day and 3 hr.

(ii) NMFS shall determine any reduced DAS accrual rate and the amount of additional pounds of scallops on Sea Scallop Access Area, LAGC IFQ, and NGOM trips based on the economic conditions of the scallop fishery, as determined by best available information. Vessel owners and observer service providers shall be notified through the Small Entity Compliance Guide of any DAS accrual rate changes and any changes in additional pounds of scallops determined by the Regional Administrator to be necessary. NMFS shall notify vessel owners and observer providers of any adjustments.

* * * * *

(6) *Coverage and cost requirements.* When the available set-aside for observer coverage is exhausted, vessels shall still be required to carry an observer as specified in this section, and shall be responsible for paying for the cost of the observer, but shall not be authorized to harvest additional pounds or fish at a reduced DAS accrual rate.

* * * * *

## Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

■ 3. In § 648.52, revise paragraph (g) and add paragraph (h) to read as follows:

### § 648.52 Possession and landing limits.

* * * * *

(g) *Possession limit to defray the cost of observers for LAGC IFQ vessels.* An LAGC IFQ vessel with an observer on board may retain, per observed trip, an allowance of scallops in addition to the possession limit, as established by the Regional Administrator in accordance with § 648.53(g), provided the observer set-aside specified in § 648.53(a)(8) has not been fully utilized. For example, if the LAGC IFQ vessel possession limit is 600 lb (272.2 kg) and the additional allowance to defray the cost of an observer is 200 lb/day (90.7 kg), the vessel fishing 24 hours or less could retain up to 800 lb (362.9 kg) when carrying an observer. If a vessel does not land its additional allowance on the trip while carrying an observer, the additional allowance will be added to the vessel's IFQ allocation, and it may land it on a subsequent trip. However, the vessel may not exceed the IFQ trip possession limit as described in § 648.52(a) unless it is actively carrying an observer.

(h) *Possession limit to defray the cost of observers for NGOM vessels.* A NGOM vessel with an observer on board may retain, per observed trip, an allowance of scallops in addition to the possession limit, as established by the Regional Administrator in accordance with § 648.53(g), provided the observer set-aside specified in § 648.53(a)(8) has not been fully utilized. For example, if the NGOM vessel possession limit is 200 lb (90.7 kg) and the additional allowance to defray the cost of an observer is 125 lb (56.7 kg) per trip, the vessel could retain up to 325 lb (147.4 kg) when carrying an observer. The vessel may not exceed the possession limit as described in § 648.52(b) unless it is actively carrying an observer.

■ 4. In § 648.53, revise paragraphs (a)(7) and (9) and (b)(1) and (3) to read as follows:

### § 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, and individual fishing quotas (IFQ).

(a) * * *

(7) *Scallop incidental landings target TAL.* The annual incidental landings target TAL is the catch available for harvest for vessels with incidental catch scallop permits. This incidental catch target will be removed from the ABC/ACL defined in paragraph (a)(3) of this section prior to establishing the limited access and LAGC IFQ sub-ACLs and sub-ACTs defined in paragraphs (a)(5) and (6) of this section.

* * * * *

(9) *Scallop fishery catch limits.* The following catch limits will be effective for the 2022 and 2023 fishing years:

TABLE 2 TO PARAGRAPH (a)(9)—SCALLOP FISHERY CATCH LIMITS

| Catch limits | 2022 (mt) | 2023 (mt) [1] |
|---|---|---|
| OFL | 38,271 | 34,941 |
| ABC/ACL (discards removed) | 25,724 | 23,200 |
| Incidental Landings | 23 | 23 |
| RSA | 578 | 578 |
| Observer Set-Aside | 257 | 232 |
| NGOM Set-Aside | 282 | 221 |
| ACL for fishery | 24,865 | 22,367 |
| Limited Access ACL | 23,498 | 21,137 |
| LAGC Total ACL | 1,368 | 1,230 |
| LAGC IFQ ACL (5 percent of ACL) | 1,243 | 1,118 |
| Limited Access with LAGC IFQ ACL (0.5 percent of ACL) | 124 | 112 |
| Limited Access ACT | 20,365 | 18,318 |

TABLE 2 TO PARAGRAPH (a)(9)—SCALLOP FISHERY CATCH LIMITS—Continued

| Catch limits | 2022 (mt) | 2023 (mt) [1] |
|---|---|---|
| APL (after set-asides removed) | 14,251 | (1) |
| Limited Access APL (94.5 percent of APL) | 13,467 | (1) |
| Total IFQ Annual Allocation (5.5 percent of APL) [2] | 784 | 588 |
| LAGC IFQ Annual Allocation (5 percent of APL) [2] | 713 | 534 |
| Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) [2] | 71 | 53 |

[1] The catch limits for the 2023 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2023 that will be based on the 2022 annual scallop surveys. The 2023 default allocations for the limited access component are defined for DAS in paragraph (b)(3) of this section and for access areas in § 648.59(b)(3)(i)(B).

[2] As specified in paragraph (a)(6)(iii)(B) of this section, the 2023 IFQ annual allocations are set at 75 percent of the 2022 IFQ Annual Allocations.

(b) * * *

(1) *DAS allocations.* DAS allocations shall be determined by distributing the portion of the limited access APL defined in paragraph (a)(3) of this section, as reduced by access area allocations defined in § 648.59, by applying estimates of open area landings per unit effort (LPUE) projected through the specifications or framework adjustment processes used to set annual allocations and dividing that amount among vessels in the form of DAS calculated.

* * * * *

(3) *DAS allocations.* The DAS allocations for limited access scallop vessels for fishing years 2022 and 2023 are as follows:

TABLE 3 TO PARAGRAPH (b)(3)—SCALLOP OPEN AREA DAS ALLOCATIONS

| Permit category | 2022 | 2023 [1] |
|---|---|---|
| Full-Time | 24.00 | 18.00 |
| Part-Time | 9.60 | 7.20 |
| Occasional | 2.00 | 1.5 |

[1] The DAS allocations for the 2023 fishing year are subject to change through a future specifications action or framework adjustment. The 2023 DAS allocations are set at 75 percent of the 2022 allocation as a precautionary measure.

* * * * *

■ 5. In § 648.59, revise paragraphs (a)(2) and (3), (b)(3) heading, (b)(3)(i)(B), (b)(3)(ii), (c), (e), and (g)(3)(v) to read as follows:

**§ 648.59 Sea Scallop Rotational Area Management Program and Access Area Program requirements.**

(a) * * *

(2) *Transiting a Scallop Rotational Closed Area.* No vessel possessing scallops may enter or be in the area(s) specified in this section when those areas are closed, as specified through the specifications or framework adjustment processes defined in § 648.55, unless the vessel is transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II-East Scallop Rotational Area, as defined in § 648.60(d), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(3) *Transiting a Scallop Rotational Access Area.* Any sea scallop vessel that has not declared a trip into the Scallop Access Area Program may enter a Scallop Access Area, and possess scallops not caught in the Scallop Access Areas, for transiting purposes only, provided the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2. Any scallop vessel that has declared a trip into the Scallop Area Access Program may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area provided its gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Scallop Rotational Area, as defined in § 648.60(b)(1), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(b) * * *

(3) *Scallop Rotational Access Area allocations*—(i) * * *

(B) The following access area allocations and possession limits for limited access vessels shall be effective for the 2022 and 2023 fishing years:

(*1*) *Full-time vessels.* (*i*) For a full-time limited access vessel, the possession limit and allocations are:

TABLE 1 TO PARAGRAPH (b)(3)(i)(B)(*1*)(*i*)

| Rotational access area | Scallop possession limit | 2022 Scallop allocation | 2023 Scallop allocation (default) |
|---|---|---|---|
| Closed Area II | 15,000 lb (6,804 kg) per trip | 30,000 lb (13,608 kg) | 15,000 lb (6,804 kg). |
| Nantucket Lightship-South-Deep | 15,000 lb (6,804 kg) per trip | 15,000 lb (6,804 kg) | 0 lb (0 kg). |
| Total | | 45,000 lb (20,412 kg) | 15,000 lb (6,804 kg). |

(*ii*) [Reserved]

(*2*) *Part-time vessels.* (*i*) For a part-time limited access vessel, the possession limit and allocations are as follows:

TABLE 2 TO PARAGRAPH (b)(3)(i)(B)(*2*)(*i*)

| Rotational access area | Scallop possession limit | 2022 Scallop allocation | 2023 Scallop allocation (default) |
|---|---|---|---|
| Closed Area II | 9,000 lb (4,082 kg) per trip | 9,000 lb (4,082 kg) | 9,000 lb (4,082 kg). |
| Nantucket Lightship-South-Deep | 9,000 lb (4,082 kg) per trip | 9,000 lb (4,082 kg) | 0 lb (0 kg). |
| Total | | 18,000 lb (8,165 kg) | 9,000 lb (4,082 kg). |

(*ii*) [Reserved]

(*3*) *Occasional limited access vessels.* (*i*) For the 2022 fishing year only, an occasional limited access vessel is allocated 3,750 lb (1,701 kg) of scallops with a trip possession limit at 3,750 lb of scallops per trip (1,701 kg per trip). Occasional limited access vessels may harvest the 3,750 lb (1,701 kg) allocation from either the Nantucket Lightship-South-Deep or Closed Area II Access Area.

(*ii*) For the 2023 fishing year, occasional limited access vessels are allocated 1,250 lb (567 kg) of scallops in Closed Area II Access Area with a trip possession limit of 1,250 lb of scallops per trip (567 kg per trip).

(ii) *Limited access vessels' one-for-one area access allocation exchanges*—(A) *Full-time limited access vessels.* (*1*) The owner of a vessel issued a full-time limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's unharvested scallop pounds allocated into another scallop access area. These exchanges may be made only in 7,500-lb (3,402-kg) increments. For example, a full-time vessel may exchange 7,500 lb (3,402 kg) from one access area for 7,500 lb (3,402 kg) allocated to another full-time vessel for another access area. Further, a full-time vessel may exchange 15,000 lb (6,804 kg) from one access area for 15,000 lb (6,804 kg) allocated to another full-time vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A vessel owner may exchange equal allocations in 7,500-lb (3,402-kg) increments between two or more vessels of the same permit category under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

(*2*) [Reserved]

(B) *Part-time limited access vessels.* The owner of a vessel issued a part-time limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another part-time vessel's unharvested scallop pounds allocated into another scallop access area. These exchanges may be made only for the amount of the current trip possession limit, as specified in paragraph (b)(3)(i)(B)(*2*) of this section. For example, if the access area trip possession limit for part-time limited access vessels is 9,000 lb (4,082 kg), a part-time limited access vessel may exchange no more or less than 9,000 lb (4,082 kg), from one access area for no more or less than 9,000 lb (4,082 kg) allocated to another vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time limited access vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A part-time limited access vessel owner may exchange equal allocations up to the current possession limit between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

* * * * *

(c) *Scallop Access Area scallop allocation carryover.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, a limited access scallop vessel may fish any unharvested Scallop Access Area allocation from a given fishing year within the first 60 days of the subsequent fishing year if the Scallop Access Area is open, unless otherwise specified in this section. However, the vessel may not exceed the Scallop Rotational Area trip possession limit. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in the Closed Area II Access Area at the end of fishing year 2021, that vessel may harvest those 7,000 lb (3,175 kg) during the first 60 days that the Closed Area II Access Area is open in fishing year 2022 (April 1, 2022 through May 30, 2023).

* * * * *

(e) *Sea Scallop Research Set-Aside Harvest in Scallop Access Areas.* Unless otherwise specified, RSA may be harvested in any access area that is open in a given fishing year, as specified through a specifications action or framework adjustment and pursuant to § 648.56. The amount of scallops that can be harvested in each access area by

vessels participating in approved RSA projects shall be determined through the RSA application review and approval process. The access areas open for RSA harvest for fishing years 2022 and 2023 are:

(1) 2022: Nantucket Lightship-South-Deep, Closed Area I, and Closed Area II Scallop Rotational Areas.

(i) For fishing year 2022, vessels may only harvest RSA compensation from Closed Area II from June 1, 2022 through August 14, 2022.

(ii) [Reserved]

(2) 2023: No access areas.

* * * * *

(g) * * *

(3) * * *

(v) *LAGC IFQ access area allocations.* The following LAGC IFQ access area trip allocations will be effective for the 2022 and 2023 fishing years:

TABLE 3 TO PARAGRAPH (g)(3)(v)

| Scallop access area | 2022 | 2023 [1] |
|---|---|---|
| Closed Area I | 714 | 357 |
| Nantucket Lightship-South-Deep | 357 | 0 |
| Total | 1,071 | 357 |

[1] The LAGC IFQ access area trip allocations for the 2023 fishing year are subject to change through a future specifications action or framework adjustment.

* * * * *

■ 6. In § 648.60:

■ a. Remove and reserve paragraph (b)(2)(ii);

■ b. Redesignate table 7 to paragraph (g) and table 8 to paragraph (h) as table 6 to paragraph (g) and table 7 to paragraph (h); and

■ c. Add paragraphs (i) and (j).

The additions read as follows:

**§ 648.60 Sea Scallop Rotational Areas.**

* * * * *

(i) *Nantucket Lightship-West Scallop Rotational Area.* The Nantucket Lightship-West Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 8 TO PARAGRAPH (i)

| Point | N latitude | W longitude |
|---|---|---|
| NLSW1 | 40°43.44′ | 70°20′ |
| NLSW2 | 40°43.44′ | 70°00′ |
| NLSW3 | 40°43.44′ | 69°30′ |
| NLSW4 | 40°20′ | 69°30′ |
| NLSW5 | 40°20′ | 70°00′ |
| NLSW6 | 40°26.63′ | 70°20′ |
| NLSW1 | 40°43.44′ | 70°20′ |

(j) *New York Bight Scallop Rotational Area.* The New York Bight Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 9 TO PARAGRAPH (j)

| Point | N latitude | W longitude |
|---|---|---|
| NYB1 | 40°00′ | 73°20′ |
| NYB2 | 40°00′ | 72°30′ |
| NYB3 | 39°20′ | 72°30’ |
| NYB4 | 39°20′ | 73°20’ |
| NYB1 | 40°00′ | 73°20′ |

**§ 648.60 [Amended]**

■ 7. Effective May 31, 2022, further amend § 648.60 as follows:

■ a. Remove and reserve paragraph (a); and

■ b. Redesignate table 2 to paragraph (b)(1), table 3 to paragraph (c), table 4 to paragraph (d), table 5 to paragraph (e), table 6 to paragraph (g), table 7 to paragraph (h), table 8 to paragraph (i), and table 9 to paragraph (j) as table 1 to paragraph (b)(1), table 2 to paragraph (c), table 3 to paragraph (d), table 4 to paragraph (e), table 5 to paragraph (g), table 6 to paragraph (h), table 7 to paragraph (i), and table 8 to paragraph (j).

8. In § 648.62:

■ a. Revise paragraphs (a)(2) and (3);

■ b. Remove and reserve paragraph (a)(4);

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

■ d. Remove paragraph (e).

The revisions read as follows:

**§ 648.62 Northern Gulf of Maine (NGOM) Management Program.**

(a) * * *

(2) Scallop landings by vessels issued NGOM permits shall be deducted from the NGOM Set-Aside, as defined in § 648.53(a)(8)(iii), and specified in paragraph (b)(1) of this section, when vessels fished all or part of a trip in the Federal waters portion of the NGOM. If a vessel with a NGOM scallop permit

fishes exclusively in state waters within the NGOM, scallop landings from those trips will not be deducted from the NGOM Set-Aside.

(3) Scallop landings by all vessels issued LAGC IFQ scallop permits and fishing in the NGOM scallop management area against the NGOM Set-Aside, as defined in § 648.53(a)(8)(iii), shall be deducted from NGOM Set-Aside specified in paragraph (b)(1) of this section. Scallop landings by LAGC IFQ scallop vessels fishing in the NGOM scallop management area shall be deducted from their respective scallop IFQs. Landings by vessels with incidental permits shall not be deducted from the NGOM total allowable catch specified in paragraph (b) of this section.

* * * * *

(5) Scallop landings by all vessels issued scallop permits and fishing in the NGOM under the scallop RSA program (as specified in § 648.56) shall be deducted from the overall RSA allocation.

(b) *NGOM Scallop Fishery landings limits.* (1) The following landings limits will be effective for the NGOM for the 2022 and 2023 fishing years.

TABLE 1 TO PARAGRAPH (b)(1)

| Landings limits | 2022 | 2023[1] |
|---|---|---|
| NGOM TAL | 661,387 lb (300,000 kg) | 504,384 (228,785 kg). |
| 1 percent NGOM ABC for Observers | 15,080 lb (6,840 kg) | 13,404 (6,080 kg). |
| RSA Contribution | 25,000 lb (11,340 kg) | 25,000 lb (11,340 kg). |
| NGOM Set-Aside | 621,307 lb (281,820 kg) | 465,980 lb (211,365 kg). |
| NGOM APL | 0 lb (0 kg). | |

[1] The landings limits for the 2023 fishing year are subject to change through a future specifications action or framework adjustment.

(2) Unless a vessel has fished for scallops outside of the NGOM scallop management area and is transiting the NGOM scallop management area with all fishing gear stowed and not available for immediate use as defined in § 648.2, no vessel issued an LAGC scallop permit pursuant to § 648.4(a)(2) may possess, retain, or land scallops in the NGOM scallop management area once the Regional Administrator has provided notification in the **Federal Register** that the NGOM Set-Aside in accordance with paragraph (b)(1) of this section has been reached, unless the vessel is participating in the scallop RSA program as specified in § 648.56 and has been allocated NGOM RSA pounds. Once the NGOM Set-Aside is reached, a vessel issued a NGOM permit may no longer declare a state-only NGOM scallop trip and fish for scallops exclusively in state waters within the NGOM, unless participating in the state waters exemption program as specified in § 648.54. A vessel that has not been issued a Federal scallop permit that fishes exclusively in state waters is not subject to the closure of the NGOM scallop management area.

(3) If the NGOM Set-Aside is exceeded, the amount of NGOM scallop landings in excess of the NGOM Set-Aside specified in paragraph (b)(1) of this section shall be deducted from the NGOM Set-Aside for the subsequent fishing year, or, as soon as practicable, once scallop landings data for the NGOM management area is available.

* * * * *

[FR Doc. 2022–06736 Filed 3–29–22; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 220216–0049; RTID 0648–XB903]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processors Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher/processors using hook-and-line (HAL) gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2022 Pacific cod total allowable catch (TAC) apportioned to catcher/processors using HAL gear in the Central Regulatory Area of the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), March 25, 2022, through 1200 hours, A.l.t., June 10, 2022.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907–586–7241.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2022 Pacific cod TAC apportioned to catcher/processors using HAL gear in the Central Regulatory Area of the GOA is 602 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2022 Pacific cod TAC apportioned to catcher/processors using HAL gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 592 mt and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processors using HAL gear in the Central Regulatory Area of the GOA.

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

### Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to

section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher/processors using HAL gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 24, 2022.

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

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

Dated: March 25, 2022.

**Ngagne Jafnar Gueye,**

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

[FR Doc. 2022–06718 Filed 3–25–22; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 220223–0054; RTID 0648–XB911]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; reallocation.

**SUMMARY:** NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters) length overall using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the A season apportionment of the 2022 total allowable catch of Pacific cod to be harvested.

**DATES:** Effective March 25, 2022, through 2400 hours, Alaska local time (A.l.t.), December 31, 2022.

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

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2022 Pacific cod total allowable catch (TAC) specified for vessels using jig gear in the BSAI is 1,127 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022).

The 2022 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line or pot gear in the BSAI is 2,671 mt as established by final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that jig vessels will not be able to harvest 1,075 mt of the A season apportionment of the 2022 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*1*). Therefore, in accordance with § 679.20(a)(7)(iv)(C), NMFS apportions 1,027 mt of Pacific cod from the A season jig gear apportionment to the annual amount specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

The harvest specifications for 2022 Pacific cod included in the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022) are revised as follows: 52 mt to the A season apportionment and 804 mt to the annual amount for vessels using jig gear, and 3,746 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

### Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from jig vessels to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 18, 2022.

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

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

Dated: March 25, 2022.

**Ngagne Jafnar Gueye,**

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

[FR Doc. 2022–06713 Filed 3–25–22; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 87, No. 61
Wednesday, March 30, 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 431

**[EERE–2022–BT–STD–0008]**

**RIN 1904–AF32**

## Energy Conservation Program: Energy Conservation Standards for Air Cooled, Three-Phase, Small Commercial Air Conditioners and Heat Pumps With a Cooling Capacity of Less Than 65,000 Btu/h and Air-Cooled, Three-Phase, Variable Refrigerant Flow Air Conditioners and Heat Pumps With a Cooling Capacity of Less Than 65,000 Btu/h

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

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including small, large, and very large commercial package air conditioning and heating equipment, of which air cooled, three-phase, small commercial air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h are categories. EPCA requires the U.S. Department of Energy (''DOE'' or ''the Department'') to consider the need for amended standards each time the relevant industry standard is amended with respect to the standard levels or design requirements applicable to that equipment, or periodically under a six-year-lookback review provision. For the three-phase equipment that is the subject of this notice of proposed rulemaking (''NOPR''), DOE is proposing amended energy conservation standards that rely on new efficiency metrics and align with amended efficiency levels in the industry standard. DOE has preliminarily determined that it lacks clear and convincing evidence required by the statute to adopt standards more stringent than the levels specified in the industry standard. This NOPR also announces a webinar to receive comment on these proposed standards and associated analyses and results.

**DATES:** *Meeting:* DOE will hold a public meeting via webinar on Monday, May 16, 2022, from 1:00 p.m. to 4:00 p.m., in Washington, DC. See section VII, ''Public Participation'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

*Comments:* DOE will accept comments, data, and information regarding this NOPR no later than May 31, 2022.

Comments regarding the likely competitive impact of the proposed standard should be sent to the Department of Justice contact listed in the **ADDRESSES** section on or before April 29, 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–2022–BT–STD–0008, by any of the following methods:

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

2. *Email:* to *AirCooledACHP2022STD0008@ee.doe.gov.* Include docket number EERE–2022–BT–STD–0008 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 VII of this document.

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

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

The docket web page can be found at *www.regulations.gov/#!docketDetail;D=EERE-2022-BT-STD-0008.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VII for information on how to submit comments through *www.regulations.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy following the instructions at *www.RegInfo.gov.*

EPCA requires the U.S. Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition. The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standard. Interested persons may contact the Antitrust Division at *energy.standards@usdoj.gov* on or before the date specified in the **DATES** section. Please indicate in the ''Subject'' line of your email the title and Docket Number of this proposed rulemaking.

**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.*

Ms. Kristin Koernig, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–3593. Email: *kristin.koernig@hq.doe.gov.*

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

**SUPPLEMENTARY INFORMATION:**

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## I. Synopsis of the Proposed Rule

Title III, Part C [1] of EPCA [2] established the Energy Conservation Program for Certain Industrial Equipment. (42 U.S.C. 6311–6317) Such equipment includes air cooled, three-phase, small commercial air conditioners and heat pumps (''ACUACs and ACUHPS'') with a cooling capacity of less than 65,000 Btu/h (''three-phase, less than 65,000 Btu/h ACUACs and ACUHPs'') and air-cooled, three-phase, variable refrigerant flow (''VRF'') air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h (''three-phase, less than 65,000 Btu/h VRF''), the subject of this proposed rulemaking.

Pursuant to EPCA, DOE is required to consider amending the energy efficiency standards for certain types of covered commercial and industrial equipment, including the equipment at issue in this document, whenever the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (''ASHRAE'') amends the standard levels or design requirements prescribed in ASHRAE 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings,'' (''ASHRAE 90.1''), and at a minimum, every 6 years (42 U.S.C. 6313(a)(6)(A)–(C)). For each type of equipment, EPCA directs that if ASHRAE 90.1 is amended, DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE 90.1, unless clear and convincing evidence supports a determination that adoption of a more-stringent efficiency level would produce significant additional energy savings and be technologically feasible and economically justified (42 U.S.C. 6313(a)(6)(A)(ii) (referred to as the ''ASHRAE trigger'')). If DOE adopts an amended uniform national standard at the efficiency level specified in the amended ASHRAE 90.1, DOE must establish such standard no later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) If DOE determines that a more-stringent standard is appropriate under the statutory criteria, DOE must establish such a more-stringent standard no later than 30 months after publication of the revised ASHRAE 90.1. (42 U.S.C. 6313(a)(6)(B)(i))

Under EPCA, DOE must also review its energy conservation standards for three-phase, less than 65,000 Btu/h ACUAC, ACUHP, and VRF equipment every six years and either: (1) Issue a notice of determination that the standards do not need to be amended, as adoption of a more-stringent level under the relevant statutory criteria is not supported by clear and convincing evidence; or (2) issue a notice of proposed rulemaking including new proposed standards based on certain criteria and procedures in subparagraph (B).[1] (42 U.S.C. 6313(a)(6)(C)(i))

ASHRAE officially released the 2019 version of Standard 90.1 (''ASHRAE 90.1–2019'') on October 25, 2019, thereby triggering DOE's previously referenced obligations, pursuant to EPCA, to determine for certain classes of three-phase, less than 65,000 Btu/h ACUAC, ACUHP, and VRF systems whether: (1) The amended industry standard should be adopted; or (2) clear and convincing evidence exists to justify more-stringent standard levels. For any classes where DOE was not triggered by ASHRAE 90.1–2019, the Department routinely considers those classes under EPCA's six-year-lookback provision at the same time to address the subject equipment in a comprehensive fashion.

The current Federal energy conservation standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF are codified in DOE's regulations at 10 CFR 431.97. These standards for both equipment types are specified in terms of seasonal energy

[1] In relevant part, subparagraph (B) specifies that: (1) In making a determination of economic justification, DOE must consider, to the maximum extent practicable, the benefits and burdens of an amended standard based on the seven criteria described in EPCA; (2) DOE may not prescribe any standard that increases the energy use or decreases the energy efficiency of a covered equipment; and (3) DOE may not prescribe an amended standard that interested persons have established by a preponderance of evidence is likely to result in the unavailability in the United States of any product type (or class) of performance characteristics (including reliability, features, sizes, capacities, and volumes) that are substantially the same as those generally available in the United States. (42 U.S.C. 6313(a)(6)(B)(ii)–(iii))

efficiency ratio (''SEER'') for cooling mode and heating seasonal performance factor (''HSPF'') for heating mode. The current Federal test procedure at 10 CFR 431.96 for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs references American National Standards Institute (''ANSI'')/Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') Standard 210/240–2008, ''*Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment,*'' approved by ANSI on October 27, 2011, and updated by Addendum 1 in June 2011 and Addendum 2 in March 2012 (''AHRI 210/240–2008''). The current Federal test procedure at 10 CFR 431.96 for three-phase, less than 65,000 Btu/h VRF references ANSI/AHRI 1230–2010, ''*2010 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment,*'' approved August 2, 2010 and updated by Addendum 1 in March 2011 (''ANSI/AHRI 1230–2010'').

As set forth in ASHRAE 90.1–2019, the efficiency levels for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs are specified in terms of seasonal energy efficiency ratio-2 (''SEER2'') for cooling mode and heating seasonal performance factor-2 (''HSPF2'') for heating mode. These efficiency levels are measured per ANSI/AHRI 210/240, ''*2023 Standard for Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment*'' (''AHRI 210/240–2023''). Furthermore, ASHRAE 90.1–2019 and AHRI 210/240–2023 align the test procedures for three-phase, less than 65,000 Btu/h equipment with those of their single-phase counterparts (*i.e.,* measuring performance in terms of SEER2 and HSPF2), which, aside from the three-phase power supply, are otherwise identical.[2]

DOE is also proposing definitions for space-constrained (''S–C'') commercial package air conditioning and heating equipment (''S–C ACUACs and ACUHPs'') and for small-duct, high-velocity (''SDHV'') commercial package air conditioning and heating equipment (''SDHV ACUACs and ACUHPs'') as described in section V.C. Additionally, DOE is proposing to separate equipment classes and corresponding energy conservation standards for three-phase, less than 65,000 Btu/h ACUAC and ACUHP that are (1) S–C split-system ACUACs; (2) S–C split-system ACUHPs; (3) S–C single-package ACUACs; (4) S–C single-package ACUHPs; (5) SDHV ACUACs; and (6) SDHV ACUHPs. These additional equipment classes are included in ASHRAE 90.1–2019 for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs.

As described in detail in section III of this document, DOE conducted a crosswalk analysis to translate the current SEER and HSPF standards (measured per the current DOE test procedure) to SEER2 and HSPF2 levels, respectively (measured per the latest version of AHRI Standard AHRI 210/240 (*i.e.,* AHRI 210/240–2023)). DOE then compared these crosswalked metrics to those presented in ASHRAE 90.1–2019 to determine which equipment classes are triggered by the increased stringency in ASHRAE 90.1–2019.

In this document, DOE proposes to update the minimum energy conservation standard levels found at Tables 3, 4, and 13 of 10 CFR 431.97. The proposed standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and for three-phase, less than 65,000 Btu/h VRF systems, which are expressed in SEER2 and HSPF2, are presented in Table I–1 and Table I–2.[3] If adopted, the standards in Table I–1 are proposed for all three-phase, less than 65,000 Btu/h ACUACs and ACUHPs manufactured in or imported into the United States starting January 1, 2025. If adopted, the standards in Table I–2 would apply to all three-phase, less than 65,000 Btu/h VRF manufactured in or imported into the United States starting January 1, 2025.

As described in section V of this document, DOE has tentatively determined that insufficient data are available to determine, based on clear and convincing evidence, that more-stringent standards would result in significant additional energy savings and be technologically feasible and economically justified. The clear and convincing threshold is a heightened standard, and would only be met where the Secretary has an abiding conviction, based on available facts, data, and DOE's own analyses, that it is highly probable an amended standard would result in a significant additional amount of energy savings, and is technologically feasible and economically justified. *See American Public Gas Association* v. *U.S. Dep't of Energy,* No. 20–1068, 2022 WL 151923, at *4 (D.C. Cir. January 18, 2022) (citing *Colorado* v. *New Mexico,* 467 U.S. 310, 316, 104 S.Ct. 2433, 81 L.Ed.2d 247 (1984)).

DOE normally performs multiple in-depth analyses to determine whether there is clear and convincing evidence to support more stringent energy conservation standards (*i.e.,* whether more stringent standards would produce significant additional conservation of energy and be technologically feasible and economically justified). However, as discussed in the section V of this NOPR, due to the lack of available market and performance data, DOE is unable to conduct the analysis necessary to evaluate the potential energy savings or evaluate whether more stringent standards would be technologically feasible or economically justifiable, with sufficient certainty. As such, DOE is not proposing standards at levels more stringent than those specified in ASHRAE Standard 90.1. Rather, DOE is proposing to adopt the levels specified in ASHRAE 90.1–2019 for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs, as required by EPCA, except for S–C ACUACs and ACUHPs, SDHV ACUACs and ACUHPs, and three-phase less than 65,000 Btu/h VRF equipment, for which DOE is proposing crosswalked levels that maintain equivalent stringency to the currently applicable Federal standards but do not align with the levels in ASHRAE 90.1–2019.

For S–C ACUACs and ACUHPs and SDHV ACUACs and ACUHPs, DOE has tentatively concluded that the levels specified in ASHRAE 90.1–2019 are less stringent than the applicable current Federal standards. Therefore, to avoid backsliding (as required by EPCA),[4] DOE is proposing standards for S–C ACUACs and ACUHPs and SDHV ACUACs and ACUHPs in terms of SEER2 and HSPF2 that maintain equivalent stringency to the applicable current Federal standards (in terms of SEER and HSPF).

For three-phase, less than 65,000 Btu/h VRF equipment, ASHRAE 90.1–2019 did not update the efficiency metrics to be in terms of SEER2 and HSPF2 and instead left the metrics in terms of SEER and HSPF with no change to efficiency levels. In this document, DOE is proposing translated standard levels in terms of SEER2 and HSPF2 that are of equivalent stringency to the current SEER and HSPF Federal standards.

[2] *See, e.g.,* 80 FR 42614, 42622 (July 17, 2015), 83 FR 49501, 49504 (Oct. 2, 2018), and 86 FR 70316, 70322 (Dec. 9, 2021).

[3] Energy conservations standards for air-cooled, three-phase, small, commercial packaged air conditioners and heat pumps with a cooling capacity of greater than 65,000 Btu/h and air-cooled, VRF, multi-split systems with a cooling capacity of greater than 65,000 Btu/h are not addressed in this NOPR. Instead this equipment will be addressed in separate energy conservation standards rulemakings.

[4] EPCA's anti-backsliding provision prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6313(a)(6)(B)(iii)(I))

TABLE I–1—PROPOSED ENERGY CONSERVATION STANDARDS FOR AIR-COOLED, THREE-PHASE, SMALL COMMERCIAL PACKAGE AIR CONDITIONERS AND HEAT PUMPS WITH A COOLING CAPACITY OF LESS THAN 65,000 Btu/h

| Equipment type | Size category (cooling) | Subcategory | Minimum efficiency |
|---|---|---|---|
| Air Conditioners | <65,000 Btu/h | Split System | 13.4 SEER2 |
| | | Single-Package | 13.4 SEER2 |
| Heat Pumps | <65,000 Btu/h | Split System | 14.3 SEER2<br>7.5 HSPF2 |
| | | Single-Package | 13.4 SEER2<br>6.7 HSPF2 |
| Space-Constrained Air Conditioners | ≤30,000 Btu/h | Split System | 13.9 SEER2 |
| | | Single-Package | 13.9 SEER2 |
| Space-Constrained Heat Pumps | ≤30,000 Btu/h | Split System | 13.9 SEER2<br>7.0 HSPF2 |
| | | Single-Package | 13.9 SEER2<br>6.7 HSPF2 |
| Small-Duct, High-Velocity Air Conditioners | <65,000 Btu/h | Split System | 13.0 SEER2 |
| Small-Duct, High-Velocity Heat Pumps | <65,000 Btu/h | Split System | 14.0 SEER2<br>6.9 HSPF2 |

TABLE I–2—PROPOSED ENERGY CONSERVATION STANDARDS FOR AIR-COOLED, THREE-PHASE, VRF MULTI-SPLIT AIR CONDITIONERS AND HEAT PUMPS WITH A COOLING CAPACITY OF LESS THAN 65,000 Btu/h

| Equipment type | Size category (cooling) | Subcategory | Minimum efficiency |
|---|---|---|---|
| VRF Air Conditioners | <65,000 Btu/h | Split System | 12.9 SEER2 |
| VRF Heat Pumps | <65,000 Btu/h | Split System | 12.9 SEER2<br>6.5 HSPF2 |

## II. Introduction

The following section briefly discusses the statutory authority underlying this proposed rule, as well as some of the relevant historical background related to the establishment of standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF.

### *A. Authority*

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C of EPCA, added by Public Law 95–619, Title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency for covered equipment. This covered equipment includes small, large, and very large commercial package air conditioning and heating equipment, including three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF, the subject of this document. (42 U.S.C. 6311(1)(B)–(D)) Additionally, DOE must consider amending the energy efficiency standards for certain types of commercial and industrial equipment, including the equipment at issue in this document, whenever ASHRAE amends the standard levels or design requirements prescribed in ASHRAE/IES Standard 90.1, and, at a minimum, every 6 years. (42 U.S.C. 6313(a)(6)(A)–(C))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (*See* 42 U.S.C. 6316(a)–(b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (*See* 42 U.S.C. 6316(b)(2)(D))

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6314) Manufacturers of covered equipment must use the Federal test procedures 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. The DOE test procedures for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and for three-phase, less than 65,000 Btu/h VRF appear at 10 CFR 431, subpart F, appendix A.

ASHRAE 90.1 sets industry energy efficiency levels for small, large, and very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks (collectively ''ASHRAE equipment''). For each type of listed ASHRAE equipment, EPCA directs that if ASHRAE amends Standard 90.1, DOE must adopt amended standards at the new ASHRAE efficiency level, unless DOE determines, supported by clear and

convincing evidence, that adoption of a more stringent level would produce significant additional conservation of energy and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii))

Under EPCA, DOE must also review energy efficiency standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF every six years and either: (1) Issue a notice of determination that the standards do not need to be amended as adoption of a more stringent level is not supported by clear and convincing evidence; or (2) issue a notice of proposed rulemaking including new proposed standards based on certain criteria and procedures in subparagraph (B). (42 U.S.C. 6313(a)(6)(C))

In deciding whether a more-stringent standard is economically justified, under either the provisions of 42 U.S.C. 6313(a)(6)(A) or 42 U.S.C. 6313(a)(6)(C), DOE must determine whether the benefits of the standard exceed its burdens. DOE must make this determination after receiving comments on the proposed standard and by considering, to the maximum extent practicable, the following seven factors:

(1) The economic impact of the standard on manufacturers and consumers of products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered equipment that are likely to result from the standard;

(3) The total projected amount of energy savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered product likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary of Energy considers relevant.

(42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII)) As discussed previously, EPCA also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6313(a)(6)(B)(iii)(I)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability, features, sizes, capacities, and volumes) that are substantially the same as those generally available in the United States. (42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa))

*B. Background*

1. Current Standards

EPCA defines ''commercial package air conditioning and heating equipment'' as air-cooled, water-cooled, evaporatively-cooled, or water-source (not including ground water source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application. (42 U.S.C. 6311(8)(A); 10 CFR 431.92) EPCA further classifies ''commercial package air conditioning and heating equipment'' into categories based on cooling capacity (*i.e.,* small, large, and very large categories). (42 U.S.C. 6311(8)(B)–(D); 10 CFR 431.92) ''Small commercial package air conditioning and heating equipment'' means equipment rated below 135,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(B); 10 CFR 431.92) ''Large commercial package air conditioning and heating equipment'' means equipment rated: (i) At or above 135,000 Btu per hour; and (ii) below 240,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(C); 10 CFR 431.92) ''Very large commercial package air conditioning and heating equipment'' means equipment rated: (i) At or above 240,000 Btu per hour; and (ii) below 760,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(D); 10 CFR 431.92)

The energy conservation standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs were most recently amended through a final rule for energy conservation standards and test procedures for certain commercial HVAC and water heating equipment published in the **Federal Register** on July 17, 2015 (July 2015 final rule). 80 FR 42614. For three of the four equipment classes of three-phase, less than 65,000 Btu/h ACUACs and ACUHPs (packaged air conditioners, packaged heat pumps, and split-system heat pumps), the July 2015 final rule adopted energy conservation standards that correspond to the levels in the 2013 revision of ASHRAE Standard 90.1. For the remaining equipment class (split-system air conditioners), the July 2015 final rule did not amend the energy conservation standards.

DOE's current energy conservation standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs are codified at Tables 1 and 2 of 10 CFR 431.97. The current equipment classes are differentiated by configuration (split system or single package) and by heating capability (air conditioner or heat pump) and repeated in Table II–1 of this document.

Pursuant to its authority under EPCA (42 U.S.C. 6313(a)(6)(A)) and in response to updates to ASHRAE Standard 90.1, DOE has established the category of VRF multi-split systems, which meets the EPCA definition of ''commercial package air conditioning and heating equipment,'' but which EPCA did not expressly identify. *See* 10 CFR 431.92; 10 CFR 431.97.

DOE defines ''variable refrigerant flow air conditioner'' as a unit of commercial package air-conditioning and heating equipment that is configured as a split system air conditioner incorporating a single refrigerant circuit, with one or more outdoor units, at least one variable-speed compressor or an alternate compressor combination for varying the capacity of the system by three or more steps, and multiple indoor fan coil units, each of which is individually metered and individually controlled by an integral control device and common communications network and which can operate independently in response to multiple indoor thermostats. Variable refrigerant flow implies three or more steps of capacity control on common, inter-connecting piping. 10 CFR 431.92.

DOE defines ''variable refrigerant flow multi-split heat pump'' as a unit of commercial package air-conditioning and heating equipment that is configured as a split system heat pump that uses reverse cycle refrigeration as its primary heating source and which may include secondary supplemental heating by means of electrical resistance, steam, hot water, or gas. The equipment incorporates a single refrigerant circuit, with one or more outdoor units, at least one variable-speed compressor or an alternate compressor combination for varying the capacity of the system by three or more steps, and multiple indoor fan coil units, each of which is individually metered and individually controlled by a control device and common communications network and which can operate independently in response to multiple indoor thermostats. Variable refrigerant flow implies three or more steps of capacity control on common, inter-connecting piping. 10 CFR 431.92.

DOE adopted energy conservation standards for VRF multi-split systems in a final rule published on May 16, 2012 (May 2012 Final Rule). 77 FR 28928. When determining the appropriate standard levels, DOE considered updates to the 2010 edition of ASHRAE Standard 90.1 (''ASHRAE 90.1–2010''), which designated separate equipment classes for VRF multi-split systems for the first time. *Id.* at 77 FR 28934. For three-phase, less than 65,000 Btu/h VRF, DOE maintained the standards from the equipment class under which the corresponding VRF multi-split system equipment class was previously regulated (*i.e.,* three-phase, less than 65,000 Btu/h VRF had previously been covered as three-phase, less than 65,000 Btu/h ACUACs and ACUHPs). *Id.* at 77 FR 28938.

DOE's current equipment classes for three-phase, less than 65,000 Btu/h VRF are differentiated only by refrigeration cycle (air conditioners or heat pumps). DOE's current standards for VRF multi-split systems are set forth at Table 13 to 10 CFR 431.97 and repeated in Table II–2 of this document.

TABLE II–1—CURRENT FEDERAL ENERGY CONSERVATION STANDARDS FOR AIR-COOLED, THREE-PHASE, SMALL COMMERCIAL PACKAGE AIR CONDITIONERS AND HEATING EQUIPMENT WITH A COOLING CAPACITY OF LESS THAN 65,000 BTU/H

| Equipment type | Cooling capacity | Subcategory | Heating type | Efficiency level | Compliance date |
|---|---|---|---|---|---|
| Small Commercial Package Air Conditioner and Heating Equipment (Air-Cooled, 3-Phase, Split-System). | <65,000 Btu/h | AC | All | 13 SEER | June 16, 2008. |
| | | HP | All | 14 SEER<br>8.2 HSPF | January 1, 2017. |
| Small Commercial Package Air Conditioning and Heating Equipment (Air-Cooled, 3-Phase, Single-Package). | <65,000 Btu/h | AC | All | 14 SEER | January 1, 2017. |
| | | HP | All | 14 SEER<br>8.0 HSPF | January 1, 2017. |

TABLE II–2—CURRENT FEDERAL ENERGY CONSERVATION STANDARDS FOR AIR-COOLED, THREE-PHASE, VARIABLE REFRIGERANT FLOW AIR CONDITIONERS AND HEAT PUMPS WITH A COOLING CAPACITY OF LESS THAN 65,000 BTU/H

| Equipment type | Cooling capacity | Heating type | Efficiency level | Compliance date |
|---|---|---|---|---|
| VRF Multi-Split Air Conditioners (Air-Cooled) | <65,000 Btu/h | All | 13 SEER | June 16, 2008. |
| VRF Multi-Split Heat Pumps (Air-Cooled) | <65,000 Btu/h | All | 13 SEER<br>7.7 HSPF | June 16, 2008. |

2. ASHRAE 90.1–2019

As previously discussed, ASHRAE released ASHRAE 90.1–2019 on October 25, 2019, which updated the test procedure references for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and for three-phase, less than 65,000 Btu/h VRF. ASHRAE 90.1–2019 also updated the efficiency metrics for less than 65,000 Btu/h ACUACs and ACUHPs from SEER and HSPF to SEER2 and HSPF2 and updated the efficiency levels for all classes to reflect the new metrics. ASHRAE 90.1–2019 did not update the efficiency metrics or efficiency levels for three-phase, less than 65,000 Btu/h VRF.

For three-phase, less than 65,000 Btu/h ACUACs and ACUHPs, the current DOE test procedure references the industry test procedure ANSI/AHRI Standard 210/240–2008 with Addenda 1 and 2, *Performance Rating of Unitary Air-Conditioning and Air-Source Heat Pump Equipment* (''AHRI 210/240–2008'') and measures performance in terms of SEER and HSPF. ASHRAE 90.1–2019 references the updated industry test procedure ANSI/AHRI Standard 210/240–2023, *2023 Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment,* (''AHRI 210/240–2023'') beginning on January 1, 2023, which measures performance in terms of SEER2 and HSPF2. As discussed in section III.A.2 of this document, DOE conducted a preliminary crosswalk analysis to determine whether the new metrics and efficiency levels in ASHRAE 90.1–2019 represent at least equivalent stringency as compared to the existing DOE standards in terms of SEER and HSPF. As discussed in section I.A.1 of this document, DOE's preliminary crosswalk analysis determined that ASHRAE 90.1–2019 increased the stringency of cooling and heating mode efficiency levels for the two DOE equipment classes of three-phase, split-system, less than 65,000 Btu/h ACUAC and ACUHP equipment while leaving unchanged the stringency of single-packaged, three-phase equipment.

Regarding three-phase, less than 65,000 Btu/h VRF, ASHRAE 90.1–2019 also updates the relevant industry test procedure. The current DOE test procedure references AHRI Standard 1230–2010 with Addendum 1, *Performance Rating of Variable Refrigerant Flow (VRF) Multi-split Air-conditioning and Heat Pump Equipment* (''AHRI 1230–2010''). ASHRAE 90.1–2019 updates this reference to the more recent version of this standard: AHRI Standard 1230–2014 with Addendum 1. As discussed in a separate rulemaking for commercial VRF multi-split systems with rated cooling capacity of greater than 65,000 Btu/h, DOE determined that the test procedure changes between AHRI 1230–2010 and AHRI 1230–2014 do not have a significant impact on the measured heating or cooling efficiency of VRF multi-split systems, therefore a crosswalk analysis was not required. 86 FR 70644, 70650 (Dec. 10, 2021). ASHRAE 90.1–2019 did not update the efficiency metrics or standards levels for three-phase, less than 65,000 Btu/h VRF—which are still specified in terms of SEER and HSPF.

3. September 2020 NODA/RFI

DOE published a notice of data availability and request for information (''NODA/RFI'') in response to the amendments to ASHRAE 90.1–2019 in the **Federal Register** on September 25, 2020 (''September 2020 NODA/RFI''). 85 FR 60642. In the September 2020 NODA/RFI, DOE compared the current Federal standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs (in terms of SEER and HSPF) to the levels in ASHRAE 90.1–2019 (in terms of SEER2 and HSPF2) and

requested comment on its preliminary findings. *Id.* at 85 FR 60662–60666. The September 2020 NODA/RFI did not address standards for three-phase, less than 65,000 Btu/h VRF. DOE received comments in response to the September 2020 NODA/RFI from interested parties listed in Table II–2.

TABLE II.2—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS TO THE SEPTEMBER 2020 NODA/RFI

| Commenter(s) | Abbreviation | Commenter type |
|---|---|---|
| Air-Conditioning, Heating and Refrigeration Institute | AHRI | Manufacturer Trade Group. |
| Carrier Corporation | Carrier | Manufacturer. |
| Goodman Manufacturing Company, L.P | Goodman | Manufacturer. |
| Rheem Manufacturing Company | Rheem | Manufacturer. |
| California Investor-Owned Utilities | CA IOUs | Utility. |
| Northwest Energy Alliance, Appliance Standards Awareness Project, Natural Resources Defense Council. | Joint Advocates | Advocacy Group. |
| Trane Technologies | Trane | Manufacturer. |

## III. Discussion of Crosswalk Analysis

### *A. Crosswalk Background*

The energy conservation standards proposed in this document were developed in response to updates to the relevant industry test standard (*i.e.,* AHRI 210/240–2023), as well as updates to the minimum efficiency levels specified in ASHRAE 90.1–2019. As stated in section II.A, DOE must consider amending the energy efficiency standards for certain types of commercial and industrial equipment, including the equipment at issue in this document, whenever ASHRAE amends the standard levels or design requirements prescribed in ASHRAE Standard 90.1, and at a minimum, every 6 years. (42 U.S.C. 6313(a)(6)(A)–(C)) EPCA also prohibits DOE from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6313(a)(6)(B)(iii)(I)); commonly referred to as EPCA's ''anti-backsliding provision'') DOE conducted separate crosswalk analyses for each equipment class to ensure that EPCA's anti-backsliding provision would not be violated if DOE were to adopt the standards proposed in this NOPR.

As described in the following sections, DOE presented a preliminary crosswalk in the September 2020 NODA/RFI for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs that qualitatively evaluated whether the levels presented in ASHRAE 90.1–2019 were of higher, lower, or equivalent stringency to the existing Federal standard levels. 85 FR 60642, 60662–60663 (Sept. 25, 2020). The September 2020 NODA/RFI did not consider standards for three-phase, less than 65,000 Btu/h VRF and therefore did not conduct a crosswalk translation for such equipment. In the September 2020 NODA/RFI, DOE accounted for the changes in the updated industry test standard AHRI 210/240–2023. *Id.* at 85 FR 60663. Specifically, DOE evaluated the impact to measured efficiency resulting from increased external static pressure requirements and changes to the heating load line in AHRI 210/240–2023. *Id.* at 85 FR 60662. In AHRI 210/240–2023, most equipment classes have increased external static pressure testing requirements for ducted systems as compared to the current Federal test procedures. As a result, most classes of three-phase, less than 65,000 Btu/h equipment consume more power under the updated test procedure and thus have lower numerical values of SEER2 and HSPF2 when translated from a given SEER or HSPF rating, respectively. *Id.* AHRI 210/240–2023 also includes changes to the heating load line calculations. Specifically, AHRI 210/240–2023 includes different slope factors for the heating load line, which results in higher calculated heating demand for most systems. The increased heating demand has an overall impact of decreased numerical values for HSPF2 as compared to HSPF. *Id.*

On January 6, 2017, DOE published a direct final rule concerning energy conservation standards for residential central air conditioners and heat pumps (''CACs and HPs'') (''January 2017 CAC/HP ECS DFR''). 82 FR 1786. The January 2017 CAC/HP ECS DFR established crosswalk translations for CACs and HPs from SEER and HSPF (measured per 10 CFR part 430, subpart B, appendix M (''Appendix M'')) to SEER2 and HSPF2 (measured per 10 CFR part 430, subpart B, appendix M1 (''Appendix M1'')). Specifically, in the January 2017 CAC/HP ECS DFR DOE established multiple SEER-to-SEER2 translations that were unique to the test conditions for each product class. *Id.* at 82 FR 1849. In the January 2017 CAC/HP ECS DFR, DOE also established an HSPF-to-HSPF2 translation and concluded that the 15 percent reduction from HSPF to HSPF2 that was observed in an earlier rule for split-system and single-package heat pumps was appropriate also for S–C and SDHV heat pumps. *Id.* at 82 FR 1850.

As described in the September 2020 NODA/RFI, AHRI 210/240–2023 aligns test methods and ratings to be consistent with DOE's test procedure for single-phase central air conditioners at appendix M1. 85 FR 60642, 60647 (Sept. 25, 2020). Given that three-phase equipment are generally identical to their single-phase counterparts, aside for three-phase power input, DOE presented a preliminary metric translation for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs based on the metric translation used for single-phase CAC/HPs presented in the January 2017 CAC/HP ECS DFR in the September 2020 NODA/RFI. *Id.* at 85 FR 60662. For three-phase equipment classes with Federal standards matching SEER and HPSF standards in Table V–29 of the January 2017 CAC/HP ECS DFR, DOE used the corresponding SEER2 and HSPF2 value from Table V–30 of the January 2017 CAC/HP ECS DFR. For three-phase equipment classes that did not having matching SEER and/or HSPF values in Table V–29 of the January 2017 CAC/HP ECS DFR, DOE evaluated the stringency of the ASHRAE 90.1–2019 SEER2 and HSPF2 levels relative to the Federal SEER and HSPF standards by qualitatively assessing how the testing method changes made for single phase switching from SEER/HSPF to SEER2/HSPF2 would impact three-phase equipment. *See id.* at 85 FR 60662–60663.

DOE received multiple comments in response to this preliminary crosswalk analysis in the September 2020 NODA/RFI. AHRI, Carrier, Goodman, and the Joint Advocates all commented in support of DOE's crosswalk methodology. (AHRI, No. 2 at p. 5; Carrier, No. 3 at p. 2; Goodman, No. 7 at p. 2; Joint Advocates, No. 6 at p. 2)

Goodman commented further that all efficiency levels in ASHRAE 90.1–2019, effective January 1, 2023, are greater than or equal to the current Federal standards. (Goodman, No. 7 at p. 2) In response to comments received from stakeholders, DOE is evaluating its preliminary crosswalk analysis and is proposing an additional crosswalk analysis for three-phase, less than 65,000 Btu/h VRF in this document.

*B. Crosswalk Methodology*

1. Three-Phase, Less Than 65,000 Btu/h, Single-Package and Split-System ACUACs and ACUHPs

Because three-phase, less than 65,000 Btu/h single-package air conditioners and heat pumps have directly comparable single-phase product classes, DOE was able to utilize the same crosswalk as described in the January 2017 CAC/HP ECS DFR when evaluating the relative stringency of ASHRAE 90.1–2019 levels. *See* 82 FR 1786, 1848–1851 (Jan. 6, 2017). In the September 2020 NODA/RFI, DOE determined that the ASHRAE 90.1–2019 efficiency standards are equivalent to the translated Federal efficiency standards for single-package ACUACs and ACUHPs. 85 FR 60642, 60662–60663 (Sept. 25, 2020). However, for three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs, DOE's preliminary crosswalk analysis determined that the levels in ASHRAE 90.1–2019 are more stringent than current Federal standards, which triggered DOE's review of the standard levels for three-phase, split-system equipment. *Id.*

In response to the proposed crosswalk in the September 2020 NODA/RFI, Goodman requested that DOE provide specific crosswalk values for the equipment classes where DOE determined that the post-2023 levels in ASHRAE 90.1–2019 are more stringent than the current Federal standards (*i.e.,* the two classes of three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs). (Goodman, No. 7 at p. 2) Specifically, Goodman requested that DOE provide specific crosswalked values for the translation from 13 SEER to SEER2 and from 8.2 HSPF to HSPF2. (*Id.*) Goodman asserted that these values would be useful to help eliminate potential market confusion in the years 2023–2024, where some products on the market may be rated to SEER/HSPF (in compliance with current Federal standards) while other products would simultaneously be rated early to SEER2/HSPF2. (*Id.*)

As discussed, DOE conducted the crosswalk to evaluate the relative stringency of ASHRAE 90.1–2019 levels as compared to the existing Federal standards to ensure that backsliding would not result were the ASHRAE 90.1 levels adopted. Based on the crosswalk, DOE finds that it is unnecessary to provide specific crosswalk values for the two equipment classes of three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs for which ASHRAE 90.1–2019 increased stringency as compared to the current Federal standards.

2. Three-Phase, Less Than 65,000 Btu/h, Space-Constrained and Small-Duct, High-Velocity ACUACs and ACUHPs

In its preliminary crosswalk analysis in the September 2020 NODA/RFI, DOE determined that the post-2023 standards levels for S–C and SDHV equipment found in ASHRAE 90.1–2019 are less stringent than the current Federal standards for the following six equipment classes: (1) S–C, split-system ACUAC; (2) S–C, split-system ACUHP; (3) S–C, single-package ACUAC; (4) S–C, single-package ACUHP; (5) SDHV split-system ACUAC; and (6) SDHV split-system ACUHP. DOE's preliminary crosswalk showed that the crosswalked Federal standard levels for these equipment classes are qualitatively higher than the SEER2 and/or HSPF2 levels found in ASHRAE 90.1–2019, however DOE did not determine specific values for an appropriate crosswalk. In the September 2020 NODA/RFI, DOE noted that although the post-2023 values for S–C and SDHV equipment are less stringent than current Federal standards, it still intended to consider these ASHRAE classes separately in this rulemaking as part of the six-year-lookback review. 85 FR 60642, 60663 (Sept. 25, 2020).

In response to the September 2020 NODA/RFI, AHRI commented that it disagreed with DOE's preliminary determination that it could not adopt the ASHRAE 90.1–2019 standard levels for S–C ACUACs and ACUHPs and SDHV ACUACs and ACUHPs that are aligned with their single-phase counterparts. AHRI contended that these products could not meet the general levels established for three-phase equipment and urged DOE to set levels for three-phase S–C and SDHV equipment at the levels prescribed by ASHRAE 90.1–2019, which are harmonized with the single-phase equivalents for those products. AHRI further stated that it is not aware of any three-phase S–C or SDHV products on the market and speculated that S–C products are unlikely to exist because the equipment class is limited to products having capacity less than 30,000 Btu/h. (AHRI, No. 2 at p. 5)

In a NOPR published on January 8, 2015, which covered energy conservation standards for commercial HVAC equipment, including three-phase, less than 65,000 Btu/h air conditioners and heat pumps (''January 2015 ASHRAE 90.1 NOPR''), DOE stated that EPCA does not separate these six additional equipment classes from other types of small commercial package air conditioning and heating equipment in its definitions, and, therefore, EPCA's definition of ''small commercial package air conditioning and heating equipment'' includes SDHV and S–C air conditioners and heat pumps. 80 FR 1172, 1184. DOE reiterated this position in the September 2020 NODA/RFI. 85 FR 60642, 60662 (Sept. 25, 2020). EPCA generally directs DOE to establish amended uniform national standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs at the minimum levels specified in ASHRAE Standard 90.1. (43 U.S.C. 6313(a)(6)(A)(ii)(I)) As DOE has previously stated, when considering the ASHRAE trigger, DOE evaluates ASHRAE amendments at the class level. Because the six equipment classes of three-phase S–C and SDHV equipment prescribed in ASHRAE 90.1–2019 are covered as small commercial package air conditioning and heating equipment, DOE cannot propose standard levels that are any lower than the current Federal standards. However, to distinguish S–C and SDHV equipment from the three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs equipment for which DOE was triggered by more stringent levels in ASHRAE 90.1–2019, DOE proposes to establish six separate equipment classes of three-phase S–C and SDHV equipment with separate standard levels. Consistent with EPCA, the levels that DOE is proposing for these S–C and SDHV equipment classes maintain equivalent stringency to the current applicable Federal standards, and are therefore more stringent than the corresponding levels set forth in ASHRAE 90.1–2019.

In this document, DOE proposes to extend its preliminary crosswalk analysis for these types of equipment (the September 2020 NODA/RFI presented a qualitative discussion of relative stringency) and propose specific efficiency levels in terms of SEER2 and HSPF2 that are crosswalked from the existing Federal standards for small commercial package air conditioning and heating equipment. DOE developed a crosswalk for S–C, split-system, and single-package ACUACs and ACUHPs and SDHV ACUACs and ACUHPs by

applying similar translations as observed in the January 2017 CAC/HP ECS DFR for single-phase S–C and SDHV equipment to the existing Federal standards for small commercial package air conditioners and heat pumps.

a. Space-Constrained Equipment

Single-phase S–C air conditioners, which are not further separated into split-systems and single-package systems, have a DOE minimum SEER of 12 that was translated to 11.7 SEER2. 82 FR 1786, 1848–1849 (Jan. 6, 2017). Single-phase S–C heat pumps also have a minimum SEER of 12, but the January 2017 CAC/HP ECS DFR established a different translated SEER2 of 11.9. *Id.* This difference in the SEER2 requirement between S–C air conditioners and S–C heat pumps is due to differences in the requirements for determination of represented values codified at Table 1 to paragraph (a)(1) of 10 CFR 429.16. In a December 9, 2021, NOPR to amend the test procedure for three-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and three-phase VRF with cooling capacity of less than 65,000 Btu/h (''December 2021 Three-Phase TP NOPR''), DOE proposed to align the representation requirements for three-phase, less than 65,000 Btu/h equipment with the representation requirements for single-phase CACs and HPs. 86 FR 70316, 70326–70327. Accordingly, DOE is proposing in this document to utilize the same cooling-metric translations for three-phase, space-constrained equipment as the translations present for single-phase, space-constrained equipment (*i.e.,* applying a 0.3 point SEER2 decrement for space-constrained air conditioners and a 0.1 point SEER2 decrement for space-constrained heat pumps). DOE notes that split-system S–C ACUACs are currently covered under the Federal standard of 13.0 SEER for three-phase, split-system, less than 65,000 Btu/h ACUACs, whereas S–C split-system ACUHPs and S–C single-packaged ACUACs and ACUHPs are each covered under corresponding DOE equipment classes with a standard of 14 SEER.[5]

With regards to the translation from HSPF to HSPF2 for S–C ACUACs and ACUHPs, DOE is proposing to use the same 15 percent reduction from the January 2017 CAC/HP ECS DFR when translating from HSPF to HSPF2 at an equivalent stringency. Because the changes to the heating load line between AHRI 210/240–2008 and AHRI 210/240–2023 are equivalent to the changes in the heating load line between appendix M and appendix M1, DOE has tentatively concluded that utilizing the same HSPF2 translation from single-phase CACs and HPs is appropriate for S–C ACUACs and ACUHPs.

b. Small-Duct, High-Velocity Equipment

For single-phase SDHV CACs and HPs, there is no increase in external static pressure requirements in appendix M1 as compared to appendix M. Consequently, in the January 2017 CAC/HP ECS DFR, there was no decrease in numerical value when translating standards from SEER to SEER2. 82 FR 1786, 1848–1849 (Jan. 6, 2017). Given that the test procedures for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs are aligned with the test procedures for single-phase CACs and HPs, there are also no increases in external static pressure requirements for SDHV ACUACs and ACUHPs in AHRI 210/240–2023. Therefore, DOE is proposing no decrement when translating from SEER to SEER2 for SDHV ACUACs and ACUHPs.

For the heating mode for SDHV ACUHPs, DOE is proposing to use the same 15 percent reduction from the January 2017 CAC/HP ECS DFR when translating from HSPF to HSPF2. *Id.* at 82 FR 1850. Because the changes to the heating load line between AHRI 210/240–2008 and AHRI 210/240–2023 are equivalent to the changes in the heating load line between appendix M and appendix M1, DOE has tentatively concluded that utilizing the same HSPF2 translation from single-phase CACs and HPs is appropriate for SDHV ACUACs and ACUHPs.

3. Three-Phase, Less Than 65,000 Btu/h VRF

The current DOE test procedure for VRF multi-split systems (including three-phase, less than 65,000 Btu/h VRF) references AHRI 1230–2010 with addendum 1. For three-phase, less than 65,000 Btu/h VRF, AHRI 1230–2010 is used to calculate cooling and heating efficiency in terms of the SEER and HSPF metrics, respectively. In May 2021, AHRI published AHRI 1230–2021, which excludes from its scope three-phase, less than 65,000 Btu/h VRF. Accordingly, in the December 2021 Three-Phase TP NOPR, DOE proposed to remove its reference to AHRI 1230–2010 and instead to reference AHRI 210/240–2023 in the test procedure for three-phase, less than 65,000 Btu/h VRF. 86 FR 70316, 70321–70322 (Dec. 9, 2021). In that proposed rule, DOE noted that AHRI 210/240–2023 includes in its scope three-phase, less than 65,000 Btu/h VRF systems and harmonizes with the updated Federal test method for single-phase central air conditioners and central air conditioning heat pumps with rated cooling capacities of less than 65,000 Btu/h (*i.e.,* appendix M1, effective January 1, 2023), which includes single-phase, air-cooled, VRF systems with a cooling capacity of less than 65,000 Btu/h. *Id.* at 85 FR 70322. Like appendix M1, AHRI 210/240–2023 is used to calculate cooling and heating efficiency in terms of updated metrics, SEER2 and HSPF2, respectively. As discussed in section II.B.2, ASHRAE 90.1–2019 established SEER2 and HSPF2 levels for three-phase, less than 65,000 Btu/h CUACs and CUHPs (some with increased stringency over current DOE levels) but did not consider new metrics or an increase in stringency for three-phase, less than 65,000 Btu/h VRF. Accordingly, DOE is proposing in this document to update its efficiency metrics for three-phase, less than 65,000 Btu/h VRF from SEER and HSPF measured per AHRI 1230–2010 to SEER2 and HSPF2 measured per AHRI 210/240–2023.

To translate the existing SEER and HSPF levels to SEER2 and HSPF2 levels with equivalent stringency, DOE conducted a crosswalk analysis. As described in section III.B, there are several classes of three-phase, less than 65,000 Btu/h CUACs and CUHPs for which DOE was able to apply identical crosswalk methodologies as were used for corresponding product classes of single-phase residential CACs and HPs in the January 2017 CAC/HP ECS DFR. However, there are not separate product classes for single-phase, residential, multi-split CACs and HPs (the consumer products that correspond to three-phase, less than 65,000 Btu/h VRF). Therefore, DOE could not rely on existing analysis specific to multi-split systems from the January 2017 CAC/HP ECS DFR and instead conducted an analytical crosswalk by evaluating changes in the test procedure between AHRI 1230–2010 and AHRI 210/240–2023. Additionally, DOE is not aware of any models of three-phase, less than 65,000 Btu/h VRF currently on the market.

When deciding how to translate SEER to SEER2 for three-phase, less than 65,000 Btu/h VRF, DOE considered the external static pressure testing requirements in AHRI 1230–2010 and AHRI 210/240–2023. While DOE is not aware of the existence of any models of three-phase, less than 65,000 Btu/h VRF, the Department expects that, should they exist, the most common configuration would likely be non-ducted indoor units, similar to other categories of VRF systems (*e.g.,* single-

[5] *See* table in paragraph (c)(1) of 10 CFR 430.32 for current standards.

phase, residential, multi-split CACs and HPs). Because both AHRI 1230–2010 and AHRI 210/240–2023 require testing at zero external static pressure (''ESP'') for non-ducted indoor units, there would be no change in the numerical value translating from SEER to SEER2 for systems comprising of non-ducted indoor units. For systems rated with ducted indoor units, AHRI 1230–2010 specifies ESP requirements that vary with indoor unit cooling capacity (varying between 0.1 to 0.2 in $H_2O$), while AHRI 210/240–2023 specifies ESP requirements of 0.1 in $H_2O$ for low-static indoor units and 0.3 in $H_2O$ for mid-static indoor units. Therefore, the ESP requirements would only result in different ratings for certain combinations of ducted indoor units. For example, DOE expects a typical configuration would be low-static indoor units with per-indoor-unit cooling capacity less than 28,800 Btu/h (given an overall system capacity less than 65,000 Btu/h)—in which case both test procedures require testing at 0.1 in $H_2O$. Consequently, DOE has tentatively determined that for a significant majority of three-phase, less than 65,000 Btu/h VRF systems (should they exist in the future), there would be no change in the required external static pressure when testing to the updated industry test procedure AHRI 210/240–2023. Therefore, DOE is not proposing a change in the numerical value of SEER2 standards crosswalked from existing SEER standards.

With regards to the translation from HSPF to HSPF2 for three-phase, less than 65,000 Btu/h VRF, DOE is proposing to use the same 15 percent reduction from the January 2017 CAC/HP ECS DFR when translating from HSPF to HSPF2 at an equivalent stringency. Because the changes to the heating load line between AHRI 1230–2010 and AHRI 210/240–2023 are equivalent to the changes in the heating load line between appendix M and appendix M1, DOE has tentatively concluded that utilizing the same HSPF2 translation from single-phase CACs and HPs is appropriate for three-phase, less than 65,000 Btu/h VRF.

*C. Crosswalk Results*

DOE conducted the crosswalk discussed in section III.B of this document to translate the current Federal standards to the SEER2 and HSPF2 metrics and determine whether the levels specified in ASHRAE 90.1–2019 represent more, less, or equivalent stringency as compared to the current Federal standards. DOE's crosswalk results for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and for three-phase, less than 65,000 Btu/h VRF are presented in Table III–1

TABLE III—1 CROSSWALK RESULTS FOR AIR-COOLED, THREE-PHASE, LESS THAN 65,000 BTU/H ACUAC, ACUHP, AND VRF EQUIPMENT

| ASHRAE 90.1–2019 equipment class | Current federal equipment class | Federal energy conservation standard(s) | Crosswalk of current federal standard(s) | Energy efficiency levels in ASHRAE 90.1–2019 | Comparison of ASHRAE 90.1–2019 to crosswalk [1] |
|---|---|---|---|---|---|
| Air-cooled Air Conditioner, Three-Phase, Single-Package, <65,000 Btu/h. | Air-cooled Air Conditioner, Three-Phase, Single-Package, <65,000 Btu/h. | 14.0 SEER | 13.4 SEER2 | 14.0 SEER before 1/1/2023<br>13.4 SEER2 on and after 1/1/2023. | Equivalent. |
| Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h. | Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h. | 13.0 SEER | <13.0 SEER2 [2] | 13.0 SEER before 1/1/2023<br>13.4 SEER2 on and after 1/1/2023. | More Stringent. |
| Air-cooled Heat Pump, Three-Phase, Single-Package, <65,000 Btu/h. | Air-cooled Heat Pump, Three-Phase, Single-Package, <65,000 Btu/h. | 14.0 SEER<br>8.0 HSPF | 13.4 SEER2<br>6.7 HSPF2 | 14.0 SEER/8.0 HSPF before 1/1/2023.<br>13.4 SEER2/6.7 HSPF on and after 1/1/2023. | Equivalent. |
| Air-cooled Heat Pump, Three-Phase, Split-System, <65,000 Btu/h. | Air-cooled Heat Pump, Three-Phase, Split-System, <65,000 Btu/h. | 14.0 SEER<br>8.2 HSPF | 13.4 SEER2<br><7.5 HSPF2 [3] | 14.0 SEER/8.2 HSPF before 1/1/2023.<br>14.3 SEER2/7.5 HSPF2 on and after 1/1/2023. | More Stringent. |
| Space-Constrained, Air-cooled Air Conditioner, Three-Phase, Single-Package, ≤30,000 Btu/h. | Air-cooled Air Conditioner, Three-Phase, Single-Package, <65,000 Btu/h. | 14.0 SEER | 13.9 SEER2 | 12.0 SEER before 1/1/2023<br>11.7 SEER2 on and after 1/1/2023. | Less Stringent.[3] |
| Space-Constrained, Air-cooled Air Conditioner, Three-Phase, Split-System, ≤30,000 Btu/h. | Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h. | 13.0 SEER | 12.7 SEER2 | 12.0 SEER before 1/1/2023<br>11.7 SEER2 on and after 1/1/2023. | Less Stringent.[3] |
| Space-Constrained, Air-Cooled Heat Pump, Three-Phase, Single-Package, ≤30,000 Btu/h. | Air-cooled Heat Pump, Three-Phase, Single-Package, <65,000 Btu/h. | 14.0 SEER<br>8.0 HSPF | 13.9 SEER2<br>6.7 HSPF2 | 12.0 SEER/7.4 HSPF before 1/1/2023.<br>11.7 SEER2/6.3 HSPF2 on and after 1/1/2023. | Less Stringent.[3] |
| Space-Constrained, Air-cooled Heat Pump, Three-Phase, Split-System, ≤30,000 Btu/h. | Air-cooled Heat Pump, three-phase, Split-System, <65,000 Btu/h. | 14.0 SEER<br>8.2 HSPF | 13.9 SEER2<br>7.0 HSPF2 | 12.0 SEER/7.4 HSPF before 1/1/2023.<br>11.7 SEER2/6.3 HSPF2 on and after 1/1/2023. | Less Stringent.[3] |
| Small Duct High Velocity, Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h. | Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h. | 13.0 SEER | 13.0 SEER2 | 12.0 SEER before 1/1/2023<br>12.0 SEER2 on and after 1/1/2023. | Less Stringent.[3] |
| Small Duct, High Velocity, Air-cooled Heat Pump, Three-Phase, Split-System, <65,000 Btu/h. | Air-cooled Heat Pump, Three-Phase, Split-Package, <65,000 Btu/h. | 14.0 SEER<br>8.2 HSPF | 14.0 SEER2<br>6.9 HSPF2 | 12.0 SEER/7.2 HSPF before 1/1/2023.<br>12.0 SEER2/6.1 HSPF2 on and after 1/1/2023. | Less Stringent.[3] |
| VRF, Air-Cooled, Air Conditioner | Air-cooled VRF Multi-Split Air Conditioners, < 65,000 Btu/h. | 13.0 SEER | 12.9 SEER2 | 13.0 SEER | Equivalent.[4] |
| VRF, Air-Cooled, Heat Pump | Air-cooled VRF Multi-Split Heat Pumps, < 65,000 Btu/h. | 13.0 SEER<br>7.7 HSPF | 12.9 SEER2<br>6.5 HSPF2 | 13.0 SEER<br>7.7 HSPF | Equivalent.[4] |

[1] Column indicates whether the ASHRAE 90.1–2019 levels, beginning on January 1, 2023, are less stringent, equivalent to, or more stringent than the crosswalked Federal standards.

[2] The Federal SEER standard is lower than the ASHRAE 90.1–2019 SEER2 level indicating that the crosswalked Federal SEER2 standard will also be lower than the ASHRAE 90.1–2019 SEER2 level.

[3] For S–C and SDHV equipment, the ASHRAE 90.1 levels are less stringent than the crosswalked Federal efficiency levels because these classes are split off from split-system and single-package, respectively.

[4] As discussed in section III.B.3, ASHRAE 90.1–2019 did not establish SEER2/HSPF2 levels for three-phase, less than 65,000 Btu/h VRF equipment. DOE's crosswalk values represent an equivalent-stringency translation.

*Issue 1:* DOE requests comment on the crosswalk methodology described in section III.B of this proposed rule and the crosswalk results in Table III–1 for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF.

## IV. Estimates of Potential Energy Savings

As required under 42 U.S.C. 6313(a)(6)(A)(i), for three-phase, less than 65,000 Btu/h CUAC equipment classes for which ASHRAE 90.1–2019 set more stringent levels than the current Federal standards, DOE performed an assessment to determine the energy-savings potential of amending Federal standard levels to reflect the efficiency levels specified in ASHRAE 90.1–2019. The two equipment classes analyzed in the September 2020 NODA/RFI were air-cooled, three-phase, split-system, less than 65,000 Btu/h air conditioners and air-cooled, three-phase, split-system, less than 65,000 Btu/h heat pumps. In the September 2020 NODA/RFI, DOE presented the methodology to determine energy savings along with the findings of the energy savings potential for the two equipment classes and sought comment on the analysis. 85 FR 60642, 60666–60673 (Sep. 25, 2020).

In response to the September 2020 NODA/RFI, AHRI and Carrier supported DOE's approach to develop unit energy consumption, shipments, and the no-new standards efficiency distributions that were used to estimate the energy savings potential of air-cooled, three-phase, split-system air conditioners and heat pumps less than 65,000 Btu/h. (AHRI, No. 2, at pp. 5–6; Carrier, No. 3 at pp. 2–3) However, AHRI, Carrier, and Goodman all disagreed with DOE's approach to equipment lifetime. (AHRI, No. 2, at p. 6; Carrier, No. 3 at p. 3; Goodman, No. 7 at p. 2) AHRI stated that DOE should use the average lifetime of 18.4 years for central air conditioners and 15.2 years for heat pumps stated in the January 2016 Final Rule for small, large, and very large commercial package air conditioning and heating equipment. (AHRI, No. 2 at p. 6) Carrier stated that the lifetime is overestimated and suggested a range of 10 to 15 years (Carrier, No. 3 at p. 3) Goodman suggested using a lifetime that is lower than the single-phase lifetime, such as 15 years, because three-phase products are typically installed in commercial applications and thus operate more hours per year and at more extreme conditions, resulting in a shorter lifetime. (Goodman, No. 7 at p. 2)

In its analysis for this NOPR, DOE did not make any changes to the inputs into the energy savings analysis that was presented in the September 2020 NODA/RFI, including the average lifetimes of 19 years for air conditioners and 16.2 years for heat pumps. First, DOE notes that the average lifetimes cited by AHRI are from the September 30, 2014 NOPR and not the January 15, 2016 final rule. *See* 79 FR 58948, 58981 (Sept. 30, 2014). In the January 15, 2016 final rule, DOE updated the lifetimes based on new shipment data. The average lifetimes for small commercial package air conditioning equipment used in the January 15, 2016 final rule was 21.1 years. 81 FR 2479, 2481 (January 15, 2016). As the commenters provided a range of lifetimes, DOE chose to maintain the average lifetimes used in the September 2020 NODA/RFI. DOE estimated the potential site, primary, and full-fuel-cycle (FFC) energy savings in quads (*i.e.,* $10^{15}$ Btu) for adopting ASHRAE 90.1–2019 for the two equipment classes analyzed. The potential energy savings of adopting ASHRAE 90.1–2019 levels are measured relative to the current Federal standards. Table IV–1 displays the energy savings at the ASHRAE level for air-cooled, three-phase, split-system air conditioners less than 65,000 Btu/h and air-cooled, three-phase, split-system heat pumps less than 65,000 Btu/h. The values in the table below are identical to the values presented in the September 2020 NODA/RFI. 85 FR 60642, 60673 (Sept. 25, 2020)

TABLE IV–1—POTENTIAL ENERGY SAVINGS FOR AIR-COOLED, THREE-PHASE, SPLIT-SYSTEM, LESS THAN 65,000 BTU/H AIR CONDITIONERS AND HEAT PUMPS

| | Split-system, air conditioner | | Split system, heat pump | |
|---|---|---|---|---|
| | ASHRAE efficiency level | quads | ASHRAE efficiency level | quads |
| **Site Energy Savings Estimate** | | | | |
| Level 0—ASHRAE | 13.4 SEER2 | 0.0007 | 14.3 SEER2<br>7.5 HSPF2 | 0.0017 |
| **Primary Energy Savings Estimate** | | | | |
| Level 0—ASHRAE | 13.4 SEER2 | 0.0017 | 14.3 SEER2<br>7.5 HSPF2 | 0.0044 |
| **FFC Energy Savings Estimate** | | | | |
| Level 0—ASHRAE | 13.4 SEER2 | 0.0018 | 14.3 SEER2<br>7.5 HSPF2 | 0.0047 |

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking. 86 FR 70892, 70901 (Dec. 13, 2021) For example, the United States rejoined the Paris Agreement on February 19, 2021. As part of that agreement, the United States has committed to reducing GHG emissions in order to limit the rise in mean global temperature. As such, energy savings that reduce GHG emissions have taken on greater importance. Additionally, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with

relatively constant demand. In evaluating the significance of energy savings, DOE considers differences in primary energy and FFC effects for different covered products and equipment when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy conservation standards.

DOE conducted an analysis of the emissions reductions at the ASHRAE efficiency level for air-cooled, three-phase, split-system, less than 65,000 Btu/h air conditioners and air-cooled, three-phase, split-system, less than 65,000 Btu/h heat pumps. This emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector combustion emissions of $CO_2$, $NO_X$, $SO_2$, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, $CH_4$ and $N_2O$, as well as the reductions to emissions of other gases due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion. Table IV–2 displays the emissions reductions estimates for the power sector, the upstream sector, and the full-fuel-cycle.

TABLE IV–2—POTENTIAL EMISSIONS SAVINGS FOR AIR-COOLED, THREE-PHASE, SPLIT-SYSTEM, LESS THAN 65,000 BTU/H AIR CONDITIONERS AND HEAT PUMPS

| | Split system, air conditioner | Split system, heat pump |
|---|---|---|
| | ASHRAE efficiency level | ASHRAE efficiency level |
| Power Sector Emissions: | | |
| $CO_2$ (*million metric tons*) | 0.1 | 0.2 |
| $CH_4$ (*thousand tons*) | 0.0 | 0.0 |
| $N_2O$ (*thousand tons*) | 0.0 | 0.0 |
| $SO_2$ (*thousand tons*) | 0.0 | 0.1 |
| $NO_X$ (*thousand tons*) | 0.0 | 0.1 |
| Hg (*tons*) | 0.0 | 0.0 |
| Upstream Emissions: | | |
| $CO_2$ (*million metric tons*) | 0.0 | 0.0 |
| $CH_4$ (*thousand tons*) | 0.5 | 1.2 |
| $N_2O$ (*thousand tons*) | 0.0 | 0.0 |
| $SO_2$ (*thousand tons*) | 0.0 | 0.0 |
| $NO_X$ (*thousand tons*) | 0.1 | 0.2 |
| Hg (*tons*) | 0.0 | 0.0 |
| Total FFC Emissions: | | |
| $CO_2$ (*million metric tons*) | 0.1 | 0.2 |
| $CH_4$ (*thousand tons*) | 0.5 | 1.2 |
| $N_2O$ (*thousand tons*) | 0.0 | 0.0 |
| $SO_2$ (*thousand tons*) | 0.0 | 0.1 |
| $NO_X$ (*thousand tons*) | 0.1 | 0.3 |
| Hg (*tons*) | 0.0 | 0.0 |

## V. Conclusions

### *A. Consideration of More Stringent Efficiency Levels for Split Systems*

As discussed, ASHRAE 90.1–2019 includes efficiency levels more stringent than the current Federal standards for three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs. When triggered by an update to ASHRAE Standard 90.1, EPCA requires DOE to establish an amended uniform national standard for equipment classes at the minimum level specified in the amended ASHRAE Standard 90.1 unless DOE determines, by rule published in the **Federal Register**, and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than the amended ASHRAE Standard 90.1 for the equipment class would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(I)–(II)). As noted previously, clear and convincing evidence is a heightened standard, and would only be met where the Secretary has an abiding conviction, based on available facts, data, and DOE's own analyses, that it is highly probable an amended standard would result in a significant additional amount of energy savings, and is technologically feasible and economically justified. *See American Public Gas Association* v. *U.S. Dep't of Energy,* No. 20–1068, 2022 WL 151923, at *4 (D.C. Cir. January 18, 2022) (citing *Colorado* v. *New Mexico,* 467 U.S. 310, 316, 104 S.Ct. 2433, 81 L.Ed.2d 247 (1984)).

In the September 2020 NODA/RFI, DOE did not consider more stringent efficiency levels, as this would require DOE to crosswalk the entire market for this equipment. 85 FR 60642, 60674 (Sept. 25, 2020) The amended levels in ASHRAE 90.1–2019 rely on updated metrics (SEER2 and HSPF2), which are not applicable until 2023. Furthermore, the single-phase market, which is nearly identical to three-phase equipment, will not begin to use SEER2 and HSPF2 until 2023. Single-phase and three-phase models generally are manufactured on the same production lines and are physically identical to their corresponding single-phase central air conditioner and central air conditioning heat pump models except the former have three-phase electrical systems and use components, primarily motors and compressors, that are designed for three-phase power input. 86 FR 70316, 70322 (Dec. 9, 2021). The amended levels for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs in ASHRAE 90.1–2019 are the same efficiency levels that will be required for single-phase air conditioners and heat pumps in 2023 (*See* 10 CFR 430.32(c)(5)). Given that the

amended levels for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and for three-phase, less than 65,000 Btu/h VRF, or those for single-phase air conditioners and heat pumps, will not be effective until January 1, 2023 at the earliest, manufacturers have not yet made representations using the updated metrics. 85 FR 60642, 60674 (Sept. 25, 2020). As a result, there are currently no public databases with ratings in terms of the updated metrics.

EPCA states that in order for DOE to adopt a standard more stringent than an amended ASHRAE 90.1 standard, DOE must support its decision with clear and convincing evidence. In the September 2020 NODA/RFI, DOE tentatively determined that the lack of market data for the amended efficiency metric creates substantial doubt in any analysis of energy savings that would result from efficiency levels more stringent than those in ASHRAE 90.1–2019 given the 2023 compliance date. 85 FR 60642, 60674 (Sept. 25, 2020) Therefore, DOE did not conduct any analysis of energy savings from more stringent standards for the two triggered classes of three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs. DOE requested data and information that would enable it to determine whether more stringent standards would result in significant energy savings for the two triggered equipment classes in the September 2020 NODA/RFI. *Id..*

In response to the September 2020 NODA/RFI, AHRI and Rheem commented in support of generally adopting the amended ASHRAE 90.1–2019 standard levels for all classes of three-phase, less than 65,000 Btu/h ACUACs and ACUHPs as the national standards (AHRI, No. 2 at p. 1; Rheem, No. 4 at p. 1) However, AHRI stated that it did not have any data that it could provide to DOE to develop more stringent efficiency levels and supported harmonization with the ASHRAE 90.1–2019 levels. (AHRI, No. 2 at p. 6)

Similarly, Carrier commented that it had no data that would suggest that efficiency levels more stringent than ASHRAE 90.1–2019 would result in additional energy savings for classes where DOE is triggered. (Carrier, No. 3 at p. 3)

Conversely, Joint Advocates and CA IOUs encouraged DOE to evaluate more-stringent standards than the ASHRAE 90.1–2019 levels and said that they disagreed with DOE's preliminary conclusion in the September 2020 NODA/RFI that the test metric change created uncertainty that would prevent an adequate evaluation of more stringent standards. (Joint Advocates, No. 6 at pp. 2, 3–4; CA IOUs, No. 5 at p. 2) These commenters asserted that only when economic analyses are complete can the determination be made as to whether the statutory ''clear and convincing evidence'' requirement has been met. *Id.* Further, CA IOUs encouraged DOE to evaluate on a case-by-case basis whether the standard of ''clear and convincing evidence'' of energy savings has been met for increasing stringency of standards when there is a metric change. (CA IOUs, No 5 at 2) CA IOUs presented the concern that if DOE were to generalize the position taken in the September 2020 NODA/RFI to other product categories, some members of the ASHRAE 90.1 committee will be less likely to support updates to the test procedure if they believe that DOE will use the update as a reason to decline to conduct further analysis. (*Id.*)

CA IOUs requested that DOE complete an analysis using information from the Compliance and Certification Management System (''CCMS'') database, noting that the maximum SEER rating in the database has increased since the previous final rule (*Id.* at pp. 2–3) CA IOUs also noted that DOE successfully used a crosswalk to compare SEER and SEER2 as well as HSPF and HSPF2 metrics for single-phase products in the January 2017 CAC/HP ECS DFR. (*Id.* at p. 3)

Likewise, the Joint Advocates stated that it is not unprecedented for DOE to adopt amended standards at levels higher than the ASHRAE Standard 90.1 levels based on a revised metric, referencing a prior standards rulemaking for ACUACs in which DOE adopted integrated energy efficiency ratio (''IEER'') standards at levels that were more stringent than the corresponding ASHRAE 90.1 levels in a 2016 direct final rule (81 FR 2420 (Jan. 15, 2016)). (Joint Advocates, No. 6 at p. 4)

In response to the comments from Joint Advocates and CA IOUs, DOE notes that it makes determinations pursuant to the ASHRAE trigger (and the six-year look back review) by evaluating the information and data available specific to the equipment under review. In this NOPR, DOE is not making a general determination on whether the clear and convincing threshold can be met in instances in which there is a metric change. The preliminary position taken in the September 2020 NODA/RFI and in this NOPR on whether the clear and convincing evidence requirement for showing that more stringent standards would result in significant additional energy savings is specific to three-phase, less than 65,000 Btu/h ACUACs and ACUHPs. As suggested by CA IOUs, DOE makes this determination on a case-by-case basis. As to the concern that the preliminary determination put forward in this NOPR may cause some members of the ASHRAE Standard 90.1 committee to be less likely to support updates to industry test procedures, DOE notes that EPCA requires DOE to review periodically the test procedures for covered equipment and make amendments to the extent justified. (42 U.S.C. 6314(a)(1))

As discussed in the September 2020 NODA/RFI, an estimation of energy savings potentials of energy efficiency levels more stringent than the amended ASHRAE 90.1 levels would require developing efficiency data for the entire three-phase, less than 65,000 Btu/h ACUACs and ACUHPs market in terms of the SEER2 and HSPF2 metrics. 85 FR 60642, 60674 (Sept 25, 2020). Because there are minimal market efficiency data currently available in terms of SEER2 and HSPF2, this would require a crosswalk analysis much broader than the analysis used to evaluate ASHRAE 90.1–2019 levels. *Id.* The crosswalk analysis of ASHRAE 90.1–2019 levels presented in this NOPR required only that DOE translate the efficiency levels between the metrics at the baseline levels, and not that DOE translate all efficiency levels currently represented in the market (*i.e.,* high efficiency levels). To obtain SEER2 and HSPF2 market data for purposes of analysis of standard levels more stringent than ASHRAE 90.1–2019, DOE would be required to translate the individual SEER and HSPF ratings to SEER2 and HSPF2 ratings for all three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs models certified in DOE's CCMS Database. As noted in the September 2020 NODA/RFI, there is the added issue of the new metrics not being applicable until 2023, which compounds the problem of a lack of market data. *Id.* The change in metrics and the future compliance date create uncertainty in the development of more stringent efficiency levels as well as the market distribution by efficiency. *Id.*

Because of the lack of market data and the test metric change, DOE has tentatively determined that it lacks clear and convincing evidence that a more stringent standard level would result in significant additional conservation of energy and is technologically feasible and economically justified. Therefore, DOE has tentatively decided not to conduct further analysis for this particular rulemaking because DOE lacks the data necessary to assess potential energy conservation. Although

DOE has not conducted an analysis of manufacturer impacts resulting from more stringent standards, DOE would expect that standards for three-phase equipment more stringent than the ASHRAE 90.1–2019 levels could impose burden to manufacturers by potentially requiring them to develop and manufacture new models of three-phase equipment that are not otherwise identical to models of single-phase products for sale.

In this specific instance, DOE disagrees with comments from CA IOUs and Joint Advocates that the statutory clear and convincing evidence criterion can only be assessed after full economic analyses have been conducted. EPCA requires that DOE determine, supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than the amended ASHRAE 90.1 for three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs would result in significant additional conservation of energy *and* is technologically feasible *and* economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II); *emphasis added*) The inability to make a determination, supported by clear and convincing evidence, with regard to any one of the statutory criteria prohibits DOE from adopting more stringent standards regardless of determinations as to the other criteria. As a result, DOE has tentatively determined that at this time there is insufficient data specific to three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs (including but not limited to market efficiency data in terms of the new efficiency metric) to provide clear and convincing evidence of significant additional energy savings from three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs efficiency levels more stringent than ASHRAE 90.1–2019 levels.

The CA IOUs cited as precedent the crosswalk in the January 2017 CAC/HP ECS DFR, but that crosswalk was not analogous to the present NOPR for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs. Specifically, for single-phase CACs and HPs, DOE conducted its analysis in terms of the metrics at the time, SEER and HSPF. After selecting amended efficiency levels, DOE then crosswalked the selected levels to SEER2 and HSPF2 using a methodology consistent with the recommendations of the CAC/HP Working Group. 82 FR 1786, 1849 (Jan. 6, 2017). DOE did not crosswalk the entire market for single-phase CACs and HPs—the crosswalk addressed only single-phase CAC and HPs with rated efficiency at the selected levels. Because ASHRAE 90.1–2019 included efficiency levels for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs based on SEER2 and HSPF2, DOE is unable to conduct an analysis based on SEER and HSPF metrics as it did for single-phase CACs and HPs.

Likewise, the past ACUAC rulemaking cited by the Joint Advocates as precedent was not analogous to the present situation for three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs, because at the time that ACUAC rulemaking began, the IEER metric was already in use by the ACUAC industry. *See* 81 FR 2419, 2441 (Jan. 15, 2014).[6] Specifically, the vast majority of ACUAC models on the market were already rated for IEER (in addition to Energy Efficiency Ratio (EER), which was the federally regulated metric at the time), and these IEER market data for ACUACs were available in the AHRI Directory at the time.[7]

In contrast, during the development of this NOPR, there was no available SEER2 and HSPF2 market data. Specifically, the CCMS database and the AHRI directory do not currently rate any units with SEER2 or HSPF2 as the compliance date for these metrics is not until 2023.

After considering the stakeholder comments and the lack of sufficient SEER2 and HSPF2 market data available following the September 2020 NODA/RFI, DOE maintains its preliminary decision not to conduct additional analysis of more stringent standards for this rulemaking. The lack of market and performance data in terms of the new metric limits the analysis of energy savings that would result from efficiency levels more stringent than the amended ASHRAE 90.1–2019 levels for this equipment. Given the limits of any energy use analysis resulting from this lack of data, DOE has tentatively concluded that it lacks clear and convincing evidence that more stringent standards would result in a significant additional amount of energy savings as required for DOE to establish more-stringent standards.

As a result, DOE has tentatively determined that, due to the lack of market and performance data for the market as a whole in terms of SEER2 and HSPF2, it is unable to estimate potential energy savings from more stringent standards that meets the clear and convincing evidence threshold required by statute to justify standards more stringent than the amended ASHRAE 90.1 efficiency levels for three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs.

*B. Review Under Six Year Lookback*

As discussed, DOE is required to conduct an evaluation of each class of covered equipment in ASHRAE Standard 90.1 every six years. (42 U.S.C. 6313(a)(6)(C)(i)) Accordingly, in this document, DOE is evaluating also the three-phase, less than 65,000 Btu/h equipment for which ASHRAE 90.1–2019 did not increase the stringency of the standards: (1) Three-phase, single package, less than 65,000 Btu/h ACUACs and ACUHPs; (2) S–C, three-phase, less than 65,000 Btu/h ACUACs and ACUHPs; (3) SDHV, three-phase, less than 65,000 Btu/h ACUACs and ACUHPs; and (4) three-phase, less than 65,000 Btu/h VRF.

As discussed in section III of this NOPR, DOE has tentatively concluded that there are no models on the market in the equipment classes of: (1) S–C, three-phase, less than 65,000 Btu/h ACUACs and ACUHPs; (2) SDHV, three-phase, less than 65,000 Btu/h ACUACs and ACUHPs; and (3) three-phase, less than 65,000 Btu/h VRF. Therefore, there would be no potential energy savings associated with more stringent standards for these classes, and DOE did not conduct further analyses of more stringent standards for these classes.

For three-phase, single package, less than 65,000 Btu/h ACUACs and ACUHPs, similar to the triggered classes discussed in section V.A of this document (*i.e.,* three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs), there are limited SEER2 and HSPF2 data for models of varying efficiencies, and there is not a comparable industry analysis (*i.e.,* translating ratings to the updated metric for these models on the market) for comparison. The market-wide analysis necessary to evaluate whether amended standards would result in significant energy savings and be technologically feasible and economically justified under the clear and convincing threshold would require more than baseline data.

Therefore, in line with the same initial reasoning presented in DOE's evaluation of more stringent standards

[6] DOE noted that AHRI Standard 340/360–2007 already included methods and procedures for testing and rating equipment with the IEER metric. ASHRAE, through its Standard 90.1, includes requirements based on the part-load performance metric, IEER. These IEER requirements were first established in Addenda to the 2008 Supplement to Standard 90.1–2007, and were required for compliance with ASHRAE Standard 90.1 on January 1, 2010. 81 FR 2419, 2441 (Jan. 15, 2014).

[7] As part of a NODA/RFI for energy conservation standards for ACUACs published on February 1, 2013 (78 FR 7296), DOE made available a document that provides the methodology and results of an investigation of EER and IEER market data for ACUACs. *See* Docket No. EERE–2013–BT–STD–0007–0001.

for those classes of three-phase, less than 65,000 Btu/h ACUACs and ACUHPs for which ASHRAE updated the industry standards (*i.e.,* split systems), DOE tentatively determines that the ''clear and convincing'' threshold is not met for three-phase, single-package, less than 65,000 Btu/h ACUACs and ACUHPs. As such, DOE did not conduct an energy savings analysis of standard levels more stringent than the current Federal standard levels for three-phase, single package, less than 65,000 Btu/h ACUACs and ACUHPs not triggered by ASHRAE 90.1–2019.

1. Proposed Addendum to ASHRAE 90.1–2019

On November 8, 2021, ASHRAE published the First Public Review Draft of Addendum 'ay' to ASHRAE 90.1–2019 (''the first public review draft''). The first public review draft proposes to update the efficiency metrics for three-phase, less than 65,000 Btu/h VRF to be in terms of SEER2 and HSPF2 starting January 1, 2023. The first public review draft also proposes to update the test procedure for three-phase, less than 65,000 Btu/h VRF to specify AHRI 1230–2014 with addendum 1 prior to Jan 1, 2023, and then AHRI 210/240–2023 starting Jan 1, 2023.

While the proposed Addendum ay to ASHRAE 90.1–2019 includes SEER2 and HSPF2 levels for three-phase, less than 65,000 Btu/h VRF, those levels are not yet formally incorporated into an approved version of ASHRAE 90.1. As a result, DOE is not triggered by the EPCA requirement to consider adopting amended standards at the new ASHRAE efficiency level. (42 U.S.C. 6313(a)(6)(A)(ii)) Because there are no models of three-phase, less than 65,000 Btu/h VRF currently on the market, DOE tentatively finds that there would be no potential energy savings associated with adopting the levels in the first public review draft, and thus no energy savings analysis would be required. Therefore, if ASHRAE finalizes a future version of ASHRAE 90.1 that (1) publishes prior to DOE publishing a final rule for amended energy conservation standards for three-phase, less than 65,000 Btu/h VRF and (2) includes SEER2/HSPF2 levels for three-phase, less than 65,000 Btu/h VRF that are more stringent than the existing federal standards, DOE proposes that it would adopt those levels in a final rule.

*Issue 2:* DOE requests comment on its proposal to adopt the more stringent SEER2/HSPF2 efficiency levels for three-phase, less than 65,000 Btu/h VRF in the first public review draft of Addendum 'ay' to ASHRAE 90.1–2019, should such levels be incorporated into an updated version of ASHRAE Standard 90.1 that publishes prior to DOE publishing a final rule for amended energy conservation standards for three-phase, less than 65,000 Btu/h VRF.

*C. Definitions for Space-Constrained and Small-Duct, High-Velocity Equipment*

ASHRAE 90.1–2019 includes S–C and SDHV equipment classes for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs. Because DOE is proposing to adopt separate standards for S–C, split-system, and single-package ACUACs and ACUHPs and SDHV ACUACs and ACUHPs, DOE is proposing the following definitions for ''small-duct, high-velocity commercial package air conditioning and heating equipment'' and ''space-constrained commercial package and heating equipment'' at 10 CFR 431.92. These two definitions align with the definitions specified in 10 CFR 430.2 for single-phase CACs and HPs, which, as discussed in section V.A, are identical to three-phase products except for the power input.

- *Small-duct, High-velocity Commercial Package Air Conditioning and Heating Equipment* means a basic model of commercial package, split-system air conditioning and heating equipment that: has a rated cooling capacity no greater than 65,000 Btu/h; is air-cooled; and is paired with an indoor unit that (1) includes an indoor blower housed with the coil; (2) is designed for, and produces, at least 1.2 inches of external static pressure when operated at the certified air volume rate of 220–350 CFM per rated ton cooling in the highest default cooling airflow-controls setting; and (3) when applied in the field, uses high velocity room outlets generally greater than 1,000 fpm that have less than 6.0 square inches of free area.
- *Space-constrained Commercial Package Air Conditioning and Heating Equipment* means a basic model of commercial package air conditioning and heating equipment (packaged or split) that: (1) Is air-cooled; (2) has a rated cooling capacity no greater than 30,000 Btu/h; (3) has an outdoor or indoor unit having at least two overall exterior dimensions or an overall displacement that: (i) Is substantially smaller than those of other units that are: (A) Currently usually installed in site-built single-family homes; and (B) of a similar cooling, and, if a heat pump, heating capacity; and (ii) if increased, would certainly result in a considerable increase in the usual cost of installation or would certainly result in a significant loss in the utility of the product to the consumer; and (3) of a product type that was available for purchase in the United States as of December 1, 2000.

*D. Proposed Energy Conservation Standards*

1. Standard Levels

In this proposed rule, DOE is proposing amended energy conservation standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and for three-phase, less than 65,000 Btu/h VRF. The proposed amended energy conservation standards are in terms of SEER2 and HSPF2, which would align with the efficiency metrics specified in ASHRAE 90.1–2019 for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs [8] and with the updated industry test procedure AHRI 210/240–2023.

DOE is proposing amended energy conservation standards in terms of SEER2 and HSPF2 that generally align with the standard levels in ASHRAE 90.1–2019 for three-phase equipment with some exceptions. For three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs, DOE is proposing standards that align with the more stringent levels in ASHRAE 90.1–2019. For three-phase, single-package, less than 65,000 Btu/h ACUACs and ACUHPs, DOE is proposing standards that align with the levels in ASHRAE 90.1–2019, which maintain equivalent stringency to the current Federal standards. For S–C split-system and single-package ACUACs and ACUHPs, SDHV ACUACs and ACUHPs, and for three-phase, less than 65,000 Btu/h VRF, DOE is proposing standards that differ from the values specified in ASHRAE 90.1–2019. These standards are equivalent stringency to the current Federal standards but are translated to the new metrics SEER2 and HSPF2. The proposed standards are presented in Table I.1 and Table I.2 of this document.

2. Compliance Date

In the September 2020 NODA/RFI, DOE discussed the potential compliance dates for amended standards for three-

[8] While ASHRAE 90.1–2019 does not specify updated standards in terms of SEER2 and HSPF2 for three-phase, less than 65,000 Btu/h VRF, the proposed levels for three-phase, less than 65,000 Btu/h VRF are consistent with the updated industry test procedure for this equipment. Specifically, as discussed in section III.B.3 of this document, the updated industry test procedure applicable to three-phase, less than 65,000 Btu/h VRF is AHRI 210/240–2023, which measures performance in terms of the SEER2 and HSPF2 metrics. Further, as discussed in section V.B.1 of this document, industry has shown intent to adopt efficiency levels in terms of SEER2 and HSPF2 for this equipment in ASHRAE Standard 90.1 in the first public review draft of Addendum ay to ASHRAE 90.1–2019.

phase, less than 65,000 Btu/h ACUACs and ACUHPs. 85 FR 60642, 60671 (Sept. 25, 2020). In that September 2020 NODA/RFI, DOE determined that for the two equipment classes where DOE was triggered by an increase in stringency in ASHRAE 90.1–2019 (three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs) the earliest compliance date for amended Federal standards would be two years after the ASHRAE 90.1–2019 compliance date (January 1, 2023), resulting in a compliance date of January 1, 2025. *Id.* DOE also discussed that EPCA specifies similar considerations on compliance date if DOE were to adopt amended standards more stringent than the ASHRAE 90.1 levels [9] for the two equipment classes for which DOE is evaluating standards under its 6-year lookback authority (three-phase, single-package, less than 65,000 Btu/h ACUACs and ACUHPs). *Id.* Ultimately, DOE determined that it did not have clear and convincing evidence to justify adopting standards more stringent than the ASHRAE 90.1–2019 levels, and, therefore, the three-year and/or six-year delay period would not apply. DOE presented an approximate compliance date of January 1, 2025 for all four equipment classes of three-phase, less than 65,000 Btu/h ACUACs and ACUHPs. *Id.*

In response to the September 2020 NODA/RFI, Rheem agreed that the compliance date for amended Federal standards should be January 1, 2025 for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs, based on the statutory provision by EPCA for a six-year lookback to amend uniform national standards. (Rheem, No. 4 at p. 1) Carrier, Goodman, and Trane requested that DOE align the compliance date of amended standards in terms of SEER2 and HSPF2 for three-phase equipment with the corresponding compliance date for single-phase products of January 1, 2023, arguing that discrepancy in compliance dates between single-phase products and three-phase equipment would be undesirable and confusing for consumers and manufacturers. (Carrier, No. 3 at p. 2; Goodman, No. 7 at p. 2; Trane, No. 8 at p. 2)

In response to the comments from Carrier, Goodman, and Trane, DOE notes that while there may be benefits to aligning the compliance dates for SEER2 and HSPF2 standards between single-phase products and three-phase equipment, DOE cannot prescribe a compliance date for amended standards that would violate its obligations under EPCA. As discussed, EPCA requires that DOE specify a compliance date no earlier than 2 years after the compliance date specified in ASHRAE Standard 90.1 for triggered classes of three-phase, less than 65,000 Btu/h ACUACs and ACUHPs. As a result, to provide a consistent compliance date for standards in terms of SEER2 and HSPF2 for all three-phase, less than 65,000 Btu/h equipment, DOE proposes that the amended standards proposed in this NOPR would apply for all three-phase, less than 65,000 Btu/h equipment that is manufactured on or after January 1, 2025.

## VI. Procedural Issues and Regulatory Review

### *A. Review Under Executive Orders 12866 and 13563*

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this proposed regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

### *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: *www.energy.gov/gc/office-general-counsel.* DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

The following sections detail DOE's IRFA for this energy conservation standards proposed rulemaking.

#### 1. Description of Reasons Why Action Is Being Considered

DOE is proposing to amend the existing DOE energy conservation standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF. EPCA requires DOE to consider amending the existing Federal energy conservation standard for certain types of listed commercial and industrial equipment (generally, commercial water heaters, commercial packaged boilers, commercial air conditioning and heating equipment, and packaged terminal air conditioners and heat pumps) each time ASHRAE Standard 90.1 is amended with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) For each type of equipment, EPCA directs

[9] EPCA states that any such standard shall apply to equipment manufactured after a date that is the latter of the date three years after publication of the final rule establishing such standard or six years after the effective date for the current standard (42 U.S.C. 6313(a)(6)(C)(iv).

that if ASHRAE Standard 90.1 is amended, DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more stringent efficiency level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) This is referred to as ''the ASHRAE trigger.'' DOE must also review and determine whether to amend standards of each class of covered equipment in ASHRAE Standard 90.1 every 6 years. (42 U.S.C. 6313(a)(6)(C)(i)).

2. Objectives of, and Legal Basis for, Rule

EPCA requires DOE to consider amending the existing Federal energy conservation standard each time ASHRAE Standard 90.1 is amended with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) ASHRAE officially released ASHRAE 90.1–2019 on October 25, 2019, thereby triggering DOE's previously referenced obligations to determine, for certain classes of three-phase, less than 65,000 Btu/h ACUAC, ACUHP, and VRF systems, whether: (1) The amended industry standard levels should be adopted; or (2) clear and convincing evidence exists to justify more-stringent standard levels. For any class where DOE was not triggered, the Department routinely considers those classes under EPCA's 6-year-lookback provision at the same time, to address the subject equipment in a comprehensive fashion.

3. Description on Estimated Number of Small Entities Regulated

For manufacturers of three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF, the Small Business Administration (''SBA'') has set a size threshold. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the proposed rule. *See* 13 CFR part 121. The equipment covered by this proposed rule is classified under North American Industry Classification System (''NAICS'') code 333415,[10] ''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 reviewed the energy conservation standards proposed in this NOPR under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE relied on the Compliance Certification Database[11] in identifying manufacturers. For three-phase, less than 65,000 Btu/h ACUACs and ACUHPs, DOE identified 17 original equipment manufacturers (''OEM''). Of those 17 OEMs, DOE screened out companies that do not meet the definition of a ''small business'' or are foreign-owned and operated. DOE used subscription-based business information tools to determine headcount and revenue of the small businesses. DOE identified 4 small, domestic OEMs for consideration. DOE did not identify any manufacturers of three-phase, less than 65,000 Btu/h VRF.

*Issue 3:* DOE seeks comment on the number of small manufacturers producing three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF.

4. Description and Estimate of Compliance Requirements Including Differences in Cost, if Any, for Different Groups of Small Entities

In this NOPR, DOE proposes to:

- Adopt amended energy conservations standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs corresponding to the minimum efficiency levels in ASHRAE 90.1–2019. The levels are in terms of new metrics seasonal energy efficiency ratio-2 (SEER2) and heating seasonal performance factor-2 (HSPF2);
- Separate energy conservation standards for three-phase, less than 65,000 Btu/h ACUAC and ACUHP further into: (1) Three-phase, S–C, commercial split-system air conditioners (''S–C ACUACs''); (2) three-phase, S–C, commercial split-system heat pumps (''S–C ACUHPs''); (3) S–C single-package ACUACs; (4) S–C single-package ACUHPs; (5) three-phase, SDHV commercial air conditioners (''SDHV ACUACs''); and (6) three-phase, SDHV commercial heat pumps (''SDHV ACUHPs''). These additional equipment classes are included in ASHRAE 90.1–2019 for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs; and
- Adopt amended energy conservation standards for three-phase, less than 65,000 Btu/h VRF. Because the levels for this equipment were not updated in ASHRAE 90.1–2019, the proposed standards are translated from the existing Federal regulatory metrics (SEER and HSPF) to the updated metrics (SEER2 and HSPF2)—as measured per the updated industry test procedure AHRI 210/240–2023.

For S–C ACUACs and ACUHPs and SDHV ACUACs and ACUHPs, the current applicable Federal standards are more stringent than the ASHRAE 90.1–2019 levels. To avoid backsliding (as required by EPCA), DOE cannot adopt the ASHRAE 90.1–2019 levels for these classes and is therefore proposing standards for S–C ACUACs and ACUHPs and SDHV ACUACs and ACUHPs equipment in terms of SEER2 and HSPF2 that maintain equivalent stringency to the applicable current Federal standards (in terms of SEER and HSPF). Of note, DOE has tentatively concluded that there are no models of S–C ACUACs and ACUHPs and SDHV ACUACs and ACUHPs on the market.

For three-phase, single-package, less than 65,000 Btu/h ACUACs and ACUHPs as well as three-phase, less than 65,000 Btu/h VRF, the ASHRAE 90.1–2019 levels are of equivalent stringency to the current Federal standards. Therefore, DOE's proposal to adopt standards in terms of the new metrics SEER2 and HSPF2 that are crosswalked from the current Federal standards would not increase the stringency of standards.

ASHRAE 90.1–2019 includes minimum efficiency levels for three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs that are more stringent than the current Federal standards. DOE must adopt amended standards at the amended ASHRAE efficiency levels unless DOE determines, supported by clear and convincing evidence, that adoption of a more stringent standard would produce significant additional conservation of energy and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii). Because DOE proposes no such determination, this NOPR proposes to adopt amended standards at the amended ASHRAE efficiency levels for three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs.

In estimating the impact to small manufacturers, DOE recognizes that manufacturers may incur conversion costs as a result of the proposed standards for three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs. In reviewing all commercially

[10] 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 February 24, 2022).

[11] DOE's Compliance Certification Database is available at: *www.regulations.doe.gov/ccms*.

available models of three-phase, split-system. less than 65,000 Btu/h ACUACs and ACUHPs in DOE's Compliance Certification Database, the 4 small manufacturers account for 30 percent of model offerings. For each of the 4 small manufacturers, approximately 58 percent of the companies' current models would meet the proposed levels. For the current models that do not meet the proposed levels, the small manufacturers would need to either discontinue or redesign non-compliant models. However, adoption of standards at least as stringent as the ASHRAE levels is required under EPCA; furthermore, adopting standards above ASHRAE levels (DOE's only other option under 42 U.S.C. 6313(a)(6)(A)(ii)) would lead to an even greater portion of small manufacturer models requiring redesign. Therefore, DOE has tentatively determined that the proposed efficiency level provides the least cost option for small manufacturers.

*Issue 4:* DOE requests comment on its understanding of the current market accounted for by small manufacturers. DOE also requests comment on its understanding of the efficiency of the equipment offered by such manufacturers.

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 this rule.

6. Significant Alternatives to the Rule

As EPCA requires DOE to either adopt the ASHRAE levels or to propose higher standards, DOE is limited in options to mitigate impacts to small businesses from the more stringent ASHRAE Standard 90.1 levels. DOE's proposal to adopt the more stringent levels in ASHRAE 90.1–2019 for three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs is the least cost option to industry.

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*

Manufacturers of three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test 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 three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and for three-phase, less than 65,000 Btu/h VRF. 76 FR 12422 (Mar. 7, 2011); 80 FR 5099 (Jan. 30, 2015). 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.

*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 that establish energy conservation standards for consumer products or industrial equipment. 10 CFR part 1021, subpart D, appendix B5.1. DOE anticipates that this rulemaking qualifies for categorical exclusion B5.1(b) because it is a proposed rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in categorical exclusion B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it 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*

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 it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively 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 equipment 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. 6316(a) and (b); 42 U.S.C. 6297) Therefore, no further action is required by Executive Order 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 section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule 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, section 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.*

This proposed rule does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year 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, 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*

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 rule 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, 2001*

Section 515 of the Treasury and General Government Appropriations 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 NOPR 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 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 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.

DOE has tentatively concluded that this proposed rule, which proposes amended energy conservation standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

*L. Information Quality*

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. Under the Bulletin, the energy conservation standards rulemaking analyses are ''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 2664, 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a report describing that peer review.[12] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical

[12] The 2007 ''Energy Conservation Standards Rulemaking Peer Review Report'' is available at: *www.energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0* (last accessed December 10, 2021).

methodologies to ascertain whether modifications are needed to improve the Department's analyses. DOE is in the process of evaluating the resulting report.[13]

## VII. Public Participation

### *A. Participation in the Webinar*

The time and date for the webinar meeting 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. Procedure for Submitting Prepared General Statements for Distribution*

Any person who has an interest in the topics addressed in this document, 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. Such persons may submit to *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.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. 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 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/public meeting 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 permit, 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. 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 proposed 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 document. 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 before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. 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 itself 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

[13] The report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.*

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, 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'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 crosswalk methodology described in section III.B of this document and the crosswalk results in Table III–1 for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF.

*Issue 2:* DOE requests comment on its proposal to adopt the more stringent SEER2/HSPF2 efficiency levels for three-phase, less than 65,000 Btu/h VRF in the first public review draft of Addendum 'ay' to ASHRAE 90.1–2019, should such levels be incorporated into an updated version of ASHRAE Standard 90.1 that publishes prior to DOE publishing a final rule for amended energy conservation standards for three-phase, less than 65,000 Btu/h VRF.

*Issue 3:* DOE seeks comment on the number of small manufacturers producing three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF.

*Issue 4:* DOE requests comment on its understanding of the current market accounted for by small manufacturers. DOE also requests comment on its understanding of the efficiency of the equipment offered by such manufacturers.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this proposed rulemaking that may not specifically be identified in this document.

## VIII. 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 in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, and Reporting and recordkeeping requirements.

## Signing Authority

This document of the Department of Energy was signed on March 23, 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 March 23, 2022.

**Treena V. Garrett,**

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

For the reasons set forth in the preamble, DOE proposes to amend part 431 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

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

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

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

■ 2. Section 431.92 is amended by adding, in alphabetical order, definitions for ''Small-duct, High-velocity Commercial Package Air Conditioning and Heating Equipment'' and ''Space-constrained Commercial Package Air Conditioning and Heating Equipment'' to read as follows:

### § 431.92 Definitions concerning commercial air conditioners and heat pumps.

* * * * *

*Small-duct, High-velocity Commercial Package Air Conditioning and Heating Equipment* means a basic model of commercial package, split-system air conditioning and heating equipment that:

(1) Has a rated cooling capacity no greater than 65,000 Btu/h;

(2) Is air-cooled; and

(3) Is paired with an indoor unit that

(i) Includes an indoor blower housed with the coil;

(ii) Is designed for, and produces, at least 1.2 inches of external static pressure when operated at the certified air volume rate of 220–350 CFM per rated ton cooling in the highest default cooling airflow-controls setting; and

(iii) When applied in the field, uses high velocity room outlets generally greater than 1,000 fpm that have less than 6.0 square inches of free area.

*Space-constrained Commercial Package Air Conditioning and Heating Equipment* means a basic model of commercial package air conditioning and heating equipment (packaged or split) that:

(1) Is air-cooled;

(2) Has a rated cooling capacity no greater than 30,000 Btu/h;

(3) Has an outdoor or indoor unit having at least two overall exterior dimensions or an overall displacement that:

(i) Is substantially smaller than those of other units that are:

(A) Currently usually installed in site-built single-family homes; and

(B) Of a similar cooling, and, if a heat pump, heating capacity;

and

(ii) If increased, would certainly result in a considerable increase in the usual

cost of installation or would certainly result in a significant loss in the utility of the product to the consumer;

and

(4) Of a product type that was available for purchase in the United States as of December 1, 2000.

* * * * *

■ 3. Section 431.97 is amended by:

■ a. Removing the rows of Table 1 to paragraph (b), under the column heading, ''Equipment Type'' for: ''Small Commercial Package Air Conditioning and Heating Equipment (Air-Cooled, 3-Phase, Split-System)'' and ''Small Commercial Package Air Conditioning and Heating Equipment (Air-Cooled, 3-Phase, Single-Package)'';

■ b. Removing each instance in Table 1 to paragraph (b), ''[2]'' and ''[3]'' and adding in their place ''[1]'' and ''[2]'';

■ c. Removing footnote 1 in Table 1 to paragraph (b) and redesignating footnotes ''2'' and ''3'' as footnotes ''1'' and ''2'', respectively;

■ d. Removing ''June 16, 2008.'' and adding in its place ''June 16, 2008.[2]'', in row 13, ''Small Commercial Package Air-Conditioning and Heating Equipment (Air-Cooled, 3-Phase, Split-System)'', in Table 3 to paragraph (b) under the column heading, ''Compliance date: Equipment manufactured starting on . . .'';

■ e. Removing ''January 1, 2017.'' and adding in its place ''January 1, 2017.[2]'', in row 14, ''Small Commercial Package Air-Conditioning and Heating Equipment (Air-Cooled, 3-Phase, Split-System)'', in Table 3 to paragraph (b) under the column heading, ''Compliance date: Equipment manufactured starting on . . .'';

■ f. Removing ''January 1, 2017.'' and adding in its place ''January 1, 2017.[2]'', in row 15, ''Small Commercial Package Air-Conditioning and Heating Equipment (Air-Cooled, 3-Phase, Single-Package)'', in Table 3 to paragraph (b) under the column heading, ''Compliance date: Equipment manufactured starting on . . .'';

■ g. Removing ''January 1, 2017.'' and adding in its place ''January 1, 2017.2'', in row 16, ''Small Commercial Package Air-Conditioning and Heating Equipment (Air-Cooled, 3-Phase, Single-Package)'', in Table 3 to paragraph (b) under the column heading, ''Compliance date: Equipment manufactured starting on . . .'';

■ h. Adding, immediately following footnote 1 below Table 3 to paragraph (b), ''[2] And manufactured before January 1, 2025. For equipment manufactured on or after January 1, 2025, see Table 14 to paragraph (g) of this section for updated efficiency standards.'';

■ i. Removing ''January 1, 2017.'' and adding in its place ''January 1, 2017.3'', in row 1, ''Small Commercial Package Air Conditioning and Heating Equipment (Air-Cooled, 3-Phase, Split-System)'', in Table 4 to paragraph (b) under the column heading, ''Compliance date: Equipment manufactured starting on . . .'';

■ j. Removing the words ''January 1, 2017.'' and adding in its place ''January 1, 2017.[3]'', in row 2, ''Small Commercial Package Air Conditioning and Heating Equipment (Air-Cooled, 3-Phase, Single Package)'', in Table 4 to paragraph (b) under the column heading, ''Compliance date: Equipment manufactured starting on . . .'';

■ k. Adding, immediately following footnote 2 below Table 4 to paragraph (b), ''[3] And manufactured before January 1, 2025. For equipment manufactured on or after January 1, 2025, see Table 14 to paragraph (g) of this section for updated efficiency standards.'';

■ l. Removing ''June 16, 2008.'' and adding in its place ''June 16, 2008.[2]'', in rows 1, VRF Multi-Split Air Conditioners (Air-Cooled)'', and 7, ''VRF Multi-Split Heat Pumps (Air-Cooled)'', of Table 13 to paragraph (f) under the column heading: ''Compliance date: Products manufactured on and after . . .'';

■ m. Adding, immediately following footnote 1 below Table 13 to paragraph (f), ''[2] And manufactured before January 1, 2025. For equipment manufactured on or after January 1, 2025, see Table 14 to paragraph (g) of this section for updated efficiency standards.''; and

■ n. Adding a new paragraph (g) and Table 14 to read as follows:

**§ 431.97 Energy efficiency standards and their compliance dates.**

* * * * *

(g) Each air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase variable refrigerant flow multi-split air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h manufactured on or after January 1, 2025, or if certifying to SEER2/HSPF2, must meet the applicable minimum energy efficiency standard level(s) set forth in Table 14 of this section.

TABLE 14 TO § 431.97—UPDATED MINIMUM EFFICIENCY STANDARDS FOR AIR-COOLED, THREE-PHASE, SMALL COMMERCIAL PACKAGE AIR CONDITIONING AND HEATING EQUIPMENT WITH A COOLING CAPACITY OF LESS THAN 65,000 BTU/H AND AIR-COOLED, THREE-PHASE, SMALL VARIABLE REFRIGERANT FLOW MULTI-SPLIT AIR CONDITIONING AND HEATING EQUIPMENT WITH A COOLING CAPACITY OF LESS THAN 65,000 BTU/H

| Equipment type | Size category (cooling) | Subcategory | Minimum efficiency |
|---|---|---|---|
| Air Conditioners | <65,000 Btu/h | Split-System | 13.4 SEER2. |
| | | Single-Package | 13.4 SEER2. |
| Heat Pumps | <65,000 Btu/h | Split-System | 14.3 SEER2. 7.5 HSPF2. |
| | | Single-Package | 13.4 SEER2. 6.7 HSPF2. |
| Space-Constrained Air Conditioners | ≤30,000 Btu/h | Split-System | 12.7 SEER2. |
| | | Single-Package | 13.9 SEER2. |
| Space-Constrained Heat Pumps | ≤30,000 Btu/h | Split-System | 13.9 SEER2. 7.0 HSPF2. |
| | | Single-Package | 13.9 SEER2. 6.7 HSPF2. |
| Small-Duct, High-Velocity Air Conditioners | <65,000 Btu/h | Split-System | 13.0 SEER2. |
| Small-Duct, High-Velocity Heat Pumps | <65,000 Btu/h | Split-System | 14.0 SEER2. 6.9 HSPF2. |
| VRF Air Conditioners | <65,000 Btu/h | | 13.0 SEER2. |

TABLE 14 TO § 431.97—UPDATED MINIMUM EFFICIENCY STANDARDS FOR AIR-COOLED, THREE-PHASE, SMALL COMMERCIAL PACKAGE AIR CONDITIONING AND HEATING EQUIPMENT WITH A COOLING CAPACITY OF LESS THAN—Continued 65,000 BTU/H AND AIR-COOLED, THREE-PHASE, SMALL VARIABLE REFRIGERANT FLOW MULTI-SPLIT AIR CONDITIONING AND HEATING EQUIPMENT WITH A COOLING CAPACITY OF LESS THAN 65,000 BTU/H

| Equipment type | Size category (cooling) | Subcategory | Minimum efficiency |
|---|---|---|---|
| VRF Heat Pumps | <65,000 Btu/h | | 13.0 SEER2.<br>6.5 HSPF2. |

[FR Doc. 2022–06450 Filed 3–29–22; 8:45 am]
**BILLING CODE 6450–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 240 and 242

**[Release No. 34–94499; File No. S7–11–22]**

**RIN 3235–AL14**

### Removal of References to Credit Ratings From Regulation M

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') is re-proposing amendments to remove the references to credit ratings included in certain Commission rules. The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), among other things, requires the Commission to remove any references to credit ratings from its regulations. In one rule governing the activity of distribution participants, the Commission is proposing to remove the reference to credit ratings, substitute alternative measures of credit-worthiness, and impose related recordkeeping obligations in certain instances. In another rule governing the activity of issuers and selling security holders during a distribution, the Commission is proposing to eliminate the exception for investment-grade nonconvertible debt, nonconvertible preferred securities, and asset-backed securities.

**DATES:** Comments should be received on or before May 23, 2022.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/submitcomments.htm*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–11–22 on the subject line; or

*Paper Comments*

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–11–22. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (*http://www.sec.gov/rules/proposed.shtml*). Comments are also 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 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

**FOR FURTHER INFORMATION CONTACT:** John Guidroz, Branch Chief, Laura Gold, Special Counsel, Jessica Kloss, Attorney-Adviser, or Josephine Tao, Assistant Director, in the Office of Trading Practices, at (202) 551–5777, Division of Trading and Markets, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing to amend the existing exceptions found in 17 CFR 242.101 (''Rule 101'') and 17 CFR 242.102 (''Rule 102'') for investment-grade nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities. Specifically, the Commission is proposing to remove the requirement to qualify for the exception in each of these rules that these securities be rated investment grade by at least one nationally recognized statistical rating organization (''NRSRO''). In its place, in Rule 101, the Commission proposes to except (1) nonconvertible debt securities and nonconvertible preferred securities (collectively, ''Nonconvertible Securities'') that meet a specified probability of default threshold, and (2) asset-backed securities that are offered pursuant to an effective shelf registration statement filed on the Commission's Form SF–3. In addition, the Commission is proposing to eliminate the existing exception in Rule 102 for investment-grade Nonconvertible Securities, and asset-backed securities. The Commission is also proposing amendments to 17 CFR 240.17a–4(b) (''Rule 17a–4(b)'') under the Securities Exchange Act of 1934 (''Exchange Act'') to require broker-dealers to maintain the written probability of default determination.

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## I. Background

Title IX, Subtitle C, of the Dodd-Frank Act includes provisions regarding statutory and regulatory references to credit ratings in the Exchange Act and the rules promulgated thereunder.[1] One such provision, Section 939A, requires the Commission to ''review any regulation issued by [the Commission] that requires the use of an assessment of the credit-worthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings.'' [2] Upon completion of this review, the Commission must ''remove any reference to or requirement of reliance on credit ratings'' and ''substitute in such regulations such standard of credit-worthiness'' as the Commission determines to be appropriate for such regulations. In making such a determination, the Commission shall seek to establish, to the extent feasible, uniform standards of credit-worthiness for use by the Commission, taking into account the entities it regulates and the purposes for which such entities would rely on such standards of credit-worthiness.[3] The statute also requires the Commission to transmit a report to Congress upon the conclusion of the review required in Section 939A(a).[4]

In reference to the requirements in Section 939A, the Commission is proposing amendments to Rule 101 and Rule 102 to remove the existing exceptions for nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities, that are rated by at least one NRSRO, as that term is used in Rule 15c3–1 under the Exchange Act,[5] in one of its generic rating categories that signifies investment grade.[6] Throughout this release, this exception referencing an investment grade rating is referred to as the ''Investment Grade Exception,'' or the ''Investment Grade Exceptions'' when referencing the exception provided in Rule 101 and Rule 102 or the rules collectively, as applicable. In place of the Investment Grade Exception in Rule 101, the Commission proposes to substitute alternative standards of credit-worthiness with respect to the type of security that is the subject of a distribution. First, for distributions of Nonconvertible Securities, the Commission is proposing a standard that is based on the probability of default of the issuer.[7] Second, for distributions of asset-backed securities, the Commission is proposing to except asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3. Finally, the Commission is proposing to eliminate the Investment Grade Exception in Rule 102 and not replace it with an alternative standard.

As a set of prophylactic anti-manipulation rules, Regulation M is designed to preserve the integrity of the securities trading markets as independent pricing mechanisms by prohibiting activities that could artificially influence the market for an offered security. Subject to exceptions, Rules 101 and 102 prohibit issuers, selling security holders, distribution participants,[8] and any of their affiliated purchasers[9] from, directly or indirectly, bidding for, purchasing, or attempting to induce another person to bid for or purchase a covered security[10] during a specified period referred to as the ''restricted period.'' [11]

The Investment Grade Exceptions are two of several exceptions to the general prohibitions of Rules 101 and 102. The Commission expressed its belief that certain securities and activities should be excepted from the prohibitions in order to allow for activities necessary for the distribution to occur; to limit adverse effects to the trading market that could result from these prohibitions absent such exceptions; and to allow conduct that is not likely to have a manipulative impact.[12] The Commission did not except other securities and activities, however, expressing a belief that the application of Regulation M is appropriate ''where the incentive to manipulate can escalate.'' [13] The securities and activities exceptions provided in Regulation M take into account the different types of interests that distribution participants, issuers, and selling security holders have regarding the outcome of a distribution by providing different and limited exceptions in Rule 102 to issuers and

[1] *See* Public Law 111–203 secs. 931–939H, 124 Stat. 1376, 1872–90 (2010). These provisions are designed ''[t]o reduce the reliance on ratings.'' Joint Explanatory Statement of the Committee of Conference, Conference Committee Report No. 111–517, to accompany H.R. 4173, 864–79, 870 (June 29, 2010).

[2] Public Law 111–203 sec. 939A(a); *see infra* note 4.

[3] *See id.* at sec. 939A(b).

[4] *Id.* at sec. 939A(c); *see* U.S. Securities and Exchange Commission Staff, Report on Review of Reliance on Credit Ratings: As Required by Section 939A(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2011), *available at https://www.sec.gov/news/studies/2011/939astudy.pdf.* Staff reports, Investor Bulletins, and other staff documents (including those cited herein) represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of these documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person.

[5] 17 CFR 240.15c3–1. In 1975, the Commission adopted the term NRSRO as part of its amendments to Exchange Act Rule 15c3–1. In 2013, pursuant to Section 939A of the Dodd-Frank Act, the Commission adopted amendments to Rule 15c3–1 to remove the reference to NRSROs. *See Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934*, Release No. 34–71194 (Dec. 27, 2013) [79 FR 1522, 1527–28 (Jan. 8, 2014)].

[6] *See* 17 CFR 242.101(c)(2), 17 CFR 242.102(d)(2).

[7] To assist the Commission in conducting effective examinations and oversight of distribution participants and their affiliated purchasers, the Commission is also requiring the maintenance and preservation of the written probability of default determination. *See infra* Part V.

[8] *See* 17 CFR 242.100 (''Rule 100'') (defining ''distribution participant'' as any ''underwriter, prospective underwriter, broker, dealer, or other person who has agreed to participate or is participating in a distribution'').

[9] Specifically, Rule 101 governs the activities of ''distribution participants,'' while Rule 102 governs the activities of the issuer and selling security holders. Rules 101 and 102 also apply to the affiliated purchasers of underwriters and issuers or selling security holders, respectively.

[10] *See* 17 CFR 242.100 (defining ''covered security'' as any security that is the subject of a distribution or any reference security, and ''reference security'' as a security into which a security that is the subject of a distribution may be converted, exchanged, or exercised or which, under the terms of the subject security, may in whole or in significant part determine the value of the subject security).

[11] The restricted period for any particular distribution commences one or five business days before the day of the pricing of the offered security and continues until the distribution is complete. The restricted period that applies to a particular offering is determined based on the trading volume value of the offered security and the public float value of the issuer. *See* Rule 100. A person determines when it completes its participation in the distribution based on its role. *See* Rule 100; *Anti-Manipulation Rules Concerning Securities Offerings*, Release No. 34–38067 (Dec. 20, 1996) [62 FR 520, 522 (Jan. 3 1997)] (''Regulation M Adopting Release''). In addition, securities acquired in the distribution for investment purposes by any person participating in a distribution, or any affiliated purchaser of such person, are deemed to be distributed. Rule 100; Regulation M Adopting Release, 62 FR 523.

[12] *See Trading Practices Rules Concerning Securities Offerings*, Release No. 33–7282 (Apr. 11, 1996) [61 FR 17108, 17111, 17120 (Apr. 18, 1996)] (''Regulation M Proposing Release'').

[13] Regulation M Adopting Release, 62 FR 528. The Commission also stated more generally that Regulation M applies where there is a ''readily identifiable incentive to manipulate the price of an offered security.'' *Id.* at 540.

selling security holders.[14] Rule 102 contains fewer exceptions than Rule 101 because issuers and selling security holders have the greatest interest in an offering's outcome and generally do not have the same market access needs as underwriters.[15]

## II. Prior Proposals To Remove References to Credit Ratings in Regulation M

The Commission has previously proposed two alternatives with respect to the Investment Grade Exceptions, once in 2008 (''2008 Proposal'') [16] and once in 2011 (''2011 Proposal'').[17] The Commission did not adopt any rules based on the 2008 Proposal or the 2011 Proposal.[18]

### *A. 2008 Proposal*

In 2008, prior to the enactment of the Dodd-Frank Act, the Commission proposed to substitute the Investment Grade Exceptions with a standard for Nonconvertible Securities based primarily on the well-known seasoned issuers (''WKSI'') concept from Rule 405 of the Securities Act of 1933 (''Securities Act''), as well as a standard for asset-backed securities that were registered on Form S–3.[19] Commenters expressed uniform opposition to the 2008 Proposal.[20] Many of these commenters stated their view that changes to the Regulation M exceptions, such as those in the 2008 Proposal, were not necessary as the Regulation M exceptions did not raise the same concerns about investors' undue reliance on credit ratings as other rules could.[21] Commenters also stated that a result of the 2008 Proposal would be new burdens on issuers and underwriters from imposing the restrictions of Regulation M on currently excepted investment grade securities.[22] Additionally, commenters expressed the view that certain issuers of high yield securities that are currently subject to Regulation M, but are arguably more vulnerable to manipulation than securities currently excepted from Regulation M, would have been excepted from Rules 101 and 102.[23] These commenters generally did not suggest specific alternatives to the proposed rule changes.[24]

In 2009, in light of the uniform opposition by commenters and continuing concern regarding the undue influence of credit ratings, the Commission reopened the comment period for the 2008 Proposal and invited comments suggesting alternative proposals to achieve the Commission's goals.[25] The Commission received three additional comment letters. Of these, two reiterated earlier objections,[26] and the third stated that the 2008 Proposal would have resulted in adverse effects on foreign sovereign issuers of debt securities.[27] Although the Commission invited commenters to suggest alternative proposals, no new alternatives were suggested.[28] As noted above, the Commission did not adopt any rules based on the 2008 Proposal.

### *B. 2011 Proposal*

In 2011, after the Dodd-Frank Act was signed into law, the Commission issued a different proposal, which would have replaced the Investment Grade Exceptions with a standard based on the trading characteristics that the Commission believed made the exceptions apply to securities that were less prone to the type of manipulation that Regulation M seeks to prevent. The 2011 Proposal would have replaced the Investment Grade Exceptions with an exception for Nonconvertible Securities and asset-backed securities that (1) were liquid relative to the market for that asset class, (2) traded in relation to general market interest rates and yield spreads, and (3) were relatively fungible with securities of similar characteristics and interest rate yield spreads.[29] The 2011 Proposal would have required the person seeking to rely on the exception to make the determination that the security in question met these standards utilizing reasonable factors of evaluation. Further, this determination would have been required to be subsequently verified by an independent third party.[30]

Almost all commenters expressed concerns about aspects of the 2011 Proposal.[31] For example, commenters generally had concerns regarding the practicality of the 2011 Proposal. More specifically, there were concerns that, because of the forward-looking and subjective nature of the proposed standards in this release, it would be impractical to make consistent determinations among market participants, even in the same distributions.[32] Many commenters

[14] *See* Regulation M Adopting Release, 62 FR 530.

[15] *Id.*

[16] *References to Ratings of Nationally Recognized Statistical Rating Organizations*, Release No. 34–58070 (July 1, 2008) [73 FR 40088, 40095–97 (July 11, 2008)] (''2008 Proposing Release'').

[17] *Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934*, Release No. 34–64352 (Apr. 27, 2011) [76 FR 26550 (May 6, 2011)] (''2011 Proposing Release'').

[18] *See Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934*, Release No. 34–71194 (Dec. 27, 2013) [79 FR 1522 (Jan. 8, 2014)].

[19] 2008 Proposing Release, 73 FR 40095–97. More specifically, the 2008 Proposal—consistent with the definition of WKSI in Securities Act Rule 405—would have excepted Nonconvertible Securities of issuers who have issued at least $1 billion aggregate principal amount of nonconvertible securities, other than common equity, in primary offerings for cash, not exchange, registered under the Securities Act. *See* 17 CFR 230.405, paragraph (1)(i)(B)(1) of the definition of WKSI; *see also* 2008 Proposing Release, 73 FR 40096.

[20] *See* 2011 Proposing Release at 26559 (discussing commenter views about the 2008 Proposal). Comments received in response to the 2008 Proposal are contained in File No. S7–17–08, *available at https://www.sec.gov/comments/s7-17-08/s71708.shtml.* Comments that were received in response to the 2008 Proposal that are relevant to the substance or scope of the amendments being proposed in this release and are discussed below in Part IV. Comments that were received in response to the 2008 Proposal that are relevant to the economic effects of the amendments being proposed in this release and are discussed below in Part VIII.

[21] *See, e.g.,* Letter from Deborah A. Cunningham and Boyce I. Greer, Co-chairs, Securities Industry and Financial Markets Association (''SIFMA'') Credit Rating Agency Task Force, to Florence E. Harmon, Acting Secretary (Sep. 4, 2008) (''SIFMA Letter 1'') at 14 (''Regulation M is primarily directed at the actions of the issuers of securities and the investment banks who underwrite them; in contrast, the investors that the Commission is concerned with are not users of Regulation M.'').

[22] Letter from Keith F. Higgins, Chair, Committee on Federal Regulation of Securities, American Bar Association (''ABA''), to Florence E. Harmon, Acting Secretary (Oct. 10, 2008) (''ABA Letter'') and SIFMA Letter 1 at 13.

[23] ABA Letter at 16 and SIFMA Letter 1 at 13.

[24] The ABA did, however, suggest that should the Commission insist on using the WKSI standard for investment grade Nonconvertible Securities, it do so only as an alternative to the current exceptions in Rules 101(c)(2) and 102(d)(2). ABA Letter at 17. However, the ABA expressed its ''strong[ ] belie[f] that the Commission should retain the current exceptions.'' *Id.* at 16.

[25] *References to Ratings of Nationally Recognized Statistical Rating Organizations*, Release No. 34–60790 (Oct. 5, 2009) [74 FR 52374, 52375 (Oct. 9, 2009)].

[26] Letter from Mary Keogh, Managing Director, Regulatory Affairs and Daniel Curry, President, DBRS, Inc., to Elizabeth M. Murphy, Secretary (Nov. 13, 2009); Letter from Sean C. Davy, Managing Director, Corporate Credit Markets Division, SIFMA, to Elizabeth M. Murphy, Secretary (Dec. 8, 2009).

[27] Letter from Steven G. Tepper, Arnold & Porter LLP, to the Honorable Mary L. Schapiro, Chairman (Dec. 8, 2009) (''Arnold & Porter Letter'').

[28] *See* 2011 Proposing Release, 76 FR 26559.

[29] 2011 Proposing Release, 76 FR 26559.

[30] *Id.* at 26560.

[31] Comments received in response to the 2011 Proposal are contained in File No. S7–15–11, *available at https://www.sec.gov/comments/s7-15-11/s71511.shtml.* Comments that were received in response to the 2011 Proposal that are relevant to the substance or scope of the amendments being proposed in this release are discussed below, in Part IV. Comments that were received in response to the 2011 Proposal that are relevant to the economic effects of the amendments being proposed in this release are discussed below, in Part VIII. One commenter expressed complete support for the 2011 Proposal. *See* Letter from Kurt N. Schacht, Managing Director, Standards and Financial Markets Integrity, and Linda L. Rittenhouse, Director, Capital Markets Policy, CFA Institute to Elizabeth M. Murphy, Secretary (Dec. 20, 2011) (''CFA Letter'').

[32] Letter from Sullivan & Cromwell LLP to Elizabeth M. Murphy, Secretary (July 5, 2011)

contrasted these issues with the fact that using credit ratings under the existing standard establishes a bright-line for market participants.[33] Many commenters also stated that the 2011 Proposal would have added costs and delays to the offering process.[34]

One commenter suggested that the risk of manipulation is low for the securities at issue.[35] Another said that the 2011 Proposal was contrary to the approach in Regulation M in general and the exceptions specifically, which was to focus the restrictions of the regulation on those circumstances where the chance for manipulation was heightened,[36] though others disagreed.[37] One commenter suggested that all fixed income securities be excepted from Rules 101 and 102.[38] One commenter believed that the 2011 Proposal would have excluded some investment grade securities, changing the scope of the exception.[39]

Commenters also suggested that unintended consequences could have resulted from the 2011 Proposal. Some suggested that, in light of the fact that transactions in Rule 144A securities are generally excepted from Rules 101 and 102,[40] the lack of a bright-line could have reduced the attractiveness of registered offerings because of the complications in using the exceptions from Regulation M as changed by the 2011 Proposal.[41] However, one of these commenters agreed with the Commission's assessment that the ''impact of the change should not be substantial.'' [42]

Some commenters questioned whether Section 939A of the Dodd-Frank Act requires that the Commission change Regulation M at all,[43] whereas others suggested that the proposal did not go far enough to comply with that section.[44] One commenter suggested that the Commission adopt amendments similar to those included in the 2008 Proposal in response to the 2011 Proposal in light of the apparent mandate of 939A to not retain the status-quo.[45] This commenter noted that it preferred a proposal that utilized an objective, bright-line standard.[46] As noted above, the Commission did not adopt any rules based on the 2011 Proposal.

## III. Application of Regulation M to Distributions of Nonconvertible Securities and Asset-Backed Securities

The application of Regulation M's prohibitions to distributions of Nonconvertible Securities and asset-backed securities generally is limited because distribution participants and affiliated purchasers are restricted only from bidding for or purchasing securities that are identical in all of their terms to the security being distributed.[47] In other words, the restrictions do not apply for a security if there is a single basis point difference in coupon rates or a single day's difference in maturity dates from the security in distribution.[48]

The Investment Grade Exceptions trace back to a 1975 no-action position taken by Commission staff regarding former Exchange Act Rule 10b–6, the predecessor to Rules 101 and 102.[49] This no-action letter was premised on the principle that investment grade Nonconvertible Securities and asset-backed securities are less likely to be subject to manipulation because they are traded on the basis of their yields and credit ratings rather than the identity of the particular issuer.[50] This reasoning served as the basis for the Commission's adoption of the

(''Sullivan & Cromwell Letter'') at 3; *see also* Letter from Suzanne Rothwell, Managing Member, Rothwell Consulting LLC to Elizabeth M. Murphy, Secretary (July 5, 2011) (''Rothwell Letter'') at 6–7 and Letter from Kenneth E. Bensten, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA to Elizabeth M. Murphy, Secretary (July 5, 2011) (''SIFMA Letter 3'') at 3–10. SIFMA Letter 3 stated that this could lead to market participants being overly conservative in their analysis in fear of other distribution participants taking more negative views of the security or being overly optimistic regarding the security in order to gain a competitive advantage, leaving the application of the exceptions to something other than whether the security is less susceptible to manipulation. *See* SIFMA Letter 3 at 7.

[33] Letter from Davis Polk & Wardwell LLP to Elizabeth M. Murphy, Secretary (July 5, 2011) (''Davis Polk Letter'') at 2; Rothwell Letter at 7; Sullivan & Cromwell Letter at 3; SIFMA Letter 3 at 3; *see also* Letter from Dennis M. Kelleher, President & CEO, and Stephen W. Hall, Securities Specialist, Better Markets, Inc., to Elizabeth M. Murphy, Secretary (July 5, 2011) (''Better Markets Letter'') at 5 (arguing for bright-line standards to ensure that manipulation does not occur). Some commenters also pointed to the success of the references to credit ratings in the current exceptions at creating workable exceptions to Regulation M. *See* Rothwell Letter at 2; Sullivan & Cromwell Letter at 3.

[34] Davis Polk Letter at 3; Rothwell Letter at 7; Sullivan & Cromwell Letter at 4; SIFMA Letter 3 at 7.

[35] Davis Polk Letter at 1.

[36] Davis Polk Letter at 1; SIFMA Letter 3.

[37] Sullivan & Cromwell Letter at 2 (stating that ''[a]s a purely conceptual matter, we think the new standard is logical and consistent with the principles underlying Regulation M, as they have been developed over time''); CFA Letter at 6–7 (stating that ''the exemptions . . . appear to be reasonably focused at preventing the types of manipulation that the regulation seeks to deter'').

[38] This commenter said that the rationale for the exceptions for investment grade fixed income securities applies equally to non-investment grade fixed income securities. SIFMA Letter 3 at 14.

[39] Davis Polk Letter at 4.

[40] *See, e.g.,* 17 CFR 242.101(b)(10).

[41] Sullivan & Cromwell Letter at 4–5; SIFMA Letter 3 at 4.

[42] Sullivan & Cromwell Letter at 2. However, this commenter also stated that it did not ''perceive any real purpose being served by this proposed change'' and while the change would not be substantial, ''that is not a good reason to make it.'' *Id.* It also described the potential impact of the proposal on distributions that are not completed immediately after pricing. *Id.* at 3–5.

[43] For example, commenters who questioned the need for the changes pointed out that the underlying concern with Section 939A, that market participants had become overly reliant on credit ratings as a substitute for their own credit analysis, was not present in the Regulation M exceptions at issue because Regulation M regulates trading practices. *See* Rothwell Letter at 4; Sullivan & Cromwell Letter at 3. One of these commenters also stated that, because the credit rating process has been improved by regulatory changes in recent years, including the Credit Rating Agency Reform Act of 2006, the Commission did not need the 2011 Proposal. *See* Rothwell Letter at 4.

[44] *See* SIFMA Letter 3 at 4 (suggesting adopting a modified version of the 2008 Proposal ''now that the Dodd-Frank Act *requires removal* of references to credit ratings'') (emphasis added); *see also* Letter from Chris Barnard to Elizabeth M. Murphy, Secretary (June 6, 2011); Better Markets Letter at 13 (questioning whether the 2011 Proposal offered a sufficient ''standard of credit-worthiness'' as required in Section 939A).

[45] SIFMA Letter 3 at 7–8.

[46] SIFMA Letter 3 at 9; Letter from Sean C. Davy, Managing Director, Corporate Credit Markets Division, SIFMA, to Elizabeth M. Murphy, Secretary (Jan. 24, 2014) at 3.

[47] Regulation M Adopting Release, 62 FR 524.

[48] To illustrate with a simple example, absent an exception, a broker-dealer who is participating in a distribution of XYZ Corp.'s 3% bonds maturing 12/31/2029 would be prohibited from making a market in bonds with those terms prior to completing the distribution. The broker-dealer would not, however, be prohibited from making a market in XYZ Corp.'s 3% bonds maturing 12/31/2030 because the date of maturity, a term of the bond, is different from the security in distribution.

[49] For a discussion of why the Commission considered replacing former Exchange Act Rule 10b–6 (and other predecessor trading practices rules) with Regulation M, see *Review of Antimanipulation Regulation of Securities Offerings,* Release No. 34–33924 (Apr. 19, 1994) [59 FR 21681 (Apr. 26, 1994)].

[50] Letter from Robert C. Lewis, Associate Director, Division of Market Regulation, to Donald M. Feuerstein, General Partner and Counsel, Salomon Brothers (Mar. 4, 1975). The request letter to the staff states that debt securities ''are merely a right to receive a fixed amount of money no later than a specified future date, and the issuer's prospects are relevant only insofar as they reflect on its ability to meet its obligations to the debtholders. Thus, nonconvertible debt securities with similar economic terms and similar degrees of assurance of payment are substantially fungible even though their issuers may be different. The economic terms of particular debt issues are susceptible to precise comparison, particularly when mathematically translated into yield to maturity, average life or call. Although the degree of assurance of payment cannot be precisely quantified, debt investors are not influenced by many developments in the issuer's affairs that are material to equity investors. . . . Thus the identity of the issuers of corporate bonds with similar risk factors is not important in the analysis of fixed income securities.''

Investment Grade Exceptions in Regulation M[51] and continues to serve in part as the basis for the proposed amendments to Rule 101.

While the Commission carried over its reasoning from former Exchange Act Rule 10b–6 to serve as the premise of the Investment Grade Exceptions, it did not adopt the former rule's broad application. In contrast to Regulation M's limited applicability only to distributions of securities that have identical terms, former Exchange Act Rule 10b–6 applied to distributions of ''any security of the same class and series.''[52] The phrase ''same class and series'' was construed broadly to encompass securities that were sufficiently similar in their terms to the security in a distribution to raise the possibility that bids for or purchases of the outstanding security might facilitate the distribution, even in the absence of an inherent mathematical relationship between the prices of the two securities.[53]

Accordingly, some commenters responding to the 2008 Proposal and the 2011 Proposal stated that reliance on the Investment Grade Exceptions largely is limited to two situations. The first situation is a so-called ''reopening,'' which is an offering of an additional principal amount of fixed-income securities that are identical to, and fungible with, the securities that are already outstanding.[54] One commenter stated that an issuer may want to make a series of offerings of its fixed-income securities via a reopening to match its funding needs or the desires of its target investor class.[55] Further, some foreign sovereign issuers may conduct a reopening for public finance purposes.[56] The second situation identified by commenters is a so-called ''sticky offering,'' which is an offering where a lack of demand results in an underwriter being unable to sell all of the securities in a distribution.[57] One commenter stated that an investor failing to honor a previously given indication of interest is an example of a situation that can cause a sticky offering.[58] Another example provided by a commenter is a ''best-efforts'' offering.[59]

One commenter noted that, absent the Investment Grade Exceptions, underwriters would be prohibited from making a market in the distribution securities while the distribution continued.[60] The implication of this is that underwriters would have to ''weigh (a) the risk of . . . a continuing distribution occurring, against (b) the possible disruptive effect of having no underwriters making a market in the immediate post-pricing period.''[61] Another commenter identified that the absence of an Investment Grade Exception from Rule 102 would disrupt the ability of foreign sovereign issuers and their affiliates to purchase any of the issuer's securities in connection with the sovereign issuer's own general trading and investment activities, or for other public purposes, during the applicable restricted period.[62]

## IV. Proposed Amendments to Rules 101 and 102 To Remove References to Credit Ratings

As discussed below, the Commission is proposing to eliminate the Investment Grade Exceptions from both Rules 101 and 102. The Commission is proposing to replace the Investment Grade Exception in Rule 101 with two separate exceptions based on different standards: (1) With respect to Nonconvertible Securities, an exception that is based on a probability of default standard as an indicator of credit-worthiness, and (2) an exception for asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3.

### *A. Rule 101*

#### 1. Excepted Securities: Nonconvertible Securities

With respect to Nonconvertible Securities, the Commission is proposing to replace the NRSRO reference currently included in Rule 101(c)(2) with a standard utilizing a specified probability of default threshold based on certain structural credit risk models (''Structural Credit Risk Models'').[63]

##### (a) Existing Exception for Investment Grade Nonconvertible Securities

As discussed above, Rule 101(c)(2) currently provides an exception for Nonconvertible Securities that are rated by at least one NRSRO in one of its generic rating categories that signifies investment grade. The Commission excepted investment grade Nonconvertible Securities from Rule 101 ''based on the premise that these securities traded on the basis of their yield and credit ratings, are largely fungible and, therefore, are less likely to be subject to manipulation.''[64]

##### (b) Overview of Structural Credit Risk Models

In 1974, Robert C. Merton published a paper that provided a method, based on the Black-Scholes option pricing model,[65] of analyzing a company's credit risk by modeling a company's equity as a call option on the company's assets (''Merton (1974) Model''), which is generally regarded as the first Structural Credit Risk Model.[66] Since 1974, Structural Credit Risk Models, such as the Merton (1974) Model and

[51] *See* Regulation M Adopting Release, 62 FR 527.

[52] Former Exchange Act Rule 10b–6(a)(3).

[53] *See Review of Antimanipulation Regulation of Securities Offerings,* Release No. 34–33924 (Apr. 19, 1994) [59 FR 21681, 21688 (Apr. 26, 1994)]; *see also* Gamble Skogmo, Inc., SEC No-Action Letter, (Jan. 11, 1974), in which the staff took a no-action position to permit bids for or purchases of the issuer's outstanding debt securities that varied by at least 1% in coupon interest rate and by at least ten years in maturity from those of the debt securities being distributed.

[54] *See* SIFMA Letter 3 at 6.

[55] *Id.*

[56] *See* Arnold & Porter Letter at 2–3.

[57] Sullivan & Cromwell Letter at 4. The Commission also indicated that a sticky offering could be a circumstance in which Regulation M would impact debt securities, stating its belief that ''as a practical matter, Rule 101 and Rule 102 will have very limited impact on debt securities, except for the rare situations where selling efforts continue over a period of time.'' Regulation M Adopting Release, 62 FR 528.

[58] Sullivan & Cromwell Letter at 4.

[59] Rothwell Letter at 9. In a best-efforts offering, the underwriters are not required to sell any specific number or dollar amount of securities but will use their best efforts to sell the securities offered. *See Plain English Disclosure,* Release No. 34–38164, (Jan. 14, 1997) [62 FR 3152 (Jan. 21, 1997)].

[60] Sullivan and Cromwell Letter at 4.

[61] *Id.* (discussing the alternative to following the steps required for an underwriter to determine the availability of the exception from Regulation M under the 2011 Proposal).

[62] Arnold & Porter Letter at 3.

[63] As discussed below, the term ''structural credit risk model'' for purposes of the proposed exception in Rule 101(c)(2)(i) shall mean any commercially or publicly available model that calculates the probability that the value of the issuer may fall below a threshold based on an issuer's balance sheet.

[64] Regulation M Adopting Release, 62 FR 527.

[65] Fischer Black & Myron Scholes, *The Pricing of Options and Corporate Liabilities*, 81 J. Pol. Econ. 637, 637–54 (1973). The Black-Scholes option pricing model is used to determine the fair price or theoretical value for a call or put option based on a number of variables, including the volatility and price of the underlying stock, the type of option, time, the option's strike price, and the risk-free rate.

[66] Robert C. Merton, *On the Pricing of Corporate Debt: The Risk Structure of Interest Rates*, 29 J. Fin. 449, 449–70 (1974). The Merton (1974) Model has been expanded upon and used to develop new Structural Credit Risk Models that rely on its principles (''Successor Models''), such as the Black-Cox (1976) model and the Leland (1994) model. *See, e.g.,* Suresh Sundaresan, *A Review of Merton's Model of the Firm's Capital Structure with its Wide Applications*, 5 Ann. Rev. Fin. Econ. 21, 21–41 (2013); Fischer Black & John C. Cox, *Valuing Corporate Securities: Some Effects of Bond Indenture Provisions*, 31 J. Fin. 351, 351–67 (1976); *see also* Hayne E. Leland, *Corporate Debt Value, Bond Covenants, and Optimal Capital Structure*, 49 J. Fin. 1213, 1213–52 (1994).

the Successor Models, have become widely relied upon to determine the probability of an issuer defaulting on its loan obligations.[67] Many commercial data providers, as part of software suites that allow users to analyze securities, employ Structural Credit Risk Models as a way to measure the credit-worthiness of companies.[68] Generally, these models assume that owners of a company's equity will continue to pay the company's liabilities if the company's value exceeds its liabilities. Equivalently, if the equity owners were considered to own a call option on the value of the company with a strike price equivalent to the liabilities owed, the equity owners would exercise the call on the value of the company. If, however, the company's liabilities exceed the company's value, the models assume that the equity owners will choose to default on the company's liabilities, or equivalently, the equity owners would not exercise the call on the value of the company. Accordingly, Structural Credit Risk Models, such as the Merton (1974) Model and the Successor Models, provide a method to estimate the probability that a company might default on its liabilities based on the Black-Scholes option pricing model.

Structural Credit Risk Models typically use measures from firm accounting statements and firm-specific and aggregate market prices. Generally, Structural Credit Risk Models require input variables to calculate an estimated probability of default for a specified horizon, including market value and volatility of the assets, as well as assumptions regarding the threshold for firm asset values, below which the equity owner would default on its obligations (''Default Point'').[69] Structural Credit Risk Models provide a probability that a firm's assets will fall below the Default Point at or by the expiration of a defined period of time. Generally, the following variables are needed to calculate the probability of default: (1) The value of the firm, which can be based on observed market prices of a firm's equity security or estimated based on a firm's balance sheet; (2) the volatility of the firm's equity or assets, which can also be based on market observations or estimated based on a firm's balance sheet; (3) the risk-free rate; (4) a time horizon; and (5) the Default Point. Application of Structural Credit Risk Models may be limited in the absence of a market for a firm's equity securities if the market price of the firm's assets, which is required to calculate the probability of default, is difficult to determine.[70]

(c) Proposed Probability of Default Exception

As discussed above, Section 939A of the Dodd-Frank Act requires the Commission to remove any reference to or requirement of reliance on credit ratings, and to substitute in such regulations such standard of credit-worthiness as the Commission determines is appropriate for that regulation.[71] The Commission believes that credit-worthiness, which was the basis of the Investment Grade Exception for Nonconvertible Securities in Rule 101, is still appropriate to use as an exception to Rule 101.[72] Specifically, securities of issuers of a certain credit quality trade based on yield and credit-worthiness[73] and are less susceptible to manipulation because other similar Nonconvertible Securities are available to investors as an alternative to the security in distribution. If pricing of a Nonconvertible Security offering is inconsistent with pricing in the overall secondary market for similar Nonconvertible Securities, an investor may purchase alternative Nonconvertible Securities that have a better yield, yet are of comparable credit-worthiness, than the security being distributed. Accordingly, the ability to substitute similar Nonconvertible Securities in the market for the security in distribution limits the potential impact that a distribution participant might attempt to exert on the market and distribution of such security. Additionally, when debt has a very low probability of default, the cashflows are close to risk free. Thus, the price of the debt is mainly subject to fluctuations based on aggregate interest rates rather than firm-specific or security-specific news. Thus, Nonconvertible Securities of credit-worthy issuers are less susceptible to the type of manipulation that Rule 101 seeks to prevent.[74] Furthermore, as

[67] *See infra* Part VIII.B. For example, the Merton (1974) Model and the Successor Models are included in the curriculum for such credentials as the Chartered Financial Analyst. *See, e.g., Credit Analysis Models*, CFA Inst. (2022), *available at https://www.cfainstitute.org/en/membership/professional-development/refresher-readings/credit-analysis-models.*

[68] *See infra* note 84.

[69] The Default Point is frequently calculated as all short-term liabilities plus half of the long-term liabilities. *See* Mario Bondioli, Martin Goldberg, Nan Hu, Chengrui Li, Olfa Maalaoui, and Harvey J, Stein, *The Bloomberg Corporate Default Risk Model (DRSK) for Public Firms* (2021), *available at https://ssrn.com/abstract=3911300.*

[70] Structural Credit Risk Models calculate the probability of default based on inputs from an issuer's balance sheet. Transactions in equity securities are frequently used as a proxy to determine the value of the firm and the overall volatility of the issuer's assets in Structural Credit Risk Models. Even though a market for an issuer's equities may not exist, this alone does not preclude the ability for a distribution participant to use a Structural Credit Risk Model. Specifically, the issuer's balance sheet will include the liabilities, assets, and equity, which, with further analysis, can be used to determine the inputs for the models. Distribution participants, based on their activities as an underwriter, broker-dealer, or other person who has agreed to participate in a distribution, would have access to an issuer's balance sheet to calculate the probability of default.

[71] Although two commenters to the 2011 Proposal believed that Section 939A of the Dodd-Frank Act did not mandate the removal of credit rating references from Regulation M, the Commission believes that Section 939A of the Dodd-Frank Act requires the Commission to remove such references from Regulation M, without flexibility to retain the references, contrary to the suggestion made by these commenters. *See supra* note 43. Specifically, Section 939A of the Dodd-Frank Act requires the Commission to review ''any references to or requirements in such regulations regarding credit ratings'' and issue a report upon conclusion of the review. *See* Public Law 111–203 sec. 939A(a) and (c); *see supra* note 4. It then requires the Commission to ''remove *any reference to* or requirement of reliance on credit ratings, and to substitute in such regulations such standard of credit-worthiness'' as the Commission determines to be appropriate for such regulations. *See* Public Law 111–203 sec. 939A(b) (emphasis added). Accordingly, the Commission believes that it does not have discretion to retain the Investment Grade Exceptions provided in Rules 101 and 102.

[72] *See supra* note 50 and accompanying text. Sticky offerings of Nonconvertible Securities issued by credit-worthy issuers might indicate that a security is not trading based upon its yield or credit quality, due to some reason, despite the perceived credit-worthy nature of the issuer (based on a probability of default calculation or otherwise). As discussed below, a distribution participant should be able to find someone willing to purchase the Nonconvertible Securities of credit-worthy issuers because the securities would be trading based on their yield and price in relation to securities of similar credit-worthiness. The inability to sell securities of credit-worthy issuers could reflect, for example, a lag between the trading in the market for such Nonconvertible Securities and the credit rating, or more recent concerns related to the issuer of the securities reflected in the market but not yet absorbed in credit-worthiness assessments or inputs for such assessments. The Commission solicits comments below regarding this particular issue.

[73] Bonds trade among investors and dealers in secondary markets at prices that depend on economy-wide interest rates, as well as on market perceptions regarding the likelihood that the issuing company will make the promised payments. Hendrik Bessembinder & William Maxwell, *Markets: Transparency and the Corporate Bond Market*, 22 J. Econ. Persp. 217, 220 (2008).

[74] Some commenters to the 2008 Proposal, which would have replaced a credit-worthiness standard with a WKSI standard, believed that the 2008 Proposal would place burdens related to complying with Regulation M on issuers and underwriters who are currently able to rely on the Investment Grade Exceptions. The proposed exception using Structural Credit Risk Models, in contrast to the 2008 Proposal, continues to rely on the premise underlying the Investment Grade Exception—that certain Nonconvertible Securities trade based on their yield and credit-worthiness. Accordingly, similar to how the prohibitions related to Regulation M do not exist for securities that currently meet the Investment Grade Exception, the prohibitions associated with Rule 101 would not exist under the proposed exception for Nonconvertible Securities that trade based on their yield and credit-worthiness.

distribution participants have relied on the Investment Grade Exception, which is based on credit-worthiness, to facilitate orderly distributions of Nonconvertible Securities, the proposed exception has limited potential to disrupt the trading market for securities that have been the subject of a reopening.[75]

As discussed below in Part VIII.B, Structural Credit Risk Models calculate a probability of default that provides a measure of the credit-worthiness of an issuer of a Nonconvertible Security. The Commission preliminarily believes that the probability of default as calculated by Structural Credit Risk Models is an appropriate substitute as a standard of credit-worthiness in Rule 101(c)(2). In particular, the probability of default[76] as estimated by Structural Credit Risk Models is widely used by market and distribution participants to measure credit-worthiness of issuers.[77] As such, the Commission preliminarily believes that the use of Structural Credit Risk Models to determine credit-worthiness could be used as an alternative for Nonconvertible Securities with an investment grade rating for purposes of proposed Rule 101(c)(2)(i).[78]

The probability of default can be independently determined by Structural Credit Risk Models based on observable market events and information available on a firm's balance sheet without reliance on an investment grade credit rating by an NRSRO. Probability of default can be used to identify securities that trade based on their yield and high credit-worthiness, similar to the Nonconvertible Securities that are excepted based on the existing Investment Grade Exception, and thus would be less susceptible to the manipulation that Rule 101 is designed to prevent.

Commenters to the 2011 Proposal raised concerns regarding the 2011 Proposal that the Commission preliminarily believes are not present regarding Structural Credit Risk Models. For example, commenters were concerned that it would be impractical under the 2011 Proposal to make consistent determinations among market participants even in the same distributions and that the standard proposed in the 2011 Proposal is impractical, forward-looking, and subjective.[79] The Commission preliminarily believes the Structural Credit Risk Models can result in consistent determinations and can be replicated by distribution participants, particularly if distribution participants utilize the same model. Furthermore, the use of a bright-line test, such as a probability of default of 0.055% as discussed below, should address the concern of some commenters that the exception will impose new costs and delays in the offering process and reduce the attractiveness of registered offerings.[80] Whereas the 2011 Proposal depended on a distribution participant's subjective expectations about the future regarding how a security would trade in the market, the proposed standard specifically includes a 0.055% probability of default threshold. The Commission acknowledges that the complex nature of the models, assumptions, and estimated inputs used to estimate the probability of default may not be comparable across different issuers or if the estimates are done using different Structural Credit Risk Models, the results may not be comparable. The Commission, however, believes that the assumptions and estimates that are used to determine the probability of default using Structural Credit Risk Models are appropriately practical, as well as objective, and accordingly the proposed standard is not impractical or overly subjective. In particular, as noted throughout the release, market participants currently rely on Structural Credit Risk Models to assess the credit-worthiness of issuers.

Under the proposed amendment to Rule 101, the exception would be available to the Nonconvertible Securities of issuers for which the probability of default, estimated as of the day of the determination of the offering pricing and over the horizon of 12 calendar months[81] from such day, is less than 0.055%,[82] as determined and documented in writing[83] by the distribution participant using a Structural Credit Risk Model.[84] As discussed in Part VIII.B, based on an analysis of the probability of default and investment grade ratings of a sample of Nonconvertible Securities available on the market as of October 22, 2021, the Commission preliminary believes that a probability of default, estimated as of the day of the determination of the offering pricing and over the horizon of 12 calendar months from such day, that is less than 0.055%, as determined by a Structural Credit Risk Model, provides an appropriate substitute for investment grade ratings. Limiting the exception to issuers of Nonconvertible Securities that have a probability of default of less than 0.055% should limit the exception to Nonconvertible Securities that are less susceptible to the type of manipulation that Regulation M is designed to prevent.

Exceptions for investment grade rated Nonconvertible Securities existed in former Exchange Act Rule 10b–6, which preceded the adoption of Regulation M. As discussed above, Regulation M excepts securities based on their credit-worthiness as determined by an investment grade rating from a NRSRO. As noted by commenters to the 2008 Proposal and 2011 Proposal, the Investment Grade Exception has provided a bright-line test to identify securities that are less prone to the type of manipulation that Regulation M is designed to prevent.[85] The Commission preliminarily believes a standard utilizing a threshold derived from

[75] *See* Regulation M Proposing Release, 61 FR 17117 (stating reasons for the exceptions from Regulation M).

[76] The term ''probability of default'' as used in this release to describe the proposed requirement means the actual (or physical) probability, rather than the risk-neutral probability.

[77] *See supra* notes 65–68 and accompanying text; *see also infra* note 158. The Commission considered including reduced-form models in addition to Structural Credit Risk Models as part of the exception in Rule 101(c)(2)(i). Reduced-form models rely on statistical analysis rather than the balance sheet to determine a firm's creditworthiness. However, unlike Structural Credit Risk Models, they lack in rigorous theoretical justification as well as economic interpretation of the resulted relationships between the model inputs.

[78] Securities with low probability of default (by credit-worthy issuers) do not need to price default risk (because it is very low) and therefore trade based on other, observable characteristics, such as yields or maturity. This implies less price uncertainty, which leaves less room for manipulation of prices.

[79] *See supra* note 32.

[80] *See supra* note 41.

[81] The proposed exception would specify 12 calendar months to provide a uniform time horizon to use in the Structural Credit Risk Models to calculate the probability of default. The Commission preliminarily believes that 12 calendar months would provide a minimum period of time for an estimation of probability of default that could address investor concerns that a Nonconvertible Security would default during or shortly after the distribution of the securities. Furthermore, the Commission preliminarily believes that 12 calendar months is the appropriate horizon to include in the Rule to calculate probability of default because it is the horizon that corresponds with vendor models that use Structural Credit Risk Models to calculate probability of default and map to investment grade ratings. Specifying the time horizon in the rule is intended to limit the ability of a distribution participant to modify the time horizon to generate a more favorable probability of default if such distribution participant chooses to calculate the probability of default on its own.

[82] *See infra* Part VIII.B.

[83] *See infra* Part V.

[84] Vendors offer a number of commercial applications based on Structural Credit Risk Models. The Commission preliminarily believes that these models are relied upon by market participants to analyze the credit quality of Nonconvertible Securities or the issuers of such securities. Furthermore, the probability of default calculated by Structural Credit Risk Models, such as the Merton (1974) Model and the Successor Models, can be calculated by distribution participants without the use of a vendor.

[85] *See* ABA Letter at 15–17; *see also* Rothwell at 2.

Structural Credit Risk Models provides the advantage of serving as a bright-line test to identify securities that, similar to Nonconvertible Securities currently excepted from Rule 101 based on the Investment Grade Exception, trade based on their yield and credit-worthiness. In particular, based on the Commission's analysis comparing probabilities of default with NRSRO credit ratings, the Commission preliminarily believes that the 0.055% threshold would effectively identify securities that trade based on yield and credit-worthiness, because this threshold appropriately captures most of those securities that meet the credit-worthiness standard under the existing Investment Grade Exception.[86] Accordingly, the Commission preliminary believes that the 0.055% threshold appropriately calibrates the probability of default to determine the credit-worthiness of an issuer whose Nonconvertible Securities would trade based on yield and credit-worthiness, similar to the current Investment Grade Exception.[87]

The Commission acknowledges that a probability of default less than 0.055% could be both under- and over-inclusive in capturing the securities that are excepted under the existing Investment Grade Exception in Rule 101. As a result, the restrictions of Rule 101 would apply to certain Nonconvertible Securities that are currently excepted securities under Rule 101(c)(2). Furthermore, some securities that are not currently excepted securities under Rule 101 could become excepted securities under the proposed probability of default metric. The Commission preliminarily believes that it is appropriate to use a 0.055% threshold because even if it does not capture exactly the same set of securities covered under the existing investment grade standard, this 0.055% threshold would identify Nonconvertible Securities that are less susceptible to the manipulation that Regulation M is designed to prevent because they trade based on their yield and credit-worthiness as determined by the current financial condition of the issuer.

Rule 101(c)(2)(i) would define the term Structural Credit Risk Model to mean any commercially or publicly available model that calculates the probability that the value of the issuer may fall below the Default Point based on an issuer's balance sheet. These models, which estimate the probability of default related to the financial condition of the issuer based on the issuer's liabilities, provide a measure of credit-worthiness specific to that issuer. Additionally, the definition would include only commercially or publicly available models. The Commission understands that distribution participants, such as underwriters and broker-dealers, currently use commercially available models from various vendors to measure and manage credit risk. These commercially available vendor models estimate a probability of default based on the issuer's balance sheet information to set thresholds and market estimates of firm value and volatility. Furthermore, distribution participants can use commonly available spreadsheet software to calculate the probability of default based on publicly available models, which may be found in academic and professional journals.[88] Limiting the definition of Structural Credit Risk Models to commercially or publicly available models is intended to capture these commercially and publicly available models that we understand distribution participants already use and have access to. At the same time, we intend to prevent parties with an interest in the price of the security that is the subject of a distribution and outcome of such distribution from developing their own models to achieve favorable results.

(d) Request for Comment

We solicit comments on all aspects of this proposal. We ask that commenters provide specific reasons and information to support their views. Commenters are requested to provide empirical data, economic studies, and other factual support for their views to the extent possible.

1. Do commenters agree that the credit-worthiness of an issuer of Nonconvertible Securities reduces the risk of manipulation that Rule 101 is designed to prevent? Please explain. Is an exception based on probability of default appropriate to preserve Rule 101's anti-manipulation goals? Why or why not?

2. Should the probability of default threshold be higher than 0.055%? For example, should the probability of default threshold be 0.06%, 0.07%, or some other threshold? If so, what should the probability of the default threshold be and why?

3. Should the probability of default threshold be lower than 0.055%? For example, should the probability of default threshold be 0.05%, 0.04%, or some other threshold? If so, what should the probability of the default threshold be and why?

4. Is the 12 calendar months used to calculate the probability of default an appropriate time horizon? Or should some other time horizon be used? Please explain. For example, should it be for the term of the Nonconvertible Security? If so, what should the time horizon be to calculate the probability of default for purposes of Rule 101? Please explain.

5. Are there other models or model types besides Structural Credit Risk Models that the Rule should use to calculate the probability of default for purposes of Rule 101? If so, please provide the name of the model and provide support regarding why it would be an appropriate substitute for the Investment Grade Exception. Are there model types other than Structural Credit Risk Models that calculate a probability of default? For example, would a reduced-form model provide a probability of default calculation that would indicate a Nonconvertible Security is of such credit-worthiness that such security should be excepted from Rule 101? Please explain.

6. What challenges, if any, would there be to relying on an exception to Rule 101 based on the probability of default as calculated using Structural Credit Risk Models, as defined in Rule 101(c)(2)(i)? Is the definition of Structural Credit Risk Model clear? Should the exception list which models would be considered Structural Credit Risk Models? Is the requirement for the models to be commercially or publicly available clear, or is further guidance needed? Should the exception provide a test regarding what makes a model a Structural Credit Risk Model? For example, should the test for a Structural Credit Risk Model be limited to models published in academic or trade journals that refine the Merton (1974) Model? Please explain.

7. Is there a standard other than Structural Credit Risk Models that Rule 101 should use as a replacement for the Investment Grade Exception? If so, what other standard should proposed Rule 101(c)(2)(i) use and why?

8. Should the calculation of the probability of default in proposed Rule

[86] *See infra* Part VIII.B. Although the proposed standard would include certain securities that are not investment grade as determined by an NRSRO, the model-implied probabilities of default generally use current estimates of equity valuation and volatility, and hence incorporate the most recent news affecting the valuation and perceived volatility of the firm. *See infra* Part VIII.B. As such, an estimate derived from Structural Credit Risk Models is more likely to reflect the most up-to-date indicator of an issuer's credit-worthiness without being hampered by the lag that may exist with NRSRO-determined credit ratings.

[87] *See infra* note 159.

[88] *See supra* note 66.

101(c)(2)(i) be limited to distribution participants? Should the Rule permit distribution participants to rely on the probability of default calculated by persons that are not distribution participants? If so, who should the Rule include and why should such a person be specifically included in proposed Rule 101(c)(2)(i)? Are there any reasons why the Rule should not permit a distribution participant to perform its own calculation (subject to recordkeeping requirements as proposed)? Please explain. Should distribution participants be required to post or make the probability of default public on their website to rely on the exception? Please explain.

9. Do commenters disagree with the Commission's preliminary belief that market participants are currently relying on vendors' widely available commercial applications based on Structural Credit Risk Models to analyze the credit quality of Nonconvertible Securities or the issuers of such security? Do distribution participants currently have access to vendor probability of default determinations? Please explain why or why not.

10. How often do distribution participants rely on the Investment Grade Exception for Nonconvertible Securities where no other exception from Rule 101 is available?

11. As discussed in Part III, the Commission understands that the Investment Grade Exception is used in limited circumstances, *i.e.,* re-openings, sticky offerings, best efforts offerings, and foreign sovereign issuances. Are there other circumstances where distribution participants rely on the Investment Grade Exception? Please explain. Furthermore, as discussed above in this section, a sticky offering might indicate that an offering is not trading based upon its yield or credit quality. Specifically, the distribution participant is unable to sell its allotment. If the underlying premise of the exception were true, a distribution participant should be able to find someone willing to purchase the Nonconvertible Securities because the security would be trading based on its yield and price in relation to securities of similar credit-worthiness. Do sticky offerings of credit-worthy issuers disprove the underlying premise for excepting certain Nonconvertible Securities (*i.e.,* that securities offerings that become sticky do not trade based on their yield and credit-worthiness, or are there other characteristics of sticky offerings that impact how these securities trade)? For example, do sticky offerings indicate that the credit-worthiness of an issuer is not a sound basis on which to except Nonconvertible Securities, or that there may be other characteristics that may make the securities more at risk of manipulation? If so, what tools are available to distribution participants that could serve as an indicator of such characteristics that could be incorporated into the exception? Since whether a nonconvertible security will become sticky is unknown at the start of the Regulation M restricted period, should the Commission remove the exception from Rule 101 for investment grade Nonconvertible Securities completely? Why or why not?

12. Would the Nonconvertible Securities proposed to be excepted be more vulnerable to manipulation than the securities that meet the existing investment grade standard? Why or why not?

13. Please discuss whether and to what extent investors take into account reliance on the Investment Grade Exception for Nonconvertible Securities when making a decision to invest in such securities. Please also discuss whether, given that Rule 101 is directed at distribution participants and their affiliated purchasers, current Rule 101 poses any danger of undue reliance on NRSRO ratings.

14. Are there factors other than those identified in the proposed exception that influence the trading of Nonconvertible Securities? Are there additional requirements that the Commission should consider with respect to the proposed exception? Are there any requirements that the Commission should remove from the proposal?

15. Would persons needing to use the proposed exception have access to adequate information to determine whether a particular security meets the exception in proposed Rule 101(c)(2)(i)? Why or why not? Should the exception require the issuer's balance sheet to be audited?

16. If the exception as proposed is adopted should the Commission include a period of time for distribution participants to implement the exception based on probability of default? For example, should the exception, if adopted, include a three month, nine month or twelve month implementation period? Please explain. Should the exception, if adopted, go into effect within a short period of time after publication, such as 30-calendar days from being published in the **Federal Register**? Please explain.

2. Excepted Securities: Asset-Backed Securities Offered Pursuant to an Effective Shelf Registration Statement Filed on Form SF–3

To implement Section 939A(b) of the Dodd-Frank Act, the Commission is, among other things, proposing to replace the existing exception provided in Rule 101(c)(2) for investment grade asset-backed securities [89] with an exception for asset-backed securities that are offered pursuant to an effective shelf registration [90] statement filed on Form SF–3,[91] as discussed below.

(a) Background: Form SF–3

In 2014, the Commission adopted shelf eligibility criteria for asset-backed securities offerings registered on new Form SF–3 in part to implement Section 939A(b) of the Dodd-Frank Act.[92] Form SF–3 includes the following transaction requirements among other shelf eligibility criteria:

- Delinquent assets do not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date;
- With respect to securities backed by certain leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date;
- A certification by the chief executive officer of the depositor is made at the time of each takedown;

[89] *See* 17 CFR 242.101(c)(2) (providing an exception for asset-backed securities ''that are rated by at least one nationally recognized statistical rating organization, as that term is used in [Rule 15c3–1 under the Exchange Act], in one of its generic rating categories that signifies investment grade'').

[90] Shelf registration is a procedure that allows companies to file a single registration statement covering more than one issuance of the same security, subject to certain requirements. *See generally* 17 CFR 230.415 (providing requirements for securities to be registered for an offering to be made on a continuous or delayed basis in the future).

[91] *See* Proposed Rule 101(c)(2)(ii). Currently, the exception for asset-backed securities is provided in the same paragraph as the exception for Nonconvertible Securities, in Rule 101(c)(2). *See* 17 CFR 242.101(c)(2). The Commission is proposing to separate the existing exception into separate exceptions for Nonconvertible Securities and asset-backed securities in Proposed Rules 101(c)(2)(i) and 101(c)(2)(ii), respectively.

[92] *See Asset-Backed Securities Disclosure and Registration,* Release No. 34–72982 (Sept. 4, 2014) [79 FR 57184 (Sept. 24, 2014)] (''Regulation AB II Adopting Release''). Form SF–3 also carried over shelf-eligibility requirements for asset-backed securities that previously were located in Form S–3, such as transaction requirements regarding the percentage of delinquent assets and, for certain lease-backed securitizations, the portion of the pool attributable to residual value. *See* Regulation AB II Adopting Release, 79 FR 57265, n.936.

• An asset review provision in the underlying transaction agreements requires review of the pool assets, upon the occurrence of certain trigger events, for compliance with the representations and warranties made with regard to those assets;

• A dispute resolution provision for repurchase requests is contained in the underlying transaction documents; and

• A disclosure provision, as required in an underlying transaction agreement, of investors' requests to communicate with other investors related to an investor's rights under the terms of the asset-backed security was received during the reporting period by the party responsible for making Form 10–D filings.[93]

The Commission designed the shelf eligibility requirements to help ensure a certain ''quality and character'' in light of the requirement to reduce regulatory reliance on credit ratings.[94] In particular, the shelf eligibility requirements were designed to help ensure that expected cash flows are sufficient to service payments or distributions in accordance with their terms;[95] that obligated parties more carefully consider the characteristics and quality of the assets that are included in the pool;[96] that asset-backed securities shelf offerings have transactional safeguards and features that make those certain securities appropriate to be issued without prior Commission staff review;[97] and that issuers design and prepare asset-backed securities offerings with greater oversight and care.[98] As discussed below, the Commission believes that the asset-backed securities offered pursuant to an effective shelf registration statement filed on Form SF–3 trade primarily on the basis of yield and credit-worthiness. This proposed rule change would not limit a market participant's ability to substitute a security that is similar, and that is of comparable credit-worthiness, to the security that is the subject of a distribution if the pricing of the security were inconsistent with pricing in the overall secondary market for similar asset-backed securities, thereby limiting the potential for manipulation. The Commission continues to believe that its original basis for excepting securities of a certain quality and character is appropriate and that such securities are less at risk of the manipulation that Regulation M addresses.[99]

(b) Existing Exception for Investment Grade Asset-Backed Securities

As discussed above, Rule 101(c)(2) currently provides an exception for asset-backed securities that are rated by at least one NRSRO in one of its generic rating categories that signifies investment grade. The Commission excepted investment grade asset-backed securities from Rule 101 because such securities trade primarily on the basis of yield and credit rating.[100] In providing this rationale, the Commission stated that the principal focus of investors in the asset-backed securities market is on the structure of a class of securities and the nature of the assets pooled to serve as collateral for those securities rather than on the identity of a particular issuer.[101] The Commission also stated that Rule 101 excepts investment grade securities that are ''primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.''[102]

(c) Proposed Amendments to Rule 101

As discussed above, in accordance with Section 939A of the Dodd-Frank Act, the Commission proposes to remove Rule 101's current exception for investment grade asset-backed securities based on NRSRO ratings. In place of that exception, the Commission is proposing a new exception in Rule 101(c)(2)(ii) for asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3. This proposed rule change, which would carry over the standard of credit-worthiness included in the Commission's Form SF–3, also helps to implement the mandate that, to the extent feasible, uniform standards of credit-worthiness be used.[103]

The proposed rule is not based on a probability of default threshold derived from Structural Credit Risk Models with respect to asset-backed securities. An exception for asset-backed securities that is based on a probability of default threshold may be unfeasible due to the potential widespread inability of distribution participants and their affiliated purchasers to collect all of the information required to calculate the probability of default, such as the value and volatility of the assets underlying asset-backed securities. Therefore, the Commission is proposing an exception for certain asset-backed securities based on a separate standard that is more consistent with the existing Investment Grade Exception for asset-backed securities, as discussed below. The proposed rule does not contain a standard of credit-worthiness that relies on Form SF–3 with respect to Nonconvertible Securities because the transaction requirements included in Form SF–3 are relevant only to asset-backed securities. As discussed below, because the transaction requirements included in Form SF–3 serve as an indicator of credit-worthiness, the proposed exception that relies on Form SF–3 would not apply to securities that are not subject to those transaction requirements.

The proposed exception continues to be derived from the premise that certain asset-backed securities are traded based on factors such as their yield and credit-worthiness.[104] The Commission is proposing to except only the asset-backed securities offered pursuant to an effective shelf registration statement filed on Form SF–3 to further Regulation M's anti-manipulation goals. This proposed requirement regarding an effective Form SF–3 would except from Rule 101 the types of asset-backed securities that would trade based on their yield and credit-worthiness due to their qualities and characteristics and that are therefore less prone to the type of manipulation that Regulation M seeks to prevent.[105]

[93] *See* Registration Statement Under the Securities Act of 1933 (Form SF–3), *available at https://www.sec.gov/files/2017-03/formsf-3.pdf;* Regulation AB II Adopting Release, 79 FR 57189.

[94] *See* Regulation AB II Adopting Release, 79 FR 57189.

[95] *See* Regulation AB II Adopting Release, 79 FR 57265.

[96] *See* Regulation AB II Adopting Release, 79 FR 57278.

[97] *See* Regulation AB II Adopting Release, 79 FR 57283.

[98] Regulation AB II Adopting Release, 79 FR 57265, 57285.

[99] *See* Regulation M Adopting Release, 62 FR 527; *see also Prohibitions Against Trading by Persons Interested in a Distribution,* Release No. 34–19565 (Mar. 4, 1983) [48 FR 10628, 10631 (Mar. 14, 1983)] (stating the Commission's belief that the ''fungibility'' of certain types of securities makes manipulation of their price very difficult); *supra* note 50 and accompanying text.

[100] *See* Regulation M Adopting Release, 62 FR 527.

[101] *See* Regulation M Adopting Release, 62 FR 527.

[102] *See* Regulation M Adopting Release, 62 FR 527 (citations omitted). The Commission stated that such rationale also applies to the existing identical exception provided in Rule 102(d)(2) of Regulation M. Regulation M Adopting Release, 62 FR 531.

[103] Public Law 111–203 sec. 939A(b) (requiring agencies to ''seek to establish, to the extent feasible, uniform standards of credit-worthiness for use by each such agency, taking into account the entities regulated by each such agency and the purposes for which such entities would rely on such standards of credit-worthiness'').

[104] *See* Regulation M Adopting Release, 62 FR 527.

[105] *See supra* note 50 and accompanying text. The ability of a market participant to substitute a security that is similar, and that is of comparable

Continued

The Commission believes that the transaction requirements included in Form SF–3 allow for shelf offerings of only those asset-backed securities that share the qualities and characteristics of the investment grade asset-backed securities currently excepted from the provisions of Rule 101: With respect to both sets of securities, the principal focus of investors is the structure of a class of securities and the nature of the assets pooled to serve as collateral for those securities, rather than on the identity of a particular issuer.[106] First, eligibility for offering securities pursuant to a Form SF–3 is limited, in part, by the percentage of delinquent assets and, for certain lease-backed securitizations, by the portion of the pool attributable to the residual value.[107] For an asset-backed securities offering with an effective Form SF–3, delinquent assets cannot constitute 20% or more of the asset pool. Delinquent assets may not convert into cash within a finite period of time, as required by the definition of ''asset-backed security,'' because they are not performing in accordance with their terms and management or that other action may be needed to convert the assets into cash. However, as expressed at the adoption of Form SF–3, in principle, asset-backed securities should be primarily dependent on the pool of assets self-liquidating instead of on the ability of the entity performing collection services.[108] The application of the limitation on delinquent assets included in Form SF–3 was designed to ensure that attention is focused on the ability of collateral of the underlying asset pool to generate cash flow rather than on the identity of the issuer and its ability to convert those assets into cash,[109] consistent with the Commission's original basis for excepting investment grade asset-backed securities from Rule 101.[110]

Second, Form SF–3 includes certain transaction requirements with respect to the structure of the asset-backed security being offered. Such structural requirements include (1) a certification by the depositor's chief executive officer that, among other things, the securitization structure provides a reasonable basis to conclude that the expected cash flows are sufficient to service payments or distributions in accordance with their terms; (2) a review of the asset-backed security's pool of assets upon the occurrence of certain triggering events, including delinquencies, by a person that is unaffiliated with certain transaction parties, such as the sponsor, depositor, servicer, trustee, or any of their affiliates; and (3) a dispute resolution provision, contained in the underlying transaction documents, for any repurchase request. When adopting the requirements included in Form SF–3, the Commission stated that sponsors may have an increased incentive to carefully consider the characteristics of the assets underlying the securitization and accurately disclose these characteristics at the time of offering. The Commission also believed that investors should benefit from the reduced losses associated with nonperforming assets because, as a result of this new shelf requirement, sponsors will have less of an incentive to include nonperforming assets in the pool.[111] Because the transactional safeguards included in Form SF–3 provide incentives for obligated parties to, among other things,[112] more carefully consider the quality and character of the assets that are included in the pool,[113] asset-backed securities that are offered pursuant to an effective Form SF–3 should trade based on their yield and credit-worthiness rather than on the identity of a particular issuer.[114] The application of the transaction requirements included in the Commission's Form SF–3, therefore, should result in the offering of asset-backed securities that have similar qualities and characteristics to the investment grade asset-backed securities currently excepted under the existing provision in Rule 101(c)(2).

The Commission believes that the requirement regarding an effective shelf registration statement filed on Form SF–3 is an appropriate substitute for the Investment Grade Exception currently provided in Rule 101(c)(2) because the proposed standard intends to limit eligibility for that exception to only those asset-backed securities that trade based on their yield and credit-worthiness due to their particular qualities and characteristics. Because the ability of distribution participants and their affiliated purchasers to bid up the price of an asset-backed security offered pursuant to an effective Form SF–3, during a distribution, is limited by a market participant's ability to substitute the security with other securities that are similar and of comparable credit-worthiness,[115] the Commission believes that such a security is less susceptible to the types of manipulation that Regulation M seeks to prevent.

(d) Request for Comment

We solicit comments on all aspects of this proposal. We ask that commenters provide specific reasons and information to support their views. Commenters are requested to provide empirical data, economic studies, and other factual support for their views to the extent possible.

17. How often and in which context is the Investment Grade Exception for asset-backed securities utilized where no other exception from Rule 101 is available?

18. As discussed above, the existing Investment Grade Exception for asset-backed securities and the proposed exception provided in paragraph (c)(2)(ii) of Rule 101 are premised on the ability of a market participant to substitute a security (in distribution) with other securities that are similar and of comparable credit-worthiness if there is a pricing aberration in the secondary market for similar securities. What is the universe of securities that is likely to be substituted in such instance? Please explain.

19. If the Investment Grade Exception for asset-backed securities is rarely, infrequently, or never used, or if the proposed standard for asset-backed securities has limitations in practice or otherwise, should the Commission

credit-worthiness, to the security that is the subject of a distribution limits the ability of a distribution participant or its affiliated purchaser from bidding up the price of the subject security.

[106] *See supra* note 102.

[107] *See* 17 CFR 239.45(b)(v), (vi); Form SF–3, I.B.1(e).

[108] *Asset-Backed Securities,* Release No. 33–8518 (Dec. 22, 2004) [70 FR 1506, 1517 (Jan. 7, 2005)] (''Regulation AB Release''). In adopting the 20% delinquency concentration level, the Commission codified a staff position that an asset-backed security will not fail to meet the definition of ''asset-backed security'' solely because such a security is supported by assets having total delinquencies of up to 20% at the time of the proposed offering. *See* Regulation AB Release, 70 FR 1517 (citing Bond Mkt. Ass'n, SEC Staff No-Action Letter, 1997 WL 634124 (Oct. 8, 1997)). This threshold was the same threshold that was applied to certain other matters affecting registration and disclosure requirements for asset-backed securities (*e.g.,* non-recourse commercial mortgage securitizations, pooling of corporate debt securities, and securitizations involving third-party credit enhancement). *See* Bond Mkt. Ass'n, SEC Staff No-Action Letter, 1997 WL 634124, at * 3. The staff position was based on the premise that such a threshold for total delinquency concentration would, by itself, not present a materially greater risk of asset non-performance or default at the security level. *See Id.,* 1997 WL 634124, at * 4.

[109] *See* Regulation AB Release, 70 FR 1517.

[110] *See* Regulation M Adopting Release, 62 FR 527.

[111] *See* Regulation AB II Adopting Release, 79 FR 57283.

[112] *See supra* notes 94–98 and accompanying text.

[113] *See* Regulation AB II Adopting Release, 79 FR 57278.

[114] *See, e.g.,* Regulation AB II Adopting Release, 79 FR 57277–78.

[115] *See* Regulation M Adopting Release, 62 FR 527; *see also supra* note 50 and accompanying text.

remove the exception for asset-backed securities completely? Why or why not?

20. What specific trading activities that currently occur pursuant to the Investment Grade Exception would then be prohibited during the restricted period because no other exception is available? What are the advantages and disadvantages of such trading activities? Should the Commission explicitly except any such specific activities in lieu of providing a generic exception for investment grade asset-backed securities or an exception for asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3? What benefits or challenges would this approach create?

21. Should the proposed exception be expanded to apply to all asset-backed securities, such as asset-backed securities registered on Form SF–1? What activities would then be allowed that were previously prohibited under Rule 101? To what extent would these additional activities be at risk of manipulation? Why or why not?

22. Are there any types of asset-backed securities that should not be covered by the proposed exception? Please explain.

23. Would the asset-backed securities excepted in the proposal be more vulnerable to manipulation than the securities that meet the existing investment grade standard? Why or why not?

24. Is the proposal to except only asset-backed securities that are offered pursuant to an effective shelf registration statement filed on the Commission's Form SF–3 an appropriate substitute for credit ratings in this context? What effect(s), if any, would the proposed modifications to the current exception have on the market for asset-backed securities? Please explain.

25. How difficult and costly in practice would the requirements of the proposed exception be to apply? If the requirements are more difficult or costly to apply, how might this impact the scope of securities subject to the prohibitions of Regulation M? For example, to what extent, if any, might a narrower range of securities meet the exception as a result of the proposal, if adopted? If fewer securities are excepted from the prohibitions of Regulation M, in what ways and to what extent, if any, would this impact the market for those securities that would no longer qualify for an exception?

26. Will fewer asset-backed securities issuances meet the requirement for this exception? If so, what impact would this proposed exception have on the market for new issuances of these securities?

27. Please discuss whether and to what extent investors take into account reliance on the current Rule 101(c)(2) exception for investment grade asset-backed securities when making a decision to invest in such securities.

28. Are there factors other than those identified in the proposed exception that influence the trading of such securities? Are there additional requirements that the Commission should adopt with respect to the proposed exception? Are there any that the Commission should remove from the proposal?

29. Would a probability of default standard be appropriate for the exception for asset-backed securities? Are there models used to calculate a probability of default threshold (*e.g.,* reduced-form models or structural models of credit risk) for asset-backed securities that would be relevant to consider based on the type of security involved? If so, what threshold should be included in the exception to Rule 101 for asset-backed securities? What benefits would this approach provide? What other concerns could this approach raise? How would this approach address potential conflicts of interest involving the distribution participant or affiliated purchaser? Please explain.

30. Are there any concerns with regard to distribution participants and affiliated purchasers' ability to collect any of the information required for the probability of default calculation for asset-backed securities? If so, please explain.

*B. Rule 102*

1. Existing Investment Grade Exception

Rule 102 contains fewer exceptions than Rule 101 does because issuers and selling security holders have the greatest interest in an offering's outcome (and thereby should be subject to Regulation M's prohibitions) but generally do not have the same market access needs as underwriters do (and as such are expected to have less of a desire to seek an exception).[116] Despite these differences in the situation of issuers and selling security holders as compared to distribution participants, the exception for certain investment grade securities provided in former Exchange Act Rule 10b-6 was carried over to Regulation M as paragraph (d)(2) at the adoption of Rule 102.[117]

2. Proposed Removal of Investment Grade Exception

The Commission is proposing to amend Rule 102 to remove the Investment Grade Exception. As noted above, there are limited situations in which issuers, selling security holders, or their affiliated purchasers rely on the Investment Grade Exception provided in Rule 102.[118] Given this apparent limited reliance, coupled with the incentive for issuers, selling shareholders, and their affiliated purchasers to manipulate the market for the distributed security exists regardless of the credit quality of the security,[119] the Commission believes that the existing exception should be eliminated without replacement.[120]

[116] Regulation M Adopting Release, 62 FR 530. Further, the Commission has also stated that ''[a]n issuer or selling shareholder may have a substantial incentive to raise improperly the price of offered securities.'' Regulation M Proposing Release, 61 FR 17120.

[117] The Commission initially proposed not to include the Investment Grade Exception in Rule 102. Regulation M Proposing Release, 61 FR 17120 (''[T]he Commission preliminarily believes that it may not be appropriate to extend the . . . the exception for investment grade debt and investment grade preferred securities provided in Rule 101, to issuers, selling security holders, or their affiliated purchasers.'') The Commission, however, adopted the Investment Grade Exception in Rule 102 ''based on commenters' views and the rationales indicated . . . for an identical exception to Rule 101.'' Regulation M Adopting Release, 62 FR 531.

[118] No commenter responding to the 2011 Proposal mentioned issuers, selling security holders, or their affiliated purchasers relying on the Investment Grade Exception. However, one commenter to the 2008 Proposal commented that the substitution of the Investment Grade Exception with a WKSI standard would prevent foreign sovereign issuers or affiliated purchasers from purchasing the foreign sovereign's bonds for its own general trading and investment activities, or for other public purposes, during the applicable restricted period. *See* Arnold & Porter Letter at 3. Given that the prohibitions of Regulation M apply only to bonds with the exact same terms of the bond in distribution, as discussed above in Part III, the Commission believes that the concerns raised by this commenter would rarely occur. Furthermore, the bond in distribution could be structured by the foreign sovereign in a manner so that Rule 102's restrictions would not impede a foreign sovereign issuer or its affiliated purchasers from engaging in its own general trading and investment activities, or for other public purposes.

[119] *See supra* Part IV.B.1.

[120] Other than ''exempted securities,'' as defined in Section 3(a)(12) of the Exchange Act, the Investment Grade Exception provided in Rule 102 is the only security-based exception that permits an issuer, selling shareholder, or its affiliates to purchase the securities in distribution absent a need for the issuer to facilitate an orderly distribution or to limit potential disruptions in the trading market. For example, the security-based exception for open-ended investment companies is designed to ensure that open-ended investment companies can redeem shares during a continuous distribution without (by itself engaging in that exact activity) violating Regulation M. *See* 17 CFR 242.102(d)(4). Rule 102 does not provide an actively-traded securities exception like Rule 101 does. Instead, the relevant exception provided in Rule 102 is based on actively-traded *reference* securities, which is designed to allow issuers or selling security holders to purchase an actively-traded reference security

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Further, the Commission believes that, while substituting an alternative standard of credit-worthiness may except securities that have little manipulative potential, retention of such an exception is not likely necessary to facilitate orderly distributions of securities or to limit potential disruptions in the trading market in light of issuers' limited market access needs.[121] Accordingly, the proposed amendment to Rule 102 should protect investors and further Regulation M's anti-manipulation goals in the rare event of an issuer or its affiliate desiring to purchase or bid for Nonconvertible Securities or asset-backed securities that are in distribution.

Under the proposed amendment to Rule 102, an issuer of investment grade Nonconvertible Securities and asset-backed securities that is participating in a distribution of its own securities would not have an exception and would need to ensure that the applicable restricted period is complete before purchasing, bidding for, or attempting to induce others to purchase or bid for, the covered security. Market participants can structure their offerings to ensure compliance with Rule 102 by, for example, completing the distribution prior to purchasing any covered security and thus completing the applicable Rule 102 restricted period, or distributing bonds with different terms from outstanding bonds. The Commission preliminarily believes that eliminating the exception is appropriate because it would decrease the risk of conduct raising improperly the price of an offered security without impeding the facilitation of orderly distributions of securities.[122] For the same reason, while the Commission adopted the Investment Grade Exception in Rule 102 in response to commenters responding on the original Regulation M Proposing Release[123] and received one comment discussing this exception in response to the 2008 Proposal,[124] the Commission is concerned that issuers and selling security holders have the greatest interest in an offering's outcome thereby heightening the risk of manipulation.

3. Request for Comment

We solicit comments on all aspects of this proposal. We ask that commenters provide specific reasons and information to support alternative recommendations. Please provide empirical data, when possible, and cite to economic studies, if any, to support alternative approaches.

31. Do issuers, selling security holders, and their affiliated purchasers have an incentive to manipulate securities that currently qualify for the Investment Grade Exception from Rule 102? If yes, would substituting the probability of default approach for the current exception address this incentive to manipulate?

32. If commenters are aware of situations where issuers, selling security holders, or their affiliated purchasers are currently relying on the Investment Grade Exception in Rule 102, do these activities raise improperly the price of the offered securities? Why or why not?

33. If the Investment Grade Exception in Rule 102 proposed to be removed is adopted, would it result in potential disruptions to trading and if so, please explain. Can market participants structure their distributions to comply with Regulation M? In light of the proposed removal of the exception, would any alternative structures be detrimental to the capital raising process?

34. Would the proposed removal of the Investment Grade Exception in Rule 102 impede the facilitation of orderly distributions of securities or result in potential disruptions to trading markets? Why or why not?

35. Should the Commission adopt an exception based on either the probability of default standard for Nonconvertible Securities or asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3 for Rule 102 instead of removing the Investment Grade Exception without substituting an alternative? Why or why not? Should the Commission adopt an exception for Rule 102 if a distribution participant determines that a security is an excepted security pursuant to Rule 101(c)(2)?

36. As discussed above, one commenter to the 2008 Proposal believed that the removal of the Investment Grade Exception for foreign sovereign bonds would impede a foreign sovereign or its affiliated purchasers from engaging in its own general trading and investment activities, or other public purposes. Should the Commission adopt an exception from Rule 102 for bonds issued by a foreign government or political subdivision thereof? For example, should the Commission except from Rule 102 any bond issued by a foreign sovereign or political subdivision thereof filed with a registration statement pursuant to Schedule B of the Securities Act? Do all bonds issued by foreign sovereigns or political subdivisions thereof trade based on a spread to U.S. Treasury securities? Please explain.

## V. Recordkeeping Requirement: Rule 17a–4(b)(17)

### *A. Proposed Recordkeeping Requirement*

The Commission is proposing a new recordkeeping requirement that broker-dealers who are distribution participants or affiliated purchasers must keep certain records pursuant to Rule 17a–4 under the Exchange Act, the Commission's broker-dealer record retention rule. Proposed paragraph (b)(17) of Rule 17a–4 would require broker-dealers relying on the exception for Nonconvertible Securities to preserve the written probability of default determination made pursuant to proposed paragraph (c)(2)(i) of Rule 101. Accordingly, broker-dealers relying on

issued by an unaffiliated entity in a hedging transaction. *See* Rule 101(c)(1) and Rule 102(d)(1). As the Commission stated in the adopting release regarding the actively-traded *reference* securities exception, the Commission believes that persons subject to Rule 102 should not be able to trade in their securities. *See* Regulation M Adopting Release at 531. As stated in the Regulation M Adopting Release, the Commission's view is based on the issuers' and selling security holders' stake in the proceeds of the offering, and their generally lesser need to engage in securities transactions. *Id.*

[121] *See* Regulation M Proposing Release, 61 FR 17117 (stating reasons for exceptions from Regulation M). Disruption to the trading market may be limited because distribution participants would still be able to rely on the exception from Rule 101 if they meet the requirements of the proposed rules. While the one commenter that addressed sovereign issuers and Rule 102 pointed to certain exemptive orders issued in the early 2000s to support a contention that sovereign issuers should continue to be excepted from Regulation M because the securities trade primarily on the basis of a spread to a United States Treasury security, all but one of the exemptive orders cited by the commenter only exempted the recipient from Rule 101. *See* Arnold & Porter Letter at 3. For orders cited by this commenter that only provided an exemption from Rule 101, *see Federative Republic of Brazil* (Jan. 21, 2000; Apr. 29, 2003; July 3, 2003; Sept. 9, 2003; Oct. 15, 2003). *See also Regulation M—Sovereign Bond Exemption* (Jan. 12, 2003) (order exempting certain distributions of certain sovereign bonds from Rule 101, not Rule 102). For the one order cited by this commenter that provided an exception from Rule 102, *see United Mexican States* (Feb. 17, 1999). Because the proposed amendments would place distribution participants in a similar position to distribution participants trading the securities issued by the sovereign issuers pursuant to existing Rule 101 exemptive orders, and given that the exception under Rule 102 appears seldom used, we believe it is appropriate to eliminate the exception in Rule 102 as proposed.

[122] Regulation M Proposing Release, 61 FR 17120. *See also Review of Antimanipulation Regulation of Securities Offerings,* Release No. 34–33924 (Apr. 19, 1994) [59 FR 21681, 21686 (Apr. 26, 1994)] (stating ''issuers and selling shareholders have a clear incentive to manipulate the price of the securities to be distributed. A very small change in the market price of a security, which in some circumstances may be accomplished at relatively little expense, can result in a substantial increase in offering proceeds.'').

[123] *See* Regulation M Adopting Release at 531.

[124] *See* Arnold & Porter Letter.

the exception in proposed paragraph (c)(2)(i) of Rule 101 would be required to preserve for a period of not less than three years, the first two years in an easily accessible place, the written probability of default determination made pursuant to proposed paragraph (c)(2)(i) of Rule 101.

Under proposed paragraph (c)(2)(i) of Rule 101, broker-dealers relying on the exception would need to determine and document in writing that the probability of default of the issuer of Nonconvertible Securities is, estimated as of the day of the determination of the offering pricing and over the horizon of 12 calendar months from such day, less than 0.055% using a Structural Credit Risk Model. Broker-dealers relying on the exception in proposed Rule 101(c)(2)(i) would be required to preserve the written probability of default determination pursuant to Rule 17a–4. The proposed amendment to Rule 17a–4 would modify the existing practices of broker-dealers who are distribution participants or affiliated purchasers to impose new recordkeeping burdens when relying on the exception in proposed Rule 101(c)(2)(i). A broker-dealer that uses a vendor to determine the probability of default threshold could satisfy this recordkeeping requirement by maintaining documentation of the assumptions used in the vendor model, as well as the output provided by the vendor supporting the probability of default determination. A broker-dealer calculating the probability of default on its own could satisfy the recordkeeping requirement by maintaining documentation of the value of each variable used to calculate the probability of default, along with a record identifying the specific source(s) of such information for each variable.

The proposed requirement to preserve the written probability of default determination pursuant to Rule 17a–4 is consistent with other retention obligations of records that Exchange Act rules impose on broker-dealers.[125] Exchange members and broker-dealers are currently required to comply with the three-year preservation period in Rule 17a–4 for other records and should have procedures to satisfy such preservation requirements in place.[126]

The proposed recordkeeping requirement is intended to aid the Commission in its oversight of broker-dealers who are distribution participants or affiliated purchasers and rely on the exception in proposed paragraph (c)(2)(i) of Rule 101 by requiring such broker-dealers to retain the written probability of default determination supporting their reliance on the exception. The written records documenting the probability of default determination would be subject to review in regulatory examinations by Commission staff and self-regulatory organizations.

*B. Request for Comment*

We solicit comments on all aspects of this proposal. We ask that commenters provide specific reasons and information to support their views.

37. Is the retention of information by distribution participants or affiliated purchasers for a period of three years, the first two years in an easily accessible place, in proposed paragraph (b)(17) of Rule 17a–4 appropriate? If not, what would be a more appropriate period of time, and why? Would investors, the Commission, or the public benefit from a retention period that is longer than three years? What would the costs be for broker-dealers who are distribution participants or affiliated purchasers for a retention period that is longer than three years?

38. Is the retention requirement in proposed paragraph (b)(17) of Rule 17a–4 burdensome or costly? Please explain. If so, in what ways could modifications to the Rule as proposed reduce these burdens and costs? What would the costs be for broker-dealers who are distribution participants or affiliated purchasers to preserve the written probability of default determination?

39. Should broker-dealers who are distribution participants or affiliated purchasers relying on the exception in proposed paragraph (c)(2)(i) of Rule 101 be required to document information in addition to the proposed required documentation (*i.e.,* the written probability of default determination)? For example, should a broker-dealer be required to retain the documentation governing the probability of default estimation if the broker-dealer uses a vendor model?

## VI. General Request for Comment

The Commission solicits comment on all aspects of the proposed amendments to Rule 101, Rule 102, and Rule 17a–4, as well as any other matter that may impact any of the proposals discussed above. Please provide empirical data, when possible, and cite to economic studies, if any, to support alternative approaches. In particular, the Commission asks commenters to consider the following questions:

40. In proposing the criteria above, the Commission has focused on indicators of credit-worthiness. Is credit-worthiness alone an appropriate signifier of whether a security is susceptible to manipulation under the conditions in which Rule 101 is concerned? Why or why not?

41. Please comment in particular on any relevant changes to the Nonconvertible Securities or asset-backed securities markets since Regulation M was adopted in 1996 and how these developments should affect the Commission's evaluation of the proposed amendments. How do these changes fit within the relevant changes to the debt markets (more generally) since Regulation M's adoption?

## VII. Paperwork Reduction Act Analysis

*A. Background*

Certain provisions of proposed amendments impose ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[127] Specifically, the Commission estimates that respondents would incur PRA burden when determining whether a distribution of a nonconvertible security qualifies for the proposed exception from Regulation M. The Commission also believes that there would be PRA burdens associated with documenting this determination. These PRA burdens would be distinct from the existing OMB-approved collection of information burden estimates under Rule 101 and Rule 17a–4 because the Commission has not estimated that respondents incur PRA burdens when determining whether a security qualifies for the current Investment Grade Exception.[128] The Commission is submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid control number.

[125] *See id.*

[126] 17 CFR 240.17a–4(b).

[127] *See* 44 U.S.C. 3501 *et seq.* The burden associated with the information collection requirements are referred to as ''PRA burdens.''

[128] The Commission preliminarily believes that the proposed amendment to Rule 102 would not change the PRA burden estimates under the current OMB-approved collections of information for that rule because those estimates do not include any collections of information or burden related to the determination of whether a security qualifies for the Investment Grade Exception. The proposed amendment would eliminate the exception under Rule 102, so respondents would continue to incur no burden making a determination because they would not be making one. *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 102 of Regulation M* (OMB Control No. 3235–0467) (Feb. 5, 2020), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201911-3235-012* (discussing the burden estimates under Rule 102).

The titles and control numbers for these collections of information are as follows:

| Rule | Title | OMB control No. |
|---|---|---|
| Rule 101 | Rule 101, 17 CFR 242.101 (Activities by Distribution Participants). | 3235–0464 |
| Rule 17a–4 | Records to be Preserved by Certain Brokers and Dealers | 3235–0279 |

As discussed above, Regulation M is designed to preserve the integrity of the securities trading market as an independent pricing mechanism by prohibiting activities that could artificially influence the market for an offered security. Subject to exceptions, Rule 101 prohibits distribution participants and their affiliated purchasers from directly or indirectly bidding for, purchasing, or attempting to induce another person to bid for or purchase a covered security during a restricted period. Rule 17a–4 requires a broker-dealer to preserve certain records if it makes or receives them.

In reference to the requirement in Section 939A, the Commission is proposing amendments to Rules 101 and 102 to remove the existing exceptions for nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities that are rated by at least one NRSRO in one of its generic rating categories that signifies investment grade. With respect to Nonconvertible Securities in Rule 101, the Commission proposes to substitute a standard that would except securities for which the probability of default, estimated as of the day of the determination of the offering pricing and over the horizon of 12 calendar months from such day, is less than 0.055%, as determined by a Structural Credit Risk Model. Broker-dealers who are distribution participants and their affiliated purchasers that would be relying on the proposed exception from Rule 101 would be required to preserve for a period of not less than three years, the first two years in an easily accessible place, the written probability of default determination. The Commission is also proposing to except asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3.

The discussion of estimates that follows is limited to a discussion of the new information collection requirements that result from the proposed amendments. The Commission is not estimating that the proposed amendments would increase or decrease the existing approved information collections under Rule 101 and Rule 17a–4 because those information collections are not related to making a determination about whether a security qualifies for the Investment Grade Exceptions. The information collections in the proposed amendments are distinct, so they are the only information collections discussed herein.

*B. Proposed Use of Information*

The information collected under the proposal would be used to ensure that the nonconvertible debt securities most resistant to manipulation are excepted from Rule 101. Further, the Commission preliminarily believes that the information contained in the records required to be retained and kept pursuant to the proposed amendment to Rule 17a–4 would be used to assist the Commission in conducting effective examinations and oversight of distribution participants and their affiliated purchasers.

*C. Information Collections*

The proposed amendments that impose information collection burdens would apply to distribution participants and affiliated purchasers that choose to rely on the exception for a distribution of Nonconvertible Securities. As noted in Part VIII.A.1, there were 237 underwriters of Nonconvertible Securities in 2020. The Commission preliminarily believes that this number will remain roughly consistent because of the capital, expertise, and relationships needed to underwrite a Nonconvertible Security. The Commission, therefore, is estimating that 237 respondents would be subject to PRA burdens under the proposed amendments.

As discussed below, the Commission preliminarily believes that respondents would incur PRA burdens under the proposed amendments because distribution participants and their affiliated purchasers would be required to analyze each distribution of Nonconvertible Securities to determine whether the distribution qualifies for the exception. Respondents would also incur PRA burdens under Rule 17a–4 because distribution participants would be required to keep certain records documenting this determination that support their reliance on the exception.

1. Rule 101

Under the proposed amendment to Rule 101, respondents wishing to rely on the exception for a distribution of Nonconvertible Securities would be required to gather the data serving as the inputs and then perform the analysis necessary to calculate the probability of default of the issuer whose securities are the subject of the distribution.[129] This requirement would result in respondents incurring recordkeeping burden. The Commission preliminarily believes that this process would likely be highly automated, and that respondents would initially comply with this requirement by reprograming systems to create a means to calculate electronically the probability of default based on manually gathered and entered inputs for financial modeling. The Commission preliminarily believes that all respondents would be broker-dealers who have experience using their own proprietary version of a publicly available Structural Credit Risk Model so the initial configuration of systems will be handled internally and take 3 hours per respondent. The Commission also preliminarily believes that broker-dealers already have the software and systems in place that would be required to make the calculations.[130]

[129] The Commission recognizes that some respondents may choose to utilize the probability of default estimates calculated and made available by a third-party vendor rather than perform the calculations themselves. The Commission's burden estimate for the proposed amendment to Rule 101 is based upon respondents gathering the required data and calculating the probability of default internally without the use of third-party vendors, because the Commission lacks granular information from which to base an estimate of the proportion of respondents that would use vendors. The Commission welcomes comments on this approach, including regarding the likelihood and cost of using third-party vendors, including any time burden associated with using such services.

[130] Further, the Commission preliminarily believes that respondents that choose to utilize the probability of default estimates calculated and made available by a third-party vendor would already have access to the vendor's software and systems containing these estimates, typically as part of an existing subscription, so they would not need to procure further services or subscriptions from

Accordingly, the Commission estimates that the total industry-wide initial burden for the proposed amendment to Rule 101 would be 711 hours.[131]

An issuer's probability of default is forward-looking and changes over time, so the Commission preliminarily believes that respondents would manually gather the inputs required to calculate probability of default each time it participates in a distribution of debt securities. There were 19,076 offerings of Nonconvertible Securities in 2020.[132] Because financial modeling generally, and the probability of default calculation more specifically, is well-known by industry participants, the Commission preliminarily believes that respondents would have employees that are familiar with how to gather the required inputs. The Commission, therefore, estimates that would take respondents roughly 1 hour per distribution of Nonconvertible Securities on this requirement. Accordingly, the Commission estimates that the amendment to Rule 101 will result in an aggregate annual ongoing industry-wide burden of 19,076 hours. The Commission, therefore, estimates that the total PRA burden resulting from the proposed amendment to Rule 101 would be 19,787 hours in the first year[133] and 19,076 hours thereafter.

The Commission preliminarily believes that the proposed amendments would not result in respondents incurring PRA burden when participating in distributions of asset-backed securities because whether an asset-backed security has an effective registration statement on Form SF–3 is an objective, observable fact.[134] Further, under the proposed amendments, there is no requirement for distribution participants or their affiliated purchasers to keep records documenting its reliance on the exception for distributions of asset-backed securities.

2. Rule 17a–4

The proposed amendment to Rule 17a–4 would require broker-dealers relying on the exception in proposed paragraph (c)(2)(i) to preserve for a period of not less than three years, the first two years in an easily accessible place, the written probability of default determination. Because the burden to make these records is accounted for in the PRA estimates for the amendment to Rule 101, the burden imposed by these proposed new requirements under Rule 17a–4 is limited to the maintenance and preservation of the written records.[135] The Commission estimates that this recordkeeping requirement would impose an initial burden of 25 hours per respondent for updating the applicable policies and systems required to account for capturing the records made pursuant to proposed paragraph (c)(2)(i). Accordingly, the Commission estimates that the total industry-wide initial burden for this requirement would be 5,925 hours.[136] The Commission also estimates that respondents would incur an ongoing annual burden of 10 hours per firm for maintaining such records as well as to make additional updates to the applicable recordkeeping policies and systems to account for the proposed rules, leading to a total ongoing industry-wide burden of 2,370 hours.[137] The Commission, therefore, estimates that the total PRA burden resulting from the proposed amendment to Rule 17a–4 would be 8,295 hours in the first year[138] and 2,370 hours thereafter.

PRA Summary Table

| | Initial burden hours | Ongoing annual burden hours per year (after first year) | Total PRA burden hours in first year |
|---|---|---|---|
| Industry-Wide Burden due to Proposed Amendment to Rule 101 | 711 | 19,076 | 19,787 |
| Industry-Wide Burden due to Proposed Amendment to Rule 17a–4 | 5,925 | 2,370 | 8,295 |

*D. Collection of Information Is Mandatory*

Each collection of information discussed above would be a mandatory collection of information.

*E. Confidentiality*

The Commission would not typically receive confidential information as a result of this collection of information. To the extent that the Commission receives—through its examination and oversight program, through an investigation, or by some other means—records or disclosures from a distribution participant regarding the probability of default determination, such information would be kept confidential, subject to the provisions of applicable law.

*F. Retention Period of Recordkeeping Requirement*

Pursuant to proposed Rule 17a–4(b)(17) a broker-dealer who is a distribution participant or affiliated purchaser would be required to retain information for a period of not less than three years, the first two years in an easily accessible place.

*G. Request for Comment*

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to (1) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information and assumptions used therein; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (4) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and (5) evaluate whether the proposed amendments would have any effects on any other collection of information not

these vendors. The Commission welcomes comments on this preliminary belief and on any related costs and burdens.

[131] 237 respondents × 3 hours = 711 hours.

[132] This number was obtained from Mergent, a financial data provider. Data for 2021 is not yet available in Mergent.

[133] 711 hours (initial burden) + 19,076 hours (ongoing annual burden) = 19,787 hours.

[134] *See* 17 CFR 239.45.

[135] As noted above, for the purposes of these estimates, the Commission assumes that no registrants are using vendors to rely on the proposed exceptions, however, the Commission also preliminarily believes that the burden associated with the proposed amendment to Rule 17a–4 would not differ between respondents that rely on a third-party vendor and those that do not.

[136] 237 respondents × 25 hours = 5,925 hours.

[137] 237 respondents × 10 hours = 2,370 hours.

[138] 5,925 hours (initial burden) + 2,370 hours (ongoing annual burden) = 8,295 hours.

previously identified in this section. The Commission also requests that commenters provide data to support their discussion of the burden estimates.

While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following questions:

42. Is the Commission adequately capturing the respondents that would be subject to burdens under the proposed amendments? Specifically, would more or fewer than the 237 respondents determine the probability of default?

43. Is the Commission accurately estimating the amount of time it would take to program systems and gather the data required to perform the probability of default calculations?

44. Would any aspects of the proposed amendments that are not discussed in this PRA Analysis affect the burden associated with the collection of information?

45. Do commenters agree with the Commission's preliminary belief that the proposed amendment to Rule 102 would not change PRA burdens?

46. Do commenters agree with the Commission's preliminary belief that the proposed amendments would not result in respondents incurring PRA burden when participating in distributions of asset-backed securities?

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov,* and send a copy to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–11–22. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–11–22, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

## VIII. Economic Analysis

The Commission is sensitive to the economic consequences and effects, including costs and benefits, of its rules. Some of these costs and benefits stem from statutory mandates, while others are affected by the discretion exercised in implementing the mandates. Section 3(f) of the Exchange Act provides that whenever the Commission is engaged in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[139] Additionally, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition. Section 23(a)(2) also provides that the Commission shall not adopt any rule which would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The analysis below addresses the likely economic effects of the proposed amendments, including the anticipated benefits and costs of the amendments, and their likely effects on efficiency, competition, and capital formation. The Commission also discusses the potential economic effects of certain alternatives to the approach taken by these amendments. Some of the benefits and costs discussed below are difficult to quantify. For example, sticky offerings are generally not identified in the available data and may be difficult to trace in the appropriate records of the distribution participants. Therefore, much of the discussion of economic effects is qualitative.

### *A. Baseline*

#### 1. The Investment Grade Fixed Income Market

To assess the economic effects of the proposed amendments, the Commission is using as the baseline the nonconvertible debt, nonconvertible preferred, and asset-backed securities markets as they exist at the time of this release, including applicable rules that the Commission has already adopted.

The affected parties include Nonconvertible Security and asset-backed security (collectively ''fixed-income securities'')[140] distribution and market participants, such as issuers, selling security holders, underwriters, banks, broker-dealers, and their affiliated purchasers; fixed-income security investors, such as retail investors, mutual funds, exchange traded funds, and separate investment accounts; vendors of the relevant market data; and NRSROs. Currently a majority of the distribution participants in the relevant markets are subscribed to a major vendor of the market data necessary to evaluate various aspects of the distribution. Further, a rating by an NRSRO is necessary in order for distribution participants to rely on the Investment Grade Exception. Today there are nine credit rating agencies registered with the Commission as NRSROs.[141] Three large NRSROs (S&P Global Ratings, Moody's Investors Services, Inc., and Fitch Ratings, Inc.) have historically accounted for most of the market share in this market. As of December 31, 2020, these three market participants accounted for 94.7% of all of the NRSRO credit ratings outstanding.[142]

The affected securities are nonconvertible debt, nonconvertible preferred, and asset-backed securities. In 2020, there were 19,076 issues of nonconvertible debt, with 694 issuers and 237 participating underwriters involved.[143] Additionally, in 2020, there were 152,069 issues of mortgage-backed securities with 195 underwriters involved and 7,255 issues of other asset-backed securities with 155 underwriters.[144]

#### 2. The Investment Grade Exception to Regulation M

Regulation M is designed to prevent manipulative activities that could artificially influence the demand and pricing of covered securities.[145] In particular, Rules 101 and 102 of Regulation M prohibit distribution and market participants from bidding for or purchasing a covered security, unless an exception, such as the Investment Grade Exception, applies.[146] At the time the exception was included, the investment grade securities, that is securities characterized by sound credit-worthiness, were considered to be

[139] *See* 15 U.S.C. 78c(f).

[140] The term ''fixed-income'' in the Economic Analysis section refers to nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities.

[141] U.S. Sec. and Exch. Comm'n, Annual Report on Nationally Recognized Statistical Rating Organizations 2 (2022), *available at https://www.sec.gov/files/2022-ocr-staff-report.pdf.*

[142] *Id.* at 24.

[143] The statistics are based on the data from Mergent.

[144] The data for the asset-backed securities (including mortgage-backed securities) comes from Bloomberg.

[145] *See supra* Part 0.

[146] *See* 17 CFR 242.101(a), 102(a); *see, e.g.,* 17 CFR 242.101(c)(2), 102(d)(2).

traded primarily on yield and maturity, rather than the factors that determine credit-worthiness of the issuer and add uncertainty to the pricing of the issue.[147] Thus sound credit-worthiness was considered to be a good proxy for manipulation risk. Such issues were presumed to have low probability of default and were thus considered to have low pricing uncertainty and low manipulation risk, which formed the basis for the exception. The Commission continues to believe that sound credit-worthiness is a good proxy for manipulation risk since securities issued by firms with sound credit-worthiness trade primarily on yield and maturity and not on issuer-specific characteristics that may increase pricing uncertainty.

The Commission believes that the application of the Investment Grade Exception to Rules 101 and 102 is primarily limited to two cases:[148] Reopenings (an offering of an additional principal amount of securities that are identical to the securities already outstanding) and sticky offerings (an offering where a lack of demand results in an underwriter being unable to sell all of the securities in a distribution). Reopenings are used infrequently and constitute about 3% of the relevant securities' markets' issuance volume.[149] Sticky offerings are not identified in the relevant databases, making it difficult to assess their relative magnitude.

Reopenings are used in situations when such financing method offers the benefit of cost-effectiveness. For example, it may be cheaper for an issuer to offer a series of small offerings as opposed to one large offering, as the latter could result in a lower offering price due to the supply pressure. Further, since a reopening issue is fungible with securities already in circulation and can be traded interchangeably with these securities in the secondary market, it provides additional liquidity benefits to the investors.[150]

Sticky offerings typically result when a large investor fails to fulfill its expressed purchase interest in the issue,[151] which could be due to a negative factor that transpired in regard to the issue or issuer. In such cases it may become challenging to trade the issue based solely on the yield and maturity (otherwise it would have become possible to find another purchaser in a timely manner). This may give rise to a heightened risk of manipulation even if the security is rated as investment grade.

The Commission preliminarily believes that the exception based on investment grade rating is rarely used in practice in Rule 102. Rule 102 prohibits trading of the securities fungible with the securities being issued by issuers, selling security holders, and their affiliated purchasers.[152] However, issuers and selling security holders generally do not have the same market access needs as underwriters and are not expected to buy the securities they are issuing.[153]

The Investment Grade Exception was included in the regulation as it was considered a good proxy for the likelihood of manipulation risk.[154] However, the reference to NRSRO ratings in the Commission's rules may encourage investors to place undue reliance on the NRSRO ratings. Additionally, even though credit-worthiness has been historically considered a good proxy for manipulation risk, it is still not a precise measure of such risk and therefore there are costs associated with using such a proxy that currently exist in the relevant markets. Specifically, in some instances distribution participants may choose to engage in manipulative activities of the securities of issuers with sound credit-worthiness. As a result, under the existing rules, situations may arise in which securities with high manipulation risk are excepted from Regulation M.

### *B. Benefits of the Proposed Amendment*

As mentioned above, Section 939A of the Dodd-Frank Act requires the Commission to ''remove any reference to or requirement of reliance on credit ratings, and to substitute in such regulations such standard of credit-worthiness as the Commission determines to be appropriate.'' [155] In this proposed rule, the Commission proposes to rely upon the Structural Credit Risk Models to measure credit-worthiness.[156] These models have become widely used to estimate the probability of default of an issuer.[157]

Structural Credit Risk Models typically take the issuer balance sheet measures of debt obligations as given and estimate a probability of default based on the market value and volatility of the firm's equity. The value of equity is viewed in these models as the value of a call option on firm assets where the strike price is the total notional value of debt. Since the market value of equity, the volatility of equity, and the notional value of debt can be calculated from the market and balance sheet data, under the Structural Credit Risk Models the volatility of the value of the assets and the market value of assets, which are not observable, can be estimated. The probability of default can be calculated as the probability that the call option will expire out-of-the-money, which occurs when the value of the company falls below the book value of the debt.

As discussed above, Structural Credit Risk Models are based on the structure of the balance sheet.[158] The key

[147] *See* Regulation M Adopting Release, 62 FR 527.

[148] Some commenters note that best efforts offerings (*see supra* note 59) and foreign sovereign offerings (*see supra* note 62) could also be affected by the exceptions in Rules 101 and 102.

[149] The estimate is obtained using Mergent data for the relevant fixed income securities during the past five years as of Oct. 2021.

[150] *See* SIFMA Letter 3 at 6; John Berkery & Remmelt Reigersman, *Re-openings: Issuing Additional Debt Securities of an Outstanding Series,* Mayer Brown 1–2 (2020), *available at https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2020/05/reopenings_-issuing-additional-debt-securities-of-an-outstanding-series.pdf. See also* Arnold & Porter Letter at 3.

[151] Sullivan & Cromwell Letter at 4.

[152] *See supra* Part IV.A.1.c. for a relevant discussion.

[153] *See supra* Part IV.B.

[154] *See supra* Part III (discussing the history of the Investment Grade Exceptions).

[155] Public Law 111–203 sec. 939A(a). The Commission has issued several releases concerning the removal of references to credit ratings: *Security Ratings,* Release No. 34–64975 (July 27, 2011) [76 FR 46603 (Aug. 3, 2011)]; *Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934,* Release No. 34–71194 (Dec. 27, 2013) [79 FR 1522 (Jan. 8, 2014)]; *Removal of Certain References to Credit Ratings under the Investment Company Act,* Release No. IC–30847 (Dec. 27, 2013) [79 FR 1316 (Jan. 8, 2014)]; *Asset-Backed Securities Disclosure and Registration,* Release No. 34–72982 (Sept. 4, 2014) [79 FR 57184 (Sept. 24, 2014)]; *Removal of Certain References to Credit Ratings and Amendment to the Issuer Diversification Requirement in the Money Market Fund Rule,* Release No. IC–31828 (Sept. 16, 2015) [80 FR 58124 (Sept. 25, 2015)].

[156] See for example the seminal model by Robert C. Merton, *On the Pricing of Corporate Debt: The Risk Structure of Interest Rates,* 29 Journal of Finance 449, 449–70 (1974), along with related successive refinement models such as Fischer Black & John C. Cox, *Valuing Corporate Securities: Some Effects of Bond Indenture Provisions,* 31 J. Fin. 351, 351–67 (1976); Robert Geske, *The Valuation of Corporate Liabilities as Compound Options,* 12 J. Fin. & Quantitative Analysis 541, 541–52 (1977); and Oldrich A. Vasicek, *Credit Valuation, KMV* (Mar. 22, 1984), among others.

[157] *See supra* note 67.

[158] An alternative set of models used to derive probability of default are 'reduced-form models'. The reduced-form models rely on statistical analysis rather than the balance sheet to determine a firm's creditworthiness. However, compared to Structural Credit Risk Models, they lack in rigorous theoretical justification as well as economic interpretation of the resulted relationships between the model inputs. *See, e.g.,* Edward Altman, Andrea Resti, & Andrea Sironi, *Default Recovery Rates in Credit Risk Modeling: A Review of the Literature and Empirical Evidence,* 33 Econ. Notes 183 (2004) (discussing the competing models), *available at https://onlinelibrary.wiley.com/doi/10.1111/j.0391-5026.2004.00129.x.*

assumption of a Structural Credit Risk Model is that default occurs when the value of the company falls below the book value of the debt. Since the future value of the firm is unknown, a Structural Credit Risk Model must make assumptions about the probability distribution of possible firm values in different scenarios, some of which may trigger default. These assumptions include the current firm value and the volatility of firm value, for which the observed market value of equity and the volatility of equity is often an input. Some models include assumptions over the firm's dividend policy.

The Commission preliminarily believes that the probability of default based on the Structural Credit Risk Models is an appropriate proxy for credit-worthiness. As discussed previously, the Commission continues to believe that credit-worthiness is an appropriate standard to reflect manipulation risk since securities issued by firms with sound credit-worthiness trade primarily on yield and maturity and have low pricing uncertainty. Thus, the probability of default based on Structural Credit Risk Models is a reasonable proxy for manipulation risk.

The Commission calibrated the 0.055% threshold in the sample of nonconvertible fixed income securities so as to capture approximately 90% of the investment grade securities in our sample of nonconvertible fixed income securities (2436 distinct investment grade issues with probability of default below 0.055% out of 2710 total investment grade rated issues in the sample). This threshold also captures 125 distinct non-investment grade issues with probability of default below 0.055%. Overall, 2561 issues meet the proposed exception as compared with the 2710 issues under the current exception.[159] The securities with probability of defaults within the first 12 months, as estimated based on a widely accepted Structural Credit Risk Model, below the 0.055% threshold are proposed to be excepted from Rule 101.

An advantage of using probabilities of default implied by Structural Credit Risk Models instead of NRSRO credit ratings is that these model-implied probabilities of default generally use current estimates of equity valuation and volatility, and hence incorporate most recent news affecting the valuation and perceived volatility of the firm. In contrast, credit rating agencies are generally slower than the market in updating credit ratings and outlooks and thus may reflect less up-to-date information.[160] [161]

Distribution participants should be able to calculate the probability of default internally using Structural Credit Risk Models. One of the benefits of the proposed amendment is that the distribution participants will have the flexibility of selecting the model they find most convenient to assess the credit-worthiness of issuers for the purposes of using the exception. This means the distribution participants will no longer have to rely on an NRSRO rating for the issue for purposes of the Regulation M exception and will no longer have to rely on an NRSRO's choice of the model for such purposes. Furthermore, the Commission preliminarily believes that multiple vendors currently provide estimates of the probability of default based upon Structural Credit Risk Models as a part of default packages that include various market data and metrics.[162]

Removing the reference to credit ratings from Rules 101 and 102 of Regulation M may also have a benefit of expanded options available to distribution participants compared to the Regulation M Investment Grade Exception requirement, as the proposed requirement will no longer rely on a limited number of vendors providing credit ratings, which may reduce possible negative consequences from limited competition. Structural Credit Risk Models as a measure for credit-worthiness could therefore serve as a better proxy for manipulation risk than credit ratings because, by prescribing a methodology rather than a metric generated by only a certain category of regulated vendors (that is, NRSROs), distribution participants may have more options for either using a vendor supplied Structural Credit Risk Model or using their own proprietary version of a publicly available Structural Credit Risk Model.

Under the proposed amendments, the Structural Credit Risk Models cannot, as a practical matter, apply to asset-backed securities due to the complexity of the structure of such instruments. In the case of asset-backed securities, the Commission preliminarily believes that securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3 should also be excepted from Rule 101. Form SF–3 requirements provide objective criteria that also ensure that the securities with the least amount of manipulation risk are allowed to rely on the Regulation M exception. Specifically, Form SF–3 requirements limit the number of nonperforming assets in the asset-backed security pool, require review of the pool assets, and require certification by the chief executive officer, among other things. The Commission continues to believe, as noted when it adopted these requirements, that use of Form SF–3 incentivizes sponsors to carefully review and disclose the underlying assets' characteristics, reducing the overall uncertainty about the asset-backed security and therefore the risk of manipulation. Accordingly, asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3 have similar qualities and characteristics to the investment-grade asset-backed securities currently excepted from Rule 101(c)(2). Further, an analysis of a merged sample of Form SF–3 filers and Bloomberg credit ratings

[159] The most recent available investment grade status (as of the last available Mergent update through Dec. 2020) for nonconvertible securities issued between 2016 and 2020 was obtained from Mergent while the probability of default estimates were obtained for a cross-section of securities available in Bloomberg as of Oct. 22, 2021, which represents an average trading day with respect to the relevant market metrics. Since the cross-section of the relevant securities does not change considerably from day to day and the relevant metrics are typically calculated based on the data over a several months period or longer, it is unlikely that the results of the analysis are considerably affected by the specific day selected for the analysis. Please refer to Mario Bondioli, Martin Goldberg, Nan Hu, Chngrui Li, Olfa Maalaoui, & Harvey J. Stein, *The Bloomberg Corporate Default Risk Model (DRSK) for Private Firms* (working paper Aug. 27, 2021), *available at https://ssrn.com/abstract=3911330* (retrieved from SSRN Elsevier database), for methodology description of Bloomberg probability of default measure.

[160] This is consistent with the following SEC staff statement in COVID–19 Market Monitoring Group, *Credit Ratings, Procyclicality and Related Financial Stability Issues: Select Observations,* SEC (July 15, 2020) (''Cost of debt capital is driven by a wide range of financial and non-financial factors and forces; ratings downgrades are generally lagging indicators of cost of debt capital.''), *available at https://www.sec.gov/news/public-statement/covid-19-monitoring-group-2020-07-15.*

[161] Some academic studies find evidence that Structural Credit Risk Models may be able to respond to aggregate and firm specific news faster than credit ratings. Also, such models are able pick up on differences in default risk *within* a credit rating bucket. However, credit ratings do not necessarily imply probabilities of default and thus may not be directly comparable to probability of default estimated using a Structural Credit Risk Model. *See* Jing-zhi Huang & Hao Zhou, *Specification Analysis of Structural Credit Risk Models* (Fed. Res. Bd., Fin. & Econ. Discussion Series, 2008–552008), *available at https://www.federalreserve.gov/pubs/feds/2008/200855/200855pap.pdf*; Moody's Analytics, *EDF Overview* (2011) (outlining the approach by Moody's KMV), *available* at *https://www.moodysanalytics.com/-/media/products/EDF-Expected-Default-Frequency-Overview.pdf;* Giuseppe Montesi & Giovanni Papiro, *Risk Analysis Probability of Default: A Stochastic Simulation Model,* 10 J. Credit Risk 29 (2014).

[162] See a relevant discussion in *supra* Part IV.A.1.c).

for year 2021 asset-backed securities issuances demonstrates that 78% of Form SF–3 filers' issuances have investment grade status (362 out of 464 rated issuances), while the remaining 22% of issuances have non-investment grade status (102 issuances).[163] To the extent that asset-backed securities for which a Form SF–3 is filed includes securities that have low manipulation risk but lack an investment grade rating, the additional benefit of the proposed amendments is allowing such low manipulation risk issues to rely on the exception and encouraging participation in the relevant market.

The Commission is proposing to eliminate the exception entirely from Rule 102, as discussed above, given the heightened risk of manipulation that exists for issuers and selling security holders and absence of a need to facilitate an orderly distribution or to limit potential disruptions in the trading market, coupled with our understanding that the Investment Grade Exception is generally not relied upon in practice, as issuers and selling security holders who are subject to Rule 102, unlike broker-dealers, typically do not trade outstanding issues of their own securities that are identical to the issue being distributed in the secondary market.[164] The economic benefit of the proposed amendment is that it may contribute to the Dodd-Frank Act goals of reducing perceived government endorsement of NRSROs and over-reliance on credit ratings by market participants in Regulation M by removing the relevant reference to credit ratings.

*C. Costs of the Proposed Amendment*

The Commission recognizes that some of the affected distribution participants may bear costs from the proposed amendments. The proposed amendments may alter the universe of securities that can rely on the exception and additionally may prevent issuers from using the exception in some cases potentially leading to fewer issues of the affected securities. If some distribution participants decide not to participate in certain issues as a result of the proposed amendments, the costs of the affected issues may increase. For example, when fewer banks or broker-dealers are available, these distribution participants may be able to charge higher fees. Additionally, as the result of the proposed amendments fewer issues may take place, potentially limiting issuers' ability to raise capital and affecting investors in the relevant securities as the available security selection and liquidity may be reduced.

There are several types of costs that could arise: (1) Costs associated with calculations or obtaining the probability of default estimate; (2) costs associated with maintaining records related to the probability of default estimation; (3) costs due to the probability of default being an imperfect proxy for credit-worthiness, (4) asset-backed securities' costs associated with the proposed amendments, (5) costs related to Rule 102 amendments (6) indirect and other costs of the amendments. We discuss these costs in detail below.

1. Costs Associated With Obtaining the Estimate of the Probability of Default

Distribution participants may incur costs related to determining the probability of default. Consistent with the PRA section,[165] the Commission estimates that it would take a distribution participant 3 hours to establish a system to gather the data serving as the inputs and then perform the analysis necessary to calculate the probability of default of the issuer whose securities are the subject of the distribution, for an aggregate cost of $240,318.[166] Consistent with the PRA section,[167] the Commission also estimates that it would take a distribution participant one hour to gather the inputs required to calculate probability of default each time it participates in a distribution of Nonconvertible Securities. There were 19,076 offerings of Nonconvertible Securities in 2020. Therefore, it is estimated that annually distribution participants would spend $6,447,688[168] in the aggregate complying with this requirement.

Any costs associated with using a vendor to obtain probability of default estimate should be minimal, as the Commission preliminarily believes that distribution participants engaged in the offering of Nonconvertible Securities would typically already have subscriptions to vendors that provide calculations regarding the probability of default based on Structural Credit Risk Models.[169] Furthermore, we believe that distribution participants, in particular those that choose to determine the probability of default estimate internally, would already have the computational resources necessary to conduct such analysis internally.[170]

2. Costs Associated With Maintaining Records Related to the Probability of Default Estimation

Distribution participants would also incur costs related to capturing and maintaining records regarding the probability of default determination. Consistent with the PRA section,[171] the Commission estimates that it would take a distribution participant 25 hours to update the applicable policies and systems required to account for capturing the records made pursuant to proposed Rule 101(c)(2)(i), for an aggregate cost of $2,002,650.[172] Consistent with the PRA section,[173] the Commission also estimates that it would take a distribution participant 10 hours to maintain such records as well as to make additional updates to the applicable recordkeeping policies and systems to account for the proposed rules. Therefore, it is estimated that annually broker-dealers would spend $801,060[174] in the aggregate complying with this requirement.

3. Costs Associated With Structural Credit Risk Model Based Probability of Default Being an Imperfect Proxy for Credit-Worthiness

As discussed previously, the proposed Structural Credit Risk Models are designed to measure credit-worthiness, and credit-worthiness itself

[163] We note that 770 investment grade asset-backed security issuances (by 191 issuers) from the 2021 Bloomberg sample did not merge with the sample of Form SF–3 filers in part due to necessarily present imperfections in issuer name matching and in part due to a much smaller number of Form SF–3 filers (62 issuers). This may imply a possibility that a fairly large number of issuances that are able to rely on the exception currently will be excluded under the proposed standard. The asset-backed securities eligible for Rule 144A were excluded from the analysis as they are able to rely on a different exception.

[164] See also a relevant discussion in *supra* note 120. Eliminating the Investment Grade Exception, however, could affect the ability of foreign sovereign issuers to purchase any of such issuer's securities. *See* discussion in *infra* Part VIII.C.5 and Arnold & Porter Letter at 3.

[165] *See supra* Part VII.C.1.

[166] The Commission estimates the wage rate based on salary information for the securities industry compiled by SIFMA. *See Management & Professional Earnings in the Securities Industry—2013,* SIFMA (Oct. 7, 2013), *available at https://www.sifma.org/resources/research/management-and-professional-earnings-in-the-securities-industry-2013/.* These estimates are modified by the Commission staff to account for an 1800 hour work-year and multiplied by 5.35 (professionals) or 2.93 (office) to account for bonuses, firm size, employee benefits and overhead. These figures have been adjusted for inflation through the end of 2021 using data published by the Bureau of Labor Statistics. 237 distribution participants × 3 hours × $338 hour for a compliance manager = $240,318.00.

[167] *See supra* Part V.C.1.

[168] 19,076 offerings × 1 hour × $338 hour for a compliance manager = $6,447,688.

[169] *See supra* note 84.

[170] *See supra* Part IV.A.1.c).

[171] *See supra* Part VII.C.2.

[172] 237 distribution participants × 25 hours × $338 hour for a compliance manager = $2,002,650.

[173] *See supra* Part V.C.1.

[174] 237 distribution participants × 10 hours × $338 for a compliance manager = $801,060.

is considered to be a good measure of manipulation risk. There are costs that are currently present in the relevant markets associated with credit-worthiness being an imperfect proxy for manipulation risk. However, in the absence of a better proxy for manipulation risk, credit-worthiness has continued to successfully serve the purpose of measuring such risk for many years. This is also supported by the comments stating that investment grade standard has been successfully used in Rules 101 and 102 exception.[175] The proposed amendments are not expected to alter those costs and the discussion that follows focuses instead on the costs associated with the proposed Structural Credit Risk Models as a proxy for credit-worthiness.

The use of any model to estimate credit-worthiness necessarily provides an imperfect measure. Structural credit risk models are no exception. We note, however, that NRSROs similarly may rely on imperfect models of estimating issuer credit-worthiness. Moreover, models such as Structural Credit Risk Models often are a part of the analysis involved in obtaining a credit rating.[176]

Some ways to implement Structural Credit Risk Models make use of historical trading data to produce a reliable estimate of the model input parameters. These data may not be available for certain infrequently traded securities. In some circumstances the market for a security has not yet been established and sufficient trading data are unavailable, making it difficult to apply the exception.

Additionally, Structural Credit Risk Models rely on a number of parameter estimates such as firm market value and volatility, which could be difficult to assess as these values change with market conditions and business fluctuations. A changing term structure of interest rates and noise trading in the market can further distort the probability of default estimates. Incorrect parameter estimates may result in the incorrect estimates of default probability and allow distribution participants to rely on the exception for risky issues or prevent distribution participants from relying on the exception for safe issues. Implied probabilities of default are sensitive to market prices and estimates of market volatility and consequently tend to be counter cyclical, increasing during market downturns, which are often also periods of increased uncertainty. A constant threshold which is not time-varying would potentially result in fewer firms qualifying for the exception during market downturns, which may result in more issuances during this period not qualifying or firms choosing not to issue, hence increasing their cost of capital or limiting their access to capital. While credit rating downgrades are also counter cyclical, they tend to be slow in incorporating updates[177] and relatively fewer firms will have an investment grade credit rating during downturns, the impact of the counter cyclicality of default probabilities implied by Structural Credit Risk Models would be stronger relative to using credit ratings: During periods of distress, using these probabilities of default will likely result in fewer firms with an investment grade credit rating falling below the threshold, and thus fewer firms qualifying for the exception relative to using credit ratings. Distribution participants would, however, be able to adjust the required estimated model parameters and inputs frequently as market conditions change, mitigating the costs discussed above.

Due to the number of variations among Structural Credit Risk Models and their estimated inputs, the probability of default estimates may be subjective to some extent and not comparable across different issuers or for the same issuer across different issues if estimates are based on different models, or done by different researchers or vendors. The latter may affect market participants' ability to effectively rely on the estimates to make comparative assessments across multiple securities. However, this is also true of the credit ratings that often rely on similar models, which mitigates these costs of the proposed amendments relative to the market baseline.

In addition, as discussed previously in reference to the selected threshold, the amendment may expand slightly the universe of firms that qualify for the exception and include firms that did not receive an investment grade credit rating, but have a structural credit model implied probability of default that falls below the threshold. The debt prices of these firms may be prone to manipulation if the price of their debt is relatively less sensitive to aggregate interest rate changes.

Additionally, this amendment may create potential opportunities for new products offered by the vendors designed specifically for a given issue or issuer. A custom designed estimate paid for by the issuer may lead to potential conflicts of interest since the vendor is incentivized in this case to produce an estimate which would allow the issuer to rely on the exception. However, the existing major vendors supplying probability of default estimates have numerous clients currently using this information for business purposes other than the Rule 101 exception. Therefore, given the reputational concerns it is unlikely that these vendors would produce a slightly different product to cater specifically to the use of these estimates for purposes of relying on the Rule 101 exception. Additionally, the model input estimates or assumptions may be tweaked by the distribution participants in such a way as to produce the desired estimation result if the model is estimated internally and may result in market participants' adjusting the models so as to be able to rely on the exception.[178] This may result in an additional cost of adding some manipulation risk to the relevant markets if manipulation prone issues are allowed to rely on the exception as a result.

Finally, the proposed threshold of 0.055% for the exception is based on model assumptions and historical data. Future market evolution may result in this threshold becoming either too large or too small, allowing risky issues to rely on the exception or preventing safe issues from using it. This may vary by industry, with the threshold being more restrictive in some industries relative to the original NRSRO investment grade designation. Moreover, probabilities of default as implied by Structural Credit Risk Models tend to be counter-cyclical and can spike in periods of crisis due to decreases in market valuation and increases in equity volatility. Consequently, fewer investment grade firms would fall below the threshold. Credit rating by NRSROs are also countercyclical but tend to be slow moving, since credit rating changes often lag updates to firm conditions that would impact cost of capital.[179]

[175] *See,* for example, Rothwell at 2 and ABA at 15 –17.

[176] *See, e.g.,* John Y. Campbell, Jens Hilscher, & Jan Szilagyi, *In Search of Distress Risk,* 63 J. Fin. 2899 (2008), *available at https://scholar.harvard.edu/files/campbell/files/campbellhilscherszilagyi_jf2008.pdf.*

[177] *See* COVID–19 Market Monitoring Group, *supra* note 160 (''Cost of debt capital is driven by a wide range of financial and non-financial factors and forces; ratings downgrades are generally lagging indicators of cost of debt capital.'').

[178] The definition of Structural Credit Risk Models for purposes of Rule 101(c)(2)(i) is limited to commercially or publicly available models, which would limit a distribution participant's ability to develop its own models to achieve favorable results.

[179] COVID–19 Market Monitoring Group, *supra* note 160 (''Cost of debt capital is driven by a wide range of financial and non-financial factors and forces; ratings downgrades are generally lagging indicators of cost of debt capital.'').

4. Costs Associated With Asset-Backed Securities' Amendments

The proposed amendments may render some asset-backed securities ineligible to rely on the exception from the Regulation M. This may increase issuance costs for the distribution participants. For instance, broker-dealers may reduce an offering's size or increase fees if required to comply with Regulation M. Additionally, distribution participants may need to establish new business relationships due to Regulation M restrictions. Furthermore, some issuers may decide not to issue the affected securities if required to comply with Regulation M restrictions. As a result, some asset-backed securities' issues may not take place, which could affect issuers' ability to raise capital and could affect investors in the relevant markets by potentially reducing the selection of the available asset-backed securities.

5. Costs Associated With Amendments to Rule 102

As discussed previously, the effect of eliminating the exception from Rule 102 is expected to be minimal since the exception is likely not useful from a practical standpoint, because the issuers and selling security holders who are subject to Rule 102 typically do not trade their own securities that are being issued. However, as was identified previously in a comment letter, an Investment Grade Exception from Rule 102 could affect the ability of foreign sovereign issuers or their affiliates to purchase any of such issuer's securities.[180] In the past the Commission has issued exemptive relief for some foreign sovereign issuers because they trade, as represented in incoming letters, based on a yield spread to US treasuries.[181] This might mean that bonds of foreign sovereign issuers are less susceptible to manipulation risk since there is less uncertainty in regards to their valuation. Eliminating the exception from Rule 102 may increase issuance costs or deter market participants from issuing such securities with low manipulation risk.

6. Indirect and Other Costs of the Amendments

Besides the direct effects on the distribution participants and affected securities discussed above the proposed amendment may also generate indirect effects on investors in these securities and NRSROs. For instance, if issuer participation in the relevant security issues becomes limited, some issues may not take place that otherwise would. Investors may face a more limited choice of investment instruments as a result, for example in the case of reopenings. This may further affect liquidity of their portfolios since reopenings can offer additional liquidity benefits as the securities offered in reopenings are interchangeable with the existing issues. However, as already discussed, these costs are expected to be minimal as reopenings are used infrequently.

The proposed amendment does not rely on an NRSRO rating in order to determine if an issue can rely on the exception. This may diminish NRSROs' clientele to the extent NRSROs choose not to provide Structural Credit Risk Model-based estimates of the probability of default for their existing clients opting to rely on the exception. However, the amendment may increase the clientele of the vendors that supply relevant data and metrics to the distribution participants if such vendors already supply probability of default estimates or choose to offer this estimate as a part of their services. In addition, if firms do not solicit credit rating services from NRSROs beyond the estimate of a probability of default implied by a Structural Credit Risk Model, investors will not be able to benefit from the information provided by a credit rating report and ongoing coverage of the firm that otherwise would be provided through the distribution participant.

*D. Efficiency, Competition, and Capital Formation*

As discussed previously, distribution participants will have flexibility to select the best Structural Credit Risk Model to access credit-worthiness as a measure of manipulation risk for their business. This may encourage market participation in affected security issues and, as a result, could improve competition between issuers for the investors as well as between other distribution participants. Further, widely available estimates of the probability of default as well as an option of internal model estimation could lead to a more competitive environment as the requirement to rely on proprietary credit risk models of a small number of NRSROs is removed. The improved competition, market participation and efficiency ultimately should lead to more efficient capital formation as the access to and functioning of the relevant fixed income markets improves. We note however that these effects are not expected to be significant because the exceptions in Rules 101 and 102 affect only a small portion of the relevant market as discussed previously.

However, while unlikely, it is possible that a new business model could emerge in the relevant markets that leads to conflicts of interest and neutralizes the effects discussed above. For instance, distribution participants could contract with a vendor or a credit rating agency directly to create a custom estimate of the probability of default. This could result in a business model where an issuer pays for the supplied estimate and where vendors may be incentivized to produce an estimate designed to fit the desired estimation result. Thus issues that otherwise would not be able to rely on the exception could end up being excepted potentially increasing the manipulation risk in the relevant markets, which in turn could negatively affect competition and capital formation.

Further, the positive effects discussed above could be offset by the fact that some issuers may face higher costs or no longer be able to use the exception, for example, due to imperfect model estimates as a result of market fluctuations or changing market. High costs of issuance or inability to rely on the exception may deter participants from issuing the affected securities, which could impact the competition and capital formation in the relevant markets. Further, potential negative effects of non-uniform estimates and subjectivity additionally reduce these benefits. Finally, potentially increased issuance costs due to some asset-backed securities being ineligible for the exception may also negatively affect market participation and competition of the relevant markets.

*E. Reasonable Alternatives*

Alternative 1 discussed below deals with the proposed threshold, 2–4 propose alternative approaches to using Structural Credit Risk Models as a standard of credit-worthiness to measure manipulation risk. Alternative 5 discusses elimination of the exception, alternative 6 deals with asset-backed securities, while alternative 7 discusses Rule 102 options.

1. Alternative Threshold for Probability of Default

The proposed threshold of 0.055% was chosen so as to capture most of the investment grade securities while at the same time capturing the fewest of the non-investment grade securities. However, a different threshold could be used in the proposed exception, which would capture different proportions of investment and non-investment grade securities. For example, a higher

[180] Arnold & Porter Letter at 3.

[181] *See supra* note 121.

threshold of 0.5% is estimated to capture about 98.6% of investment grade securities (2673 out of 2710 investment grade issues), overall resulting in 2883 issues that can rely on the exception under the proposed standard.[182] A lower threshold of 0.01% is estimated to capture about 65% of investment grade securities (1760 out of 2710 investment grade issues) and overall results in 1811 issues that can rely on the exception under the proposed standard.[183] The advantage of a higher threshold is that it captures a larger set of investment grade securities, but at the expense of also capturing a small set of non-investment grade securities, which could be more prone to manipulation risk. As alternatives, the Commission could increase the threshold, which would allow more investment grade securities to rely on the exception at expense of potentially a higher manipulation risk; or decrease the threshold, which would limit the ability of some of the investment grade securities to use the exception, but would potentially also limit the number of non-investment grade securities allowed to rely on the exception and, as a result, also limit manipulation risk.

As an alternative to providing a specific number as a threshold, the Commission could specify a method for distribution participants to use in calculating such a threshold. For example, such method could involve calculating probability of default for a sample of nonconvertible securities similar to the distribution participant's securities issued over a specified time interval and comparing it to investment grade status or another specified standard of credit-worthiness. A longer time interval would capture more issues and improve statistical accuracy at expense of having market conditions potentially changing and generating incorrect estimates. A shorter time interval ensures the market conditions have not changed but includes fewer issues resulting in a smaller sample and lower statistical accuracy.

The main advantage of specifying a method as opposed to a number for the threshold is its flexibility with respect to changing market conditions. The main disadvantage of this alternative is subjectivity of the analysis involved, which may lead to non-uniform application of the Regulation M exception across issues or issuers; or lead to market participants adjusting the estimation to be able to rely on the exception.

2. Exception Based on Security Characteristics

As an alternative replacement for the reference to investment grade securities, the Commission has considered analysis that could be based on security characteristics, such as (1) total amount of issue outstanding (public float); (2) yield to maturity of the security during a past trading period; or (3) empirical duration.[184] Other relevant security characteristics that could be used are outlined in the 2011 Proposal.[185] Such analysis could be performed internally or externally and could be additionally verified by a third party. Below we discuss public float, yield to maturity and empirical duration criteria in more detail.

• *Exception Based on the Total Amount of Issue Outstanding (Public Float).*

To the extent that it is more difficult to manipulate price of a larger issue, public float could be used as an alternative criterion to reflect manipulation risk. This criterion has the advantage of being straightforward and easy to evaluate. Due to its simplicity it lacks the estimation issues associated with other measures such as the probability of default. However, determination of a threshold for public float to select securities for the exception is complicated due to its considerable variation across issuers or industries. A specific threshold selection could potentially disadvantage smaller issuers—especially during periods of market downturns when valuations are low.[186]

• *Exception Based on Yield to Maturity.*

Securities that are traded primarily on yield and maturity have low manipulation risk, as discussed before, since their pricing does not reflect issuer specific risks. Yield to maturity, therefore, can be used as an alternative criterion to evaluate manipulation risk. However, using yield to maturity as a criterion for securities eligible for the exception is also problematic. Even though this criterion is similarly easy to obtain and lacks any major estimation issues, selecting a threshold is not straightforward. For instance, yield to maturity differs considerably by industry. Selecting a fixed threshold may result in some industries being under-represented and others over-represented in the pool of eligible issues. Moreover, yield to maturity often moves with risk-free rates; thus fewer firms would be excepted during periods of high interest rates.

• *Exception Based on Empirical Duration.*

Empirical duration is another alternative proxy that can be used to evaluate Nonconvertible Securities for an exception from Regulation M. Negative empirical duration might be an indication that a Nonconvertible Security or its issuer is of low credit-worthiness. A Nonconvertible Security with negative empirical duration is less impacted by changes in interest rates than Nonconvertible Securities of credit-worthy issuers and trades similar to equity securities. Although negative empirical duration may demonstrate that a particular issuer or security is not credit-worthy, it has some limitations that impact the viability of negative empirical duration as a substitute for the Investment Grade Exception. In particular, this measure relies heavily on statistical analysis, requires the Nonconvertible Security to be traded, and may lack intuitive interpretation, which renders empirical duration a poor proxy for the type of manipulation that Regulation M is designed to prevent.

3. Exception Based on Issuer Characteristics

The Commission has also considered an exception based on issuer characteristics, for example, the interest coverage ratio, the WKSI standard, as suggested in the 2008 Proposal,[187] or a criterion based on a reduced-form credit risk model, as an alternative to the Structural Credit Risk Models. We discuss these alternatives below.

• *Exception Based on the WKSI Standard.*

The Commission could adopt the WKSI standard as a criterion to determine eligibility for the exception. The issuers that fall under the WKSI definition are large and established firms that typically have sound credit-worthiness. The advantage of this characteristic is its simplicity and straightforward calculations. However, the WKSI standard as discussed in the 2008 Proposal was heavily criticized, for instance for allowing risky high-yield issues to be eligible for the exception and preventing issues by smaller but

[182] 2883 issues captured by the new proposed standard (with probability of default below 0.5%) consist of 2673 investment grade issues and 210 non-investment grade rated issues.

[183] 1811 issues captured by the new proposed standard (with probability of default below 0.01%) consist of 1760 investment grade issues and 51 non-investment grade rated issues.

[184] Empirical duration is bond duration calculated based on historical data rather than a formula. Typically, it is estimated using a regression analysis of the relationship between market bond prices and Treasury yields.

[185] 2011 Proposing Release, 76 FR 26557–64.

[186] See also a related discussion in *supra* note 70.

[187] 2008 Proposing Release, 73 FR 40095–97.

otherwise credit-worthy issuers from relying on the exception.[188]

• *Exception Based on the Interest Coverage Ratio.*

Another possible issuer-based criterion for exception eligibility is the interest coverage ratio. A high interest coverage ratio typically indicates the issuer's ability to repay debt and can be used as a criterion to reflect credit-worthiness. It has the advantage of being a simple and easy to calculate value. However, the interest coverage ratio is an accounting measure that can result in inconsistent outcomes as it is based on the reported earnings rather than cash flows. Reported earnings may differ based on accounting practices of the firm. The proposed Structural Credit Risk Models have an advantage over interest coverage ratio since they are not dependent on reported earnings, which are heavily influenced by accounting practices.

• *Exception Based on Reduced-Form Credit Risk Model.*

An alternative to using Structural Credit Risk Models is reduced-form credit risk models.[189] The latter models could be a good measure of credit-worthiness and of manipulation risk to the extent that credit-worthiness is a good proxy for manipulation risk. Unlike structural models, reduced-form models do not assume default occurs when firm value falls below a threshold. The default is instead assumed to follow an unobserved process and the default model can be fitted to the market data. The advantage of these models is they do away with some of the unrealistic requirements of Structural Credit Risk Models, for example when the firm value, its volatility or other required parameters are unobserved. Even though such models can be considered more flexible and may provide better fit for the observed default events, their ability to predict future defaults may not necessarily exceed that of the structural models. In addition, unlike structural models, they suffer from a lack of theoretical background of the assumed relationships, or the intuitive interpretation of the model dependencies and why the defaults occur. Unrestricted use of these models might also provide more opportunity to choose a reduced-form model specification which enables use of the exception.

4. Exception Based on Issuer and Issue Characteristics

The Commission considered, as another alternative, an analysis based on both security and issuer characteristics; for example, characteristics outlined in Exchange Act Rule 15c3–1. Rule 15c3–1 specifies a set of factors to determine a minimum amount of credit risk broker-dealers can use to determine if a security can qualify for lower haircuts: (1) Credit spreads; (2) securities-related research; (3) internal or external credit assessments; (4) default statistics; (5) inclusion in an index; (6) enhancements and priorities; (7) price, yield and/or volume; or (8) asset-class specific factors.[190] Some of these factors, such as default statistics or credit assessments, measure issuer credit-worthiness, while others, such as price, yield, or volume, measure the manipulation risk present in each specific issue, providing a good overall assessment of manipulation risk.

The advantage of this alternative is that it would align the exception with already existing standards that broker-dealers might apply to determine whether a security has a minimal amount of credit risk. The standard in Rule 15c3–1 was adopted in 2013 as a replacement for a reference to investment grade securities pursuant to Section 939A of the Dodd-Frank Act. Such test could have minimum additional costs for broker-dealers who already have all the necessary procedures in place for its application.

However, the scope and objectives of the 15c3–1 standard and the exception in Rules 101 and 102 of Regulation M are different: The 15c3–1 standard applies only to broker-dealers, which already have the necessary arrangements in place to apply 15c3–1 standard, whereas the Regulation M exceptions affect a broader range of market participants. For example, banks involved in the relevant security issues will also be affected. Depending on these other participants' systems and regulatory obligations, it may be costly for them to replace the investment grade standard with the minimal credit risk standard. This could result in a situation where different distribution participants are facing different costs,[191] possibly deterring some market participants.

5. Elimination of the Exception

The Commission also considered eliminating the exception for fixed-income securities. The advantage of this alternative is a more uniform application of Regulation M, which eliminates the situations when manipulation-prone securities fall under the exception due to limitations of proxies used to select the securities to be excepted. For instance, as discussed above, there are various limitations of the Structural Credit Risk Models' applications, which may limit the ability of certain issuers to rely on the exception or allow issuers with a higher risk of having their securities manipulated to avoid Regulation M. If the exception is eliminated, any limitations of such a proxy for manipulation risk are eliminated as well.

In addition, this approach could ultimately relieve broker-dealers from the need to spend time or costs to implement, understand, and calibrate any proposed standard such as a Structural Credit Risk Model. The Commission preliminarily believes that most broker-dealers already have the capability to undertake those calculations themselves or procure them from a data vendor and would benefit from the continued availability of an exception despite the costs.

However, this approach raises a number of concerns. Specifically, eliminating the exception could make some offerings in the excepted securities considerably more costly. For example, with respect to reopenings, broker-dealers who might otherwise elect to reopen a bond offering may determine not to do so to avoid restrictions of Regulation M that could arise during such a reopening if it becomes a sticky offering. This could increase the cost of the issue that has to rely on the next-best alternative structure. Further, an alternative transaction structure, if selected, may decrease the liquidity of the securities being issued because they would not be fungible with the previously issued securities. This may also result in some distribution participants, such as broker-dealers, deciding not to participate. This could limit the number of available participants, potentially increasing fees faced by the issuers. Further, if certain

[188] ABA Letter at 15–17 and SIFMA Letter 1 at 13.

[189] The reduced-form credit risk models are discussed, for example, in Robert Litterman & Thomas Iben, *Corporate Bond Valuation and the Term Structure of Credit Spreads,* 17 (3) Fin. Analysts J. 52, 52–64 (1991); Robert A. Jarrow & Stuart M. Turnbull, *Pricing Derivatives on Financial Securities Subject to Default Risk,* 50 J. Fin. 53, 53–86 (1995); Robert A. Jarrow, David Lando, & Stuart M. Turnbull, *A Markov Model for the Term Structure of Credit Risk Spreads,* 10 Rev. Fin. Stud. 481, 481–523 (1997); Darrell Duffie & Kenneth J. Singleton, *Modeling the Term Structures of Defaultable Bonds,* 12 Rev. Fin. Stud. 687, 687–720 (1999).

[190] *See Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934,* Release No. 34–71194 (Dec. 27, 2013) [79 FR 1522, 1527–28 (Jan. 8, 2014)].

[191] This is unlike the Structural Credit Risk Model based probability of default that would imply the same costs for all the participants who obtain the estimated values.

issues do not take place under the proposed amendments, it could reduce the selection of available securities for the investors in the relevant markets and may limit issuers' ability to raise capital.

However, these costs might be mitigated because a party subject to the prohibitions of Rules 101 or 102 could structure its buying activity before or after the applicable restricted period so as not to incur any costs associated with relying on the exceptions.

The above arguments apply to all currently excepted investment grade securities because any such issue can become a sticky offering and the distribution participants have to account and adjust for this possibility ex-ante. In a scenario where an underwriter is unable to sell its allotted securities to the public on or promptly after the pricing date, there is no exception on which to rely, the underwriter/broker-dealer would likely ex-ante adjust the cost of issuance to reflect this added risk. Broker-dealers could be more cautious in structuring potentially sticky offerings if they know they will be required to comply with Regulation M (and have no exceptions available), by reducing an offering's size or increasing fees as a risk premium. This could potentially raise the cost of investment grade offerings. However, this could also decrease the probability of an offering to become sticky, potentially reducing manipulation risk in the relevant markets.

The removal of the exception could also affect the liquidity of the fixed-income issues if reopenings of issues already in circulation are more costly, potentially reducing issuers' reliance on this financing structure, which negatively impacts the investors in the relevant markets.

This alternative could also disrupt some established business relationships. In certain circumstances new relationships may need to be established. For example, if an offering becomes sticky, the issuer may need to seek a different broker-dealer to comply with the Regulation M requirements. This would increase costs of the affected security offerings, including the new broker dealer fees or the search costs, especially when the market has a limited number of available broker-dealers.

6. Alternative for Asset-Backed Securities

As an alternative for asset-backed securities the Commission could use a standard based on the value at risk. Value at risk measures the percentage loss of the security in the worst case scenarios over a specified time period. It can be estimated by performing a simulation over the underlying securities' pool and determining the cash flows available to the asset-backed security in each scenario. A number of commercially available options can be used to perform this analysis. Value at risk can be a good indicator of manipulation risk since low value at risk indicates that the majority of the cash flows are sufficiently assured. The price of the asset-backed security in this case is more certain and is less subject to manipulation risk.

However, value at risk is by construction estimated for a specified time period and thus only accounts for the potential losses during such period, while losses may also occur after this time period. In this case the price of the asset-backed security may depend on issue-specific factors and be prone to manipulation despite the estimated value at risk over the specified time period being low. This may allow securities with high manipulation risk to rely on the exception.

7. Alternatives for Rule 102 Exception

The Commission considered exempting all bonds issued by a foreign government or political subdivision thereof from Rule 102 of Regulation M. This would allow such issuers to avoid compliance costs associated with Regulation M requirements as discussed above. However, this alternative implies excepting non-investment grade foreign sovereign securities along with investment grade foreign sovereign securities. This may introduce considerable risk that some foreign sovereign issuers with low credit-worthiness and which are subject to a considerable geopolitical risk are allowed to rely on Regulation M exception. This could potentially result in a high pricing uncertainty and a high manipulation risk introduced into the relevant markets.

The Commission also considered excepting asset-backed securities from Rule 102 that are offered pursuant to an effective shelf registration statement filed on Form SF–3. However, this alternative might introduce risk regarding issuers, selling shareholders, or their affiliated purchasers engaging in activity to favorably affect the distribution based on their interest in an offering's outcome, without any benefit to facilitating orderly distributions or to limiting potential disruptions in the trading market.[192] These market participants, unlike distribution participants, may have an interest in the specific pricing of the issue and could benefit from engaging in activity that impacts the market. Thus, excepting such asset-backed securities from requirements of Regulation M could introduce manipulation risk in the relevant markets.

*F. Request for Comment*

We solicit comments on all aspects of this proposal. We ask that commenters provide specific reasons and information to support alternative recommendations. Please provide empirical data, when possible, and cite to economic studies, if any, to support alternative approaches.

47. Are commenters aware of any additional examples of situations when Structural Credit Risk Models cannot be applied or are difficult to apply? Please explain why these situations occur.

48. Are there any assumptions or inputs of Structural Credit Risk Models that may be relevant to the estimation of the probability of default and may require additional clarification?

49. Do commenters agree with the Commission's assessment of the availability and associated costs of the estimates for probability of default based on Structural Credit Risk Models? Similarly, do commenters agree with the Commission's assessment of availability and associated costs of the necessary software or other resources necessary to obtain the estimates internally? Are there any factors that the Commission failed to consider?

50. Do commenters agree with the Commission's assessment of the proposed method of threshold measurements? Would a different method of threshold have greater benefits or fewer costs than the proposed method of threshold measurements? It is difficult to select a threshold that would capture all of the investment grade securities and none of the non-investment grade securities due to the imperfect correlation of credit ratings and probability of default. Should the current method used to calculating the threshold aim at capturing a larger set of investments grade securities, such as a set above 90%, or aimed at capturing a smaller set of non-investment grade securities, such as fewer than 125 issues? Should a different date other than October 22, 2021, for the analysis be selected? Should the Commission propose a method for calculating the threshold instead of proposing a number? Should the Commission provide guidance on the sample of securities, time interval, standard of credit-worthiness as a basis for comparison, or other specifications that should be used in this method?

[192] *See supra* note 120.

51. Are commenters aware of any available data that may help identify how many issuances of asset-backed securities with investment grade rating might be excluded under the proposed standard?

52. Are commenters aware of cases when incorrect estimates of Structural Credit Risk Models' parameters result in inaccurate probability of default estimates? For example, cases when the estimated probability of default is high for an issuer with sound credit-worthiness and vice versa. Please provide the supporting data and calculations if available.

53. Are there cases where probability of default is not a reasonable proxy for credit-worthiness and therefore manipulation risk? If so, why is it a poor proxy in those cases?

54. What concerns, if any, do commenters have regarding the counter cyclicality of probabilities of default implied by Structural Credit Risk Models?

## IX. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act of 1980 [193] (''RFA'') requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rule on small entities unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[194] Pursuant to Section 605(b) of the RFA, the Commission hereby certifies that the proposed amendments to the rule, would not, if adopted, have a significant economic impact on a substantial number of small entities. For purposes of Commission rulemaking in connection with the RFA, small entities include broker-dealers with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[195] or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[196]

With respect to the amendments to Rules 101 and 102, it is unlikely that any broker-dealer who is defined as a ''small business'' or ''small organization'' as defined in Rule 0–10 [197] could be an underwriter or other distribution participant as it would not have sufficient capital to participate in underwriting activities. Small business or small organization for purposes of ''issuers'' or ''person'' other than an investment company is defined as a person who, on the last day of its most recent fiscal year, had total assets of $5 million or less.[198] We believe that none of the various persons that would be affected by this proposal would qualify as a small entity under this definition as it is unlikely that any issuer of that size had investment grade securities that could rely on the existing exception. Therefore, we believe that these amendments would not impose a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. The Commission solicits comment as to whether the proposed amendments to Rules 101 and 102, and Rule 17a–4 could have an effect on small entities that has not been considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

## X. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[199] the Commission is also requesting information regarding the potential impact of the proposed amendments on the economy on an annual basis. In particular, comments should address whether the proposed changes, if adopted, would have a $100,000,000 annual effect on the economy, cause a major increase in costs or prices, or have a significant adverse effect on competition, investment, or innovations. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

## Statutory Basis and Text of Proposed Amendments

Pursuant to the Exchange Act, 15 U.S.C. 78a *et seq.,* and particularly Sections 3(b), 15, 23(a), and 36 (15 U.S.C. 78c(b), 78o, 78w(a), and 78mm) thereof, and Sections 939 and 939A of the Dodd-Frank Act, the Commission is proposing to amend Exchange Act Rules 101 and 102.

## List of Subjects in 17 CFR Part 240 and 242

Broker-dealers, Fraud, Issuers, Reporting and recordkeeping requirements, Securities.

## Text of Rule Amendments

For the reasons in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Section 240.17a–4 also issued under secs. 2, 17, 23(a), 48 Stat. 897, as amended; 15 U.S.C. 78a, 78d–1, 78d–2; sec. 14, Pub. L. 94–29, 89 Stat. 137 (15 U.S.C. 78a); sec. 18, Pub. L. 94–29, 89 Stat. 155 (15 U.S.C. 78w);

* * * * *

■ 2. Amend § 240.17a–4 by adding paragraph (b)(17) to read as follows:

**§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.**

* * * * *

(b) * * *

(17) The written probability of default determination pursuant to § 242.101(c)(2)(i) of this chapter (Rule 101 of Regulation M).

* * * * *

## PART 242—REGULATIONS M, SHO, ATS, AC, NMS, AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 3. The authority citation for part 242 continues to read as follows:

**Authority:** 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l,* 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

■ 4. Amend § 242.101 by revising paragraph (c)(2) to read as follows:

[193] 5 U.S.C. 603(a).

[194] 5 U.S.C. 605(b).

[195] *See* 17 CFR 240.17a–5(d).

[196] *See* 17 CFR 240.0–10(c).

[197] 17 CFR 240.0–10.

[198] 17 CFR 240.0–10(a).

[199] Public Law 104–121, Title II, 110 Stat. 857 (1996).

**§ 242.101 Activities by distribution participants.**

* * * * *

(c) * * *

(2) *Certain nonconvertible and asset-backed securities.* (i) The nonconvertible debt securities and nonconvertible preferred securities of issuers for which the probability of default, estimated as of the day of the determination of the offering pricing and over the horizon of 12 calendar months from such day, is less than 0.055%, as determined and documented in writing by the distribution participant using a structural credit risk model; *provided, however,* that, for purposes of this paragraph, the term ''structural credit risk model'' shall mean any commercially or publicly available model that calculates the probability that the value of the issuer may fall below a threshold based on an issuer's balance sheet; or

(ii) Asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3 (17 CFR 239.45).

* * * * *

**§ 242.102 [Amended]**

■ 5. Amend § 242.102 by removing and reserving paragraph (d)(2).

By the Commission.

Dated: March 23, 2022.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2022–06583 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2022–0190]**

**RIN 1625–AA00**

## Special Local Regulation, Sabine River, Orange, TX

**AGENCY:** Coast Guard, Homeland Security (DHS).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for certain navigable waters of the Sabine River, extending the entire width of the river, adjacent to the public boat ramp located in Orange, TX. The special local regulation is necessary to protect persons and vessels from hazards associated with a high-speed boat race competition in Orange, TX. Entry of vessels or persons into this zone would be prohibited unless authorized by the Captain of the Port Marine Safety Unit Port Arthur or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before April 29, 2022.

**ADDRESSES:** You may submit comments identified by docket number USCG–2022–0190 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Mr. Scott Whalen, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409–719–5086, email *Scott.K.Whalen@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background, Purpose, and Legal Basis

On March 9, 2022, the City of Orange, TX, notified the Coast Guard that it would be sponsoring high speed boat races from 9 a.m. to 6 p.m. on May 21 and 22, 2022, adjacent to the public boat ramp in Orange, TX. The Captain of the Port Marine Safety Unit Port Arthur (COTP) has determined that potential hazards associated with high speed boat races would be a safety concern for spectator craft and vessels in the vicinity of these race events.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters of the Sabine River adjacent to the public boat ramp in Orange, TX, before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### III. Discussion of Proposed Rule

The COTP is proposing to establish a special local regulation from 8:30 a.m. on May 21, 2022, through 6 p.m. on May 22, 2022. The safety zone would be enforced from 8:30 a.m. to 6 p.m. on both May 21st and May 22nd. The safety zone would cover all navigable waters of the Sabine River, extending the entire width of the river, adjacent to the public boat ramp located in Orange, TX, bounded to the north by the Orange Public Wharf and latitude 30°05′50″ N and to the south at latitude 30°05′33″ N. The duration of the safety zone is intended to protect participants, spectators, and other persons and vessels, in the navigable waters of the Sabine River during high-speed boat races and will include breaks and opportunity for vessels to transit through the regulated area.

No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. They may be contacted on VHF–FM channel 13 or 16, or by phone at 409–719–5070.

The COTP or a designated representative may prohibit or control the movement of all vessels in the zone. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

The COTP or a designated representative may terminate the operation of any vessel at any time it is deemed necessary for the protection of life or property. The COTP or a designated representative may terminate enforcement of the special local regulation at the conclusion of the event.

### IV. Regulatory Analyses

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

#### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the proposed size, location and duration of the rule. The safety zone would encompass a less than half-mile stretch of the Sabine River for eight hours on each of two days. The Coast Guard would notify the public by issuing Local Notice to Mariners (LNM),

and/or Marine Safety Information Bulletin (MSIB) and Broadcast Notice to Mariners via VHF–FM radio and the rule will allow vessels to seek permission to enter the zone during scheduled breaks.

*B. Impact on Small Entities*

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone that would last 8.5 hours on each of two days and that would prohibit entry on less than a half-mile stretch of the Sabine River in Orange, TX. Normally such actions are categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

*G. Protest Activities*

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

## V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0190 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy

and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

**List of Subjects in 33 CFR Part 165**

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREA AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0190 to read as follows:

**§ 165.T08–0190 Safety Zone; Sabine River, Orange, Texas.**

(a) *Location.* The following area is a safety zone: all navigable waters of the Sabine River, extending the entire width of the river, adjacent to the public boat ramp located in Orange, TX, bounded to the north by the Orange Public Wharf and latitude 30°05′50″ N and to the south at latitude 30°05′33″ N. The duration of the safety zone is intended to protect participants, spectators, and other persons and vessels, in the navigable waters of the Sabine River during high-speed boat races and will include breaks and opportunity for vessels to transit through the regulated area.

(b) *Effective period.* This section is effective from 9 a.m. on May 21, 2022, through 6 p.m. on May 22, 2022.

(c) *Enforcement periods.* This section will be enforced from 9 a.m. through 6 p.m. daily.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry of vessels or persons into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Port Arthur (COTP) or a designated representative. They may be contacted on VHF–FM channel 13 or 16, or by phone at by telephone at 409–719–5070.

(2) The COTP or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The COTP or a designated representative may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(4) The COTP or a designated representative will terminate enforcement of the special local regulations in this section at the conclusion of the event.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: March 23, 2022.

**Molly A. Wike,**

*Captain, U.S. Coast Guard, Captain of the Port, Marine Safety Zone Port Arthur.*

[FR Doc. 2022–06671 Filed 3–29–22; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2022–0200]**

**RIN 1625–AA00**

## Safety Zone; Hydroplane and Raceboat Museum Test Area, Lake Washington, WA

**AGENCY:** Coast Guard, Homeland Security (DHS).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for all navigable waters within a 4,000-yard oval radius off the Stan Sayres Memorial Hydroplane Pits downward to the Adams Street Boat Ramp on Lake Washington. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards in the vicinity of the Stan Sayres Memorial Park and Boat Launch and Adams Street Boat Ramp associated with test trials of a hydroplane race boat. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless specifically authorized by the Captain of the Port Sector Puget Sound or a designated representative.

**DATES:** Comments and related material must be received by the Coast Guard on or before April 14, 2022.

**ADDRESSES:** You may submit comments identified by docket number USCG–2022–0200 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Mr. Rob Nakama, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206–217–6089, email *SectorPugetSoundWWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background, Purpose, and Legal Basis

On January 26, 2022, the Hydroplane and Raceboat Museum notified the Coast Guard that it will be conducting test trials of a high speed watercraft on Lake Washington from 10 a.m. until 2 p.m. on May 24, 2022. Hazards associated with the test trial of a high speed watercraft include vessel collisions, unusual wake and accidental catastrophic human injury or death. The Captain of the Port Sector Puget Sound (COTP) has determined that potential hazards associated with the test trial would be a safety concern for anyone within a 4,000-yard oval radius of the planned test area. The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 4,000-yard radius of the test area before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 10 a.m. until 2 p.m. on May 24, 2022. The safety zone would cover all navigable waters within a 4,000-yard oval radius from position 47°34′31″ N, 122°16′34″ W, thence to position 47°34′02″ N, 122°15′44″ W, 150 yards offshore of the Stan Sayres Memorial Hydroplane Pits downward to 150 yards off the Adams Street Boat Ramp which will be marked with buoys, located on Lake Washington. These coordinates are based on World Geodetic System (WGS 84). The

duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the Hydroplane and Raceboat Museum conducts its test trials. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the COTP in the enforcement of the regulations in this section. To seek permission to enter, contact the COTP or the COTP's representative by calling the Sector Puget Sound Command Center at 206–217–6002. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

## IV. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the fact that the safety zone created by this rule is limited in size and duration. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of Lake Washington. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

### *B. Impact on Small Entities*

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting only 4 hours that will prohibit entry within the marked area off the Stan Sayres Memorial Hydroplane Pits and Adams Street Boat Ramp, located on Lake Washington. It is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### *G. Protest Activities*

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

## V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0200 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

### List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–0200 to read as follows:

### § 165.T13–0200 Safety Zone; Hydroplane and Raceboat Museum Test Area, Lake Washington, WA.

(a) *Location.* The safety zone will cover all navigable waters within a 4,000-yard oval radius drawn from 47°34′31″ N, 122°16′34″ W, thence to position 47°34′02″ N, 122°15′44″ W, 150 yards offshore of the Stan Sayres Memorial Hydroplane Pits downward to 150 yards off the Adams Street Boat Ramp which will be marked with buoys, located on Lake Washington. These coordinates are based on World Geodetic System (WGS 84).

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

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

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

(d) *Enforcement period.* This section will be enforced from 10 a.m. until 2 p.m. on May 24, 2022.

Dated: March 24, 2022.

**P.M. Hilbert,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Puget Sound.*

[FR Doc. 2022–06657 Filed 3–29–22; 8:45 am]

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## LIBRARY OF CONGRESS

## Copyright Royalty Board

## 37 CFR Part 385

**[Docket No. 21–CRB–0001–PR (2023–2027)]**

## Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV)

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The Copyright Royalty Judges withdraw a proposed rule that would have set continued, unaltered rates and terms for subpart B configurations subject to the statutory license to use nondramatic musical works to make and distribute phonorecords of those works (the Mechanical License).

**DATES:** The Copyright Royalty Board is withdrawing the proposed rule published June 25, 2021 (86 FR 33601) as of March 24, 2022.

**ADDRESSES:** *Docket:* For access to the docket to read background documents or comments received, go to eCRB at *https://app.crb.gov* and perform a case search for docket 21–CRB–0001–PR (2023–2027).

**FOR FURTHER INFORMATION CONTACT:** Anita Brown, Program Specialist, (202) 707–7658, *crb@loc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The Copyright Royalty Judges (Judges) received a Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart B Configurations (Motion) from National Music Publishers' Association, Inc. and Nashville Songwriters Association International (together, Licensors) and Sony Music Entertainment, UMG Recordings, Inc., and Warner Music Group Corp. (together, Labels). The Licensors and Labels (together, Moving Parties) sought approval of a partial settlement of the license rate proceeding before the Judges titled *Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV),* Docket No. 21–CRB–0001–PR (2023–2027). The Moving Parties asserted that they had agreed to a settlement as to royalty rates and applicable regulatory terms relating to physical phonorecords, permanent downloads, ringtones, and music bundles presently addressed in 37 CFR part 385, subpart B (Subpart B Configurations). The Moving Parties' settlement agreement also addressed payment of late fees relating to Subpart B Configurations.

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding'' provided the settling parties submit the negotiated rates and terms to the Judges for approval. That provision directs the Judges to provide those who would be bound by the negotiated rates and terms an opportunity to comment on the agreement.

The Judges published the proposed settlement in the **Federal Register** and requested comments from the public. 86 FR 40793 (Jun. 25, 2021). Comments were due by July 25, 2021. The Judges received comments from 14 interested parties.[1] One participant, George Johnson (GEO) filed three motions opposing the proposed settlement.[2] Because of some technical issues with the CRB electronic filing system, the Judges reopened the comment period with a new deadline of August 10, 2021. *See* 86 FR 40793 (Jul. 29, 2021). During the second comment period, the Judges received comments from two interested parties [3] and GEO.[4] On August 10, 2021, the closing date for comments, the Moving Parties filed comments in further support of the proposed settlement.

In their comments, the Moving Parties reasserted their respective ''significant interest[s]'' in the proceeding.[5] *See* Comments in Further Support of the Settlement . . . for Subpart B Configurations (Aug. 10, 2021) (Further Comments) at 1. The Moving Parties referred to the Congressional encouragement of settlement of royalty rate issues. *Id.* at 3. In the Motion seeking adoption of the settled rates and terms, the Moving Parties averred that the settlement would continue subpart B rates at their current levels and that the late fee provisions in the current regulations would ''continue to be applicable'' to the Labels ''and all other licensees'' of the mechanical rights at issue in subpart B. Motion at 3. Immediately preceding this synopsis of the settlement terms, however, in a section headed ''Parties,'' the Moving Parties indicated ''[c]oncurrent with the settlement, the Joint Record Company Participants and NMPA have separately entered into a memorandum of understanding addressing certain negotiated licensing processes and late fee waivers.'' Motion at 3.

The Moving Parties' comment in support of adoption of the settlement contained additional material, *i.e.,* the memorandum of understanding (MOU) as an attachment, the Judges reopened for a second time the comment period on the proposed rule. *See* 86 FR 58626 (Oct. 22, 2021). This third comment period ended on November 22, 2021. *Id.* Commenters expressed concern regarding this mention of an undefined MOU between the Labels and NMPA. During the third comment period, the Judges received seven comments.[6] GEO also filed a ''Second Round of Comments . . .'' opposing the settlement.[7]

*Statutory Standard and Precedent*

Section 801(b)(7)(A) of the Copyright Act is clear that the Judges have the authority to adopt settlements between some or all of the participants to a proceeding at any time during a proceeding, so long as those that would be bound by the agreed rates and terms are given an opportunity to comment. *Id.* at (b)(7)(A)(i). The Judges give notice by publishing a settlement as a proposed rule in the **Federal Register**. They are obliged to give notice and offer all interested parties an opportunity to comment, but only *participants* have the opportunity to comment and *object* to a proposed settlement. *See id.* (emphasis added). Section 801(b)(7)(A)(ii) provides that the Judges ''may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement,'' only ''if any participant [in the proceeding] objects to the agreement and the [Judges] conclude, based on the record before them, if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.'' 17 U.S.C. 801(b)(7)(A)(ii).

Regardless of the comments of interested parties or participants, the Judges are not compelled to adopt a settlement to the extent it includes provisions that are inconsistent with the statutory license. *See* Review of Copyright Royalty Judges Determination, 74 FR 4537, 4540 (Jan. 26, 2009) (error for Judges to adopt settlement without threshold determination of legality); *see also* Review of Copyright Royalty Judges Determination, 73 FR 9143, 9146 (Feb. 19, 2008) (error not to set separate rates as required under § 112 and 114 when parties' unopposed settlement combined rates in contravention of those statutory sections).[8]

As the Register of Copyrights (Register) observed in the 2009 review of the Judges' decision, nothing in the statute precludes rejection of any portions of a settlement that would be contrary to provisions of the applicable license or otherwise contrary to the statute. *Id.* In the instance under review by the Register, the settlement agreement purported to alter the date(s) for payment of royalties granting licensees a longer period than section 115 provided. 74 FR at 4542. The Register also noted that nothing in the

[1] Songwriters and independent music publishers Anthony Garnier, Abby North, David Poe, and Michelle Shocked filed individual comments. Joint comments were filed by: Helienne Lindvall, David Lowery, and Blake Morgan (Lindvall Comments); Songwriters Guild of America, Inc., Society of Composers and Lyricists, Music Creators North America, Rick Carnes, and Ashley Irwin (together, SGA). Attorneys Gwendolyn Seale and Peter W. DiZozza, Esq. filed comments as music industry lawyers but not on behalf of any specific client/s.

[2] GEO filed an Objection to Fraudulent Motion . . . on May 27, 2021. On the same day, GEO filed an Objection to Settlement . . . .'' GEO filed these objections before the Judges published the proposed rule for comment. GEO's filings did not seek relief and were not proper motions. On July 20, 2021, the Judges therefore denied GEO's motions and suggested GEO express his apparent opposition to the settlement by way of a comment in response to the published proposed rule. *See* Order Denying Three Motions . . . (Jul. 20, 2021).

[3] Commenters were independent music publisher Monica Corton and singer, songwriter, and teacher Rosanne Cash.

[4] GEO styled his comment as ''George Johnson's Fourth Opposition Motion Objecting to . . . Settlement . . . Also Filed as Comments. (Aug. 10, 2021). Subsequently, GEO filed four notices informing the Judges of inflation rates and a motion seeking indexing of subpart B rates.

[5] The Moving Parties alleged that the Labels represent ''the vast majority of the U.S. sound recording market.'' They also asserted that NMPA ''protects and advances the interests of over 300 music publishers'' and that NSAI is a trade association with over 4,000 members ''dedicated to serving songwriters . . . .'' Further Comments at 2.

[6] Lynne Robin Green filed an individual comment. Gwendolyn Seale and Monica Corton augmented previous comments. Abby North augmented her earlier comments in a joint filing with Erin McAnally and Chelsea Crowell. Helienne Lindvall, David Lowery, and Blake Morgan augmented their previous joint comment (Second Lindvall Comments). The Songwriters Guild of America, Inc.; Society of Composers & Lyricists; and Music Creators North America; along with individuals Rick Carnes and Ashley Irwin filed a joint comment, which was endorsed by Alliance for Women Film Composers, Alliance of Latin American Composers & Authors, Asia-Pacific Music Creators Alliance, European Composers and Songwriters Alliance, The Ivors Academy, Music Answers, Pan-African Composers and Songwriters Alliance, Screen Composers Guild of Canada, and Songwriters Association of Canada (endorsers and second submission of commenters together, Second SGA Comments). Attorney Kevin M. Casini commented as an advocate, not for any particular client.

[7] The deadline for comments was November 22. The CRB's electronic filing system noted the date and time of GEO's filing as November 23, 2021 at 12:04 a.m. The Judges accept this technically late filing.

[8] The Register found that a ''paucity of evidence'' in the record to support a determination of separate rates for the separate licenses ''does not dispatch the . . . Judges' statutory obligations.'' Review of Copyright Royalty Judges Determination, 73 *FR* 9143, 9145 (Feb. 19, 2008). The Register noted that the Judges have subpoena power to compel witnesses to appear and give testimony. *Id.*

statute relating to adoption of settlements precludes the Judges from considering comments of non-participants ''which argue that proposed [settlement] provisions are contrary to statutory law.'' *Id.* at 4540.

The Judges received a relatively large number of negative comments from interested parties. The only participant who objected to the proposed settlement was GEO. His objections tracked many of the negative comments by other parties who are not participants but who could be bound by the regulation. The Judges have also reviewed the proposed settlement for consistency with the law and the statutory license.

*Synopsis of Related Non-Participant and Moving Parties' Comments*

The comments of interested parties in this proceeding were uniformly negative regarding the proposed settlement. Their comments were largely overlapping and are summarized, along with the Moving Parties' comments as follows.

*Importance of Subpart B Configurations*

The Moving Parties downplayed the importance of Subpart B Configurations in the universe of music consumption. *See* Further Comments at 3–4. The Moving Parties emphasized that 83% of the recorded music market [9] comes from streaming. *See id.* In the same paragraph, however, they conceded that Subpart B Configurations account for 15% of the market.[10] *Id.* The Moving Parties acknowledged that the Subpart B Configurations represent a ''not immaterial source of revenue'' for songwriters and publishers. *Id.*

More than one commenter cited publications of the Recording Industry Association of America (RIAA) that give perspective to the apparent diminution of Subpart B Configurations, both to the rightsholders and to music consumers. *See, e.g.,* Comments of Gwendolyn Seale (Jul. 26, 2021) (Seale Comments) at 4; Comments of Michelle Shocked (Jul. 26, 2021) (Shocked Comments) at 1; Comments of SGA (Jul. 26, 2021) (SGA Comments) at 10 [11] (all citing ''Year-End 2020 RIAA Revenue Statistics,'' *https://www.riaa.com/wp-content/uploads/2021/02/2020-Year-End-Music-Industry-Revenue-Report.pdf* (last visited 02/14/2022) (RIAA Report)); Comments of Monica Corton (Nov. 22, 2021) (Second Corton Comments) at 2 (vinyl ''seems to be surging . . .''). The RIAA Report reflected near static sales of physical product (including digital downloads) but noted that ''[f]or the first time since 1986, revenues from vinyl records were larger than from CDs. . . . [V]inyl grew by 28.7% by value year-over-year . . . .'' RIAA Report at 2.

Commenter Corton detailed the rightsholders' mechanical license earnings from vinyl and CD albums as compared to downloading or streaming individual tracks. *See* Second Corton Comments at 2. She alleged that retailers are selling new vinyl releases for $25 to $50 (rounded). Assuming the wholesale price to be 50% of the retail price, she calculated that retailers are paying $12.50 to $25 to the record companies. *Id.* Corton contended that even in the surging market, under standard publisher-record company contracts, the record label pays the publisher $0.91 for a ten-track album ($.091 per track, limit ten, regardless of the actual number of tracks on the album). *Id.* Corton asserted that most labels enforce a ''controlled composition clause'' [12] in their contracts with publishers, limiting their earnings on an album to 75% of the statutory mechanical license rate and a standard ten song cap, or $0.6825 per album, which the publisher generally splits 50–50 with the songwriter. *Id.* The royalty that reaches the songwriter is $0.3412 for all the protected works on the marketed album. *Id.* Even after compensating performers, record labels appear to be receiving over $10 per permanent album to the songwriters' $0.34. *Id.*

Commenter Roseanne Cash asserted that mechanical royalties are ''one of the most reliable ways a songwriter can still make a minimum-to-decent wage . . . .'' Comments of Roseanne Cash at 1 (Aug. 2, 2021). She asserted that the need for fair subpart B rates is ''more dire because of the lack of fairness in compensation from streaming services. Streaming services are not in the music business. They are in the tech business, and they have built multi-billion dollar profit machines on the back of songwriters and musicians whom they use as loss-leader content.'' *Id.* at 2.

*Rate ''Freeze''*

Almost every commenter emphasized that the subpart B mechanical rates have remained unchanged for well over a decade, since 2006. *See, e.g.,* Comments of Kevin M. Casini (Nov. 21, 2021) (Casini Comments) at 3 (''what has not been frozen since 2006: the cost of living.''). According to SGA, from enactment of the governing statute in 1909 until 1978, mechanical royalties were set at $ 0.02 per unit. *See* Comments of SGA (Jul. 26, 2021) (SGA Comments) at 3. In 1978, Congress raised the rate to $ 0.0275 per unit, which was offset by a ''controlled composition clause'' in sound recording contracts by which creators were obliged to lower that new 1978 mechanical royalty rate by 25%. *Id.* The statutory rate gradually increased until 2006, when the CRB maintained the existing rate at $ 0.091 per unit in mechanical rate proceedings commenced in 2006, 2011, and 2016. *Id.* The controlled composition clause remains a feature of sound recording contracts. Second Corton Comments at 2.

Commenters advocated application of an inflation adjustment beginning, at a minimum, in 2006. *See, e.g.* SGA Comments at 4; Corton Comments at 4; Casini Comments at 4. According to the proponents of a cost of living adjustment (COLA) applied to the 2006 rates, that adjustment would yield a 2021 royalty rate of $ 0.12 (an upward 31.9% inflation adjustment over the sixteen-year period). *See, e.g.,* SGA Comments at 4. SGA conceded that the COLA extrapolation cannot be considered dispositive on the issue of new rate-setting, but they contended that it does ''starkly demonstrate the outrageous unfairness that has been imposed on the music creator community over a period of more than an entire century.'' *Id.*

*Conflicts of Interest*

More than one commenter questioned whether the underlying negotiations could be, in fact, arm's length transactions because of the vertical integration of music publishing and recording. The proposed settlement at issue was negotiated by and among the ''three major, multinational record conglomerates UMG, SME and WMG, the US music publisher trade group NMPA (whose largest members include the music publishing affiliates of those major record companies), and

[9] The Moving Parties did not define ''recorded music market.'' The study to which they referred analyzed recorded music revenues.

[10] The Moving Parties minimized the subpart B revenue by splitting it between physical sales (9%) and digital downloads (6%), glossing over the total for mechanical licenses, which was, in fact, 15%.

[11] SGA also reported that physical phonorecords and permanent downloads accounted for over 25% of total recorded music revenues worldwide in 2020. SGA Comments at 10, *citing* International Federation of the Phonographic Industry report of global recorded music revenues for 2020, *https://www.ifpi.org/our-industry/industry-data/* (last visited Mar. 16, 2022) (reporting 25.3% combined revenue).

[12] According to SGA, record labels introduced the ''controlled composition clause'' in 1978 in response to the increase of the statutory rate from $.02 per unit in effect between 1909 and 1978, to $0.275 per unit. *See* SGA Comments at 3. The controlled composition clause continues. In other words, the statutory royalty rate of $.091 per unit translates to $.06825 per unit actually paid by the subpart B licensor. *Id.*

inexplicably, the [NSAI] . . . the 'Settling Parties'. . . .'' SGA Comments at 4.

When the Settling Parties gave notice of their impending settlement, they included reference to a separate memorandum of understanding between NMPA and the record labels. Notice of Settlement in Principle (Mar. 2, 2021) 1 (''NMPA, UMG, WMG and SME have also reached an agreement in principle concerning a separate memorandum of understanding addressing certain related issues.'') *See, e.g.,* Second Seale Comments at 6 (representative negotiators of subpart B settlement and MOU ''represent 'willing buyers' and 'willing sellers' who are effectively the same parties at the corporate level.''); Comments of Anthony Garnier (Jul. 19, 2021) (''Vertical integration . . . between the major labels and major publishers poses a serious conflict of interest and engenders self-dealing among negotiators'').

Moving Parties stated, categorically, that no publisher would negotiate a below-market mechanical royalty rate and extend that rate to competitors of its ''sister record company.'' *See* Further Comments at 5. The Moving Parties referred the Judges to their determination in *Phonorecords III* wherein the Judges discounted claims of self-dealing, noting that the negotiating parties—the same parties as are presenting the present settlement for approval—''would not 'engage[ ] in anti-competitive price-fixing at below-market rates . . . .' '' *Id.* (citing Final Determination, *Determination of Royalty Rates and Terms for . . . Phonorecords,* Docket No. 16–CRB–0003–PR (*Phonorecords III*)).

*Lack of Transparency Regarding MOU*

In the Motion seeking adoption of the settled rates and terms, the Moving Parties averred that the settlement would continue subpart B rates at their current levels and that the late fee provisions in the current regulations would ''continue to be applicable'' to the Labels ''and all other licensees'' of the mechanical rights at issue in subpart B. Motion at 3. Immediately preceding their synopsis of the settlement terms, however, in a section headed ''Parties,'' the Moving Parties indicated ''[c]oncurrent with the settlement, the Joint Record Company Participants and NMPA have separately entered into a memorandum of understanding addressing certain negotiated licensing processes and late fee waivers.'' Motion at 3.

Commenters assailed a lack of transparency in the settlement with regard to the memorandum of understanding (MOU). They contended that there must be a hidden *quid pro quo* unrevealed in the proposed settlement or the Motion. In their Further Comments, the Moving Parties explained the offhand revelation of the MOU: They viewed it as ''routine, and irrelevant to the Judges' decision-making concerning the Settlement.'' *Id.* at 6. The Moving Parties further addressed this purported oversight in the Motion by indicating that all but ''a low single digit percentage'' of the music publishers have opted into the MOUs of the past. They also opined that ''thousands of independent publishers'' will voluntarily opt in to the latest iteration of the MOU. Further Comments at 7.

The Moving Parties contended that the MOU is a private contract and not something to be codified as it does not address statutory rates. *See id.* at 8. As the commenters noted, however, the MOU is tied directly to the rate determination. The current MOU is conditional and was not effective until the parties to the MOU (the Moving Parties, *except* NSAI) submitted a motion to adopt the proposed settlement in *Phonorecords IV* as rates and terms for the subpart B configurations. *Id.,* at Exhibit C, 2.

Further, the MOU contains a late fee waiver provision, contrary to published regulations, which add a late fee of up to 1.5% per month until the rightsholder receives royalties that are due monthly. *See* 37 CFR 385.3. In their comments, Lindvall, Lowery, Morgan, and Castle questioned who might receive the benefit of the waived late fees. *See* Comments of Lindvall, Lowery, Morgan, Castle (Nov. 22, 2021) (Second Lindvall Comments). The commenters in this proceeding, representing songwriters and independent or self-publishers, object strenuously to terms that they considered ''hidden'' and that would affect the amount of remuneration they receive in exchange for licensing their protected works.

Restating their particularized argument, the Moving Parties maintained that the current MOU was the fourth such arrangement between Labels and NMPA to address ''mechanical licensing process issues unique to record companies.'' *Id.* at 6. Further, the Moving Parties asserted that, in any event, the existence of MOUs has been public knowledge. *See* Further Comments at 6–7 (citing E. Christman, ''NMPA, Major Labels Sign on Terms of Agreement,'' *Billboard* (Oct. 7. 2009) and Exhibit B Supplemental Statement in *Phonorecords II* (April 11, 2012).[13]

Several commenters professed no knowledge of the current MOU or the history of MOUs. *See* SGA Comments at 9; Seale Comments at 3. Further, as they pointed out, songwriters are not parties to the MOU. The benefits of the agreement are alleged to accrue to the benefit of only certain music publishers. *See* Seale Comments at 3. This benefit, some asserted, is consideration for the publishers agreeing to continue the freeze of subpart B rates. *See* Second Seale Comments at 3; Second Lindvall Comments at 10–11. Songwriters cannot be said to have agreed to a royalty late fee waiver if they are not parties to the ''private contract'' that potentially deprives them of those late fees. *See, e.g.,* Lindvall Comments at 11 (settlement expressly refers to undisclosed terms; those ''outside the insider group'' cannot agree without knowledge of extent of consideration exchanged).

*Lack of Representation by Negotiators*

The Moving Parties asserted that the NMPA ''protects and advances the interests of over 300 music publishers . . . and their songwriting partners . . . .'' Further Comments at 2. They further asserted that NSAI is a trade organization ''of over 4,000 members dedicated to serving songwriters of all genres of music.'' *Id.* Commenters pointed out several issues with the negotiating representatives, NMPA and NSAI.

Several commenters, comprising independent songwriters, independent publishers, and music industry lawyers, challenged the validity of the representatives. *See, e.g.,* Corton Comments at 2 (many NSAI members unaware that organization is agreeing to these rates; no mention on NSAI website); Second Lindvall Comments at 19 (judges suggest unhappy songwriters might ''seek representation elsewhere . . . .''; ''the problem is that there was likely no 'representation' in the first place . . . .''); Seale Comments at 3 (NMPA, NSAI do not represent ''countless millions'' of owners); Comments of Anthony Garnier (Jul. 19, 2021) (NMPA, NSAI have not consulted with any other songwriter organizations); Comments of Abby North (Jul. 26, 2021) (North Comments) at 3 (NMPA, NSAI do not have broad authority they claim); Comments of

[13] The cited *Billboard* article describes a mechanism for allocating unclaimed royalty funds among publishers based upon market share. However, neither the *Billboard* article nor Supplemental Statement in *Phonorecords II* reveal details of the agreement.

Abby North (Nov. 22, 2021) at 1 (Second North Comments) (rightsholders that are not NMPA members cannot opt in to receive money under MOU); SGA Comments at 5 (music creator community ''blindsided'' by settlement). SGA asserts that its own membership numbers 4,500 and its co-commenter SCL has over 2,000 members, but it was not included in the negotiations of rates or the MOU. *See* SGA Comments at 5.

Claiming no voice in the negotiations that resulted in the proposed settlement, the commenters asserted that the resulting rates are contrary to statutory requirements inasmuch as they represent rates negotiated by a willing buyer and imposed on an ''unwilling seller.'' *See* Comments of David Poe (Jul. 12, 2021); Corton Comments at 2 (NSAI members unaware of organization's negotiating positions; nothing on NSAI website about MOU; without knowledge, songwriter member cannot be a willing seller).

*Negotiating Strategy*

The Moving Parties supported the negotiated settlement by reporting that, in the period 2006 to 2008, they spent ''tens of millions of dollars litigating'' the mechanical royalty rates only to have the Judges adopt the rates in place at that time as reflective of the marketplace. Further Comments at 3. They then projected that the possibility of an adjudicated change in the current subpart B rates was outweighed by the cost of litigating the rates and the uncertainty of the outcome of litigation. *Id.* at 4. Building on the small market share of Subpart B Configurations, the Moving Parties contended that agreement to static subpart B rates was an important concession in the context of the mechanical license proceeding. *Id.*

Commenters took umbrage at the conclusion by NMPA, the publisher trade group, that ''the game is not worth the candle.'' *See* Seale Comments at 6–7. Monica Corton, a veteran in the music publishing business, noted that the negotiators' conclusion to freeze Subpart B Configuration rates as a ''component'' of an overall negotiating strategy to increase digital streaming rates is, after 15 years, ''no longer justifiable.'' Second Corton Comments at 1.

*Mr. Johnson's Objections to the Settlement*

The only participant in the captioned proceeding to offer comments on the notice of the proposed settlement was George Johnson (GEO). The substance of his comments in opposition to adoption of the settlement tracked with the negative comments of other interested parties detailed above. GEO's filings include: GEO Fourth Opposition Motion (Aug. 10, 2021); Response and Further Opposition to Comments/Motion and Fraudulent Settlement for Subpart B Configurations (Aug. 21, 2021) (Further Opposition); Second Round of Comments (Nov. 23, 2021); Corrected Second Round of Comments (Dec. 1, 2021) (Corrected Second Comments).[14]

*Importance of Subpart B Configurations*

GEO pointed to the RIAA report cited by other commenters to emphasize that Subpart B Configurations are a growing part of the music business, comprising 15% of the market. *See* Further Opposition at 5. He claimed the importance of subpart B royalties is clear because affected parties ''are all perfectly willing to *spend millions of dollars to fight GEO's proposal to increase the 9.1 cents* for lost inflation . . . .'' *Id.* Other commenters indicated similar concerns.

*Rate ''Freeze''*

GEO has long advocated inclusion of an inflation index in royalty rates set by the Judges, including the subpart B rates at issue here. In support of his advocacy, GEO has filed 27 pleadings, including motions seeking imposition of an inflation index on section 115 rates[15] and periodic notices of U.S. inflation rates. His plea is bolstered by the many commenters who, almost unanimously, included this suggestion.

*Conflicts of Interest*

GEO has long assailed the apparent conflict of interests when recording companies engage in negotiations with their related music publishing houses to set royalty rates for the labels to pay to publishers. In this proceeding, GEO further argued that major negotiating parties, three record labels and three publishers, are ''just two hands of the same three foreign corporations *negotiating with themselves* in an American rate proceeding, supposedly designed to help American songwriters and music publishers.'' Corrected Second Comments at 2 (emphasis in original).

Based upon his assumption of self-dealing in this instance, GEO alleged fraud, undue influence, anti-trust violations, and international intrigue. *Id.* at 8–9, 12–13.

*Lack of Transparency Regarding MOU*

In his analysis of the validity of the MOU, GEO invoked the same conflicts of interest arguments. He referred to the ''No. 2 *Same Parties* rule under willing buyer, willing seller . . . .'' Corrected Second Comments at 1 (emphasis in original). GEO did not identify the source of this ''rule'' and although the Judges are familiar with the concept, they are unaware of any set of rules relating to the determination of a willing buyer/willing seller market value.

GEO asserted, further, that the MOU ''seems to be a clear *quid pro quo*'' to freeze subpart B rates in exchange for the late fee provisions ''and other substantial financial consideration *only benefiting members of NMPA* . . .'' *Id.; see id.* at 8.

GEO also claimed that this MOU, although it is a fourth iteration of side agreements among the parties, was formerly a secret and that it only came to light after commenters raised questions about the reference to it in the Motion.[16] *Id.* at 3. GEO further ascribed malevolent intent to the Moving Parties' timing—filing additional information relating to the MOU on the last day of the comment period. *Id.*

*Lack of Representation by Negotiators*

GEO claimed to speak for all songwriters and independent or self-publishers. He contended he abandoned his membership in NSAI because he felt NSAI did not represent his interests. *Id.* at 10. Without representation by NSAI, GEO concluded that he had no choice but to participate in this proceeding formally and advocate for his own interests and those of others similarly

[14] GEO Fourth Opposition Motion was filed on the final day of the second comment period (Fourth Opposition). GEO Response and Further Opposition was filed August 21, 2021, after the close of the second comment period (Further Opposition). Nonetheless, the Judges reopened the matter for further comment and the Judges therefore accept the August 21, 2021, filing as a timely comment during the third comment period, which closed November 22, 2021. Though not a comment in response to the **Federal Register** notices, GEO filed a Written Direct Statement on October 13, 2021 (within the third comment period), which included arguments opposing the proposed subpart B settlement at issue. GEO filed a Second Round of Comments on November 23, 2021. These comments were filed a day after the close of the third comment period; GEO filed Corrected Second Round of Comments on December 1, 2021 (Corrected Second Comments). The Judges have occasionally afforded GEO limited leeway in these proceedings, as Mr. Johnson is appearing *pro se* in this proceeding. In this instance, the Judges accept the Second Round of Comments, as amended on December 1, 2021.

[15] Rates are not set by motion, but by agreement or following a full adjudication. While GEO's motions did not result in adoption of an inflation index, GEO's position on this issue is, and has been, clear.

[16] A one-sentence paragraph in the Motion stated simply: ''Concurrent with the settlement, the Joint Record Company Participants and NMPA have separately entered into a memorandum of understanding addressing certain negotiated licensing processes and late fee waivers.'' Motion at 3. This revelation was at the end of the section entitled ''Parties,'' not in the following section entitled ''Nature of the Settlement.''

situated. *Id.* Citing all of the other reasons he objected to the settlement (self-dealing, freezing the rate, using subpart B as a bargaining chip in streaming negotiations, undisclosed MOU waiving rights to late fees), GEO contended that NSAI and NMPA cannot possibly be representing the interests of the section 115 rightsholders.

GEO's comments repeated the refrain of other commenters. He and they disagree with the settlement proposed by trade organizations that claim to represent their interests. They contended that they are not willing sellers in this equation. *Id.* at 11.

*Negotiating Strategy*

Several commenters cited the negotiating parties' admission that they considered the subpart B rates as insignificant in the context of section 115 licenses. GEO echoed their concerns that the copyright owners' negotiators used subpart B as a loss leader in their attempts to negotiate higher streaming royalty rates. GEO argued further that the streaming services use the frozen subpart B rates, to which NSAI and NMPA agree, as a justification for maintaining or lowering section 115 streaming rates. *Id* at 14. He also opined that keeping subpart B rates frozen, for yet another rate period, will provide a convincing benchmark for the streaming services not only in this proceeding, but in the next, *Phonorecords V. Id.* at 15.

*GEO's General Objections*

GEO asserted that the section 115 licenses were ''designed to help American songwriters and . . . publishers.'' *Id.* at 2. Similarly, GEO contended that the Judges' rate setting proceedings ''are designed to help songwriters . . . .'' *Id.* at 5. In his objection, he argued that the settlement is contrary to those asserted statutory purposes.

GEO argued that the Moving Parties failed to provide evidence that the proposed settlement is reasonable. *Id.* In that way, he advocated assigning a burden of proof to the Moving Parties.

GEO made several objections based on supposition, rumor, or surmise. For example, he asserted that there is ''an issue of NMPA possibly getting secret 'donations' from . . . major publishers which may amount *to tens of millions of dollars going to NMPA.*'' *Id.* at 2.

*Judges' Analysis and Conclusions*

The Judges note that each faction in this discussion has alleged that the other side has failed to present evidence that the proposal is or is not a reasonable foundation upon which to base mechanical license rates and terms for subpart B musical works configurations. Although chapter 8 of the Copyright Act encourages parties to enter into settlement negotiations, ultimately the decision as to whether a *contested* settlement [17] should be approved on motion is subject to the Judges' discretion, informed by the submissions of the moving parties and the commenters, and by the Judges' application of the law to the facts.

Only one *participant* in this proceeding, GEO, objected to the proposed settlement. As shown by the foregoing synopsis, however, GEO's objections did not come to the Judges in a vacuum. The statute requires publication of a settlement proposal and solicitation of comments from interested parties—parties who would be bound by the proposed rates and terms. Non-participants who commented on the proposal uniformly objected to adoption of the proposed rates and terms and for reasons that paralleled those stated by GEO. Interested parties' comments are filed in the record of the proceeding and the Judges must analyze those comments even though the Judges may not base rejection of a settlement solely on negative comments from non-participants alone.

It is thus clear that the Judges' review of this or any proposed rates and terms is not a routine matter. The Judges must analyze carefully the terms of the settlement in light of the participant's objections. They must also evaluate the settlement in view of the requirements of section 115. The proposed settlement must not be contrary to the statutory terms of the mechanical license.

*Reasonableness*

Weighing the objections of GEO and considering those objections in the context of the record before them, the Judges make the following conclusions.

*Importance of Subpart B Configurations*

Royalties from Subpart B Configurations are not inconsequential to the rightsholders. Subpart B Configurations are qualitatively different from the digital streaming configurations; consequently, the Judges can and do set separate rates for the Subpart B Configurations. Even though the physical and ''permanent'' download products are different in character from streaming uses, the Judges cannot and do not treat them with any less care and attention. Subpart B Configurations, in particular vinyl recordings, are a significant source of income for section 115 rightsholders. The royalties they generate should not be treated as *de minimis,* or as a ''throw away'' negotiating chip to encourage better terms for streaming configurations.

*Rate ''Freeze''*

In the dynamic music industry, there is insufficient reason to conclude that a static musical works rate is reasonable. The determination rendered in 2008, with an effective date of 2006, cannot continue to bind the parties sixteen years later, absent sufficient record evidence that the *status quo* remains grounded in current facts and is a reasonable option. Since 2006, the retail marketplace for music has changed dramatically with regard to the Subpart B Configurations. From 2006 to 2008 (and, indeed, in years prior) the Subpart B Configurations dominated the recorded music marketplace.

By 2020, industry data collected by the Recording Industry Association of America showed that various forms of digital streaming accounted for 83% of recorded music market revenues. Notwithstanding the decrease in revenues attributable to Subpart B Configurations, in 2020, vinyl record sales surpassed the volume of CD album sales, signaling a resurgence in vinyl as a music medium. Even if the sales figures were otherwise, however, sixteen years at a static rate is unreasonable under the current record, if for no other reason than the continuous erosion of the value of the dollar by persistent inflation that recently has increased significantly. In this regard, application of a consumer price index cost of living increase, beginning in 2006, would yield a statutory subpart B royalty rate for 2021 of approximately $0.12 per unit as compared with the $0.091 that prevails, which adjustment, as noted *supra,* represents a 31.9% increase.

The disparity between the static rate and the dynamic market is even more stark when considering the ''controlled composition clause'' that contractually lowers the statutory rate by 25%. Add to that the record labels' limit on album royalties to ten tracks, regardless of the number of songs actually included in each album. In other words, the statutory rate is not the effective rate record labels use in compensating songwriters and publishers.

The proposed settlement did not include any adjustment to subpart B rates, not even an indexed increase. Adjudication of rates may provide the parties an opportunity to present

[17] It seems clear that the language of section 801(b)(7)(A) inherently presumes that *uncontested* settlements are *factually* reasonable, but, even then, the Judges must be satisfied that the settlement is consistent with the law.

evidence of the advisability of such an indexed increase.

*Conflicts of Interest*

Conflicts are inherent if not inevitable in the composition of the negotiating parties. Vertical integration linking music publishers and record labels raises a warning flag. No party opposing the present settlement has evinced actual or implied evidence of misconduct, other than the corporate structure of the record labels on the one hand and the publishers on the other. While corporate relationships alone do not suffice as probative evidence of wrongdoing, they do provide smoke; the Judges must therefore assure themselves that there is no fire. The potential for self-dealing present in the negotiation of this proposed settlement and the questionable effects of the MOU are sufficient to question the reasonableness of the settlement at issue as a basis for setting statutory rates and terms.

*Lack of Transparency in MOU*

The Moving Parties noted in passing that their agreement also included a memorandum of understanding that did not have any impact on the reasonableness of the settlement terms. Reasonableness, however, is undermined by associated bargained-for provisions as to which the Judges have an inadequate basis for evaluation.

The Moving Parties assertion that the MOU is ''irrelevant'' and inconsequential to the settlement terms is facially invalid. First, the MOU is a side agreement between recording companies and publishers, which does not include participation by or agreement of either songwriters or a significant number of owners of musical works subject to the section 115 license. Second, the MOU grants a late fee waiver to licensees that are party to the agreement. This waiver of fees seems to have an indirect impact on proposed royalty returns to rightsholders. Without more complete knowledge of the implications of the MOU, however, the Judges are unable to evaluate the proposed settlement as a whole.

The Moving Parties asserted that the MOU is a private contract between private parties. It appears rather to be an attempt to modify the application of the terms of statutory licenses they allegedly are negotiating in the context of a rate-setting proceeding under the Copyright Act. By its terms, the current MOU was conditional and was not effective until the parties to the MOU (the Moving Parties, *except* NSAI) submitted a motion to adopt the proposed settlement as rates and terms for the Subpart B Configurations in *Phonorecords IV.*

Further, in their pleadings, the Moving Parties asserted that they withheld information regarding the MOU because they considered it ''irrelevant'' to statutory rate setting. Determining relevance is a judgment call reserved to the Judges. The contracting parties cannot hide changed application of a statutory rate scheme behind a ''private contract'' when that contract has implications for non-contracting parties and the ''private contract'' details necessarily inform the reasonableness of the proposed settlement. The Judges, not a participant, can and will decide what is ''irrelevant'' to this rate setting proceeding.

Finally, the Moving Parties justified the MOU by noting that it is the fourth iteration of similar agreements. The fact that this MOU is the fourth of its kind does not prove that it is appropriate or an acceptable corollary to the statutory rates set by this tribunal. Repetition alone does not make a practice advisable or fair. Nor does it indicate that the practice or its details are universally known and approved.

Parties have an undeniable right of contract. The Judges, however, are not required to adopt the terms of any contract, particularly when the contract at issue relates in part, albeit by reference, to additional unknown terms that indicate additional unrevealed consideration passing between the parties, which consideration might have an impact on effective royalty rates.

*Lack of Representation by Negotiators*

The licensors in this proceeding are represented by their respective trade associations. The commenters asserted that the trade associations, NSAI in particular, did not appear to be representing the best interests of the music creators. It is not within the purview of the Judges to select or direct what parties file petitions to participate in rate setting proceedings. Dissatisfaction with the actions of a participant can only be contested by another participant, presenting competent evidence to inform the Judges of a reasonable outcome; it is not a proper or adequate basis to decline to adopt the settlement.

*Negotiating Strategy*

The Moving Parties justified their negotiating strategy and the outcome by asserting that the Judges previously continued existing rates after the interested parties spent ''tens of millions'' of dollars litigating the same rates in the mid-2000s. As the Moving Parties noted, however, the Judges' decision at that time was reflective of the conditions of that market. The Moving Parties seemed to be projecting what actions the Judges might take on a new evidentiary record. The 2022 recorded music marketplace is not the 2006 marketplace. The Judges' determination of current rates and terms should be reflective of the current marketplace.

*GEO's Other Objections*

Contrary to GEO's assertions that the section 115 licenses were ''designed to help American songwriters,'' the statutory rates are intended to benefit both rightsholders *and* licensees by permitting fair and fairly compensated exploitation of copyrighted works in an administratively manageable way. Until a recent statutory change, the Judges were instructed to weigh various factors in setting mechanical royalty rates to assure reasonable results, fair to both sides and of benefit to the music-consuming public. The current statutory standard for determining rates, the standard applicable in this proceeding, is the willing buyer-willing seller standard, which is aimed at finding a free and competitive market rate for the licenses. *See* 17 U.S.C. 115 (c)(1)(F).

GEO alleged that, under the MOU, NMPA might receive ''secret 'donations' from these major publishers which may amount *to tens of millions of dollars going to NMPA*.'' Second Corrected Comments at 2. Although GEO's revelation of an ''issue'' of ''secret donations'' might initially seem lacking in factual bases, it is noteworthy that the MOU contains the following language.

> For the avoidance of doubt, as provided in Section 10.3 of MOU1, it shall not be a breach of this MOU4 if NMPA chooses to seek a donation from Participating Publishers as part of the enrollment process. If, after the Administrator's final accounting and resolution of any disputes, Participating Publisher claims for a given Phase of Group 6 are for less than the 11 payments made by a Participating Record Company for such Phase, then the Administrator shall return any unclaimed monies to the Participating Record Company, and Section 4.21 of MOU1 shall apply, unless RIAA and NMPA agree to simplified procedures for the refund process.

Further Comments, Exhibit C (Memorandum of Understanding) at 10–11.

The provisions of Sections 10.3 and 4.21 of MOU 1 are not in the record of this proceeding and remain unknown to the Judges. They may support GEO's concerns regarding the provision condoning NMPA's solicitation of a ''donation'' as part of an enrollment process. GEO did not provide an

evidentiary basis for his claim that, under this provision of the MOU, NMPA might benefit to the extent of ''tens of millions of dollars.'' The extent of NMPA's power to solicit donations ''*as part of the enrollment process*'' and the potential value of those donations, however, raised concerns with commenters who questioned the *quid pro quo* of the MOU and concern the Judges.[18]

If adopted by the Judges, the proposed settlement is one that would bind not only the parties to the MOU, but also songwriter licensors. Songwriters, however, are not parties to the MOU and would apparently not share in any benefit that might flow to licensors under the MOU.

*Consistency With the Law and the Statutory License*

The Judges reviewed the proposed settlement with regard to whether any portions of the settlement would be contrary to provisions of the applicable license or otherwise contrary to the statute, pursuant to the Register's prior rulings. *See e.g.,* Review of Copyright Royalty Judges Determination, 74 FR 4537, 4540 (Jan 26, 2009). Upon such review, the Judges see no basis to conclude the settlement is contrary to law, except with regard to 801(b)(7)(A).

*Conclusion*

Rightsholders are free to choose their representation in these proceedings. Admittedly, individual songwriters and self-publishers have traditionally chosen not to expend the resources necessary to participate in these proceedings at the same level as trade organizations and major technology companies. Nonetheless, the outcomes of these proceedings can have a significant impact on the lives of the individual rightsholders. In this proceeding, the Judges received lengthy comments from SGA, which claims to represent thousands of songwriters. For SGA's comments to have independent influence, however, SGA would have needed to join the proceeding as a participant. Nonetheless, with regard to the present proposed settlement, the comments of non-participants cumulatively served to amplify those of the objecting participant.

Pursuant to section 801(b)(7)(A)(ii), based on the totality of the present record—including the Judges' application of the law to that record, as well as GEO's objections, which, as noted *supra,* are consistent with the non-participant comments—the Judges find that the proposed settlement does not provide a reasonable basis for setting statutory rates and terms.[19] Furthermore, the Judges find a paucity of evidence regarding the terms, conditions, and effects of the MOU. Based on the record, the Judges also find they are unable to determine the value of consideration offered and accepted by each side in the MOU. These unknown factors, as highlighted in the record comments, provide the Judges with additional cause to conclude that the proposed settlement does not provide a reasonable basis for setting statutory rates and terms.

Dated: March 24, 2022.

**Suzanne M. Barnett,**

*Chief Copyright Royalty Judge.*

[FR Doc. 2022–06691 Filed 3–29–22; 8:45 am]

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[18] Further, given the absence of any discovery in connection with the procedures for review of a proposed settlement, the absence of evidence at this stage of the proceeding cannot be a sufficient basis to ignore an issue that the Judges find to be a matter of concern.

[19] Section 801(b)(7)(A) does not state which party—proponent or objector—might bear a burden of proof in connection with the Judges' evaluation of a proposed settlement and objections thereto. The Judges do not believe that a ''burden of proof'' issue exists in this settlement process, because evidence as described in the Judges' Rules, 37 CFR 351.10, is not required. However, were a burden of proof applicable in this proceeding, the Judges find that, if the burden were placed on the proposers of this settlement, they failed to meet that burden and, if the burden of proof were placed on GEO and/or the other commenters referenced above, they have met that burden.

# Notices

Federal Register

Vol. 87, No. 61

Wednesday, March 30, 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–SC–22–0021]**

### Fruit and Vegetable Industry Advisory Committee (FVIAC): Notice of Intent To Reestablish Charter and Call for Nominations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice: Intent to reestablish charter and call for nominations.

**SUMMARY:** Through this Notice, the U.S. Department of Agriculture (USDA) is announcing the following: Its intent to reestablish the Charter of the Fruit and Vegetable Industry Advisory Committee (FVIAC), which expires March 16, 2022; its call for nominations to fill up to 25 upcoming vacancies for appointments in 2022, and its call for nominations for a pool of candidates to fill future unexpected vacancies in any position categories should that occur. The FVIAC is seeking members who represent the fruit and vegetable industry including growers, shippers, wholesalers/distributors, brokers, retailers/restaurant representatives, state agencies, state departments of agriculture, foodservice suppliers, and fresh-cut and other fruit and vegetable processors. The FVIAC should also include representatives of farmers markets and food hubs, organic and non-organic fruit and vegetable representatives, farmer organizations, and produce trade associations. Please note, individuals who are federally registered lobbyists, appointed to committees to exercise their own individual best judgment on behalf of the government (*e.g.,* as Special Government Employees) are ineligible to serve and cannot be considered for USDA advisory committee membership. Members can only serve on one USDA advisory committee at a time. All nominees will undergo a USDA background check. You must submit the following to nominate yourself or someone else to the FVIAC: a resume (required), a USDA Advisory Committee Membership Background Information Form AD–755—available online at *https://www.usda.gov/sites/default/files/documents/ad-755.pdf* (required), a cover letter (required), and a list of endorsements or letters of recommendation (optional). The resume or curriculum vitae must be limited to five one-sided pages and should include a summary of the following information: Current and past organization affiliations; areas of expertise; education; career positions held; and any other notable positions held. For submissions received that are more than five one-sided pages in length, only the first five pages will be reviewed.

**DATES:** The current FVIAC Charter expires on March 16, 2022. The current representative terms expire July 9, 2022. Nomination packages including a cover letter to the Secretary, the nominee's typed resume or curriculum vitae, and a completed USDA Advisory Committee Membership Background Information Form AD–755 must be postmarked on or before May 31, 2022.

**ADDRESSES:** Mr. Darrell Hughes serves as the Designated Federal Officer and can be reached at (202) 378–2576 or by email *SCPFVIAC@usda.gov.* Mailing address: Darrell Hughes, U.S. Department of Agriculture, 1400 Independence Avenue SW, South Building-Room 1575–STOP 0235, Washington, DC 20250–0235, Attn: Fruit and Vegetable Industry Advisory Committee.

*Comments:* The Agricultural Marketing Service (AMS) invites interested persons to submit comments on this notice. Comments will be accepted on or before 11:59 p.m. ET on April 14, 2022, via *http://www.regulations.gov:* Document # AMS–SC–22–0021.

The AMS Specialty Crops Program strongly prefers comments be submitted electronically. However, written comments may be submitted (*i.e.,* postmarked) via mail to the person listed in the **ADDRESSES** section by or before the abovementioned deadline.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2), notice is hereby given that the Secretary of Agriculture intends to reestablish the FVIAC for two years. The purpose of the FVIAC is to examine the full spectrum of issues faced by the fruit and vegetable industry and provide suggestions and ideas to the Secretary on how USDA can tailor its programs to better meet the fruit and vegetable industry's needs.

The Deputy Administrator of the AMS Specialty Crops Program serves as the FVIAC Executive Secretary. Representatives from USDA mission areas and agencies affecting the fruit and vegetable industry could be called upon to participate in the FVIAC's meetings as determined by the FVIAC Executive Secretary and the FVIAC.

Industry members are appointed by the Secretary of Agriculture and serve 2-year terms, with a maximum of three 2-year terms. The Secretary of Agriculture appointed 24 members in 2020. Twelve (12) members have served two terms and twelve (12) members have served one term. All the terms expire July 9, 2022.

The Secretary of Agriculture will appoint members for the upcoming vacancies to serve a 2-year term of office beginning in 2022 and ending in 2024. The Secretary of Agriculture will hold nominations received that could fill future unexpected vacancies in any of the position categories as a pool of candidates that the Secretary can draw upon as replacement appointees if unexpected vacancies occur. A person appointed to fill a vacancy will serve for the remainder of the 2-year term of the vacant position. The Secretary of Agriculture invites those individuals, organizations, and groups affiliated with the categories listed in the **SUMMARY** section to nominate individuals or themselves for membership on the FVIAC.

The full Committee expects to meet at least twice a year in-person, virtually, or by teleconference, and the meetings will be announced in the **Federal Register**. FVIAC workgroup/subcommittees will meet as deemed necessary by the chairperson and may meet through teleconference or by computer-based conferencing. Subcommittees may invite technical experts to present information for consideration by the subcommittee. The subcommittee meetings will not be announced in the **Federal Register**. All data and records available to the full Committee are expected to be available to the public when the full Committee reviews and approves the work of the subcommittee.

Members must be prepared to work outside of scheduled Committee and subcommittee meetings and may be required to assist in document preparation. Committee members serve on a voluntary basis; however, travel expenses and per diem reimbursement are available.

The Secretary of Agriculture seeks a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. Equal opportunity practices will be followed in all appointments to the FVIAC in accordance with USDA policies. To ensure that FVIAC recommendations take into account the needs of the diverse groups served by USDA, membership should reflect the diversity of the industry in terms of the experience of members, methods of production and distribution, marketing strategies, and other distinguishing factors, including but not limited to individuals from historically underserved communities, that will bring different perspectives and ideas to the table.

The information collection requirements concerning the nomination process have been previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505–0001.

Date: March 24, 2022.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2022–06679 Filed 3–29–22; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 29, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Office of the Secretary, White House Liaison Office**

*Title:* Advisory Committee and Research and Promotion Board Membership Background Information.

*OMB Control Number:* 0505–0001.

*Summary of Collection:* The Department is required under Section 1804 of the Food and Agriculture Act of 1977 (7 U.S.C. 2281, *et seq.*) to provide information concerning advisory committee members' principal place of residence, persons or companies by whom employed, and other major sources of income. The Agriculture and Food Act of 1981 (Pub. L. 97–98) reiterates this requirement. Similar information will be required of research and promotion boards/committees/councils in addition to the supplemental commodity specific questions. The Secretary appoints board members under each program. Some of the information contained on form AD–755 is used by the Department to conduct background clearances of prospective board members required by departmental regulations. The clearance is required for all committee members who are appointed by the Secretary. The White House Liaison Office (WHLO) will collect information using form AD–755, ''Advisory Committee and Research and Promotion Board Membership Background Information.''

*Need and Use of the Information:* The WHLO will collect information on the background of the nominees to make sure there are no delinquent loans to the United States Department of Agriculture, (USDA), as well as making sure they have no negative record that could be a negative reflection to the USDA. The information obtained from the form is used in the compilation of an annual report to Congress. Failure of the Department to provide this information would require the Secretary to terminate the pertinent committee or board.

*Description of Respondents:* Individuals or households.

*Number of Respondents:* 5,500.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 2,750.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2022–06678 Filed 3–29–22; 8:45 am]

**BILLING CODE 3410–01–P**

## DEPARTMENT OF AGRICULTURE

**[Docket No. USDA–2022–0010]**

### Agency Information Collection Activities; USDA Generic Solution for Solicitation for Funding Opportunity Announcement

**ACTION:** Notice; request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act, the U.S. Department of Agriculture (USDA), is requesting comments concerning a proposed authorization to conduct the USDA Generic Solution for Solicitation for Funding Opportunity Announcement information collection request. This is a new information collection request.

**DATES:** Submit written comments on or before May 31, 2022.

**ADDRESSES:** We invite you to submit comments on this notice. For proper delivery, in your comment, specify ''USDA Generic Solution for Solicitation for Funding Opportunity Announcement Information Collection Request (ICR).''

*Electronic Submission of Comments.* You may submit comments, identified by Docket ID: USDA–2022–0010, electronically through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions provided on that site to submit comments electronically.

*Submission of Comments by Mail, Hand Delivery, or Courier.* You may submit comments to the Office of Budget and Program Analysis, USDA, Jamie L. Whitten Building, Room 101–A, 1400 Independence Ave. SW, Washington, DC 20250. USDA strongly encourages commenters to submit comments electronically. Electronic

submission of comments allows you maximum time to prepare and submit a comment and ensures timely receipt by USDA.

**FOR FURTHER INFORMATION CONTACT:** Steve O'Neill, 202–720–0038, *stephen.oneill@usda.gov.*

**SUPPLEMENTARY INFORMATION:** The U.S. Department of Agriculture (USDA) conducts a pre-clearance consultation program to provide the public and Federal agencies an opportunity to comment on proposed, revised, and continuing information collections before submitting them to the Office of Management and Budget (OMB).

This program helps to ensure 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 can be properly assessed.

Periodically USDA solicits grant applications on *http://grants.gov* by issuing a Funding Opportunity Announcement, Request for Applications, Notice of Funding Announcement, Notice of Solicitation of Applications, *Grants.gov* announcement, or other funding announcement type. To ensure grants are awarded to the applicant(s) best suited to perform the functions of the grant, applicants are generally required to submit an application. The first part of USDA grant applications consists of submitting the application form(s), which includes the Standard Form 424, Application for Federal Assistance and may include additional standard grant application forms. The second part of a grant application usually requires a technical proposal demonstrating the applicant's capabilities in accordance with a statement of work or selection criteria and other related information as specified in the funding announcement. Following the grant award, the grant awardee may also be required to provide progress reports or additional documents.

A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. USDA intends to seek approval from OMB for this collection of information for 3 years.

Interested parties are encouraged to provide comments to the individual listed in the **ADDRESSES** section above.

Comments must be written to receive consideration, and they will be summarized and may be included in the request for OMB approval of the final ICR. The comments will also become a matter of public record. Comments responsive to this request will be made available on-line, without redaction, as part of the submission to OMB; therefore, USDA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

USDA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, USDA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Agency:* USDA Office of the Secretary.

*Type of Review:* Request for approval of a new collection.

*Title of Collection:* USDA Generic Solution for Solicitation for Funding Opportunity Announcements.

*Affected Public:* State, Local, and Tribal Governments; Private Sector—businesses or other for-profits and not-for-profit institutions.

*Estimated Number of Respondents:* 10,000.

*Frequency:* On occasion.

*Total Estimated Annual Responses:* 20,000.

*Estimated Average Time per Response:* 20 hours.

*Estimated Total Annual Burden Hours:* 400,000 hours.

*Total Estimated Annual Other Cost Burden:* $0.

**Stephen O'Neill,**

*Legislative and Regulatory Division, OBPA–USDA.*

[FR Doc. 2022–06642 Filed 3–29–22; 8:45 am]

**BILLING CODE 3410–90–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 29, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Office of Partnerships and Public Engagement**

*Title:* USDA/1890 National Scholars Program Application.

*OMB Control Number:* 0503–0015.

*Summary of Collection:* The USDA/1890 National Scholars Program is a joint human capital initiative between the U.S. Department of Agriculture (USDA) and the 1890 Historically Black Land-Grant Universities. Through the 1890 National Scholars Program, USDA offers scholarships to high school and college students who are seeking a bachelor's degree in the fields of agriculture, food, science, or natural resource sciences and related disciplines at one of the established 1890 Land-Grant Universities. A completed application is required for graduating high school students, college freshman and sophomores to be considered for the scholarship.

*Need and Use of the Information:* The first section of the high school application requests the applicant to include biographical information (*i.e.,* name, address, age, etc.); educational background information (*i.e.,* grade point average, test scores, name of university(ies) interested in attending, and desired major); and extracurricular activities. The second section of the application is completed by the student's guidance counselor and requests information pertaining to the student's academic status, grade point average, and test scores. The last section of the application, which is to be completed by a teacher, provides information assessing the applicant's interests, habits, and potential.

The first section of the college application requests the applicant to include biographical information (*i.e.,* name, address, age, etc.); educational background information) *i.e.,* grade point average, name of university currently attending and declared major); activities. The second section of the application requires the submission of a transcript; essay containing 500–800 words; two letters of recommendation submitted on behalf of the applicant. There are no sections included in the application that the letter writing officials will need to complete.

The information will be used to assist the selecting agencies in their process of identifying potential recipients of the scholarship. The program would not be able to function consistently without this annual collection.

*Description of Respondents:* Individuals or households.

*Number of Respondents:* 2,000.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 4,000.

Dated: March 24, 2022.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2022–06623 Filed 3–29–22; 8:45 am]

BILLING CODE 3412–88–P

## DEPARTMENT OF COMMERCE

### Census Bureau

### Census Scientific Advisory Committee

**AGENCY:** Census Bureau, Department of Commerce.

**ACTION:** Renewal of the Census Scientific Advisory Committee charter.

**SUMMARY:** The Census Bureau is publishing this notice to announce the renewal of the Census Scientific Advisory Committee (Committee or CSAC). The purpose of the Committee is to provide advice to the Director of the Census Bureau on the full range of Census Bureau programs and activities including communications; decennial, demographic, and economic statistics; field operations; geography; and information technology. Additional information concerning the Committee can be found by visiting the Committee's website at: *https://www.census.gov/about/cac/sac.html.*

**FOR FURTHER INFORMATION CONTACT:** Shana J. Banks, Advisory Committee Branch Chief, Office of Program, Performance and Stakeholder Integration (PPSI), *shana.j.banks@census.gov,* Department of Commerce, Census Bureau, telephone 301–763–3815. For TTY callers, please use the Federal Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Background

In accordance with the Federal Advisory Committee Act (FACA), the Secretary of the Department of Commerce (Secretary) intends to renew the CSAC. The Secretary has determined that the work of the Committee is in the public interest and relevant to the duties of the Census Bureau. The CSAC will operate under the provisions of FACA and will report to the Secretary through the Director of the Census Bureau. The CSAC will advise the Director of the Census Bureau on the full range of Census Bureau programs and activities.

### Objectives and Duties

1. The Committee will address census policies, research and methodology, tests, operations, communications/messaging, and other activities to ascertain needs and best practices to improve censuses, surveys, operations, and programs.

2. The Committee will provide formal review and feedback on internal and external working papers, reports, and other documents related to the design and implementation of census programs and surveys.

3. The Committee will provide scientific and technical expertise from the following disciplines: Demographics, economics, geography, psychology, statistics, survey methodology, social and behavorial sciences, information technology and computing, marketing and other fields of expertise, as appropriate, to address Census Bureau program needs and objectives.

4. The Committee functions solely as an advisory body under the FACA. The function of this Committee will be a ''Scientific Technical Program Advisory Board.''

### Membership

1. The Committee consists of up to 21 members who serve at the discretion of the Director of the Census Bureau.

2. The Committee aims to have a balanced representation among its members, considering such factors as geography, scientific expertise, community involvement, and knowledge of census programs and/or activities, and, where possible, the Census Bureau will also consider the ethnic, racial, and gender diversity and various abilities of the United States population.

3. The Committee aims to include members from diverse backgrounds, including state, local and tribal governments; academia; research, national and community-based organizations; and, the private sector.

4. Members will serve as Special Government Employees (SGEs). SGEs will be subject to the ethics rules applicable to SGEs. Members will be individually advised of the capacity in which they will serve through their appointment letters.

5. SGEs will be selected from academia, public and private enterprise, and nonprofit organizations, which are further diversified by business type or industry, geography, and other factors.

6. Membership is open to persons who are not seated on other Census Bureau stakeholder entities (*i.e.,* State Data Centers, Census Information Centers, Federal State Cooperative on Populations Estimates Program, other Census Advisory Committees, etc.). Members who have served on another Census Bureau advisory committee may not be reappointed or serve on the

CSAC until at least three years have passed from the termination of previous service. No employee of the federal government can serve as a member of the Committee.

7. Members will serve for a three-year term. All members will be evaluated at the conclusion of their first term with the prospect of renewal, pending Committee needs. Active attendance and participation in meetings and activities (*e.g.,* conference calls and assignments) will be factors considered when determining term renewal or membership continuance. Members may be appointed for an additional three-year term at the discretion of the Director.

8. Members will be selected on a standardized basis, in accordance with applicable Department of Commerce guidance.

**Miscellaneous**

1. Members of the Committee serve without compensation, but receive reimbursement for Committee-related travel and lodging expenses.

2. The Census Bureau will convene two CSAC meetings per year, budget and environmental conditions permitting, but additional meetings may be held as deemed necessary by the Census Bureau Director or Designated Federal Officer. Committee meetings are open to the public in accordance with FACA.

3. Members must be able to actively participate in the tasks of the Committee, including, but not limited to, regular meeting attendance, Committee meeting discussant responsibilities, review of materials, as well as participation in conference calls, webinars, working groups, and/or special committee activities.

4. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Robert L. Santos, Director, Census Bureau, approved the publication of this Notice in the **Federal Register**.

Dated: March 25, 2022.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2022–06690 Filed 3–29–22; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Office of the Secretary

### Estimates of the Voting Age Population for 2021

**AGENCY:** Office of the Secretary, Department of Commerce.

**ACTION:** General notice announcing population estimates.

**SUMMARY:** This notice announces the voting age population estimates as of July 1, 2021, for each state and the District of Columbia. We are providing this notice in accordance with the 1976 amendment to the Federal Election Campaign Act.

**FOR FURTHER INFORMATION CONTACT:** Karen Battle, Chief, Population Division, U.S. Census Bureau, Room HQ–6H174, 4600 Silver Hill Road, Washington, DC 20233. Phone: 301–763–2071. Email: *Karen.Battle@census.gov.*

**SUPPLEMENTARY INFORMATION:** Under the requirements of the 1976 amendment to the Federal Election Campaign Act, title 52, United States Code, section 30116(e), I hereby give notice that the estimates of the voting age population for July 1, 2021, for each state and the District of Columbia are as shown in the following table.

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 2021

| Area | Population 18 and over |
|---|---|
| United States | 258,327,312 |
| Alabama | 3,917,625 |
| Alaska | 553,317 |
| Arizona | 5,662,328 |
| Arkansas | 2,322,502 |
| California | 30,465,205 |
| Colorado | 4,568,613 |
| Connecticut | 2,875,887 |
| Delaware | 795,090 |
| District of Columbia | 544,215 |
| Florida | 17,491,848 |
| Georgia | 8,275,264 |
| Hawaii | 1,137,154 |
| Idaho | 1,431,897 |
| Illinois | 9,868,245 |
| Indiana | 5,218,979 |
| Iowa | 2,456,703 |
| Kansas | 2,231,518 |
| Kentucky | 3,493,482 |
| Louisiana | 3,541,104 |
| Maine | 1,120,338 |
| Maryland | 4,801,825 |
| Massachusetts | 5,622,590 |
| Michigan | 7,897,432 |
| Minnesota | 4,389,823 |
| Mississippi | 2,257,130 |
| Missouri | 4,783,630 |
| Montana | 869,201 |

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 2021—Continued

| Area | Population 18 and over |
|---|---|
| Nebraska | 1,480,808 |
| Nevada | 2,445,243 |
| New Hampshire | 1,132,616 |
| New Jersey | 7,244,002 |
| New Mexico | 1,642,656 |
| New York | 15,722,590 |
| North Carolina | 8,249,659 |
| North Dakota | 589,247 |
| Ohio | 9,174,388 |
| Oklahoma | 3,025,109 |
| Oregon | 3,384,804 |
| Pennsylvania | 10,290,047 |
| Rhode Island | 886,783 |
| South Carolina | 4,073,613 |
| South Dakota | 674,947 |
| Tennessee | 5,434,544 |
| Texas | 22,052,508 |
| Utah | 2,390,732 |
| Vermont | 528,594 |
| Virginia | 6,757,448 |
| Washington | 6,062,570 |
| West Virginia | 1,423,928 |
| Wisconsin | 4,621,152 |
| Wyoming | 446,379 |

Source: U.S. Census Bureau, Population Division, Vintage 2021 Population Estimates.

I have certified these estimates for the Federal Election Commission.

Gina Raimondo, Secretary, Department of Commerce, approved the publication of this Notice in the **Federal Register**.

Dated: March 24, 2022.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2022–06654 Filed 3–29–22; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–959]**

### Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Results of Expedited Second Sunset Review of the Countervailing Duty Order

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

**SUMMARY:** The Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on certain coated paper suitable for high-quality print graphics using sheet-fed presses (coated paper) from the People's

Republic of China (China) would be likely to lead to continuation or recurrence of a countervailable subsidy at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

**DATES:** Applicable March 30, 2022.

**FOR FURTHER INFORMATION CONTACT:** Michael Romani, Office I, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7883.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 1, 2021, Commerce initiated its second sunset review of the countervailing duty order [1] on coated paper from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On December 10, 2021, Commerce received a notice of intent to participate in the review on behalf of Verso Corporation (Verso), Sappi North America, Inc. (Sappi), and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (USW) (collectively, the petitioners) within the deadline specified in 19 CFR 351.218(d)(1).[3] Verso and Sappi claimed interested party status under section 771(9)(C) of the Act, as domestic producers of the domestic like product. USW claimed interested party status under section 771(9)(D) of the Act as a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product.

Commerce received an adequate substantive response from the domestic industry within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] Commerce did not receive substantive responses from any other domestic or respondent interested parties in this proceeding, nor was a hearing requested. On January 20, 2022, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties. Accordingly, Commerce conducted an expedited (120-day) review of the *CVD Order,* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(l)(ii)(B)(2) and (C)(2).

## Scope of the Order

The merchandise covered by scope of the *Order* includes certain coated paper and paperboard [5] in sheets suitable for high quality print graphics using sheet-fed presses; coated on one or both sides with kaolin (China or other clay), calcium carbonate, titanium dioxide, and/or other inorganic substances; with or without a binder; having a GE brightness level of 80 or higher; [6] weighing not more than 340 grams per square meter; whether gloss grade, satin grade, matte grade, dull grade, or any other grade of finish; whether or not surface-colored, surface-decorated, printed (except as described below), embossed, or perforated; and irrespective of dimensions (certain coated paper).

Certain coated paper includes: (a) Coated free sheet paper and paperboard that meets this scope definition; (b) coated groundwood paper and paperboard produced from bleached chemi-thermo-mechanical pulp (BCTMP) that meets this scope definition; and (c) any other coated paper and paperboard that meets this scope definition.

Certain coated paper is typically (but not exclusively) used for printing multicolored graphics for catalogues, books, magazines, envelopes, labels and wraps, greeting cards, and other commercial printing applications requiring high quality print graphics.

Specifically excluded from the scope are imports of paper and paperboard printed with final content printed text or graphics.

Imports of the subject merchandise are provided for under the following categories of the HTSUS: 4810.14.11, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.6000, 4810.14.70, 4810.19.1100, 4810.19.1900, 4810.19.2010, 4810.19.2090, 4810.22.1000, 4810.22.50, 4810.22.6000, 4810.22.70, 4810.29.1000, 4810.29.5000, 4810.29.6000, 4810.29.70, 4810.32.10, 4810.32.30, 4810.32.65, 4810.39.12, 4810.39.14, 4810.39.30, 4810.39.65, 4810.92.12, 4810.92.14, 4810.92.30, 4810.92.65, 4810.29.1035, 4810.29.70, 4810.92.1235, 4810.92.1435, and 4810.92.6535. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.

## Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum.[7] A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance 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*.

## Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, we determine that revocation of the *CVD Order* on coated paper from China would be likely to lead to continuation or recurrence of a net countervailable subsidy at the following rates:

[1] *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 75 FR 70201 (November 17, 2010) (*CVD Order*).

[2] *See Initiation of Five-Year (Sunset) Review,* 86 FR 68220 (December 1, 2021).

[3] *See* Petitioners' Letter, ''Five-Year (''Sunset'') Review of Countervailing Duty Order on Coated Paper Suitable for High-Quality Print Graphics Using Sheet Fed Presses from the People's Republic of China: Notice of Intent to Participate in Sunset Review,'' dated December 10, 2021.

[4] *See* Petitioners' Letter, ''Second Five-Year (''Sunset'') Review of Countervailing Duty Order on Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From The People's Republic of China: Substantive Response to Notice of Initiation,'' dated January 3, 2022.

[5] '' 'Paperboard' '' refers to certain coated paper that is heavier, thicker and more rigid than coated paper which otherwise meets the product description. In the context of coated paper, paperboard typically is referred to as '' 'cover,' '' to distinguish it from '' 'text.' ''

[6] One of the key measurements of any grade of paper is brightness. Generally speaking, the brighter the paper the better the contrast between the paper and the ink. Brightness is measured using a GE Reflectance Scale, which measures the reflection of light off of a grade of paper. One is the lowest reflection, or what would be given to a totally black grade, and 100 is the brightest measured grade.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review: Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

| Producer/exporter | Subsidy rate (percent) |
|---|---|
| Gold East Paper (Jiangsu) Co., Ltd., Gold Huasheng Paper Co., Ltd., Gold East Trading (Hong Kong) Company Ltd., Ningbo Zhonghua Paper Co., Ltd., and Ningbo Asia Pulp & Paper Co., Ltd | 19.46 |
| Shandong Sun Paper Industry Joint Stock Co., Ltd., and Yanzhou Tianzhang Paper Industry Co., Ltd | 202.84 |
| All Others | 19.46 |

**Notification Regarding Administrative Protective Order (APO)**

This notice serves as the only reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely notification of destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

**Notification to Interested Parties**

Commerce is issuing and publishing these final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: March 22, 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. History of the Order
IV. Scope of the Order
V. Legal Framework
VI. Discussion of the Issues
VII. Final Results of Sunset Review
VIII. Recommendation

[FR Doc. 2022–06737 Filed 3–29–22; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Foreign-Trade Zone Applications

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on December 21, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* International Trade Administration, Commerce.

*Title:* Foreign-Trade Zone Applications.

*OMB Control Number:* 0625–0139.

*Form Number(s):* None.

*Type of Request:* Regular submission, extension of a current information collection.

*Number of Respondents:* 288.

*Average Hours per Response:* 3.5 to 131 hours.

*Burden Hours:* 2,521 hours.

*Needs and Uses:* The Foreign-Trade Zone Application is the vehicle by which individual firms or organizations apply for foreign-trade zone (FTZ) status, for subzone status, production authority, or for expansion/reorganization of an existing zone. The FTZ Act and Regulations require that an application with a description of the proposed project be made to the FTZ Board (19 U.S.C. 81b and 81f; 15 CFR 400.24.26) before a license can be issued or a zone can be expanded. The Act and the Regulations require that applications contain detailed information on facilities, financing, operational plans, proposed production operations, need and economic impact. Production activity in zones or subzones can involve issues related to domestic industry and trade policy impact. Such applications must include specific information on the customs tariff-related savings that result from zone procedures and the economic consequences of permitting such savings. The FTZ Board needs complete and accurate information on the proposed operation and its economic effects because the Act and Regulations authorize the Board to restrict or prohibit operations that are detrimental to the public interest.

*Affected Public:* State, local, or tribal governments or not-for-profit institutions which are FTZ grantees, as well as private companies.

*Frequency:* As necessary to receive benefits.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* 19 U.S.C. 81b and 81f; 15 CFR 400.24.26.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0625–0139.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2022–06707 Filed 3–29–22; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–867]**

### Large Power Transformers From the Republic of Korea: Amended 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) is amending its final results in the administrative review of the antidumping duty order on large power transformers (LPTs) from the Republic of Korea (Korea) for the period August 1, 2019, through July 31, 2020, to correct a ministerial error.

**DATES:** Applicable March 30, 2022.

**FOR FURTHER INFORMATION CONTACT:** John Drury, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401

Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0195.

**SUPPLEMENTARY INFORMATION:**

## Background

On March 8, 2022, Commerce published the final results of the 2019–2020 administrative review of LPTs from Korea.[1] On March 7, 2022, Commerce received a timely filed allegation from Hitachi Energy USA, Inc. and Prolec-GE Waukesha, Inc. (the petitioners) that Commerce made a ministerial error in the *Final Results* of the above-referenced administrative review with regard to its calculation of the final dumping margin for respondent Hyosung Heavy Industries Corporation, Inc. (Hyosung).[2] Based on our analysis of the allegation, we determine that we made a ministerial error and we made changes to the calculation of the weighted-average dumping margin for Hyosung and for the non-individually examined respondents.[3]

## Scope of the Order

The scope of this order covers large liquid dielectric power transformers (LPTs) having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete.

Incomplete LPTs are subassemblies consisting of the active part and any other parts attached to, imported with or invoiced with the active parts of LPTs. The ''active part'' of the transformer consists of one or more of the following when attached to or otherwise assembled with one another: The steel core or shell, the windings, electrical insulation between the windings, the mechanical frame for an LPT.

The product definition encompasses all such LPTs regardless of name designation, including but not limited to step-up transformers, step-down transformers, autotransformers, interconnection transformers, voltage regulator transformers, rectifier transformers, and power rectifier transformers.

The LPTs subject to this order are currently classifiable under subheadings 8504.23.0040, 8504.23.0080 and 8504.90.9540 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

## Ministerial Error

Section 751(h) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.224(f) define a ''ministerial error'' as an error ''in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.''

The petitioners argue that Commerce failed to fully implement certain changes that the record indicates, and Commerce recognized, were necessary for one U.S. sale, to account for the proper reporting of service-related revenues. We agree with the petitioners and, therefore, we have corrected the error.[4] As a result, the weighted-average dumping margin for Hyosung changes from 7.92 percent to 9.09 percent. Furthermore, the rate for the respondents not selected for individual examination, which is based on the margin calculated for Hyosung, also changes from 7.92 percent to 9.09 percent.[5]

## Amended Final Results of Review

Commerce determines that the following amended weighted-average dumping margins exist for the period August 1, 2019, through July 31, 2020:

| Producer/exporter | Estimated weighted-average dumping margin (percent) |
|---|---|
| Hyosung Heavy Industries Corporation | 9.09 |
| Hyundai Electric & Energy Systems Co., Ltd | 9.09 |
| Iljin Electric Co., Ltd | 9.09 |
| Iljin | 9.09 |

## Disclosure

We will disclose the calculation memorandum used in our analysis to parties to this segment of the proceeding within five days of the date of the publication of these amended final results pursuant to 19 CFR 351.224(b).

## Assessment Rate

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these amended final results of the administrative review.

In accordance with 19 CFR 351.212(b)(1), Hyosung reported the entered value of its U.S. sales such that we calculated importer-specific *ad valorem* antidumping duties assessment rates based on the ratio of the total amount of dumping calculated for the examined sales for each importer to the total entered value of the sales for each importer. Where an importer-specific antidumping duties assessment rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the period of review produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[6]

For the companies which were not selected for individual examination, we will instruct CBP to assess antidumping duties at an *ad valorem* assessment rate equal to the weighted-average dumping margins determined in these amended final results.

The amended final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the amended final results of this review and for future deposits of estimated duties, where applicable.[7] Consistent with its recent notice,[8] Commerce intends to

[1] *See Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019–2020,* 87 FR 12932 (March 8, 2022) (*Final Results*), and accompanying Issues and Decision Memorandum.

[2] *See* Petitioners' Letter, ''Large Power Transformers from Korea—Petitioners' Allegation of a Ministerial Error in the Final Results,'' dated March 7, 2022 (Ministerial Allegation Letter).

[3] *See* Memorandum ''Ministerial Error Memorandum for the Amended Final Results of the 2019–2020 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea,'' dated concurrently with this notice (Ministerial Error Memorandum).

[4] *See* Ministerial Error Memorandum at 3.

[5] The rate applied to the non-selected companies is based on Hyosung's dumping margin for the period August 1, 2019, through July 31, 2020, as no other company was selected for review. *See Final Results* at 12932.

[6] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[7] *See* section 751(a)(2)(C) of the Act.

[8] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings,* 86 FR 3995 (January 15, 2021).

issue appropriate assessment instructions directly to CBP no earlier than 35 days after the date of publication of the amended 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 retroactively for all shipments of subject merchandise that entered, or were withdrawn from warehouse, for consumption on or after March 8, 2022, 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 rate for respondents noted above will be equal to the weighted-average dumping margins established in the amended final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 22.00 percent, the all-others rate established in the less-than-fair-value investigation.[9] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers Regarding the Reimbursement of Duties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the period of review. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties did occur and the subsequent assessment of doubled antidumping duties.

**Administrative Protective Order**

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

**Notification to Interested Parties**

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 19 CFR 351.221(b)(5).

Dated: March 23, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2022–06733 Filed 3–29–22; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See Large Power Transformers from the Republic of Korea: Antidumping Duty Order,* 77 FR 53177 (August 31, 2012).

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Extension of the Call for Nominations To Serve on the Internet of Things Advisory Board

**AGENCIES:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Extension of the call for nominations to serve on the Internet of Things Advisory Board.

**SUMMARY:** The National Institute of Standards and Technology (NIST or Institute) is extending the call for nominations to serve on the inaugural Internet of Things Advisory Board. An earlier notice had requested nominations by February 28, 2022. Registered Federal lobbyists may not serve on NIST Federal Advisory Committees in an individual capacity.

**DATES:** Nominations to serve on the inaugural IoTAB must be received by 5:00 p.m. Eastern Time on April 14, 2022.

**ADDRESSES:** Please submit nominations to Alicia Chambers, Committee Liaison Officer, National Institute of Standards and Technology, 100 Bureau Drive, MS 1000, Gaithersburg, MD 20899 and Barbara Cuthill, Designated Federal Officer, National Institute of Standards and Technology, 100 Bureau Drive, MS 2000, Gaithersburg, MD 20899. Nominations may also be submitted via email to *alicia.chambers@nist.gov* and *barbara.cuthill@nist.gov.*

**FOR FURTHER INFORMATION CONTACT:** Alison Kahn, Electronics Engineer, National Institute of Standards and Technology, 100 Bureau Drive, MS 2000, Gaithersburg, MD 20899. Her email is *alison.kahn@nist.gov,* and her phone number is (303) 497–3523.

**SUPPLEMENTARY INFORMATION:**

*Committee Information:* The Secretary of Commerce (Secretary) established the Internet of Things Advisory Board (IoTAB) in accordance with the requirements of 9204(b)(5) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283), and in accordance with the Federal Advisory Committee Act, as amended (FACA), 5 U.S.C. App. The The IoTAB shall submit to the IoTFWG a report that includes any findings or recommendations related to the specific scope below.

*Objectives and Duties:* The Board shall advise the Internet of Things Federal Working Group convened by the Secretary pursuant to Section 9204(b)(1) of the Act on matters related to the Federal Working Group's activities, as specified below.

The Board shall advise the Federal Working Group with respect to—

a. the identification of any Federal regulations, statutes, grant practices, programs, budgetary or jurisdictional challenges, and other sector-specific policies that are inhibiting, or could inhibit, the development of the Internet of Things;

b. situations in which the use of the Internet of Things is likely to deliver significant and scalable economic and societal benefits to the United States, including benefits from or to—

i. smart traffic and transit technologies;

ii. augmented logistics and supply chains;

iii. sustainable infrastructure;

iv. precision agriculture;

v. environmental monitoring;

vi. public safety; and

vii. health care;

c. whether adequate spectrum is available to support the growing Internet of Things and what legal or regulatory barriers may exist to providing any spectrum needed in the future;

d. policies, programs, or multi-stakeholder activities that—

i. promote or are related to the privacy of individuals who use or are affected by the Internet of Things;

ii. may enhance the security of the Internet of Things, including the security of critical infrastructure;

iii. may protect users of the Internet of Things; and

iv. may encourage coordination among Federal agencies with jurisdiction over the Internet of Things;

e. the opportunities and challenges associated with the use of Internet of Things technology by small businesses; and

f. any international proceeding, international negotiation, or other international matter affecting the Internet of Things to which the United States is or should be a party.

The Board shall submit to the Internet of Things Federal Working Group a report that includes any of its findings or recommendations. The report will be administratively delivered to the Internet of Things Federal Working Group through the Director of the National Institute of Standards and Technology (NIST).

The Board shall set its own agenda in carrying out its duties. The Federal Working Group may suggest topics or items for the Board to study, and the Board shall take those suggestions into consideration in carrying out its duties.

The Board will function solely as an advisory body, in accordance with the provisions of FACA.

*Membership:* Members of the Board shall be appointed by the Secretary. The Board shall consist of 16 members representing a wide range of stakeholders outside of the Federal Government with expertise relating to the Internet of Things, including: (i) Information and communications technology manufacturers, suppliers, service providers, and vendors; (ii) subject matter experts representing industrial sectors other than the technology sector that can benefit from the Internet of Things, including the transportation, energy, agriculture, and health care sectors; (iii) small, medium, and large businesses; (iv) think tanks and academia; (v) nonprofit organizations and consumer groups; (vi) security experts; (vii) rural stakeholders; and (viii) other stakeholders with relevant expertise, as determined by the Secretary.

The Board members shall serve terms of two years (unless the Board terminates earlier). Vacancies are filled as soon as highly qualified candidates in a needed area of stakeholder interest are identified and available to serve. Members of the Board shall serve as representative members. Full-time or permanent part-time Federal officers or employees will not be appointed to the Board. Members must be citizens of the United States of America.

Members of the Board shall not be compensated for their services. Members of the Board, while attending meetings of the Board away from their homes or regular place of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by Section 5703 of Title 5, United States Code, for individuals intermittently serving in the Government without pay.

Members shall not reference or otherwise utilize their membership on the Board in connection with public statements made in their personal capacities without a disclaimer that the views expressed are their own and do not represent the views of the Board, the Federal Working Group, NIST, or the Department of Commerce.

The Secretary will appoint the Board's Chair from among the approved members in accordance with policies and procedures and, in doing so, shall determine the term of service for the Board's Chair.

**Miscellaneous**

Meetings will be conducted at least twice each year.

1. IoTAB meetings are open to the public.

2. Meeting will be virtual.

**Nomination Information**

NIST uses a nomination process to identify candidates for the Board. Nominations are requested through an announcement in the **Federal Register** and through solicitations through the Federal Working Group, NIST, the Department of Commerce, other Federal agencies, and organizations representing relevant businesses, consumers, communities, and economic sectors in order to ensure a robust and diverse pool of applicants. Candidates may be nominated by their peers or may self-nominate. NIST requests that the nomination includes a resume for the individual that specifically identifies the stakeholder interest of the individual being nominated. Qualifications considered may include, among others: Education, professional experience, and scientific and technical expertise in selected areas. The Director of the Information Technology Laboratory (ITL) recommends candidates for further review to fill vacancies on the Board in the areas of needed stakeholder interest and on the basis of the qualifications, the sectors the candidates may represent and the existing representation on the Board, and other balance factors. The Director of ITL recommends nominees to the Director of NIST, who reviews the recommendation for submission to the Secretary of Commerce. Candidates for the Board are then reviewed by and appointed by the Secretary of Commerce.

The Board members shall serve terms of two years (unless the Board terminates earlier). Vacancies are filled as soon as highly qualified candidates in a needed area of stakeholder interest are identified and available to serve.

The Department of Commerce seeks a broad-based and diverse IoTAB membership.

**Alicia Chambers,**

*NIST Executive Secretariat.*

[FR Doc. 2022–06646 Filed 3–29–22; 8:45 am]

BILLING CODE 3510–13–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2022–OS–0039]**

### Proposed Collection; Comment Request

**AGENCY:** 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 May 31, 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:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

*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:* Wingman Intervention Training Program Evaluation; OMB Control Number 0704–0627.

*Needs and Uses:* The purpose of the evaluation is to determine the effectiveness of the Wingman Intervention Training (WIT) program in preventing sexual harassment (SH) and sexual assault (SA). Respondents are Airmen/Guardians. Respondents will be recruited as First Term Airmen/Guardians to target the population most vulnerable to SH and SA. Respondents will start the web-based baseline January 2022 with a six-month intake period until June 2022, and a 6-month follow-up survey (July–December 2022) on SH and SA so that the Department of the Air Force (DAF) can learn whether the WIT programming is effective at preventing SH and SA events and promoting active bystander behaviors. DAF Resilience Office staff can use the results to improve their prevention programming, thus supporting safer, more inclusive settings. Further, Airmen/Guardians may benefit through the improvement of the WIT program to prevent SH and SA within the Air Force. The military and society at large will also benefit because military officers will be more knowledgeable about SH and SA and will be better able to intervene to prevent SH and SA.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 2,333.3 hours.

*Number of Respondents:* 4,000.

*Responses per Respondent:* 2.

*Annual Responses:* 8,000.

*Average Burden per Response:* 17.5 minutes.

*Frequency:* On occasion.

Dated: March 25, 2022.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2022–06726 Filed 3–29–22; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2022–OS–0038]**

### Proposed Collection; Comment Request

**AGENCY:** 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 erformance 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 May 31, 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:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

*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:* Synchronized Pre-deployment and Operational Tracker Enterprise Suite (SPOT–ES); OMB Control Number 0704–0460.

*Needs and Uses:* The National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, Section 861, requires a common database between the Department of State (DoS), DoD, and the United States Agency for International Development (USAID) to serve as the repository of information on contracts and contractor personnel performing in Iraq and Afghanistan. A 2010 Memorandum of Understanding between DoS, DoD and USAID designates the Synchronized Pre-deployment and Operational Tracker as that common database. Public Law 110–181, Section 862, requires a process for registering, processing, accounting for, and keeping appropriate records of personnel performing private security functions in an area of combat operations. Any individuals who choose not to have data collected will not be entitled to employment opportunities with businesses that require this data to be collected per DFARS Clause 252.225–7040.

*Affected Public:* Individuals or households.

*Annual Burden Hours*: 30,798 hours.

*Number of Respondents:* 1,062.

*Responses per Respondent*: 58.

*Annual Responses*: 61,596.

*Average Burden per Response*: 30 minutes.

*Frequency:* On occasion.

Dated: March 25, 2022.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2022–06729 Filed 3–29–22; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2022–OS–0040]**

### Proposed Collection; Comment Request

**AGENCY:** Washington Headquarters Services (WHS), Department of Defense (DoD).

**ACTION:** 60-Day information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Washington Headquarters Services/Facilities Services Directorate 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 May 31, 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:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

*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 Washington Headquarters Services/Facilities Services Directorate/Standards and Compliance Division, 1155 Defense Pentagon, Washington, DC 20301, Ariam Kloehn, or call 703–695–3300.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Washington Headquarters Services Facilities Services Directorate QUICX User Request Form; WHS Form 23; 0704–QUIC.

*Needs and Uses:* The information collection using the QUICX User Request Form is necessary to create a CAC-enabled account for Government and contractor personnel who are involved in construction projects on the Pentagon Reservation. The QUICX software is used to upload and review construction drawings and submittals. The software is also used to document construction related inspections and to develop and document functional performance tests for the commissioning (*i.e.,* acceptance testing) of new building systems (*e.g.,* heating units, fire alarm systems, lighting systems). Finally, the system is used to generate WHS Building Code permits, which are required for construction projects on the Pentagon Reservation.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 2.

*Number of Respondents:* 24.

*Responses per Respondent:* 1.

*Annual Responses:* 24.

*Average Burden per Response:* 5 minutes.

*Frequency:* On occasion.

Dated: March 25, 2022.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2022–06719 Filed 3–29–22; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID: USN–2021–HQ–0009]**

### Submission for OMB Review; Comment Request

**AGENCY:** Department of the Navy, 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 April 29, 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:* Navy Health of the Force Survey; OMB Control Number 0703–0079.

*Type of Request:* Revision.

*Number of Respondents:* 13,000.

*Responses per Respondent:* 1.

*Annual Responses:* 13,000.

*Average Burden per Response:* 25 minutes.

*Annual Burden Hours:* 5,416.67.

*Needs and Uses:* The Navy Health of the Force Survey is a strategic level engagement survey of the Navy Active Duty population that addresses core measures relating to the health of the force, and addresses emergent issues of interest to Navy leadership. The core survey questions support trend analysis on the following metrics: Sailor job satisfaction, retention plans, and influences to stay or leave; Health of the Force Metrics: Connectedness, cohesion, organizational commitment, job satisfaction, and inclusion; and diversity, equity and inclusion in the Navy. The survey alternates between addressing issues pertaining to the work environment (odd years) and issues pertaining to programs and policies that support Sailors personal lives (even years). The results of the annual engagement survey inform the Navy's Health of the Force Report to Congress, congressional testimony, and support program and policy assessments.

*Affected Public:* Individuals or households.

*Frequency:* Annually.

*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: March 25, 2022.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2022–06717 Filed 3–29–22; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL22–27–000]**

### Notice of Institution of Section 206 Proceeding and Refund Effective Date; Alabama Power Company, Georgia Power Company, Mississippi Power Company

On March 24, 2022, the Commission issued an order in Docket No. EL22–27–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Southern Company Services, Inc.'s [1] formula rate protocols are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Alabama Power Company, et al.,* 178 FERC ¶ 61,207 (2022).

The refund effective date in Docket No. EL22–27–000, 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. EL22–27–000 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.

[1] Alabama Power Company, Georgia Power Company, and Mississippi Power Company are Southern's electric public utility subsidiaries. Alabama Power Company is the tariff administrator for Southern's OATT. The Commission's eTariff database identifies Southern's OATT as ''Alabama Power Company, OATT and Associated Service Agreements, Tariff Volume No. 5, Southern Companies OATT.''

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: March 24, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–06696 Filed 3–29–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AD06–6–000]**

### Notice of Joint Meeting of the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission

The Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC) will hold a joint meeting on Thursday, March 31, 2022. The open meeting will be held virtually and is expected to begin at 9:00 a.m. and conclude at approximately 11:30 a.m. Eastern Time. Members of the public may attend the open session. Commissioners from both agencies are expected to participate.

The format for the joint meeting will consist of discussions between the two sets of Commissioners following presentations by their respective staffs. In addition, a representative of the North American Electric Reliability Corporation (NERC) will attend and participate in this meeting. Attached is an agenda of the meeting.

A free webcast of this event will be made available for viewing through the NRC's Webcast portal at *https://video.nrc.gov/.* In addition, the event will be transcribed, and the transcription will be made available through the NRC website at *https://www.nrc.gov/reading-rm/doc-collections/commission/tr/2022/index.html* approximately a week after the meeting.

All interested persons are invited to the open meeting. Pre-registration is not required and there is no fee to attend this joint meeting. Questions about the meeting should be directed to Lodie White at *Lodie.White@ferc.gov* or by phone at (202) 502–8453.

Dated: March 24, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–06694 Filed 3–29–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER16–323–009.

*Applicants:* Ohio Valley Electric Corporation.

*Description:* Supplement to December 18, 2020 Triennial Market Power Analysis for Central Region of Ohio Valley Electric Corporation.

*Filed Date:* 1/18/22.

*Accession Number:* 20220118–5160.

*Comment Date:* 5 p.m. ET 4/14/22.

*Docket Numbers:* ER22–1434–000.

*Applicants:* LSC Communications US, LLC.

*Description:* Tariff Amendment: LSCC MBR Tariff Cancellation to be effective 3/31/2022.

*Filed Date:* 3/24/22.

*Accession Number:* 20220324–5109.

*Comment Date:* 5 p.m. ET 4/14/22.

*Docket Numbers:* ER22–1435–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Interim ISA, SA No. 6378; Queue Nos. AE2–071/AF1–203 to be effective 2/22/2022.

*Filed Date:* 3/24/22.
*Accession Number:* 20220324–5115.
*Comment Date:* 5 p.m. ET 4/14/22.

*Docket Numbers:* ER22–1436–000.
*Applicants:* Tri-State Generation and Transmission Association, Inc.
*Description:* § 205(d) Rate Filing: Initial Filing of Pre-Existing Service Agreement FERC No. 905 to be effective 2/25/2020.
*Filed Date:* 3/24/22.
*Accession Number:* 20220324–5141.
*Comment Date:* 5 p.m. ET 4/14/22.

*Docket Numbers:* ER22–1437–000.
*Applicants:* Public Service Company of Colorado.
*Description:* § 205(d) Rate Filing: 2022–03–24 PSC-Grid United T–T Intercon FASA-(T–2021–11)-699–0.0.0 to be effective 3/25/2022.
*Filed Date:* 3/24/22.
*Accession Number:* 20220324–5144.
*Comment Date:* 5 p.m. ET 4/14/22.

*Docket Numbers:* ER22–1438–000.
*Applicants:* California Independent System Operator Corporation.
*Description:* § 205(d) Rate Filing: 2022–03–24 Short Start Long Start to be effective 6/1/2022.
*Filed Date:* /24/22.
*Accession Number:* 20220324–5153.
*Comment Date:* 5 p.m. ET 4/14/22.

*Docket Numbers:* ER22–1439–000.
*Applicants:* EdSan 1B Group 1 Edwards, LLC.
*Description:* Baseline eTariff Filing: Market-Based Rate Application to be effective 5/24/2022.
*Filed Date:* 3/24/22.
*Accession Number:* 20220324–5170.
*Comment Date:* 5 p.m. ET 4/14/22.

*Docket Numbers:* ER22–1440–000.
*Applicants:* EdSan 1B Group 1 Sanborn, LLC.
*Description:* Baseline eTariff Filing: Market-Based Rate Application to be effective 5/24/2022.
*Filed Date:* 3/24/22.
*Accession Number:* 20220324–5171.
*Comment Date:* 5 p.m. ET 4/14/22.

*Docket Numbers:* ER22–1441–000.
*Applicants:* EdSan 1B Group 2, LLC.
*Description:* Baseline eTariff Filing: Market-Based Rate Application to be effective 5/24/2022.
*Filed Date:* 3/24/22.
*Accession Number:* 20220324–5176.
*Comment Date:* 5 p.m. ET 4/14/22.

*Docket Numbers:* ER22–1442–000.
*Applicants:* EdSan 1B Group 3, LLC.
*Description:* Baseline eTariff Filing: Market-Based Rate Application to be effective 5/24/2022.
*Filed Date:* 3/24/22.
*Accession Number:* 20220324–5181.
*Comment Date:* 5 p.m. ET 4/14/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 24, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–06693 Filed 3–29–22; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP22–714–000.
*Applicants:* Enable Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: Fuel Tracker Filing—Effective May 1 2022 to be effective 5/1/2022.
*Filed Date:* 3/23/22.
*Accession Number:* 20220323–5139.
*Comment Date:* 5 p.m. ET 4/4/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 24, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–06692 Filed 3–29–22; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14861–002]**

### Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions; FFP Project 101, LLC

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.
b. *Project No.:* 14861–002.
c. *Date filed:* June 23, 2020.
d. *Applicant:* FFP Project 101, LLC (FFP).
e. *Name of Project:* Goldendale Energy Storage Project (Goldendale Project).
f. *Location:* Off-stream on the north side of the Columbia River at River Mile 215.6 in Klickitat County, Washington, with transmission facilities extending into Sherman County, Oregon. The project would be located approximately 8 miles southeast of the City of Goldendale, Washington. The project would occupy 18.1 acres of lands owned by the U.S. Army Corps of Engineers and administered by the Bonneville Power Administration.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Erik Steimle, Rye Development, 745 Atlantic Avenue, Boston, Massachusetts 02111; (503) 998–0230; email—*erik@ryedevelopment.com.*
i. *FERC Contact:* Michael Tust at (202) 502–6522; or email at *michael.tust@ferc.gov.*
j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions 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. The first page of any filing should include docket number P–14861–002.

The Commission's Rules of Practice 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. This application has been accepted and is ready for environmental analysis at this time.

The Council on Environmental Quality (CEQ) issued a final rule on July 15, 2020, revising the regulations under 40 CFR parts 1500–1518 that federal agencies use to implement NEPA (see Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 FR 43,304). The Final Rule became effective on and applies to any NEPA process begun after September 14, 2020. An agency may also apply the regulations to ongoing activities and environmental documents begun before September 14, 2020, which includes the proposed Goldendale Project. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

l. *The proposed Goldendale Project would include the following new facilities:* (1) A 61-acre upper reservoir formed by a 175-foot-high, 8,000-foot-long rockfill embankment dam at an elevation of 2,940 feet National Geodetic Vertical Datum of 1929 (NGVD 29) with a vertical concrete intake-outlet structure; (2) a 63-acre lower reservoir formed by a 205-foot-high, 6,100-foot-long embankment at an elevation of 580 feet (NGVD 29) with a horizontal concrete intake-outlet structure and vertical steel slide gates; (3) an underground conveyance tunnel system connecting the two reservoirs consisting of a 2,200-foot-long, 29-foot-diameter concrete-lined vertical shaft, a 3,300-foot-long, 29-foot-diameter concrete-lined high pressure tunnel, a 200-foot-long, 22-foot-diameter high pressure manifold tunnel, three 600-foot-long, 15-foot-diameter steel/concrete penstocks, three 200-foot-long, 20-foot-diameter steel-lined draft tube tunnels with bonneted slide gates, a 200-foot-long, 26-foot-diameter concrete-lined low-pressure tunnel, and a 3,200-foot-long, 30-foot-diameter concrete-lined tailrace tunnel; (4) an underground powerhouse located between the upper and lower reservoir in a 0.83-acre powerhouse cavern containing three, 400-megawatt (MW) Francis-type pump-turbine units for a total installed capacity of 1,200 MW; (5) a 0.48-acre underground transformer cavern adjacent to the powerhouse containing intermediate step-up transformers that will step up the voltage from 18 kilovolts (kV) to 115 kV; (6) two 30-foot-diameter tunnels for accessing the powerhouse and transformer caverns; (7) a 0.84-mile-long, 115-kV underground transmission line extending from the transformer gallery through the combined access/transmission tunnel to where it emerges aboveground near the west side of the lower reservoir and extending an additional 0.27 miles to an outdoor 7.3-acre substation/switchyard where the voltage would be stepped up to 500 kV; (8) a 3.13-mile-long, 500-kV transmission line routed from the substation/switchyard south across the Columbia River and connecting to Bonneville Power Administration's existing John Day Substation; (9) a buried 30-inch-diameter water fill line leading from a shut-off and throttling valve within a non-project water supply vault owned by Klickitat Public Utility District (KPUD) to an outlet structure within the lower reservoir to convey water to fill the reservoirs; and (10) appurtenant facilities. The project would also include an existing 0.7-mile road for accessing the lower reservoir site and an existing 8.6-mile-long road for accessing the upper reservoir site both of which may be modified to provide access for construction vehicles.

The water supply used to initially fill the lower reservoir as well as to provide make-up water would be purchased from KPUD and would be obtained from KPUD's existing intake pond on the Columbia River. The project water fill line would connect to a new KPUD-owned flanged water supply service connection in a water supply vault located near the lower reservoir. Within the vault, and just downstream of the service connection, there would be a project shut-off and throttling valve to control the initial fill and make-up water flow rate into the lower reservoir. The initial fill would require 7,640 acre-feet of water and would be completed in about six months at an average flow rate of approximately 21 cubic feet per second (maximum flow rate available is 35 cubic feet per second). It is estimated that the project would need 360 acre-feet of water each year to replenish water lost through evaporation and seepage.

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 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 (*i.e.,* P–14861). 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 *FERCOnllineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

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.

n. *The applicant must file no later than 60 days following the date of issuance of this notice either:* (1) Evidence of the date on which the certifying agency received the water quality certification request; (2) a copy of the water quality certification; or (3) evidence of waiver of water quality certification.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: March 24, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–06695 Filed 3–29–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP22–25–000]**

### Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Venture Global Calcasieu Pass, LLC Calcasieu Pass Uprate Amendment 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 Calcasieu Pass Uprate Amendment Project (Project) involving operation of facilities by Venture Global Calcasieu Pass, LLC (Calcasieu Pass) in Cameron Parish, Louisiana. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public interest.

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 April 25, 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 December 3, 2021, you will need to file those comments in Docket No. CP22–25–000 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.

Venture Global 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 also 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 (CP22–25–000) 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

Calcasieu Pass proposes to increase the Export Terminal's authorized peak liquefaction capacity achievable under optimal conditions from 12.0 million metric tons per annum to 12.4 million metric tons per annum of LNG—or from approximately 620 billion cubic feet to approximately 640.666 billion cubic feet per year (gas equivalence). According to Calcasieu Pass, this proposed increase in the peak liquefaction capacity reflects refinements in the conditions and assumptions concerning the maximum potential operations. The requested increase does *not* involve the

construction of any new facilities nor any modification of the previously authorized facilities. There would be no land disturbance required for this Project.

The general location of the Calcasieu Pass Export Terminal is shown in appendix 1.[1]

## NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the proposed project uprate under the relevant general resource areas:

- Environmental justice;
- air quality; 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.

Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), which will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary[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] 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 CP22–25–000 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: March 24, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–06697 Filed 3–29–22; 8:45 am]

BILLING CODE 6717–01–P

[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 in or eligible for inclusion in the National Register of Historic Places.

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9671–01–OA]**

## Farm, Ranch, and Rural Communities Advisory Committee (FRRCC) Call for Nominations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for nominations.

**SUMMARY:** The Environmental Protection Agency (EPA) is inviting nominations for membership on the Farm, Ranch, and Rural Communities Advisory Committee (FRRCC). The purpose of the FRRCC is to provide policy advice, information, and recommendations to the EPA Administrator on a range of environmental issues and policies that are of importance to agriculture and rural communities.

**DATES:** To be considered for 2022 appointments, nominations should be submitted no later than May 16, 2022.

**ADDRESSES:** Submit nominations electronically with the subject line ''FRRCC Membership 2022'' to *FRRCC@epa.gov.*

General information regarding the FRRCC can be found on the EPA website at: *www.epa.gov/faca/frrcc.* General information about Federal Advisory Committees at EPA is available at: *www.epa.gov/faca.*

**FOR FURTHER INFORMATION CONTACT:** Venus Welch-White, Designated Federal Officer for the FRRCC, U.S. EPA, 1200 Pennsylvania Avenue NW, Mail Code 1101A, Washington, DC 20460; telephone number: 202–564–7719; email address: *FRRCC@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

EPA established the FRRCC in 2008 pursuant to the Federal Advisory Committee Act, Public Law 92–463, in order to help EPA build a more positive and proactive relationship with the agricultural industry in furtherance of EPA's mission to protect human health and the environment. The FRRCC serves as part of EPA's efforts to expand cooperative working relationships with the agriculture community and others who are interested in agricultural issues and achieving greater progress in environmental protection. The FRRCC provides advice and recommendations to the EPA Administrator on environmental issues and programs that impact, or are of concern to, farms, ranches and rural communities. Topics addressed may include climate change, water or air quality issues, pesticides, toxics, food loss and waste, environmental justice, emergency response, enforcement and compliance, technology and innovation, and other topics of environmental importance pertaining to agriculture and rural communities. The charter for the FRRCC was renewed in February 2022. EPA is currently seeking members for the committee, who will be appointed for 2- or 3-year terms and may be eligible for reappointment. The membership of this committee will include a balanced representation of interested persons with relevant experience to contribute to the functions of the committee, and will be drawn from relevant sectors, including but not limited to academia, agricultural industry, nongovernmental organizations, and state, local, and tribal governments.

The full Committee expects to meet approximately twice a year, or as needed and approved by the Designated Federal Officer (DFO). Meetings will be held in Washington, DC, the EPA regions, and virtually. EPA is committed to prioritizing members' health and safety during the COVID–19 pandemic and will follow CDC guidelines when considering any in-person meeting. The Administrator may ask members to serve on Subcommittees and Workgroups to develop reports and recommendations to address specific policy issues, reflecting the priorities of the Administration. The average workload for members is approximately 5 hours per month. Members serve on the Committee in a voluntary capacity. However, EPA may provide reimbursement for travel expenses associated with official government business.

### II. Eligibility

Because of the nature of the issues to be discussed, it is the intent of the Agency for the majority of Committee members to be actively engaged in farming or ranching. The membership of this committee will include a balanced representation of interested persons with relevant experience to contribute to the functions of the committee and will be drawn from a variety of relevant sectors. Members may represent farmers, ranchers, and rural communities (can include large, small, crop, livestock, commodity, and specialty producers from various regions)—and their allied industries (farm groups, rural suppliers, marketers, processors, etc.); as well as the academic/research community who research environmental issues impacting agriculture, tribal agriculture groups, state, local, and tribal government, and environmental/conservation and other nongovernmental organizations. Individuals are generally appointed to serve on the FRRCC as ''Representative'' members and are thus expected to represent the points of view of a particular group (*e.g.,* an industry sector), rather than provide independent judgment and expertise. Other Federal agencies and other sectors as appropriate may be invited to attend or provide presentations at committee meetings as non-members.

In accordance with Executive Order 14035 (June 25, 2021), EPA values and welcomes opportunities to increase diversity, equity, inclusion and accessibility on its federal advisory committees. EPA's federal advisory committees have a workforce that reflects the diversity of the American people.

In selecting committee members, EPA will consider each candidate's qualifications including, but not limited to, on whether the candidate is:

- Is actively engaged in farming.
- Occupies a senior position within their organization.
- Holds leadership positions in ag-related organizations, businesses and/or workgroups.
- Has broad agricultural experience regardless of their current position.
- Has experience working on issues where building consensus is necessary.
- Has membership in professional societies, broad-based networks or the equivalent.
- Has extensive experience in the environmental field dealing with agricultural issues.
- Provides services to producers.
- Is involved in processing, retailing, manufacturing and distribution of agricultural products.
- Possesses a professional knowledge of agricultural issues and environmental policy.
- Possesses a demonstrated ability to examine and analyze complicated environmental issues with objectivity and integrity.
- Possesses excellent interpersonal as well as oral and written communication skills.
- Possesses an ability and willingness to participate in a deliberative and collaborative process.

In addition, well-qualified applicants must be prepared to process a substantial amount of complex and technical information and have the ability to volunteer several hours per month to the Committee's activities, including participation in teleconference meetings and preparation of text for Committee reports.

**III. Nominations**

Any interested person or organization may submit the names of qualified persons, including themselves. To be considered, all nominations should include the information requested below:

• Current contact information for the nominee, including the nominee's name, organization (and position within that organization), business address, email address, and daytime telephone number(s).

• A brief statement describing the nominee's interest and availability in serving on the FRRCC. Please also include the following information, as available: (1) The nominee's ability to serve as a ''Representative'' member and represent the point of view of a group (*e.g.,* an industry sector) rather than provide independent judgment and expertise; (2) if the nominee has any prior/current service on Federal advisory committees, and the number of years.

• Résumé or curriculum vitae detailing the nominee's background, experience and qualifications and other relevant information.

Letters of support and recommendation will be accepted but are not mandatory. To help the agency evaluate the effectiveness of its outreach efforts, please indicate how you learned of this nomination opportunity.

Other sources, in addition to this **Federal Register** notice, may be utilized in the solicitation of nominees. EPA expressly values diversity, equity, and inclusion, and encourages the nominations of interested individuals from diverse backgrounds. Individuals may self-nominate.

**Rodney Snyder,**

*Senior Advisor for Agriculture, EPA.*

[FR Doc. 2022–06741 Filed 3–29–22; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice to All Interested Parties of Intent To Terminate Receiverships

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for the institutions listed below, intends to terminate its receivership for said institutions.

NOTICE OF INTENT TO TERMINATE RECEIVERSHIPS

| Fund | Receivership name | City | State | Date of appointment of receiver |
|---|---|---|---|---|
| 10004 | Hume Bank | Hume | MO | 03/07/2008 |
| 10005 | ANB Financial, NA | Bentonville | AR | 05/09/2008 |
| 10026 | Sanderson State Bank | Sanderson | TX | 12/12/2008 |
| 10093 | First State Bank of Altus | Altus | OK | 07/31/2009 |
| 10104 | Dwelling House Savings and Loan | Pittsburgh | PA | 08/14/2009 |
| 10131 | Hillcrest Bank Florida | Naples | FL | 10/23/2009 |
| 10158 | Republic Federal Bank, NA | Miami | FL | 12/11/2009 |
| 10166 | Independent Bankers' Bank | Springfield | IL | 12/18/2009 |
| 10188 | Carson River Community Bank | Carson City | NV | 02/26/2010 |
| 10190 | Waterfield Bank | Germantown | MD | 03/05/2010 |
| 10202 | Bank of Hiawassee | Hiawassee | GA | 03/19/2010 |
| 10205 | Desert Hills Bank | Phoenix | AZ | 03/26/2010 |
| 10212 | City Bank | Lynwood | WA | 04/16/2010 |
| 10220 | Citizens Bank and Trust Company of Chicago | Chicago | IL | 04/23/2010 |
| 10226 | CF Bancorp | Port Huron | MI | 04/30/2010 |
| 10267 | SouthwestUSA Bank | Las Vegas | NV | 07/23/2010 |
| 10295 | Shoreline Bank | Shoreline | WA | 10/01/2010 |
| 10298 | Security Savings Bank | Olathe | KS | 10/15/2010 |
| 10300 | First Bank of Jacksonville | Jacksonville | FL | 10/22/2010 |
| 10305 | The Gordon Bank | Gordon | GA | 10/22/2010 |
| 10330 | The Bank of Asheville | Ashville | NC | 01/21/2011 |
| 10336 | American Trust Bank | Roswell | GA | 02/04/2011 |
| 10348 | Legacy Bank | Milwaukee | WI | 03/11/2011 |
| 10349 | The First National Bank of Davis | Davis | OK | 03/11/2011 |

The liquidation of the assets for each receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receiverships will serve no useful purpose. Consequently, notice is given that the receiverships shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of any of the receiverships, such comment must be made in writing, identify the receivership to which the comment pertains, and be sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of the above-mentioned receiverships will be considered which are not sent within this time frame.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on March 24, 2022.

**James P. Sheesley,**

*Assistant Executive Secretary.*

[FR Doc. 2022–06655 Filed 3–29–22; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL MARITIME COMMISSION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Maritime Commission (Commission) is giving public notice that the agency has submitted to the Office of Management and Budget (OMB) for approval the continuing information collections (extensions with no changes) described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted at the addresses below on or before April 29, 2022.

**ADDRESSES:** Comments should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Shannon Joyce, Desk Officer for Federal Maritime Commission, *OIRA_Submission@OMB.EOP.GOV,* and to: Lucille L. Marvin, Managing Director, Office of the Managing Director, Federal Maritime Commission, *omd@fmc.gov.*

Please send separate comments for each specific information collection listed below, and reference the information collection's title and OMB number in your comments.

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by contacting Lucille Marvin at *OMD@fmc.gov* or 202–523–5800.

**SUPPLEMENTARY INFORMATION:**

## Request for Comments

Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Commission invites the general public and other Federal agencies to comment on proposed information collections. On December 7, 2021, the Commission published a notice and request for comments in the **Federal Register** (85 FR 69254) regarding the agency's request for continued approval from OMB for information collections as required by the Paperwork Reduction Act of 1995. During the 60-day period, a clerical error was discovered in the reporting for ICR 3072–0071. A correction was published in the **Federal Register** on February 9, 2022, and the Commission extended the comment period for both ICR 3072–0071 and ICR 3072–0070 for an additional 30 days (87 FR 7453). The Commission received no comments on any of the requests for extensions of OMB clearance. The Commission has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

## Information Collections Open for Comment

*Title:* 46 CFR part 531—NVOCC Service Arrangements.

*OMB Approval Number:* 3072–0070 (Expires April 30, 2022).

*Abstract:* Section 16 of the Shipping Act of 1984, 46 U.S.C. 40103, authorizes the Commission to exempt by rule ''any class of agreements between persons subject to this part or any specified activity of those persons from any requirement of this part if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to an exemption and may, by order, revoke an exemption.'' 46 CFR part 531 allows non-vessel-operating common carriers (NVOCCs) and shippers' associations with NVOCC members to act as shipper parties in NVOCC Service Arrangements (NSAs), and to be exempt from certain tariff publication requirements of the Shipping Act provided the carriage in question is done pursuant to an NSA filed with the Commission and the essential terms are published in the NVOCC's tariff. *Current Actions:* There are no changes to this information collection, and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Needs and Uses:* The Commission uses filed NSAs and associated data for monitoring and investigatory purposes and, in its proceedings, to adjudicate related issues raised by private parties.

*Frequency:* The filing of NSAs is not assigned a specific time by the Commission; NSAs are filed as they may be entered into by private parties. When parties enter into an NSA, it must be filed with the Commission.

*Type of Respondents:* Parties that enter into NSAs are NVOCCs and shippers' associations with NVOCC members.

*Number of Annual Respondents:* The Commission estimates an annual respondent universe of 325. The Commission expects the estimated number of annual respondents to remain at 325 in the future.

*Estimated Time per Response:* The time per response is estimated to be 15 minutes to add a tariff rule invoking the NSA exemption, and 1 hour for recordkeeping requirements.

*Total Annual Burden:* For the 325 respondents, the burden is calculated as $325 \times .25$ hour = 81.25 hours, rounded to 81 and $325 \times 1 = 325$. Total annual burden is estimated to be 406 hours.

*Title:* 46 CFR part 532—NVOCC Negotiate Rate Arrangements.

*OMB Approval Number:* 3072–0071 (Expires April 30, 2022).

*Abstract:* Section 16 of the Shipping Act of 1984, 46 U.S.C. 40103, authorizes the Commission to exempt by order or regulation ''any class of agreements between persons subject to this [Act] or any specified activity of those persons from any requirement of this [Act] if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce.'' The Commission may attach conditions to any exemption and may, by order, revoke an exemption. In 46 CFR part 532, the Commission exempted non-vessel-operating common carriers (NVOCCs) from the tariff rate publication requirements of Part 520, and allowed an NVOCC to enter into an NVOCC Negotiated Rate Arrangement (NRA) in lieu of publishing its tariff rate(s), provided the NVOCC posts a prominent notice in its rules tariff invoking the NRA exemption and provides electronic access to its rules tariff to the public free of charge. This information collection corresponds to the rules tariff prominent notice and the requirement to make its tariff publicly available free of charge.

*Current Actions:* There are no changes to this information collection, and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Needs and Uses:* The Commission uses the information filed by an NVOCC in its rules tariff to determine whether the NVOCC has invoked the exemption for a particular shipment or shipments. The Commission has used and will continue to use the information required to be maintained by NVOCCs for monitoring and investigatory purposes, and, in its proceedings, to adjudicate related issues raised by private parties.

*Frequency:* NVOCCs that opt to enter into an NRA in lieu of publishing tariff rate(s) must post a one-time notice in its rules tariff invoking the NRA exemption. NVOCCs that opt to use NRAs exclusively must publish an NRA rules tariff.

*Type of Respondents:* NVOCCs.

*Number of Annual Respondents:* 194. An average of 2,129 NVOCCs annually have invoked the NRA exemption thus far. The Commission estimates the annual number of NVOCCs that will

invoke the exemption to be 194 in the future.

*Estimated Time per Response:* 15 minutes for those adding a tariff rule to use a combination of tariff rates and NRAs, and 1 hour for recordkeeping requirements. For those using NRAs exclusively, one hour to publish an NRA rules tariff.

*Total Annual Burden:* Of the 194 new NVOCCs estimated to file a rule or prominent notice in their respective tariffs, we estimate that 3% (6) will use NRAs exclusively. The burden is calculated as follows: 188 × .25 hours = 47 hours and 6 × 1 hour = 6 hours (3% using NRAs exclusively). Recording keeping requirements for the total number of NVOCCs that have invoked the exemption thus far is 2,349 × 1 hour = 2,349. Total annual burden is estimated to be 2,402 hours.

**William Cody,**

*Secretary.*

[FR Doc. 2022–06621 Filed 3–29–22; 8:45 am]

**BILLING CODE 6730–02–P**

## FEDERAL MEDIATION AND CONCILIATION SERVICE

### Notice of Stakeholder Survey for Qualitative Feedback on Agency Service Delivery

**AGENCY:** Federal Mediation and Conciliation Service (FMCS).

**ACTION:** 60-Day notice and request for comments.

**SUMMARY:** The Federal Mediation and Conciliation Service (FMCS), invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection request, Stakeholder Survey for Qualitative Feedback on Agency Service Delivery. This information collection request was previously approved by the Office of Management Budget (OMB) and FMCS is requesting a revision of a currently approved collection. This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery.

**DATES:** Comments must be submitted on or before May 31, 2022.

**ADDRESSES:** You may submit comments, identified by Stakeholder Survey for Qualitative Feedback on Agency Service Delivery, through one of the following methods:

- *Email: register@fmcs.gov;*
- *Mail:* Office of the General Counsel, One Independence Square, 250 E St. SW, Washington, DC 20427. Please note that at this time, mail is sometimes delayed. Therefore, we encourage emailed comments.

**FOR FURTHER INFORMATION CONTACT:** David Thaler, 980–812–0051, *dthaler@fmcs.gov.*

**SUPPLEMENTARY INFORMATION:** Copies of the agency questions are available here.

### I. Information Collection Request

*Agency:* Federal Mediation and Conciliation Service.

*Form Number:* OMB No. 3076–0017.

*Type of Request:* Revision of a currently approved collection.

*Affected Entities:* Federal government and private sector.

*Frequency:* This survey is completed once.

*Abstract:* This information collection provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations. The surveys will provide notice of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. The surveys are not statistical surveys that yield quantitative results that can be generalized to the population of study. These collections will allow for ongoing, collaborative, and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to improve program management. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. Collecting this information is critical for ensuring quality service offered to the public.

*Burden:* FMCS receives approximately 7,100 responses per year and the time required is approximately one minute.

### II. Request for Comments

FMCS solicits comments to:

i. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

ii. Enhance the accuracy of the agency's estimates of the burden of the proposed collection of information.

iii. Enhance the quality, utility, and clarity of the information to be collected.

iv. Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic collection technologies or other forms of information technology.

### III. The Official Record

The official records are electronic records.

### List of Subjects

Labor-Management Relations.

Dated: March 25, 2022.

**Anna Davis,**

*Acting General Counsel.*

[FR Doc. 2022–06658 Filed 3–29–22; 8:45 am]

**BILLING CODE 6732–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Administration for Native Americans Project Outcome Assessment Survey (OMB #0970–0379)

**AGENCY:** Administration for Native Americans, Administration for Children and Families, HHS.

**ACTION:** Request for public comment.

**SUMMARY:** The Administration for Children and Families (ACF) is requesting a 3-year extension of the form Administration for Native Americans (ANA) Project Outcome Assessment Survey (OMB #0970–0379, expiration 6/30/2022). There are minor changes and updates requested to the form.

**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 emailed

requests by the title of the information collection.

**SUPPLEMENTARY INFORMATION:**

*Description:* The information collected by the Project Impact Assessment Survey is needed for two main reasons: (1) To collect crucial information required to report on the ANA established Government Performance and Results Act measures, and (2) to properly abide by ANA's congressionally mandated statute (42 U.S.C. 2992 *et seq.*) found within the Native American Programs Act of 1974, as amended, which states that ANA will evaluate projects assisted through ANA grant dollars ''including evaluations that describe and measure the impact of such projects, their effectiveness in achieving stated goals, their impact on related programs, and their structure and mechanisms for delivery of services.'' The information collected with this survey will fulfill ANA's statutory requirement and will also serve as an important planning and performance tool for ANA.

Updates to this information collection address the Indian Community Economic Enhancement Act of 2020 (Pub. L. 116–261). It also addresses the flexibilities and assistance offered under COVID–19 recovery assistance.

*Respondents:* Tribal Governments, Native American nonprofit organizations, and Tribal Colleges and Universities.

BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ANA Project Outcome Assessment Survey | 85 | 1 | 6 | 510 |

*Estimated Total Burden Hours:* 510.

*Authority:* 42 U.S.C. 2992.

**Mary B. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2022–06652 Filed 3–29–22; 8:45 am]

**BILLING CODE 4184–34–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0280]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Financial Disclosure by Clinical Investigators

**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 April 29, 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 0910–0396. 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.

**Financial Disclosure by Clinical Investigators**

*OMB Control Number 0910–0396—Extension*

Respondents to this collection are sponsors of marketing applications that contain clinical data from studies covered by the regulations. These sponsors represent pharmaceutical, biologic, and medical device firms. Respondents are also clinical investigators who provide financial information to the sponsors of marketing applications.

In the **Federal Register** of December 2, 2021 (86 FR 68500), 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.

Table 1 shows information that is the basis of the estimated number of respondents in tables 2 through 4.

TABLE 1—ESTIMATED NUMBER OF APPLICATIONS, CLINICAL TRIALS, AND INVESTIGATORS SUBJECT TO THE REGULATION BY TYPE OF APPLICATION [1]

| Application type | Total number of applications | Number of applications affected | Number of trials | Number of investigators |
|---|---|---|---|---|
| Drugs: | | | | |
| New drug application (NDA), new molecular entity (NME) | 55 | 55 | 3 to 10 | 3 to 100. |
| NDA non-NME | 78 | 37 | 3 to 10 | 3 to 100. |
| NDA efficacy supplement | 196 | 119 | 1 to 3 | 10 to 30. |
| Abbreviated new drug application (ANDA) | 821 | 1 | 1.1 | 2. |
| ANDA supplement | 10,894 | 1 | 1 | 2. |
| CBER Biologics: | | | | |
| Biologics license application (BLA) | 10 | 10 | 3 to 10 | 3 to 100. |
| BLA efficacy supplement | 30 | 30 | 1 to 3 | 10 to 30. |
| CDER Biologics: | | | | |

TABLE 1—ESTIMATED NUMBER OF APPLICATIONS, CLINICAL TRIALS, AND INVESTIGATORS SUBJECT TO THE REGULATION BY TYPE OF APPLICATION [1]—Continued

| Application type | Total number of applications | Number of applications affected | Number of trials | Number of investigators |
|---|---|---|---|---|
| BLAs | 25 | 25 | 3 to 10 | 3 to 100. |
| BLA efficacy supplements | 102 | 65 | 1 to 3 | 10 to 30. |
| Medical Devices: | | | | |
| Premarket approval (PMA) | 39 | 39 | 1 to 31 | 10 to 20. |
| PMA supplement | 29 | 29 | 1 to 3 | 3 to 10. |
| Reclassification devices | 0 | 0 | 0 | 0. |
| 510(k) | 3,947 | 247 | 1 | 3 to 10. |
| De Novo requests | 63 | 57 | 1 to 3 | 10 to 20. |

[1] Source: Agency estimates.

FDA estimates the burden of this collection of information as follows:

**Reporting Burden**

Under § 54.4(a) (21 CFR 54.4(a)), applicants submitting an application that relies on clinical studies must submit a complete list of clinical investigators who participated in a covered clinical study, and must either certify to the absence of certain financial arrangements with clinical investigators (Form FDA 3454) or, under § 54.4(a)(3), disclose to FDA the nature of those arrangements and the steps taken by the applicant or sponsor to minimize the potential for bias (Form FDA 3455).

FDA estimates that almost all applicants submit a certification statement under § 54.4(a)(1) and (2). Preparation of the statement using Form FDA 3454 should require no more than 1 hour per study. The number of respondents is based on the estimated number of affected applications.

When certification is not possible and disclosure is made using Form FDA 3455, the applicant must describe, under § 54.4(a)(3), the financial arrangements or interests and the steps that were taken to minimize the potential for bias in the affected study. As the applicant would be fully aware of those arrangements and the steps taken to address them, describing them will be straightforward. The Agency estimates that it will take about 5 hours to prepare this narrative. Based on our experience with this collection, FDA estimates that approximately 10 percent of the respondents with affected applications will submit disclosure statements.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR section | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Certification—54.4(a)(1) and (2)—Form FDA 3454 | 715 | 1 | 715 | 1 | 715 |
| Disclosure—54.4(a)(3)—Form FDA 3455 | 72 | 1 | 72 | 5 | 360 |
| Total | | | | | 1,075 |

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

**Recordkeeping Burden**

Under § 54.6 (21 CFR 54.6), the sponsors of covered studies must maintain complete records of compensation agreements with any compensation paid to nonemployee clinical investigators, including information showing any financial interests held by the clinical investigator, for 2 years after the date of approval of the applications. Sponsors of covered studies maintain many records regarding clinical investigators, including protocol agreements and investigator résumés or curriculum vitae. FDA estimates than an average of 15 minutes will be required for each recordkeeper to add this record to the clinical investigators' file.

TABLE 3—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| 21 CFR section | Number of recordkeepers | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours [2] |
|---|---|---|---|---|---|
| Recordkeeping—54.6 | 715 | 1 | 715 | 0.25 | 179 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Numbers have been rounded.

**Third-Party Disclosure Burden**

Under § 54.4(b), clinical investigators supply to the sponsor of a covered study financial information sufficient to allow the sponsor to submit complete and accurate certification or disclosure statements. Clinical investigators are accustomed to supplying such information when applying for research grants. Also, most people know the financial holdings of their immediate family, and records of such interests are generally accessible because they are needed for preparing tax records. For these reasons, FDA estimates that the

time required for this task may range from 5 to 15 minutes; we used the median, 10 minutes, for the average burden per disclosure (see table 1).

TABLE 4—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN[1]

| 21 CFR section | Number of respondents | Number of disclosures per respondent | Total annual disclosures | Average burden per disclosure | Total hours[2] |
|---|---|---|---|---|---|
| 54.4(b)—Clinical Investigators | 13,082 | 1 | 13,082 | 0.17 | 2,224 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Numbers have been rounded.

The burden for this information collection request has changed since the last OMB approval. Our estimated burden for the information collection reflects a 298 hour increase. We have adjusted our estimated burden for the information collection to reflect the number of submissions we received in the last few years. Additionally, for products regulated by the Center for Devices and Radiological Health, we now include De Novo requests as a type of application that may rely on clinical studies. Upon review, we have corrected an inadvertent omission regarding the number of BLAs and BLA efficacy supplements received by our Center for Drug Evaluation and Research and used, in part, as a basis for calculating the cumulative burden estimate. We have corrected that error here, as reflected in table 1.

Dated: March 24, 2022.

**Andi Lipstein Fristedt,**

*Deputy Commissioner for Policy, Legislation, and International Affairs, U.S. Food and Drug Administration.*

[FR Doc. 2022–06661 Filed 3–29–22; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Application for Health Center Program Recipients for Deemed Public Health Service Employment With Liability Protections Under the Federal Tort Claims Act, 0906–0035, Revision

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30 day comment period for this notice has closed.

**DATES:** Comments on this ICR should be received no later than April 29, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the acting HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–9094.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information request collection title for reference.

*Information Collection Request Title:* Application for Health Center Program Recipients for Deemed Public Health Service Employment with Liability Protections Under the Federal Tort Claims Act (FTCA), OMB No. 0906–0035—Revision.

*Abstract:* Section 224(g)–(n) of the Public Health Service (PHS) Act (42 U.S.C. 233(g)–(n)), as amended, authorizes the ''deeming'' of entities receiving funds under section 330 of the PHS Act as PHS employees for the purposes of receiving FTCA coverage. The Health Center Program is administered by HRSA's Bureau of Primary Health Care (BPHC). Health centers submit deeming applications annually to BPHC in the prescribed form and manner in order to obtain deemed PHS employee status for this purpose.

The FTCA Program has a web-based application system, the Electronic Handbooks. These electronic application forms decrease the time and effort required to complete the older, paper-based OMB approved FTCA application forms. The application includes: Contact Information; Section 1: Review of Risk Management Systems; Section 2: Quality Improvement/Quality Assurance; Section 3: Credentialing and Privileging; Section 4: Claims Management; and Section 5: Additional Information, Certification, and Signatures.

HRSA is proposing several changes to the Application for Health Center Program Award Recipients for Deemed PHS Employment with Liability Protections under the FTCA, to be used for health center deeming applications for calendar year 2022 and thereafter, to clarify questions posed and required documentation. Specifically, the Application includes the following proposed changes:

- *Updated application language:* Throughout the application, alternate terminology was utilized to provide greater clarity and specificity. These changes were based on stakeholder feedback and information received from the HRSA Health Center Program Support. These changes are not substantive in nature.
- Some questions were removed from Quality Improvement/Quality Assurance Section, as these questions are similar to information that is also collected in the Risk Management Section. This change is intended to reduce duplicative information collection.
- For the Credentialing and Privileging Section, in this cycle, the application will return to the previous process of submitting a Credentialing List with providers' credentialing and privileging information.

A 60-day notice published in the **Federal Register**, 86 Fed Reg. 72250 (December 21, 2021). There were no public comments.

*Need and Proposed Use of the Information* Deeming applications are required by law and must address certain specific criteria in order for deeming determinations to be issued. The application submissions provide BPHC with the information essential for evaluation of compliance with legal requirements and making a deeming determination under Section 224(g)–(n) of the PHS Act (42 U.S.C. 233(g)–(n)).

*Likely Respondents:* Respondents include recipients of Health Center Program funds seeking deemed PHS employee status under Section 224(g)–(n) of the PHS Act (42 U.S.C. 233(g)–(n)).

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| FTCA Health Center Program Initial Application | 35 | 1 | 35 | 2.5 | 87.5 |
| FTCA Health Center Program Redeeming Application | 1,125 | 1 | 1,125 | 2.5 | 2,812.5 |
| Total | 1,160 | | 1,160 | | 2,900 |

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Maria G. Button,**

*Director, Executive Secretariat.*

[FR Doc. 2022–06647 Filed 3–29–22; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be held as a virtual meeting and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

A portion of this meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council on Alcohol Abuse and Alcoholism.

*Date:* May 10, 2022.

*Closed:* 11:30 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Open:* 12:45 p.m. to 5:00 p.m.

*Agenda:* Presentations and other business of the Council.

*Place:* National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20817.

*Contact Person:* Abraham P. Bautista, Ph.D., Executive Secretary, National Advisory Council, Director, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700 B Rockledge Drive, Room 1458, MSC 6902, Bethesda, MD 20892, 301–443–9737, *bautista@mail.nih.gov.*

*Name of Committee:* National Advisory Council on Alcohol Abuse and Alcoholism, National Cancer Advisory Board, and National Advisory Council on Drug Abuse.

*Date:* May 11, 2022.

*Open:* 11:00 a.m. to 3:00 p.m.

*Agenda:* Presentation of NIAAA, NCI, and NIDA Directors' Update, Scientific Reports, and other topics within the scope of the Collaborative Research on Addiction at NIH (CRAN).

*Place:* National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20817.

*Contact Person:* Abraham P. Bautista, Ph.D., Executive Secretary, National Advisory Council, Director, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700 B Rockledge Drive, Room 1458, MSC 6902, Bethesda, MD 20892, 301–443–9737, *bautista@mail.nih.gov.*

Paulette S. Gray, Ph.D., Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 7W444, Bethesda, MD 20892, 240–276–6340, *grayp@dea.nci.nih.gov.*

Susan Weiss, Ph.D., Director, Division of Extramural Research, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, NSC, Room 5274, Bethesda, MD 20892, 301–443–6487, *sweiss@nida.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.niaaa.nih.gov/AboutNIAAA/AdvisoryCouncil/Pages/default.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: March 25, 2022.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2022–06714 Filed 3–29–22; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The is a virtual meeting and will be open to the public as indicated below. The url link to this meeting is *https://www.nidcd.nih.gov/about/advisory-council/upcoming-meetings.* Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Deafness and Other Communication Disorders Advisory Council.

*Date:* May 19–20, 2022.

*Closed:* May 19, 2022, 10:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Open:* May 19, 2022, 1:00 p.m. to 3:50 p.m.

*Agenda:* Staff reports on divisional, programmatical, and special activities.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Open:* May 20, 2022, 10:00 a.m. to 12:30 p.m.

*Agenda:* Staff reports on divisional, programmatical, and special activities.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* Rebecca Wagenaar-Miller, Ph.D., Director, Division of Extramural Activities, NIDCD/NIH, 6001 Executive Boulevard, Bethesda, MD 20892, (301) 496–8693, *rebecca.wagenaar-miller@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.nidcd.nih.gov/about/advisory-council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: March 25, 2022.

**Victoria E. Townsend,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2022–06738 Filed 3–29–22; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Epidemiology, Prevention and Behavior Research Study Section.

*Date:* June 6–7, 2022.

*Time:* 9:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Anna Ghambaryan, M.D., Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, 6700B Rockledge Drive, Room 2120, MSC 6902, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 20892, 301–443–4032, *anna.ghambaryan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: March 24, 2022.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2022–06645 Filed 3–29–22; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/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 Institute on Drug Abuse Special Emphasis Panel; Clinical Trial Networks Data, Statistics, and Clinical Trial Support Center (DSC6).

*Date:* April 25, 2022.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Brian Stefan Wolff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Rockville, MD 20852, (301) 480–1448 *brian.wolff@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: March 24, 2022.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2022–06660 Filed 3–29–22; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Acquired Immunodeficiency Syndrome Research Study Section Special Emphasis Panel (SEP).

*Date:* April 21, 2022.

*Time:* 12:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Allergy and Infectious Diseases, National Institutes of Health 5601 Fishers Lane, Room 3G31B Rockville, MD 20892, (Virtual Meeting).

*Contact Person:* James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G31B, Rockville, MD 20852, (240) 669–5060, *james.snyder@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 24, 2022.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2022–06659 Filed 3–29–22; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Vaccines Against Microbial Diseases.

*Date:* April 12, 2022.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Jian Wang, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, (301) 435–2778, *wangjia@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Prevention and Immunotherapy.

*Date:* April 25, 2022.

*Time:* 12:00 p.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Laurie Ann Shuman Moss, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *laurie.shumanmoss@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 21, 2022.

**Victoria E. Townsend,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2022–06739 Filed 3–29–22; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel; Population Health Improvement.

*Date:* April 5, 2022.

*Time:* 11:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2131B, Bethesda, MD 20892 (Video Assisted Meeting).

*Contact Person:* Jolanta Maria Topczewska, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2131B, Bethesda, MD 20892, (301) 451–0000, *jolanta.topczewska@nih.gov.*

This notice is being processed less than 15 days prior to the meeting due to scheduling limitations.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 24, 2022.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2022–06644 Filed 3–29–22; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0047]**

### Agency Information Collection Activities; Revision of a Currently Approved Collection: Employment Eligibility Verification

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

**DATES:** Comments are encouraged and will be accepted for 60 days until May 31, 2022.

**ADDRESSES:** All submissions received must include the OMB Control Number 1615–0047 in the body of the letter, the agency name and Docket ID USCIS–2006–0068. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2006–0068.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

**SUPPLEMENTARY INFORMATION:**

#### Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2006–0068 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–9; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; Business or other for-profit; Not-for-profit institutions. The Form I–9 was developed to facilitate compliance with Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, making employment of unauthorized aliens unlawful and diminishing the flow of illegal workers in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–9 Employers is 75,295,000 and the estimated hour burden per response is 0.33 hour. The estimated total number of respondents for the information collection I–9 Employees is 75,295,000 and the estimated hour burden per response is 0.15 hour. The estimated total number of respondents for the information collection by Record Keepers is 27,200,000 and the estimated hour burden per response is 0.08 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 38,317,600 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0. Any requirements to support the verification process are already available through other approved collections of information that may be employment related or occur as a part of the hiring process. There is no submission to USCIS of materials which eliminates mailing and photocopying costs.

Dated: March 24, 2022.

**Samantha L Deshommes,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2022–06687 Filed 3–29–22; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0082]**

### Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application To Replace Permanent Resident Card

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and

Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** Comments are encouraged and will be accepted until April 29, 2022.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2009–0002. All submissions received must include the OMB Control Number 1615–0082 in the body of the letter, the agency name and Docket ID USCIS–2009–0002.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

**SUPPLEMENTARY INFORMATION:**

**Comments:**

The information collection notice was previously published in the **Federal Register** on November 30, 2021, at 86 FR 67965, allowing for a 60-day public comment period. USCIS did receive 2 comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2009–0002 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Replace Permanent Resident Card.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–90; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–90 is used by USCIS to determine eligibility to replace a Lawful Permanent Resident Card.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–90 (paper) is 444,601 and the estimated hour burden per response is 2 hours; the estimated total number of respondents for the information collection I–90 (electronic) is 296,400 and the estimated hour burden per response is 1.59 hours; and the estimated total number of respondents for the information collection biometrics is 741,001 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 2,227,449 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $254,163,343.

Dated: March 24, 2022.

**Samantha L Deshommes,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2022–06686 Filed 3–29–22; 8:45 am]

BILLING CODE 9111–97–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0008]**

### Agency Information Collection Activities; Revision of a Currently Approved Collection: Biographic Information (for Deferred Action)

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

**DATES:** Comments are encouraged and will be accepted for 60 days until May 31, 2022.

**ADDRESSES:** All submissions received must include the OMB Control Number 1615–0008 in the body of the letter, the agency name and Docket ID USCIS–

2005–0024. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2005–0024.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

**SUPPLEMENTARY INFORMATION:**

**Comments**

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2005–0024 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Biographic Information (for Deferred Action).

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–325A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses Form G–325A to collect biographic information from individuals requesting either military deferred action or non-military deferred action (other than deferred action based on DACA, Violence Against Women Act, A–3, G–5, and T and V nonimmigrant visas).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G–325A is 1,550 and the estimated hour burden per response is 2.15 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,875 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $38,750.

Dated: March 24, 2022.

**Samantha L. Deshommes,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2022–06689 Filed 3–29–22; 8:45 am]

BILLING CODE 9111–97–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0067]**

### Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Asylum and for Withholding of Removal

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** Comments are encouraged and will be accepted until April 29, 2022.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0034. All submissions received must include the OMB Control Number 1615–0067 in the body of the letter, the agency name and Docket ID USCIS–2007–0034.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

**SUPPLEMENTARY INFORMATION:**

**Comments**

The information collection notice was previously published in the **Federal Register** on December 29, 2021, at 86 FR

74102, allowing for a 60-day public comment period. USCIS did receive 1 comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0034 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Asylum and for Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–589; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–589 is necessary to determine whether an alien applying for asylum and/or withholding of removal in the United States is classified as refugee and is eligible to remain in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–589 is approximately 85,500 and the estimated hour burden per response is 12 hours per response; the estimated total number of respondents for the information collection I–589 (online filing) is approximately 28,500 and the estimated hour burden per response is 11 hours per response, and the estimated number of respondents providing biometrics is 110,000 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,468,200 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $46,968,000.

Dated: March 24, 2022.

**Samantha L Deshommes,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2022–06688 Filed 3–29–22; 8:45 am]

BILLING CODE 9111–97–P

## INTER-AMERICAN FOUNDATION

### Sunshine Act Meetings

**TIME AND DATE:** April 6, 2022, 12:45 p.m.–2:00 p.m. ET.

**PLACE:** Via Zoom.

**STATUS:** Meeting of the IAF Board of Directors, open to the public, portion closed to the public.

**MATTERS TO BE CONSIDERED:**

- Call to Order from the Board Chair
- Overview of Meeting Rules by General Counsel
- Approval of February 16 & 17th, 2022 Meeting Minutes
- Briefing on Anti-Deficiency Act
- Briefing on Grants Oversight Committee
- Briefing on May 3rd Board Meeting Logistics/Reception
- Adjournment

**PORTION TO BE CLOSED TO THE PUBLIC:** Executive session closed to the public as provided for by 22 CFR 1004.4(b).

**CONTACT PERSON FOR MORE INFORMATION:** Aswathi Zachariah, General Counsel, (202) 683–7118.

For Dial-in Information Contact: Denetra McPherson, Paralegal, (202) 688–3054.

The Inter-American Foundation is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b).

**Aswathi Zachariah,**

*General Counsel.*

[FR Doc. 2022–06848 Filed 3–28–22; 4:15 pm]

BILLING CODE 7025–01–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[223A2100DD/AAKC001030/A0A501010.999900]**

### Indian Energy Service Center; Approval of Tribal Energy Development Organization Certification for the Red Lake Band of Chippewa Indians Nation

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that the Department of the Interior (DOI) approved a Tribal Energy Development Organization (TEDO) Certification for Twenty-First Century Tribal Energy, Inc, which is a Tribally owned corporation of Red Lake Band of Chippewa Indians (Red Lake).

**DATES:** The certification takes effect on March 17, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Johnna Blackhair, Deputy Bureau Director, Office of Trust Services, Washington DC 20240, (202) 809–2069.

**SUPPLEMENTARY INFORMATION:** A TEDO Certification allows the Tribe to enter into a lease or business agreement with the TEDO under 25 U.S.C. 3504(a)(2) or a right-of-way with the TEDO under 25 U.S.C. 3504(b)(2)(B) without Secretarial review and without a TERA. Red Lake's TEDO is organized under the laws of the Tribe and subject to the Tribe's jurisdiction, laws, and authority. The majority of the interest in the TEDO is owned and controlled by the Tribe (or the Tribe and one or more other Tribes) the Tribal land of which is being developed. The TEDO's organizing

document requires the Tribe with jurisdiction over the land to maintain, at all times, the controlling interest in the TEDO. The TEDO's organizing document requires the Tribe to own and control, at all times, a majority of the interest in the TEDO. The certification is issued under 25 U.S.C. 3504(h) and nothing in the certification waives the sovereign immunity of the Tribe. This is to certify that the Red Lake's Tribally owned company Twenty-First Century Tribal Energy, Inc., is certified as a TEDO. The Certification is approved.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2022–06710 Filed 3–29–22; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[223A2100DD/AAKC001030/ A0A501010.999900]**

### HEARTH Act Approval of Pala Band of Mission Indians Leasing Ordinance

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Indian Affairs (BIA) approved the Pala Band of Mission Indians Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business leases without further BIA approval.

**DATES:** BIA issued the approval on March 25, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carla Clark, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *carla.clark@bia.gov,* (702) 484–3233.

**SUPPLEMENTARY INFORMATION:**

### I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal Leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Pala Band of Mission Indians.

### II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self- government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal

regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Pala Band of Mission Indians.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2022–06676 Filed 3–29–22; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

**[223A2100DD/AAKC001030/ A0A501010.999900]**

## HEARTH Act Approval of Pechanga Band of Indians Residential Leasing Ordinance

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Indian Affairs (BIA) approved the Pechanga Band of Indians Residential Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into residential leases without further BIA approval.

**DATES:** BIA issued the approval on March 25, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carla Clark, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *carla.clark@bia.gov,* (702) 484–3233.

**SUPPLEMENTARY INFORMATION:**

### I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal Leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Pechanga Band of Indians.

### II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better

positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Pechanga Band of Indians.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2022–06674 Filed 3–29–22; 8:45 am]

BILLING CODE 4337–15–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[223A2100DD/AAKC001030/A0A501010.999900]

## HEARTH Act Approval of Karuk Tribe Residential, Agriculture, and Business Leasing Ordinance

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Indian Affairs (BIA) approved the Karuk Tribe Residential, Agriculture, and Business Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into residential, agriculture, and business leases without further BIA approval.

**DATES:** BIA issued the approval on March 25, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carla Clark, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *carla.clark@bia.gov,* (702) 484–3233.

**SUPPLEMENTARY INFORMATION:**

### I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTHAct authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal Leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Karuk Tribe.

### II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds,

and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Karuk Tribe.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2022–06675 Filed 3–29–22; 8:45 am]

**BILLING CODE 4337–15–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[223A2100DD/AAKC001030/ A0A501010.999900]**

## HEARTH Act Approval of Northfork Rancheria of Mono Indians of California Business Site Leasing Ordinance

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Indian Affairs (BIA) approved the Northfork Rancheria of Mono Indians of California Business Site Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business leases without further BIA approval.

**DATES:** BIA issued the approval on March 25, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carla Clark, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *carla.clark@bia.gov,* (702) 484–3233.

**SUPPLEMENTARY INFORMATION:**

### I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal Leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Northfork Rancheria of Mono Indians of California.

### II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal

courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self- government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Northfork Rancheria of Mono Indians of California.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2022–06673 Filed 3–29–22; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

**[223D0102DM, DS6CS00000, DLSN00000.000000. DX6CS25; OMB Control Number 1093-New]**

### Agency Information Collection Activities; Application Requirement for States To Apply for Orphaned Well Site Plugging, Remediation, and Restoration Grant Consideration

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Office of the Secretary will seek Office of Management and Budget (OMB) approval of an emergency clearance of a new information collection.

**DATES:** Interested persons are invited to submit comments on or before May 31, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed emergency clearance of a new information collection should be sent to Departmental Information Collection Clearance Officer, U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240; or by email to *DOI-PRA@ios.doi.gov.* Please reference OMB Control Number ''1093-New Orphaned Well Grants'' in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact William B. Lodder Jr., Team Leader, Environmental Cleanup and Liability Management Team, Office of Environmental Policy and Compliance (OEPC), U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240; by telephone at 202–208–6128; or by email to *orphanedwells@ios.doi.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* Public Law 117–58, Section 40601, ''*Orphaned Well Site Plugging, Remediation, and Restoration*'' contained in the Bipartisan Infrastructure Law (BIL) (November 15, 2021) amends Section 349 of the Energy Policy Act of 2005 (42 U.S.C. 15907) and designates the U.S. Department of the Interior (Interior) as the key agency responsible for implementing a grant program for applicable government entities to plug, remediate, and reclaim orphaned wells on lands covered by the legislation. The associated investments, as part of the new grant programs, will rebuild America's critical infrastructure, tackle the climate crisis, advance environmental justice, and drive the creation of good-paying union jobs.

Interior will issue financial assistance through grant and cooperative agreement awards to state governments and Indian tribal governments under Assistance Listing (CFDA) program 15.018 Energy Community Revitalization Program (ECRP). The authority is the Infrastructure Investment and Jobs Act (Pub. L. 117–58), Title VI, Section 40601.

The program is separated into the following parts:

1. Initial Mandatory Grants to States
2. Formula Grants to States
3. Performance Grants to States
4. Tribal Grants

BIL Section 40601 stipulates the first deadline to implement the initial grants portion of the program as May 14, 2022. However, since that date is a Saturday, the program has set the deadline for applications to 11:59 p.m. EDT Friday, May 13, 2022. The BIL requires Interior to collect information necessary to ensure that grant funds authorized by this legislation are used in accordance with the BIL and Federal assistance requirements under 2 CFR 200. Information collected by Interior's Office of Environmental Policy and Compliance (OEPC) as part of the consolidated workplan is described below. Interior seeks OMB approval of an emergency clearance to collect this information to manage and monitor grant awards to comply with the BIL.

To implement grant funds authorized by the BIL, the OEPC proposes to collect the following information associated with the administration of grants related to ''*Orphaned Well Site Plugging, Remediation, and Restoration*'' under Section 40601:

• Consolidated Workplans—We ask for the following information as part of the consolidated workplan:

—(a) The applicant's process for determining that a well has been orphaned, including what efforts will be made to redeem financial assurances or otherwise recoup remediation costs from any parties responsible;

—(b) A description of the applicant's plugging standards, including the witnessing requirements (qualifications of witness, documentation);

—(c) Details of the applicant's prioritization process for evaluating and ranking orphan wells and associated surface reclamation, including criteria, weighting, and how such prioritization will address resource and financial risk, public health and safety, potential environmental harm (including methane emissions where applicable), and other land use priorities;

—(d) If no prioritization process currently exists, the applicant should describe its plans to develop and implement a prioritization process;

—(e) Details of how the applicant will identify and address any disproportionate burden of adverse human health or environmental effects of orphaned wells on disadvantaged communities, including communities of color, low-income communities, and Tribal and indigenous communities;

—(f) The methodology to be used by the applicant to measure and track methane and other gases associated with orphaned wells, including how the applicant will confirm the effectiveness of plugging activities in reducing or eliminating such emissions;

—(g) The methodology to be used by the applicant to measure and track contamination of groundwater and surface water associated with orphaned wells, including how the applicant will confirm the effectiveness of plugging activities in reducing or eliminating such contamination;

—(h) The methodology to be used to decommission or remove associated pipelines, facilities, and infrastructure and to remediate soil and restore habitat that has been degraded due to the presence of orphaned wells and associated infrastructure;

—(i) Methods the applicant will use to solicit recommendations from local officials and the public regarding the prioritization of well plugging and site remediation activities, and any other processes the applicant will use to solicit feedback on the program from local officials and the public;

—(j) Latitude/Longitude and all other data elements and associated units of measure as indicated in the Orphaned Well Data Reporting Template (see guidance provided within the IC in ROCIS);

—(k) How the applicant will use funding to locate currently undocumented orphaned wells;

—(l) Plans the applicant has to engage third-parties in partnerships around well plugging and site remediation, or any existing similar partnerships the applicant currently belongs to;

—(m) Training programs, registered apprenticeships, and local and economic hire agreements for workers the applicant intends to conduct or fund in well plugging or site remediation;

—(n) Plans the applicant has to support opportunities for all workers, including workers underrepresented in well plugging or site remediation, to be trained and placed in good-paying jobs directly related to the project;

—(o) Plans the applicant has to incorporate equity for underserved communities into their planning, including supporting the expansion of high-quality, good paying jobs through workforce development programs and incorporating workforce strategy into project development;

—(p) Procedures the applicant will use to coordinate with Federal or Tribal agencies to determine whether efficiencies may exist by combining field survey, plugging, or surface remediation work across private, State, Federal, and Tribal land;

—(q) The applicant's authorities to enter private property, or an applicant's procedures to obtain landowner consent to enter private property, in the event that any wells to be plugged will be accessed from privately owned surface;
—(r) A work schedule covering the period of performance of the Initial grant; and
—(s) If applicable, a federally approved Indirect Cost Rate Agreement or statement regarding applicant's intention to negotiate or utilize the de minimis rate.

• Grant Applications—The OEPC proposes to collect the following additional elements from applicants:
—*Standard forms (SF) from the SF–424 Series:* Applicants must submit the following SF–424 series of forms:
○ SF–424, Application for Federal Assistance;
○ SF–424A, Budget Information for Non-Construction Programs or SF–424C Budget Information for Construction Program;
○ SF–424B, Assurances for Non-Construction Programs) or SF–424D Assurances for Construction Programs);
○ SF–428 Tangible Personal Property Report; and the
○ SF–LLL, Disclosure of Lobbying Activities, when applicable)
—*Indirect Cost Statement:* If requesting reimbursement for indirect costs, all applicants must include in their application a statement regarding how they anticipate charging indirect costs.
—*Negotiated Indirect Cost Rate Agreement (NICRA):* When applicable, a copy of the applicant's current Federal Agency-approved Negotiated Indirect Cost Rate Agreement is required.
—*Single Audit Reporting Statement:* All U.S. governmental entities and non-profit applicants must submit a statement regarding their single audit reporting status.
—*Conflict of Interest Disclosures:* Applicants must notify the Service in writing of any actual or potential conflicts of interest known at the time of application or that may arise during the life of this award, in the event the Service makes an award to the entity.
—*Certification Statement:* Applicants for the Initial Grant part of this program must provide a signed State Certification statement consistent with Section 40601(c)(3)(A)(ii)(III) or 40601(c)(3)(A)(i)(II) of the BIL.

• Amendments—For many budget and program plan revisions, 2 CFR 200 requires recipients submit revision requests to the Federal awarding agency in writing for prior approval. Interior reviews such requests received to determine the eligibility and allowability of new or revised activities and costs and approves certain items of cost.

• Reporting/Recordkeeping Requirements:
—*Financial Reports:* Recipients are required to submit all financial reports on the Standard Form 425, Federal Financial Report. All recipients must submit financial reports in accordance with 2 CFR 200. The frequency of financial reporting may vary between the different parts of this program. However, all recipients will be required to submit reports at least annually and no more frequently than quarterly. We may require interim reports more frequently than quarterly as a specific condition of award in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.
—*Performance Reports:* Recipients must submit performance reports in accordance with 2 CFR 200. We use performance reports as a tool to ensure that the recipient is accomplishing the work on schedule and to identify any problems that the awardee may be experiencing in accomplishing that work. This information is necessary for the Service to track accomplishments and performance-related data.
Performance reports must include:
○ A comparison of actual accomplishments to the goals and objectives established for the reporting period, the results/findings, or both;
○ If the goals and objectives were not met, the reasons why, including analysis and explanation of cost overruns or high unit costs compared to the benefit received to reach an objective;
○ Performance trend data and analysis to be used by the awarding program to monitor and assess recipient and Federal awarding program performance; and
○ Consolidated long-term work plan and accomplishments updates, when award is part of a large scale or long-term effort funded under multiple awards over time.

The frequency of performance reporting may vary between the different parts of this program. However, all recipients will be required to submit reports at least annually and no more frequently than quarterly. We may require interim reports more frequently than quarterly as a specific condition of award in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes.
—*Final 15-month Report:* As required in the BIL, State recipients under the Initial Grants part of the program must submit a report no later than 15 months after the date on which the State receives the funds, describing the means by which the State used the funds in accordance with its application and certification, and including the reporting parameters described in this guidance.
—*Recordkeeping Requirements:* Recipients must retain financial records, supporting documents, statistical records, and all other records pertinent to a Federal award per 2 CFR 200 requirements.

*Title of Collection:* Application Requirement for States to Apply for Orphaned Well Site Plugging, Remediation, and Restoration Grant Consideration.

*OMB Control Number:* 1093–New.

*Form Number:* None.

*Type of Review:* Request for emergency approval of a new information collection.

*Respondents/Affected Public:* 92 (27 State and 65 Tribal governments).

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* None.

| Requirement | Average number of annual respondents | Average number of responses each | Average number of annual responses | Average completion time per response (hours) | Estimated annual burden hours |
|---|---|---|---|---|---|
| *Consolidated Workplan:* | | | | | |

| Requirement | Average number of annual respondents | Average number of responses each | Average number of annual responses | Average completion time per response (hours) | Estimated annual burden hours |
|---|---|---|---|---|---|
| Government | 92 | 1 | 92 | 4 | 368 |
| *Applications:* | | | | | |
| Government | 92 | 1 | 92 | 40 | 3,680 |
| *Amendments:* | | | | | |
| Government | 10 | 1 | 10 | 3 | 30 |
| *Financial Reports:* | | | | | |
| Reporting | 92 | 1 | 92 | 6 | 552 |
| Recordkeeping | | | | 2 | 184 |
| *Performance Reports:* | | | | | |
| Reporting | 92 | 1 | 92 | 24 | 2,208 |
| Recordkeeping | | | | 8 | 736 |
| *Final 15-month Reports:* | | | | | |
| Reporting | 92 | 1 | 92 | 24 | 2,208 |
| Recordkeeping | | | | 8 | 736 |
| *Totals* | *470* | | *470* | | *10,702* |

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Jeffrey Parrillo,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2022–06708 Filed 3–29–22; 8:45 am]

**BILLING CODE 4334–63–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLMTC01000–L10600000–MC0000MO# 4500155770]**

### Notice of Intent To Amend the Billings Field Office 2015 Resource Management Plan and To Prepare an Associated Environmental Assessment, Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Billings Field Office, Billings, Montana, intends to prepare an amendment to the Billings Field Office Resource Management Plan (RMP) and an associated Environmental Assessment (EA). The EA will analyze a proposed change to the RMP's Management Decision Wild Horse (MD WH–7) with respect to managing genetic diversity in the Pryor Mountain Wild Horse herd. This notice initiates the EA scoping process for the RMP amendment to solicit public comments and identify issues and announces the opportunity for public review of the planning criteria.

**DATES:** In order to be included in the analysis, all comments must be received electronically or in writing no later than April 29, 2022. The BLM does not plan to hold any scoping meetings for this RMP amendment. We will provide additional opportunities for public participation as appropriate.

**ADDRESSES:** Comments may be submitted electronically through the BLM e-planning website at *https://eplanning.blm.gov/eplanning-ui/project/1502632/510,* or written comments may be sent to Wild Horse & Burro Coordinator, Billings Field Office, Bureau of Land Management, 5001 Southgate Drive, Billings, MT 59101.

**FOR FURTHER INFORMATION CONTACT:** Dave LeFevre, telephone 406–896–5349, or email *dlefevre@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. LeFevre 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. Normal business hours are 8:00 a.m. to 4:30 p.m., Monday through Friday, except for Federal holidays.

**SUPPLEMENTARY INFORMATION:** This document provides notice that the BLM Billings Field Office, Billings, MT, intends to amend the Billings Field Office RMP and prepare an associated EA, announces the proposed plan amendment scoping process, and seeks public input on issues and planning criteria. Planning criteria help define decision space and are based upon applicable laws, Director and State Director guidance, and the results of public and governmental participation (43 CFR 1610.4–2). The draft planning criteria considered in the development of the proposed amendment include:

(1) The proposed amendment will be completed in compliance with NEPA, FLPMA, the Wild Free-Roaming Horses and Burro Act, as amended, and the implementing regulations in 43 CFR 1700, BLM Wild Horses and Burros Management Handbook H–1700–1, and other applicable laws, regulations, and policy.

(2) The proposed amendment is limited to MD WH–7 and would not change any other existing planning decisions in the Billings Field Office RMP.

(3) The proposed amendment would only apply to lands and resources managed by the BLM as described in the 2015 Billings Field Office RMP; it would not change management direction for other agencies.

(4) Decisions are compatible with existing plans and policies of adjacent local, State, Federal, and Tribal agencies, so long as the decisions are consistent with the purposes, policies, and programs of Federal law and regulations applicable to public lands.

The Pryor Mountain Wild Horse Range is located in the Pryor Mountains in southeastern Carbon County, Montana, and northern Big Horn County, Wyoming, and encompasses approximately 38,000 acres of land.

In 2009, the BLM approved the Pryor Mountain Wild Horse Range/Territory Herd Management Area Plan (HMAP) that identified management objectives for the Pryor Mountain wild horses and horse range. The 2009 HMAP managed the Pryor Mountain wild horses for a

phenotype animal reminiscent of a ''Colonial Spanish Mustang'' as described by ''Sponenberg North American Colonial Spanish Horses'' while balancing colors, sex ratios, and age structures.

In 2015, the BLM approved a new RMP for the Billings Field Office. That RMP at MD WH–2 provides direction for the BLM to ''*Maintain a wild horse herd that exhibits a diverse age structure, genetic diversity, and any characteristics unique to the Pryor horses.*'' Additionally, MD WH–7 states that ''*Within an HMAP, herd structure will be managed for all representations in the herd, not allowing specific colors or bloodlines to dominate from management manipulation.*'' However, the 2015 RMP does not define ''all representations'' in the herd, and the wording is ambiguous.

In the 2015 RMP, it is evident that the intent of MD WH–7 was to limit the loss of genetic diversity, consistent with Goal WH–2 (''Maintain a wild horse herd that exhibits a diverse age structure, genetic diversity, and any characteristics unique to the Pryor horses.''). However, maximizing genetic diversity at the expense of ecosystem sustainability is not a management goal or directive for the herd.

An interpretation that every possible crossing of any given mare and any given stallion should leave a surviving foal (*i.e.,* a ''representation'' of the bloodline from that particular crossing) is not practical to implement for several reasons. If foals from every possible pairing of any stallion and any mare are interpreted to be a ''representation,'' then that precludes removal of any animal unless it has full siblings. However, because individual stallions sire offspring with multiple mares, and individual mares may mate with multiple stallions, there would be an ever-increasing number of ''representations'' in the herd. Because the population recruitment rate far exceeds the death rate, not removing ''representations'' without full siblings would result in unsustainable population growth. Under this scenario, Appropriate Management Level would be mathematically impossible to achieve.

Other impracticalities exist as well. The BLM cannot cause all patrilineal or matrilineal lines to be propagated. When considering patrilineal lines, not all stallions get to reproduce; breeding is often limited to the band stallion, and some horses may forever remain a bachelor stallion. There are also practical matters related to the well-being of animals that are removed from the wild. Wild horse adoption programs tend to place animals into homes more readily with younger horses as they are more adoptable and transition more readily to domestic life compared to an older horse. However, when young horses are gathered and removed from the range, many of them will not have reached maturity and produced an offspring.

The BLM proposes to amend MD WH–7 to make it consistent with RMP Goal WH2 to maintain genetic diversity and to align with management guidance in the BLM Wild Horse and Burro Handbook H–4700–1 for maintaining desirable genetic diversity (avoiding inbreeding depression). Specifically, the BLM proposes to amend the RMP to modify MD WH–7 as stated below:

''MD WH–7 (Proposed Amendment): Maintain desirable levels of genetic diversity, as measured by Observed Heterozygosity (Ho). Observed heterozygosity is a measure of how much diversity is found, on average, within individual animals in the Herd Management Area (HMA). If Ho drops below thresholds identified in the BLM Wild Horse and Burro Handbook H–4700–1, then BLM would take one or any combination of the following actions to reduce the possible risks associated with inbreeding depression:

(1) Maximize the number of fertile, breeding age wild horses (6–10 years) within the herd;

(2) adjust the sex ratio in favor of males (but with not more than approximately 60 percent males); or

(3) introduce mares or stallions from other wild horse HMAs. Prioritize introductions from herds with characteristics similar to the Pryor Mountain horses, such as the Sulfur herd in Utah, the Cerbat Mountain herd in Arizona, or others.''

BLM Handbook H–4700–1 guidance notes that herds with observed heterozygosity values that are one standard deviation below the mean are considered at critical risk. Hair samples last collected from the Pryor Mountain herd in February 2013 indicated that values for observed heterozygosity were above the mean for feral horse herds at that time. The BLM would continue to collect genetic samples to monitor genetic diversity. The results of current and future genetic monitoring efforts, along with previous monitoring results, would indicate if loss of genetic diversity is a concern and if any of the management actions as noted in the proposed amendment would need to be taken.

Maintaining desirable levels of genetic diversity would also assure a variety of colors are maintained in the Pryor Mountain horse herd. Pryor Mountain horses exhibit a variety of colors, with common colors including dun, grulla, bay, black, and roan. Less common colors that appear in the herd include red or apricot dun, chestnut, sorrel, palomino, and buckskin. Color is a phenotypic representation of dominant or recessive genes passed through generations. A horse that is a rare color may not produce offspring that are also a rare color. BLM is proposing to revise MD WH–7 to address genetic diversity in a manner that is consistent with the Wild Horse and Burro Handbook, but consideration of color would be addressed through MD WH–2 (characteristics unique to the Pryors) and Selective Removal Criteria.

Supplemental information on the proposed plan amendment is available on BLM's e-Planning website at the project link noted earlier in the **ADDRESSES** section. The BLM will prepare an EA to consider the proposed plan amendment as well as revisions to the 2009 HMAP including objectives for fertility control, gather criteria, and rangeland and riparian management (the public comment period for scoping the HMAP revisions is closed, and previously submitted comments regarding the HMAP revisions do not need to be re-submitted). The proposed plan amendment is limited to proposed changes to MD WH–7 that would replace direction to manage for ''all representations in the herd'' with direction to maintain desirable levels of genetic diversity to reduce the possible risks associated with inbreeding depression.

You may submit comments electronically or in writing on the proposed amendment to the BLM as shown in the **ADDRESSES** section earlier. If you already submitted scoping comments on proposed revisions to the HMAP EA, including any comments related to the Appropriate Management Level, management objectives for the wild horse population, including fertility control and gather criteria, and management objectives for the Pryor Horse Range, during the comment period that ran from April 9, 2020, through May 15, 2020, you do not need to re-submit your comments.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

(Authority: 40 CFR 1501.7 and 43 CFR 1610.2)

**Theresa M. Hanley,**

*Acting BLM Montana/Dakotas State Director.*

[FR Doc. 2022–06680 Filed 3–29–22; 8:45 am]

**BILLING CODE 4310–DN–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCOG01200 L12200000.MA0000 223]**

### Notice of Intent To Implement Camping Permit and Future Fee Program on Public Lands at Rabbit Valley in Mesa County, CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** The Bureau of Land Management (BLM) is implementing a future expanded amenity fee program for camping at Rabbit Valley campgrounds, located within McInnis Canyons National Conservation Area (NCA) in Mesa County, Colorado. The fee program will allow the BLM to meet increasing demand for camping activities, protect resources, prevent further deterioration of the recreation setting, enforce existing rules and regulations, and provide for enhanced information and educational opportunities.

**DATES:** Comments on the proposed fee changes must be received or postmarked by June 28, 2022 and must include the commenter's legible full name and address. Starting on Friday, September 30, 2022, the BLM will have the option to initiate fee collection at Rabbit Valley campgrounds for overnight visitation, unless the BLM publishes a **Federal Register** notice to the contrary. Comments received after the close of the comment period or delivered to an address other than the one listed in this notice may not be considered or included in the administrative record for the proposed fee program.

**ADDRESSES:** Please send comments to the BLM Grand Junction Field Office at 2815 H Road, Grand Junction, CO 81506 or by email at *blm_co_gj_public_comments@blm.gov.* Documents concerning this fee change may be reviewed at the Grand Junction Field Office. Phone: (970) 244–3000.

**FOR FURTHER INFORMATION CONTACT:** Collin Ewing, NCA Manager, email: *cewing@blm.gov;* telephone: (970) 244–3000. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at (800) 877–8339 to contact Mr. Ewing 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:** Under the Federal Lands Recreation Enhancement Act (FLREA) and BLM policy, the BLM may collect fees in conjunction with Recreation Use Permits to manage visitor use, protect natural and cultural resources, achieve the goals and objectives of the applicable management plan, and authorize specific types of recreational activities. Under Section 2(g) of the FLREA, certain campgrounds qualify as sites where visitors can be charged an ''Expanded Amenity Recreation Fee.'' Visitors wishing to use the expanded amenities can purchase a recreation use permit as described in the FLREA implementing regulations at 43 CFR part 2930. Pursuant to FLREA and the regulations at 43 CFR subpart 2933, the BLM may charge fees for overnight camping and group-use reservations where specific amenities and services are provided.

The BLM is implementing fee collection in the Rabbit Valley campgrounds for overnight camping. Rabbit Valley is a popular recreation destination for off-highway vehicle riding, mountain biking, horseback riding, and hiking, located off Interstate 70, 2 miles east of the Colorado/Utah border. In accordance with a July 2019 decision, the BLM will be constructing new campgrounds in the Rabbit Valley area. Most campsites in the Rabbit Valley campgrounds will require a fee of $20 per night, except for group campsites, which will range from $20 to $50 per night, depending on the number of vehicles ($20 per night for the first two vehicles, additional vehicles are $10 per night up to a maximum of five vehicles). The BLM will identify and post specific visitor fees at each campground. Visitors holding an America the Beautiful—National Parks and Federal Recreational Lands ''Senior Annual Pass,'' ''Senior Lifetime Pass,'' or ''Access Pass'' would be entitled to a 50 percent discount on expanded amenity fees. Veterans and ''Annual Interagency Pass,'' ''Fourth Grade Pass,'' and ''Gold Star Families Parks Pass'' holders are not entitled to this discount.

The BLM is also implementing a temporary, fee-free Individual Special Recreation Permit (ISRP) for camping in both undeveloped and developed designated campsites. Within the footprint of planned future campground development, undeveloped campsites for ISRPs will be designated with a sign. Dispersed camping outside of developed and undeveloped designated campsites will be prohibited. The BLM will phase out the ISRP as the new campgrounds in the Rabbit Valley are constructed.

In response to increasing visitor demand, the BLM issued a July 2019 Decision Record approving the development of additional campsites in the Rabbit Valley area as described in an Environmental Assessment (EA) (DOI–BLM–CO–S081–2018–0005–EA), and prepared a Business Plan for the project. The proposed action described in the EA, and approved in the Decision Record, included the option to charge a fee for overnight camping within the Rabbit Valley project area. The EA explained that the fee program would be developed through a separate process, which would include public involvement and consultation with the BLM Colorado Southwest District Resource Advisory Council (RAC). The BLM's public outreach process and analysis of the fee program are detailed in the Business Plan.

The Business Plan outlines the agency management direction, the need for fee collection, and how the BLM intends to use the fees to improve and maintain the amenities in the Rabbit Valley area. Information about the use of the fee revenues will be posted at one or more kiosks within the fee area annually. As discussed in the Business Plan, the camping fees are consistent with other established fee sites in the region, including other BLM-administered sites and those managed by the U.S. Department of the Interior—National Park Service, U.S. Department of Agriculture—Forest Service, and the State of Colorado.

In accordance with the FLREA and the Council of Environmental Quality regulations implementing the National Environmental Policy Act, the BLM has notified and involved the public throughout this process. The BLM released its draft Business Plan and the Proposed Action for public scoping from June 24 through July 25, 2018. The BLM presented the proposed project and the results of this scoping to the BLM Colorado Southwest District RAC on March 8, 2019. The RAC passed a resolution to support fees in existing and new campgrounds in Rabbit Valley, with a separate resolution recommending that the BLM release the preliminary EA and an updated Business Plan for additional public comment. The public comment period ran from April 16 through May 17, 2019.

The BLM presented summaries of the public comments to the RAC on June 13, 2019. The RAC passed a resolution to support the Rabbit Valley camping project and collecting fees as provided in the Business Plan. The BLM welcomes public comments on the proposed fee changes.

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.

(Authority: 16 U.S.C. 6803 and 43 CFR 2932)

**Benjamin Gruber,**

*Acting BLM Colorado Associate State Director.*

[FR Doc. 2022–06731 Filed 3–29–22; 8:45 am]

BILLING CODE 4310–DN–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNVS01000.L58530000.EU0000.241A; N–99569; 12–08807; MO #4500156780; TAS:15X5232]**

### Notice of Realty Action: Recreation and Public Purposes Act Classification, Lease, and Subsequent Conveyance of Public Lands; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management (BLM), Las Vegas Field Office, has examined approximately 2.5 acres of public land in the Las Vegas Valley, Clark County, Nevada, and found the lands suitable for classification under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended. Clark County proposes to use the land for a new community fire station to help meet future expanding public-safety needs in the southwestern part of the Las Vegas Valley.

**DATES:** Interested parties may submit written comments until May 16, 2022.

**ADDRESSES:** Mail written comments to the BLM Las Vegas Field Office, Assistant Field Manager, 4701 North Torrey Pines Drive, Las Vegas, NV 89130; or fax to 775–515–5010.

**FOR FURTHER INFORMATION CONTACT:** Jamie Moeini at the above address; by telephone at 702–515–5129; or by email at *jmoeini@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** The parcel is located south of Raven Avenue and east of Rosanna Street in southwest Las Vegas and is legally described as:

**Mount Diablo Meridian, Nevada**

T. 22 S., R. 60 E.,
Sec. 22, NW¼SE¼NE¼NE¼.

The area described contains 2.5 acres, according to the official plats of the surveys of said lands on file with the BLM.

Clark County proposes to develop the above-described land as a fire station consisting of a new 10,482-square-foot building with an Emergency Medical Service office, Battalion Chief's office, Captain's office, dining room, kitchen, ''day room,'' fitness room, outdoor BBQ area, alarm center, laundry area, turnout room, 12-person dorm, and a three large-vehicle apparatus bay with mechanical yard. The building will be constructed of insulated concrete masonry units and steel structure, with a decorative masonry veneer and steel canopy at the main entrance. There will be paved parking lots at the rear of the building consisting of 11 spaces for the public and 25 spaces for staff. Typical desert landscaping will be included throughout the site. Additional detailed information pertaining to this publication and plan of development for the project is available for review in case file N–99569 at the address as shown in the **ADDRESSES** section.

The land identified is not needed for any Federal purpose and it would be in the public's interest to transfer the parcel under the R&PP Act. The lease and subsequent conveyance are consistent with the 1998 BLM Las Vegas Resource Management Plan.

The lease and subsequent conveyance, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will be made subject to and/or the following reservations:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits for the same under applicable law and such regulations as the Secretary of the Interior may prescribe;

3. All other valid existing rights;

4. Terms or conditions required by law (including, but not limited to, any terms or conditions required by 43 CFR 2741.4) or as deemed necessary and appropriate by the Authorized Officer; and

5. Indemnification protecting the Untied States from claims arising out of the lessee's/patentee's use, occupancy, or operations on the leased/patented lands.

Upon publication of this notice in the **Federal Register**, the land described previously will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land as a fire station in Clark County. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a fire station.

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. Only written comments submitted to the Assistant Field Manager, BLM Las Vegas Field Office, will be considered properly filed. Any adverse comments on the classification will be reviewed as protests, by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action.

In the absence of any adverse comments, the decision will take effect on May 31, 2022.

(Authority: 43 CFR 2741.5)

**Shonna Dooman,**

*Field Manager, Las Vegas Field Office.*

[FR Doc. 2022–06721 Filed 3–29–22; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[212.LLAZP02000.L14400000.EQ0000; AZA–38146]**

### Notice of Realty Action: Recreation and Public Purposes Act Classification, Pinal County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** Pinal County, AZ, filed an application with the Bureau of Land Management (BLM) to develop three parcels of BLM-managed land as part of a regional park that will help meet expanding recreational needs in the area near Maricopa, AZ. The BLM, Lower Sonoran Field Office, examined the three parcels consisting of approximately 497 acres of public land and determined that the parcels are suitable for classification under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended. The R&PP Act allows local governments to lease, develop, and subsequently acquire public lands for recreation and other public purposes if compliant with local government and BLM land use planning. The R&PP project is consistent with the Federal Land Policy and Management Act, as amended, and associated BLM regulations and policies.

**DATES:** Interested parties may submit written comments regarding the classification and decision to issue a lease on or before May 16, 2022. In the absence of adverse comments, the decision to lease the land will become effective no less than 60 days after the date of publication in the **Federal Register**.

**ADDRESSES:** Mail written comments to the BLM Lower Sonoran Field Office (LSFO), Attn: Ryan Randell, Realty Specialist, 21605 North 7th Avenue, Phoenix, Arizona 85027 or fax to (623) 580–5580. Additional information, including the plan of development and environmental assessment, is available for public review at the LSFO, or online at: *https://eplanning.blm.gov/eplanning-ui/project/2003296/510.*

**FOR FURTHER INFORMATION CONTACT:** Ryan Randell, Realty Specialist, telephone: (623) 580–5533, email: *rrandell@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** The three parcels are located within the Palo Verde Mountains, west of the City of Maricopa and south of Arizona State Route 238, and are legally described as:

**Gila and Salt River Meridian, Arizona**

T. 4 S. R. 2 E.,
Sec. 20, lot 4;
Sec. 29, N½NE¼NW¼;
Sec. 33, lots 1 thru 4;
T. 5 S., R. 2 E.,
Sec. 4, lots 3 and 4;
Sec. 4, E½SW¼NW¼, SE¼NW¼;
Sec. 7, SW¼NE¼NE¼, SE¼NW¼NE¼, E½SW¼NE¼, W½SE¼NE¼, SE¼SE¼NE¼, and SE¼, Excepting therefrom those portions lying within ½ mile of the center line of the Tucson Electric Power right-of-way AZA–7274.

The areas described aggregate 497 acres, more or less.

Plans for the R&PP Act project consist of new trailheads and staging areas, restrooms, shaded structures, host campsites, a 39-space campground with facilities, an archery range, and a day use off-highway vehicle area with parking. The project is consistent with the objectives of the BLM Lower Sonoran Resource Management Plan dated September 19, 2012, and was analyzed consistent with the National Environmental Policy Act (NEPA). Additional information, including the plan of development and environmental assessment, is available for public review at the LSFO (see **ADDRESSES** section) or online at: *https://eplanning.blm.gov/eplanning-ui/project/2003296/510.*

The lease document, if issued, will be subject to the provisions of the R&PP Act and the following terms and conditions:

1. Subject to valid existing rights.
2. An appropriate indemnification clause protecting the United States from claims arising out of the lessee's use, occupancy, or occupations on the leased lands.

The lands as described above have been found suitable for leasing under the R&PP Act. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws. The segregation will remain until an Opening Order is published in the **Federal Register** or the application is withdrawn.

Interested parties may submit comments involving the suitability of the land for development of a regional park in Pinal County and whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or whether the proposed use is consistent with State and Federal programs. Comments may also include concerns over the specific use proposed in the application and whether the BLM followed proper administrative procedures in reaching the decision to lease the lands under the R&PP Act. Only written comments submitted to the BLM Lower Sonoran Field Office will be considered properly filed.

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. Any adverse comments will be considered protests and will be reviewed by the BLM Arizona State Director, who may sustain, vacate, or modify this realty action.

(Authority: 43 CFR 2741.5)

**Edward Kender,**

*Field Manager, BLM Lower Sonoran Field Office.*

[FR Doc. 2022–06653 Filed 3–29–22; 8:45 am]

**BILLING CODE 4310–32–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Submission of U.S. Nomination to the World Heritage List; Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; correction.

**SUMMARY:** The National Park Service published a document in the **Federal Register** on March 23, 2022, announcing the Submission of U.S. Nomination to the World Heritage List. The document contained incorrect locations.

**FOR FURTHER INFORMATION CONTACT:** April Brooks, 202–354–1808.

**SUPPLEMENTARY INFORMATION:**

**Correction**

In the **Federal Register** of March 23, 2022, in FR Doc. 2022–06121, on page 16492, in the first column in the **SUMMARY** section, correct the locations to read:

Fort Ancient in Warren County and the Octagon Earthworks and Great Circle Earthworks in Licking County.

Dated: March 24, 2022.

**Stephen Morris,**

*Chief, NPS Office of International Affairs.*

[FR Doc. 2022–06650 Filed 3–29–22; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0033641; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Michigan State Historic Preservation Office, Lansing, MI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Michigan State Historic Preservation Office (Michigan SHPO) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and a present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Michigan SHPO. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Michigan SHPO at the address in this notice by April 29, 2022.

**FOR FURTHER INFORMATION CONTACT:** Michael Hambacher, Staff Archeologist, State Historic Preservation Office, Michigan Economic Development Corporation Building, 300 N Washington Square, Lansing, MI 48913, telephone (517) 243–9513, email *hambacherm@michigan.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Michigan State Historic Preservation Office, Lansing, MI. The human remains and associated funerary objects were removed from the White Rapids site (20ME3), Menominee County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains and associated funerary objects was made by the Michigan SHPO professional staff in consultation with representatives of the Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Minnesota Chippewa Tribe, Minnesota (Mille Lacs Band); Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as Huron Potawatomi, Inc.); and the Pokagon Band of Potawatomi Indians, Michigan and Indiana (hereafter referred to as ''The Consulted Tribes'').

The Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Minnesota Chippewa Tribe, Minnesota (Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; White Earth Band); Prairie Band Potawatomi Nation (previously listed as Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota (hereafter referred to as ''The Invited Tribes'') were invited to consult, but did not participate.

**History and Description of the Human Remains**

In 1956, human remains representing, at minimum, nine individuals were removed from the White Rapids site (20ME3), in Menominee County, MI, during an excavation conducted by an archeologist from the University of Michigan Museum of Anthropological Archaeology. The site consists of a pair of mounds located near the Menominee River in the Menominee State Forest. Human remains and associated funerary objects were removed from Mound 2, which contained three separate burial episodes designated as Features 1, 2, and 3. Feature 1 is described as an extended adult female burial. Feature 2 is described as containing charred human remains from several long bones representing multiple individuals. Feature 3 is described as fragmentary human remains from a disturbed burial. The human remains removed from the site are one young adult 19–30 years old, female; one adult, female; one child 9–10 years old; one older adult 40+ years old, indeterminate sex; one cremated adult, indeterminate sex; one older adult 40+ years old, possible male; one adult, possible female; one cremated adult, possible male; and one cremated adult 35–49 years old, female. The burials date to the Late Woodland Period (500–1400 A.D.) based on burial treatment. No known individuals were identified. The six associated funerary objects are one lot of charred wood; one lot of charcoal, soil, and unworked pebbles; one lot of ashes; one lot of charcoal; one lot of fire-cracked rock; and one lot of grit-tempered and decorated ceramic sherd.

The human remains have been determined to be Native American based on cranial morphology, accession documentation, and archeological context. A relationship of shared group identity can be reasonably traced between the Native American human remains from this site and the Menominee Indian Tribe of Wisconsin, based on the site's location within the lands traditionally occupied by the Menominee. Moreover, according to oral tradition and historical accounts, the

Menominee were most likely the predominant tribe in the vicinity of the site during the date range for this burial.

**Determinations Made by the Michigan State Historic Preservation Office**

Officials of the Michigan State Historic Preservation Office have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of nine individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the six objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Menominee Indian Tribe of Wisconsin.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request with information in support of the request to Michael Hambacher, Staff Archeologist, State Historic Preservation Office, Michigan Economic Development Corporation Building, 300 N Washington Square, Lansing, MI 48913, telephone (517) 243–9513, email *hambacherm@michigan.gov,* by April 29, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Menominee Indian Tribe of Wisconsin may proceed.

The Michigan State Historic Preservation Office is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: March 23, 2022.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2022–06666 Filed 3–29–22; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0033639; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Interior, Bureau of Indian Affairs has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Bureau of Indian Affairs. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and funerary objects should submit a written request with information in support of the request to the Bureau of Indian Affairs at the address in this notice by April 29, 2022.

**FOR FURTHER INFORMATION CONTACT:** Dr. B.J. Howerton, Bureau of Indian Affairs, 1001 Indian School Road NW, Albuquerque, NM 87114, telephone (505) 563–3013, email *BJ.Howerton@bia.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC. The human remains and associated funerary objects were removed from Coconino County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by the Bureau of Indian Affairs professional staff in consultation with representatives of the Navajo Nation, Arizona, New Mexico, & Utah.

**History and Description of the Remains**

On May 17, 1971, human remains representing, at minimum, one individual were removed from a historic Navajo site (NA11021) in Coconino County, AZ. The human remains were removed from a burial during authorized excavations prior to construction of a railroad between Black Mesa and Page, AZ, that crossed tribal trust lands of the Navajo Nation, Arizona. New Mexico, & Utah. The human remains and associated funerary objects were first placed in the custody of the Museum of Northern Arizona in Flagstaff, AZ, in 1971. Subsequently, they were placed in the custody of the Navajo Nation Museum in Window Rock, AZ. In 2019, custody of the remains and funerary objects reverted to the Museum of Northern Arizona. The human remains belong to an adult female. No known individual was identified. The two associated funerary objects are one metal spoon and one metal can with a lid.

The burial was within a brush shade structure (*chaha'oh*) typical of Navajo architecture. Ethnographic interviews indicated the burial belonged to a Navajo person and was dated ca. 1920. The burial's location away from any habitation and the presence of a shovel near the burial structure are typical of Navajo burial practices.

**Determinations Made by the U.S. Department of the Interior, Bureau of Indian Affairs**

Officials of the U.S. Department of the Interior, Bureau of Indian Affairs have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the two objects described in this notice are reasonably believed to have been placed with or near individual human

remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Navajo Nation, Arizona, New Mexico, & Utah.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. B.J. Howerton, Bureau of Indian Affairs, 1001 Indian School Road NW, Albuquerque, NM 87114, telephone (505) 563–3013, email *BJ.Howerton@bia.gov,* by April 29, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Navajo Nation, Arizona, New Mexico, & Utah may proceed.

The Bureau of Indian Affair is responsible for notifying the Navajo Nation, Arizona, New Mexico, & Utah that this notice has been published.

Dated: March 23, 2022.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2022–06664 Filed 3–29–22; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0033640; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Brooklyn Children's Museum, Brooklyn, NY

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Brooklyn Children's Museum has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Brooklyn Children's Museum. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Brooklyn Children's Museum at the address in this notice by April 29, 2022.

**FOR FURTHER INFORMATION CONTACT:** Kate Mirand Calleri, Brooklyn Children's Museum, 145 Brooklyn Avenue, Brooklyn, NY 11213, telephone (718) 735–4400, email *kcalleri@brooklynkids.org.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Brooklyn Children's Museum, Brooklyn, NY. The human remains were removed from ''Southern NY,'' most likely from within Bronx County, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by the Brooklyn Children's Museum professional staff in consultation with representatives of the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin (hereafter referred to as ''The Tribes'').

**History and Description of the Remains**

In the early-to-mid 20th century, human remains representing, at minimum, three individuals were removed from an unknown location in the Bronx, NY. The three individuals, represented by three skulls, were donated to the Museum by Dr. Theodore Kazimiroff. No known individuals were identified. No associated funerary objects are present.

Brooklyn Children's Museum has made the geographic determination that these human remains were removed from Bronx County based on the ''Southern New York'' label in the original accessioning records, as well as from the extensive history of Kazimiroff's excavations within New York City limits, particularly in Bronx County, NY. Starting in the mid-1900s, records show that he excavated over 45,000 objects in New York City, the vast majority of which he claimed were Native American. Kazimiroff was the official Bronx County historian from 1953 to 1980, as well as President of Kings Bridge Historical Society and the founder of the Bronx Historical Society. In his writings, he documents an ''Algonquin village'' burial ground that he excavated in the Bronx. He also writes of his extensive excavations in the Bronx where the New York Botanical Gardens are today located. Kazimiroff's presence in Bronx County was so great that, from 1980 to 2011, the northern extension of Southern Boulevard between East Fordham Road and Allerton Avenue was named ''Dr. Theodore Kazimiroff Boulevard.'' To this day, he is still associated with Bronx County; Pelham Bay Park contains the ''Kazimiroff Nature Trail.''

**Determinations Made by the Brooklyn Children's Museum**

Officials of the Brooklyn Children's Museum have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Tribes.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Kate Mirand Calleri, Brooklyn Children's Museum, 145 Brooklyn Avenue, Brooklyn, NY 11213, telephone (718) 735–4400, email *kcalleri@brooklynkids.org,* by April 29, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The Brooklyn Children Museum is responsible for notifying The Tribes that this notice has been published.

Dated: March 23, 2022.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2022–06665 Filed 3–29–22; 8:45 am]

**BILLING CODE 4312–52–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1218]**

### Certain Variable Speed Wind Turbine Generators and Components Thereof; Commission Determination To Grant Respondents' Motion for Leave To Submit a Petition for Reconsideration Out of Time and Respondents' Petition for Reconsideration; Issuance of Corrected Commission Opinion

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to grant respondents' petition for reconsideration and respondents' motion for leave to submit a petition for reconsideration out of time, and to issue a corrected Commission opinion.

**FOR FURTHER INFORMATION CONTACT:** Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission had instituted this investigation on September 8, 2020, based on a complaint filed on behalf of General Electric Company of Boston, Massachusetts (''GE''). 85 FR 55492–93 (Sept. 8, 2020). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain variable speed wind turbine generators and components thereof by reason of infringement of one or more claims of U.S. Patent Nos. 6,921,985 (''the '985 patent'') and 7,629,705 (''the '705 patent''). *Id.* at 55493; Order No. 10 (Dec. 2, 2020), *unreviewed by* Comm'n Notice (Dec. 22, 2020). *Id.* The Commission's notice of investigation named as respondents Siemens Gamesa Renewable Energy Inc. of Orlando, Florida; Siemens Gamesa Renewable Energy A/S of Brande, Denmark; and Gamesa Electric, S.A.U. of Zamudio, Spain (collectively, ''SGRE''). *Id.* at 26493; 85 FR 55493. The Office of Unfair Import Investigations was not a party to the investigation. *Id.*

On September 10, 2021, the ALJ issued a final initial determination (''final ID'') finding a violation of section 337 with respect to the '985 patent and finding no violation with respect to the '705 patent. 86 FR 64526 (Nov. 18, 2021). On November 12, 2021, the Commission determined to review the final ID in part. *Id.*

On January 18, 2022, the Commission made its final determination in this investigation, finding a violation of section 337 by SGRE as to certain claims of the '985 patent and issuing a limited exclusion order and cease and desist orders to SGRE. 87 FR 3586 (Jan. 24, 2022). The Commission issued a Commission Opinion accompanying its final determination.

On February 7, 2022, SGRE filed a petition for reconsideration and a motion for leave to submit a petition for reconsideration out of time. The petition requests that the Commission correct its January 18, 2022 Opinion in this investigation to correct a technical inaccuracy. GE did not file a response to either the motion or petition.

The Commission has determined to grant SGRE's petition for reconsideration and SGRE's motion for leave to submit a petition for reconsideration out of time, and to issue a corrected Commission opinion.

The Commission vote for this determination took place on March 25, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: March 25, 2022.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2022–06732 Filed 3–29–22; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Request for Electronic Service of Orders—Waiver of Certified Mail Requirement

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that the agency receives on or before April 29, 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.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) 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.

**FOR FURTHER INFORMATION CONTACT:** Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** The Longshore and Harbor Workers' Compensation Act (LHWCA), at 33 U.S.C. 919(e), requires that any order rejecting or making an LHWCA award (the compensation order) be filed in the appropriate district director's office of the Office of Workers' Compensation Programs (OWCP), and that copies be sent by registered or certified mail to the claimant and the employer. The

implementing regulations at 20 CFR 702.349(b) allow parties and their representatives to waive certified mail service and consent to electronic service instead. The information collected will be used by OWCP to serve compensation orders by email instead of by registered or certified mail. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 5, 2021 (86 FR 61323).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL–OWCP.

*Title of Collection:* Request for Electronic Service of Orders—Waiver of Certified Mail Requirement.

*OMB Control Number:* 1240–0053.

*Affected Public:* Individuals or Households.

*Total Estimated Number of Respondents:* 9,240.

*Total Estimated Number of Responses:* 9,240.

*Total Estimated Annual Time Burden:* 770 hours.

*Total Estimated Annual Other Costs Burden:* $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: March 23, 2022.

**Mara Blumenthal,**

*Senior PRA Analyst.*

[FR Doc. 2022–06722 Filed 3–29–22; 8:45 am]

BILLING CODE 4510–CF–P

## DEPARTMENT OF LABOR

### Office of Labor-Management Standards

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Employee Rights Under National Labor Relations Act Complaint Process

**ACTION:** Notice; request for comments.

**AGENCY:** Office of Labor-Management Standards, Labor.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (PRA), the DOL is soliciting public comments regarding the proposed extension of this Office of Labor-Management Standards (OLMS)-sponsored information collection for the authority to continue the information collection request (ICR) titled, ''Notice of Employee Rights under National Labor Relations Act Complaint Process,'' currently approved under OMB Control Number 1245–0004.

**DATES:** Consideration will be given to all written comments received by May 31, 2022.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Karen Torre at (202) 693–0123 (this is not a toll-free number), or (800) 877–8339 (TTY/TDD).

*Electronic submission:* You may submit comments and attachments electronically at *olms-public@dol.gov,* identified by OMB Control Number 1245–0004.

*Comments are invited on:* (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) 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.

**FOR FURTHER INFORMATION CONTACT:** Karen Torre, Chief of the Division of Interpretations and Regulations, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5609, Washington, DC 20210, by telephone at (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD), or by email at *olms-public@dol.gov.*

**SUPPLEMENTARY INFORMATION:** President Barack Obama signed Executive Order 13496 (E.O. 13496) on January 30, 2009, requiring certain Government contractors and subcontractors to post notices informing their employees of their rights as employees under Federal labor laws. The Order also provides the text of contractual provisions that Federal Government contracting departments and agencies must include in every Government contract, except for collective bargaining agreements and contracts for purchases under the Simplified Acquisition Threshold. OLMS administers the enforcement provisions of Executive Order 13496, while the compliance evaluation and investigatory provisions are handled by the Department's Office of Federal Contract Compliance Programs (OFCCP), pursuant to the Order's implementing regulatory provisions (29 CFR part 471). Complaints can be filed with both agencies.

The Department seeks extension of the current approval to collect this information. An extension is necessary because if this information collection is not conducted, E.O. 13496 could not be enforced through the complaint procedure.

E.O. 13496 advances the Administration's goal of promoting economy and efficiency of Federal government procurement by ensuring that workers employed in the private sector as a result of Federal government contracts are informed of their rights to engage in union activity and collective bargaining. Knowledge of such basic statutory rights promotes stable labor-management relations, thus reducing costs to the Federal government.

The contractual provisions require contractors and subcontractors to post a notice, created by the Secretary of Labor, informing employees of their rights under the National Labor Relations Act. The notice also provides a statement of the policy of the United States to encourage collective bargaining, as well as a list of activities that are illegal under the Act. The notice concludes with a general description of the remedies to which employees may be entitled if these rights have been violated and contact information for further information about those rights and remedies, as well as enforcement procedures.

The clause also requires contractors to include the same clause in their

nonexempt subcontracts and purchase orders, and describes generally the sanctions, penalties, and remedies that may be imposed if the contractor fails to satisfy its obligations under the Order and the clause.

The regulatory provisions implementing E.O. 13496 (29 CFR part 471) include the language of the required notices, and they explain posting and contractual requirements, the complaint process, the investigatory process, and sanctions, penalties, and remedies that may be imposed if the contractor or subcontractor fails to comply with its obligations under the Order. Specifically, 29 CFR part 471.11(c) sets forth the procedures that the Department must use when accepting written complaints alleging that a contractor doing business with the Federal government has failed to post the notice required by the Executive Order.

The Department continues to estimate a total of 10 respondents with an equal amount of responses. Since the ICR was last approved in 2019, the Department has received 1 complaint. The Department maintains the estimate of 10 complaints for purposes of this renewal request. The Department continues to estimate that it will take an employee 1.28 hours per complaint, for a total of 12.8, rounded to 13 hours.

Additionally, employees will incur costs of $0.62 per complaint in capital/start-up costs ($0.58 for standard-sized, rectangular envelopes postage in January 2022 [1] + $0.03 for an envelope + $0.01 for paper) for a total cost of $6.20. (Although employees will submit many if not all complaints via email, the Department assumes, conservatively, that it will receive all via mail.) The total cost for the estimated 10 complaints is therefore $6.20. There are no ongoing operation/maintenance costs associated with this information collection.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL–OLMS.

*Type of Review:* Extension.

*Title of Collection:* Notice of Employee Rights under National Labor Relations Act Complaint Process.

*OMB Control Number:* 1245–0004.

*Affected Public:* Employees of Federal Contractors and Subcontractors.

*Total Estimated Number of Respondents:* 10.

*Frequency:* On occasion.

*Total Estimated Number of Responses:* 10.

*Estimated Average Time per Response:* 1.28 hours.

*Total Estimated Annual Time Burden:* 13 hours.

*Total Estimated Annual Other Costs Burden:* $6.20.

(Authority: 44 U.S.C. 3506(c)(2)(A))

Dated: March 24, 2022.

**Karen Torre,**

*Chief of the Division of Interpretations and Regulations.*

[FR Doc. 2022–06716 Filed 3–29–22; 8:45 am]

BILLING CODE 4510–86–P

[1] See: *https://www.usps.com/business/prices.htm.*

## MARINE MAMMAL COMMISSION

### Sunshine Act Notice

**TIME AND DATE:** The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will hold a public meeting on Tuesday, 12 April 2022, from 2:00 p.m. to 5:00 p.m. (Eastern Daylight Time).

**PLACE:** This meeting will be conducted by remote means.

**STATUS:** This meeting will be held in accordance with the provisions of the Government in the Sunshine Act (5 U.S.C. 552b) and the Federal Advisory Committee Act (5 U.S.C. App. I) and will be open to the public. Public participation will be allowed as time permits and as determined to be desirable by the Chairman. The Commission will livestream the meeting via a Zoom webinar. For further information and to register for the webinar, go to the Commission's website at *https://www.mmc.gov/events-meetings-and-workshops/other-events/approaches-to-reducing-vessel-strike-of-cetaceans/.*

**MATTERS TO BE CONSIDERED:** The Commission and Committee of Scientific Advisors will meet to consider actions for reducing vessel strike of large cetaceans. Specifically, meeting participants will review Federal vessel-routing and speed-reduction programs, their elements, and effectiveness, identify locations where additional measures are or may be needed, and consider recommendations for next steps. The agenda for the meeting is posted on the Commission's website at *https://www.mmc.gov/events-meetings-and-workshops/other-events/approaches-to-reducing-vessel-strike-of-cetaceans/.*

**FOR FURTHER INFORMATION CONTACT:** Brady O'Donnell or Hannah Wellman, Marine Mammal Commission, 4340 East West Highway, Room 700, Bethesda, MD 20814; (301) 504–0087; email: *mmc@mmc.gov.*

**Peter O. Thomas,**

*Executive Director.*

[FR Doc. 2022–06782 Filed 3–28–22; 11:15 am]

BILLING CODE 6820–31–P

## MILLENNIUM CHALLENGE CORPORATION

**[MCC FR 22–05]**

### Notice of Open Meeting

**AGENCY:** Millennium Challenge Corporation.

**ACTION:** Notice.

**SUMMARY:** In accordance with the requirements of the Federal Advisory Committee Act, the Millennium Challenge Corporation (MCC) Advisory Council was established as a discretionary advisory committee on July 14, 2016. Its charter was renewed for a second term on July 11, 2018 and third term on July 8, 2020. The MCC Advisory Council serves MCC solely in an advisory capacity and provides insight regarding innovations in infrastructure, technology and sustainability; perceived risks and opportunities in MCC partner countries; new financing mechanisms for developing country contexts; and shared value approaches. The MCC Advisory Council provides a platform for systematic engagement with the private sector and other external stakeholders and contributes to MCC's mission—to reduce poverty through sustainable, economic growth.

**DATES:** Thursday, April 21, 2022 from 10:00 a.m.–12:00 p.m. EDT.

**ADDRESSES:** The meeting will be held in-person and via conference call.

**FOR FURTHER INFORMATION CONTACT:** Contact Bahgi Berhane, 202–521–3600, or email *MCCAdvisoryCouncil@mcc.gov* or visit *https://www.mcc.gov/about/org-unit/advisory-council.*

**SUPPLEMENTARY INFORMATION:**

*Agenda.* During the Spring 2022 meeting of the MCC Advisory Council, Co-Chairs will meet with MCC leadership. Additionally, Council members will provide advice on the compact program development process and MCC's investment strategy in Sierra Leone.

*Public Participation.* The meeting will be open to the public. Members of the public may file written statement(s) before or after the meeting. If you plan to attend, please submit your name and affiliation no later than Monday, April 18, 2022 to *MCCAdvisoryCouncil@mcc.gov,* to receive instructions on how to attend.

*Authority:* Federal Advisory Committee Act, 5 U.S.C. App.

Dated: March 25, 2022.

**Thomas G. Hohenthaner,**

*Acting VP/General Counsel and Corporate Secretary.*

[FR Doc. 2022–06711 Filed 3–29–22; 8:45 am]

**BILLING CODE 9211–03–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Intent To Renew a Current Information Collection

**AGENCY:** National Center for Science and Engineering Statistics, National Science Foundation.

**ACTION:** Notice and request for comments.

**SUMMARY:** The National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation (NSF) is announcing plans to request renewal of the Higher Education Research and Development Survey. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for three years.

**DATES:** Written comments on this notice must be received by May 31, 2022 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, W18253, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Higher Education Research and Development Survey.

*OMB Approval Number:* 3145–0100.

*Expiration Date of Current Approval:* August 31, 2022.

*Type of Request:* Intent to seek approval to extend an information collection for three years.

*Abstract:* Established within NSF by the America COMPETES Reauthorization Act of 2010 § 505, codified in the NSF Act of 1950, as amended, the National Center for Science and Engineering Statistics (NCSES)—one of 13 principal federal statistical agencies—serves as a central Federal clearinghouse for the collection, interpretation, analysis, and dissemination of objective data on science, engineering, technology, and research and development for use by practitioners, researchers, policymakers, and the public.

The Higher Education Research and Development (R&D) Survey (formerly known as the Survey of R&D Expenditures at Universities and Colleges) originated in fiscal year (FY) 1954 and has been conducted annually since FY 1972. The survey represents one facet of the research and development component of NCSES's statistical program, which also includes R&D surveys on the business, federal government, higher education, state government, and nonprofit sectors.

*Use of the Information:* The proposed project will continue the annual survey cycle for three years. The Higher Education R&D Survey will provide continuity of statistics on R&D expenditures by source of funding, type of R&D (basic research, applied research, or development), and field of research, with separate data requested on research equipment by field. Further breakdowns are collected on funds passed through to subrecipients and funds received as a subrecipient, and on R&D expenditures by field from specific federal agency sources. The survey also requests total R&D expenditures funded from foreign sources, R&D within an institution's medical school, clinical trial expenditures, R&D by type of funding mechanism (contracts vs. grants), and R&D by cost category (salaries, equipment, software, etc.). Since FY 2020, the survey has requested headcounts and full-time equivalents of R&D personnel (researchers, R&D technicians, and R&D support staff).

Data are published in NSF's annual publication series *Higher Education Research and Development,* available on the web at *http://www.nsf.gov/statistics/srvyherd/.*

*Expected respondents:* The FY 2022 Higher Education R&D Survey will be administered to approximately 650 institutions. In addition, a shorter version of the survey asking for R&D expenditures by source of funding and broad field will be sent to approximately 275 institutions spending at least $150 thousand but less than $1 million on R&D in their previous fiscal year. A short population review screener is also sent to approximately 125 institutions before the survey cycle to identify potential eligible institutions not already in the survey frame. Finally, a survey requesting R&D expenditures by source of funds, cost categories, and type of R&D will be administered to the 43 Federally Funded Research and Development Centers.

*Estimate of burden:* The survey is a fully automated web data collection effort and is handled primarily by administrators in university sponsored programs and accounting offices. To minimize burden, institutions are provided with an abundance of guidance and resources on the web and can respond via downloadable spreadsheet if desired. Each institution's record is pre-loaded with the 2 previous years of comparable data that facilitate editing and trend checking. Response to this voluntary survey has exceeded 95 percent each year.

The average burden estimate is 64 hours for the approximately 650 institutions reporting at least $1 million in R&D expenditures, 8 hours for the approximately 275 institutions reporting less than $1 million, 1 hour for the approximately 125 institutions in the population screener, and 11 hours for the 43 organizations completing the FFRDC survey. The total calculated burden across all forms is 44,398 hours.

*Comments:* 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; (c) ways to enhance the quality, utility, and clarity

of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) 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.

Dated: March 25, 2022.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2022–06725 Filed 3–29–22; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meetings

The National Science Board hereby gives notice of the scheduling of a teleconference of the Committee on Oversight for the transaction of National Science Board business pursuant to the NSF Act and the Government in the Sunshine Act.

**TIME AND DATE:** Monday, April 4, 2022, from 2:00–3:00 p.m. EDT.

**PLACE:** This meeting will be held by teleconference organized through the National Science Foundation.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The agenda is: Committee Chair's Opening Remarks; Discussion of Vision for Facilitating the Broader Impacts of the Cutting-Edge Science and Engineering Funded by NSF.

**CONTACT PERSON FOR MORE INFORMATION:** Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. Members of the public can observe this meeting through a You Tube livestream. The link is *https://youtu.be/sWEkXQX-da8.*

Meeting information is available from the NSB website at *https://www.nsf.gov/nsb/meetings/index.jsp#up.*

**Chris Blair,**

*Executive Assistant to the National Science Board Office.*

[FR Doc. 2022–06822 Filed 3–28–22; 4:15 pm]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

*Name and Committee Code:* Advisory Committee for Cyberinfrastructure (25150).

*Date and Time:* April 28, 2022; 10 a.m.–5 p.m., April 29, 2022; 10 a.m.–5 p.m.

*Place:* Virtual Meeting, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

This meeting will be held virtually. The final meeting agenda and instructions to register will be posted on the ACCI website: *https://www.nsf.gov/cise/oac/advisory.jsp.*

*Type of Meeting:* Open.

*Contact Person for More Information:* Dr. Kevin Thompson, CISE, Office of Advanced Cyberinfrastructure, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–8970.

*Minutes:* May be obtained from the contact person listed above and will be posted within 90-days after the meeting end date to the ACCI website: *https://www.nsf.gov/cise/oac/advisory.jsp.*

*Purpose of Meeting:* To advise NSF on the impact of its policies, programs and activities in the OAC community. To provide advice to the Director/NSF on issues related to long-range planning.

*Agenda:* Updates on NSF wide OAC activities.

Dated: March 24, 2022.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2022–06641 Filed 3–29–22; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. STN 50–528, STN 50–529, and STN 50–530; NRC–2022–0058]**

### Arizona Public Service Company; Palo Verde Nuclear Generating Station, Units 1, 2, and 3

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a January 14, 2022, request from Arizona Public Service Company (the licensee), as supplemented by letter dated February 22, 2022. The licensee requested an exemption from NRC regulations to remove the diverse auxiliary feedwater actuation system using the risk-informed process for evaluations for Palo Verde Nuclear Generating Station, Units 1, 2, and 3.

**DATES:** The exemption was issued on March 23, 2022.

**ADDRESSES:** Please refer to Docket ID NRC–2022–0058 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0058. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The request for the exemption was submitted by letter dated January 14, 2022, as supplemented by letter dated February 22, 2022, and are available in ADAMS under Accession Nos. ML22014A415 and ML22053A212, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Siva P. Lingam, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1564, email: *Siva.Lingam@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The text of the exemption is attached.

Dated: March 24, 2022.

For the Nuclear Regulatory Commission.

**Siva P. Lingam,**

*Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

**Attachment: Exemption**

**NUCLEAR REGULATORY COMMISSION**

**Docket Nos. STN 50–528, STN 50–529, and STN 50–530**

**Arizona Public Service Company, Palo Verde Nuclear Generating Station, Units 1, 2, and 3 Exemption**

## I. Background

Arizona Public Service Company (APS, the licensee) is the holder of Renewed Facility Operating License Nos. NPF–41, NPF–51, and NPF–74, which authorize operation of Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (Palo Verde), respectively. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC) now or hereafter in effect. The facility consists of pressurized-water reactors (PWRs) located in Maricopa County, Arizona.

## II. Request/Action

By application dated January 14, 2022, as supplemented by letter dated February 22, 2022 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML22014A415 and ML22053A212, respectively), APS, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.12, ''Specific exemptions,'' requested an exemption from certain requirements of 10 CFR 50.62, ''Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants,'' for Palo Verde. Specifically, the proposed exemption request would permit Palo Verde Units 1, 2, and 3 to eliminate the specific requirement of 10 CFR 50.62(c)(1) to provide equipment that is diverse from the reactor trip system to automatically initiate the auxiliary (or emergency) feedwater system under conditions indicative of an ATWS. The Palo Verde diverse auxiliary feedwater actuation system (DAFAS) fulfills this requirement in 10 CFR 50.62(c)(1), and APS has requested approval to allow elimination of DAFAS from the current licensing basis for Units 1, 2, and 3 consistent with the proposed exemption. Palo Verde will continue to comply with the additional requirement in 10 CFR 50.62(c)(1) to provide a diverse turbine trip under ATWS conditions.

## III. Discussion

The regulation in 10 CFR 50.62(c)(1) states:

> Each pressurized water reactor must have equipment from sensor output to final actuation device, that is diverse from the reactor trip system, to automatically initiate the auxiliary (or emergency) feedwater system and initiate a turbine trip under conditions indicative of an ATWS. This equipment must be designed to perform its function in a reliable manner and be independent (from sensor output to the final actuation device) from the existing reactor trip system.

The regulation in 10 CFR 50.62(c)(1) specifically includes the requirement to provide equipment that is diverse from the reactor trip system to automatically initiate the auxiliary (or emergency) feedwater system under the conditions of an ATWS. The Palo Verde DAFAS fulfills this requirement. Therefore, the proposed removal of the DAFAS from the Palo Verde licensing basis requires an exemption from this section of the regulations.

Pursuant to 10 CFR 50.12, the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from requirements of 10 CFR part 50 when: (1) The exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security, and (2) special circumstances, as defined in 10 CFR 50.12(a)(2), are present. The licensee's submittal identifies in particular that the special circumstance associated with this exemption request is that continuing to maintain the DAFAS in the licensing basis for Palo Verde Units 1, 2, and 3 represents an undue hardship in accordance with 10 CFR 50.12(a)(2)(iii) due to DAFAS' obsolescence.

### *A. The Exemption Is Authorized by Law*

The NRC has the authority under 10 CFR 50.12 to grant exemptions from the requirements of 10 CFR part 50 upon demonstration of proper justification. The licensee has requested a partial exemption to the requirement in 10 CFR 50.62(c)(1) to provide equipment to automatically initiate the auxiliary (or emergency) feedwater system under ATWS conditions that is diverse from the reactor trip system. The licensee will continue to meet all other requirements in 10 CFR 50.62(c)(1). As discussed below, the NRC staff determined that special circumstances exist, which support granting the proposed exemption. Furthermore, granting the exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

### *B. The Exemption Presents No Undue Risk to Public Health and Safety*

The NRC staff has concluded in the safety evaluation associated with this exemption under ADAMS Accession No. ML22054A005 (Enclosure 2) that the exemption represents low risk, is of minimal safety impact, and that adequate defense-in-depth and safety margins are preserved. DAFAS is not credited in the Palo Verde UFSAR Chapters 6 and 15 accident analyses for actuating AFS to remove residual heat. AFAS is the credited means for initiating AFS in the UFSAR analyses as well as in the Palo Verde PRA model and will be unaffected by the proposed removal of DAFAS. In addition, the NRC staff has concluded that it is acceptable for the licensee to credit existing operator manual actions within the emergency operating procedures to initiate AFS under ATWS conditions as defense-in-depth in support of the requested exemption. Thus, granting this exemption request will not pose undue risk to public health and safety.

### *C. The Exemption Is Consistent With the Common Defense and Security*

The proposed exemption will allow the removal of DAFAS from the licensing basis for Palo Verde Units 1, 2, and 3 as a diverse automatic actuation of AFS under ATWS conditions satisfying partial requirements of 10 CFR 50.62(c)(1). The NRC staff has reviewed the exemption request in the SE associated with this exemption. The NRC concluded in the associated SE that the licensee's submittal demonstrates that the reactor protection system, the engineered safety features actuation system (ESFAS) and AFAS, and the supplemental protection system (SPS) are designed and maintained with high reliability to preclude ATWS conditions and are monitored under 10 CFR 50.65, ''Requirements for monitoring the effectiveness of maintenance at nuclear power plants.'' The NRC staff also concluded that adequate defense-in-depth and safety margins will be preserved with the removal of DAFAS from the licensing basis for Palo Verde Units 1, 2, and 3. The licensee will continue to meet all other requirements in 10 CFR 50.62(c)(1). Further, the exemption does not involve security requirements and does not create a security risk. Therefore, the exemption is consistent with the common defense and security.

*D. Special Circumstances*

The licensee has asserted that continuing to maintain DAFAS in the plant licensing basis represents an undue hardship in accordance with 10 CFR 50.12(a)(2)(iii) due to its obsolescence. DAFAS is no longer supported by the vendor and spare parts are not readily available for the system. Significant engineering resources are required to reverse-engineer parts and frequent fiber optic communications problems often affect DAFAS system reliability. DAFAS operates on a vendor-supplied proprietary platform that is unique to Palo Verde. The vendor is no longer in business and Palo Verde can no longer obtain the Modicon programmable logic controllers, displays and associated equipment to maintain DAFAS. Since these replacement parts can no longer be obtained through generally available sources, the licensee has established that maintaining or replacing DAFAS in the given circumstances is a hardship. Furthermore, the Statement of Considerations associated with 10 CFR 50.62(c)(1) (49 FR 26038, dated June 26, 1984) state that the installation of diverse equipment to trip the turbine and initiate auxiliary feedwater have only a marginally favorable value/impact for Combustion Engineering plants such as Palo Verde. The NRC staff has concluded that the licensee has demonstrated that removal of DAFAS from the Palo Verde licensing basis represents low risk and only a minimal safety impact. Therefore, the maintaining or replacing of DAFAS in the given circumstances is an undue hardship on the licensee. For these reasons, granting an exemption to allow removal of DAFAS from the Palo Verde licensing basis supports the claimed special circumstance of undue hardship.

*E. Supplemental Information*

For more technical details, refer to the SE associated with this exemption under ADAMS Accession No. ML22054A005 (Enclosure 2).

*F. Environmental Considerations*

The NRC staff determined in the associated SE that the exemption discussed herein meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(9) because the granting of this exemption involves: (i) No significant hazards consideration, (ii) no significant change in the types or a significant increase in the amounts of any effluents that may be released offsite, and (iii) no significant increase in individual or cumulative occupational radiation exposure. Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's consideration of this exemption request.

**IV. Conclusions**

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants APS an exemption from the specific requirement of 10 CFR 50.62(c)(1) to provide equipment that is diverse from the reactor trip system to automatically initiate the auxiliary (or emergency) feedwater system under conditions indicative of an ATWS. As stated above, APS will continue to meet all other requirements of 10 CFR 50.62(c)(1) at Palo Verde Units 1, 2, and 3.

Dated at Rockville, Maryland, this 23rd day of March 2022.

For the Nuclear Regulatory Commission.

/RA/

Gregory F. Suber,

*Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2022–06619 Filed 3–29–22; 8:45 am]

**BILLING CODE 7590–01–P**

## PENSION BENEFIT GUARANTY CORPORATION

### Proposed Submission of Information Collection for OMB Review; Comment Request; Administrative Appeals

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of intent to request extension of OMB approval of information collection.

**SUMMARY:** The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of a collection of information contained its regulation on Rules for Administrative Review of Agency Decisions. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

**DATES:** Comments must be submitted on or before May 31, 2022.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: paperwork.comments@pbgc.gov.* Refer to OMB control number 1212–0061 in the subject line.
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026.

Commenters are strongly encouraged to submit public comments electronically. PBGC expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

All submissions received must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and refer to OMB control number 1212–0061. All comments received will be posted without change to PBGC's website, *http://www.pbgc.gov,* including any personal information provided. Commenters should not include any information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (''confidential business information''). Submission of confidential business information without a request for protected treatment constitutes a waiver of any claims of confidentiality.

Copies of the collection of information may be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, or calling 202–229–4040 during normal business hours. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

**FOR FURTHER INFORMATION CONTACT:** Melissa Rifkin (*rifkin.melissa@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026; 202–229–6563. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

**SUPPLEMENTARY INFORMATION:** The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of a collection of information contained in its regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) (OMB control number 1212–0061;

expires July 31, 2022). This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) prescribes rules governing the issuance of initial determinations by PBGC and the procedures for requesting and obtaining administrative review of initial determinations. Certain types of initial determinations are subject to administrative appeals, which are covered in subpart D of the regulation. Subpart D prescribes rules on who may file appeals, when and where to file appeals, contents of appeals, and other matters relating to appeals. Most appeals filed with PBGC are filed by individuals (participants, beneficiaries, and alternate payees) in connection with benefit entitlement or amounts. A small number of appeals are filed by companies in connection with other matters, such as plan coverage under section 4021 of ERISA or liability under sections 4062(b)(1), 4063, or 4064. For appeals of benefit determinations, PBGC has optional forms for filing appeals (Form 724) and requests for extensions of time to appeal (Form 723). PBGC needs the required information to resolve matters raised in appeals of PBGC's initial determinations.

PBGC is proposing some minor editorial and formatting changes to Forms 723 and 724. In addition, it is proposing to make the forms fillable online. These are intended to make the forms easier for appellants to complete.

The collection of information under the regulation has been approved under OMB control number 1212–0061 (expires July 31, 2022). PBGC intends to request that OMB extend its approval for another 3 years. 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.

PBGC estimates that each year there will be 300 appeals and 75 requests for extensions filed annually under this regulation. The total estimated annual burden of the collection of information is 293 hours and $37,400.

PBGC is soliciting public comments to—

- 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 methodologies and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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.

Issued in Washington, DC, by:

**Hilary Duke,**

*Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.*

[FR Doc. 2022–06618 Filed 3–29–22; 8:45 am]

BILLING CODE 7709–02–P

## POSTAL REGULATORY COMMISSION

**[Docket No. CP2019–161]**

## New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filings, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* April 1, 2022.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction
II. Docketed Proceeding(s)

### I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

### II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2019–161; *Filing Title:* USPS Notice of Amendment to Priority Mail Contract 530, Filed Under Seal; *Filing Acceptance Date:* March 24, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* April 1, 2022.

This Notice will be published in the **Federal Register**.

**Erica A. Barker,**

*Secretary.*

[FR Doc. 2022–06709 Filed 3–29–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

## POSTAL SERVICE

### International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

**DATES:** *Date of notice:* March 30, 2022.

**FOR FURTHER INFORMATION CONTACT:** Christopher C. Meyerson, (202) 268–7820.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 23, 2022, it filed with the Postal Regulatory Commission a *USPS Request To Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 4 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–47 and CP2022–52.

**Joshua J. Hofer,**

*Attorney, Ethics & Legal Compliance.*

[FR Doc. 2022–06698 Filed 3–29–22; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–239, OMB Control No. 3235–0224]**

### Submission for OMB Review; Comment Request; Extension: Rule 17j–1

*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. 350l–3520), 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 for extension and approval.

Conflicts of interest between investment company personnel (such as portfolio managers) and their funds can arise when these persons buy and sell securities for their own accounts (''personal investment activities''). These conflicts arise because fund personnel have the opportunity to profit from information about fund transactions, often to the detriment of fund investors. Beginning in the early 1960s, Congress and the Securities and Exchange Commission (''Commission'') sought to devise a regulatory scheme to effectively address these potential conflicts. These efforts culminated in the addition of section 17(j) to the Investment Company Act of 1940 (the ''Investment Company Act'') (15 U.S.C. 80a–17(j)) in 1970 and the adoption by the Commission of rule 17j–1 (17 CFR 270.17j–1) in 1980.[1] The Commission proposed amendments to rule 17j–1 in 1995 in response to recommendations made in the first detailed study of fund policies concerning personal investment activities by the Commission's Division of Investment Management since rule 17j–1 was adopted. Amendments to rule 17j–1, which were adopted in 1999, enhanced fund oversight of personal investment activities and the board's role in carrying out that oversight.[2] Additional amendments to rule 17j–1 were made in 2004, conforming rule 17j–1 to rule 204A–1 under the Investment Advisers Act of 1940 (15 U.S.C. 80b), avoiding duplicative reporting, and modifying certain definitions and time restrictions.[3]

Section 17(j) makes it unlawful for persons affiliated with a registered investment company (''fund'') or with the fund's investment adviser or principal underwriter (each a ''17j–1 organization''), in connection with the purchase or sale of securities held or to be acquired by the investment company, to engage in any fraudulent, deceptive, or manipulative act or practice in contravention of the Commission's rules and regulations. Section 17(j) also authorizes the Commission to promulgate rules requiring 17j–1 organizations to adopt codes of ethics.

In order to implement section 17(j), rule 17j–1 imposes certain requirements on 17j–1 organizations and ''Access Persons''[4] of those organizations. The rule prohibits fraudulent, deceptive or manipulative acts by persons affiliated with a 17j–1 organization in connection with their personal securities transactions in securities held or to be acquired by the fund. The rule requires each 17j–1 organization, unless it is a money market fund or a fund that does not invest in Covered Securities,[5] to: (i) Adopt a written codes of ethics, (ii) submit the code and any material changes to the code, along with a certification that it has adopted procedures reasonably necessary to prevent Access Persons from violating the code of ethics, to the fund board for approval, (iii) use reasonable diligence and institute procedures reasonably necessary to prevent violations of the code, (iv) submit a written report to the fund describing any issues arising under the code and procedures and certifying that the 17j–1 entity has adopted procedures reasonably necessary to prevent Access Persons form violating the code, (v) identify Access Persons and notify them of their reporting obligations, and (vi) maintain and make available to the Commission for review certain records related to the code of ethics and transaction reporting by Access Persons.

The rule requires each Access Person of a fund (other than a money market fund or a fund that does not invest in Covered Securities) and of an investment adviser or principal underwriter of the fund, who is not subject to an exception,[6] to file: (i)

[1] Prevention of Certain Unlawful Activities with Respect to Registered Investment Companies, Investment Company Act Release No. 11421 (Oct. 31, 1980) (45 FR 73915 (Nov. 7, 1980)).

[2] Personal Investment Activities of Investment Company Personnel, Investment Company Act Release No. 23958 (Aug. 20, 1999) (64 FR 46821 (Aug. 27, 1999)).

[3] Investment Adviser Codes of Ethics, Investment Advisers Act Release No. 2256 (Jul. 2, 2004) (69 FR 41696 (Jul. 9, 2004)).

[4] Rule 17j–1(a)(1) defines an ''access person'' as ''Any Advisory Person of a Fund or of a Fund's investment adviser. If an investment adviser's primary business is advising Funds or other advisory clients, all of the investment adviser's directors, officers, and general partners are presumed to be Access Persons of any Fund advised by the investment adviser. All of a Fund's directors, officers, and general partners are presumed to be Access Persons of the Fund.'' The definition of Access Person also includes ''Any director, officer or general partner of a principal underwriter who, in the ordinary course of business, makes, participates in or obtains information regarding, the purchase or sale of Covered Securities by the Fund for which the principal underwriter acts, or whose functions or duties in the ordinary course of business relate to the making of any recommendation to the Fund regarding the purchase or sale of Covered Securities.'' Rule 17j–1(a)(1).

[5] A ''Covered Security'' is any security that falls within the definition in section 2(a)(36) of the Act, except for direct obligations of the U.S. Government, bankers' acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements, and shares issued by open-end funds. Rule 17j–1(a)(4).

[6] Rule 17j–1(d)(2) contains the following exceptions: (i) An Access Person need not file a report for transactions effected for, and securities held in, any account over which the Access Person does not have control; (ii) an independent director

Within 10 days of becoming an Access Person, a dated initial holdings report that sets forth certain information with respect to the Access Person's securities and accounts; (ii) dated quarterly transaction reports within 30 days of the end of each calendar quarter providing certain information with respect to any securities transactions during the quarter and any account established by the Access Person in which any securities were held during the quarter; and (iii) dated annual holding reports providing information with respect to each Covered Security the Access Person beneficially owns and accounts in which securities are held for his or her benefit. In addition, rule 17j–1 requires investment personnel of a fund or its investment adviser, before acquiring beneficial ownership in securities through an initial public offering (IPO) or in a private placement, to obtain approval from the fund or the fund's investment adviser.

The requirements that the management of a rule 17j–1 organization provide the fund's board with new and amended codes of ethics and an annual issues and certification report are intended to enhance board oversight of personal investment policies applicable to the fund and the personal investment activities of Access Persons. The requirements that Access Persons provide initial holdings reports, quarterly transaction reports, and annual holdings reports and request approval for purchases of securities through IPOs and private placements are intended to help fund compliance personnel and the Commission's examinations staff monitor potential conflicts of interest and detect potentially abusive activities. The requirement that each rule 17j–1 organization maintain certain records is intended to assist the organization and the Commission's examinations staff in determining if there have been violations of rule 17j–1.

We estimate that annually there are approximately 85,297 respondents under rule 17j–1, of which 15,297 are rule 17j–1 organizations and 70,000 are Access Persons. In the aggregate, these respondents make approximately 107,363 responses annually. We estimate that the total annual burden of complying with the information collection requirements in rule 17j–1 is approximately 376,628 hours. This hour burden represents time spent by Access Persons that must file initial and annual holdings reports and quarterly transaction reports, investment personnel that must obtain approval before acquiring beneficial ownership in any securities through an IPO or private placement, and the responsibilities of Rule 17j–1 organizations arising from information collection requirements under rule 17j–1. These include notifying Access Persons of their reporting obligations, preparing an annual rule 17j–1 report and certification for the board, documenting their approval or rejection of IPO and private placement requests, maintaining annual rule 17j–1 records, maintaining electronic reporting and recordkeeping systems, amending their codes of ethics as necessary, and, for new fund complexes, adopting a code of ethics.

We estimate that there is an annual cost burden of approximately $5,000 per fund complex, for a total of $4,020,000 associated with complying with the information collection requirements in rule 17j–1. This represents the costs of purchasing and maintaining computers and software to assist funds in carrying out rule 17j–1 recordkeeping.

These burden hour and cost estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. 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 control number. Rule 17j–1 requires that records be maintained for at least five years in an easily accessible place.[7]

*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 by May 31, 2022.

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: March 25, 2022.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06706 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

of the fund, who would otherwise be required to report solely by reason of being a fund director and who does not have information with respect to the fund's transactions in a particular security, does not have to file an initial holdings report or a quarterly transaction report; (iii) an Access Person of a principal underwriter of the fund does not have to file reports if the principal underwriter is not affiliated with the fund (unless the fund is a unit investment trust) or any investment adviser of the fund and the principal underwriter of the fund does not have any officer, director, or general partner who serves in one of those capacities for the fund or any investment adviser of the fund; (iv) an Access Person to an investment adviser need not make quarterly reports if the report would duplicate information provided under the reporting provisions of the Investment Adviser's Act of 1940; (v) an Access Person need not make quarterly transaction reports if the information provided in the report would duplicate information received by the 17j–1 organization in the form of broker trade confirmations or account statements or information otherwise in the records of the 17j–1 organization; and (vi) an Access Person need not make quarterly transaction reports with respect to transactions effected pursuant to an Automatic Investment Plan.

[7] If information collected pursuant to the rule is reviewed by the Commission's examination staff, it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program. See section 31(c) of the Investment Company Act (15 U.S.C. 80a–30(c)).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94492; File No. SR–NASDAQ–2022–020]**

## Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4756(a)(3), in Light of Planned Changes to the System as Well as To Address Existing Issues

March 23, 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 March 11, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Rule 4756(a)(3), in light of planned changes to the System as well as to address existing issues, as described further below. 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*

Presently, the Exchange is making functional enhancements and improvements to specific Order Types [3] and Order Attributes [4] that are currently only available via the RASH Order entry protocol.[5] Specifically, the Exchange will be upgrading the logic and implementation of these Order Types and Order Attributes so that the features are more streamlined across the Nasdaq Systems and order entry protocols, and will enable the Exchange to process these Orders more quickly and efficiently. Additionally, this System upgrade will pave the way for the Exchange to enhance the OUCH Order entry protocol [6] so that Participants may enter such Order Types and Order Attributes via OUCH, in addition to the RASH Order entry protocol.[7] The Exchange plans to implement its enhancement of the OUCH protocol sequentially, by Order Type and Order Attribute.[8]

To support and prepare for these upgrades and enhancements, the Exchange previously submitted four rule filings to the Commission that amended its rules pertaining to, among other things, Market Maker Peg Orders, Orders with Reserve Size, Orders with Pegging and Trade Now Attributes, and Discretionary Orders.[9] The Exchange now proposes to amend Rule 4756(a)(3), which governs the entry of Orders, so that it aligns with how the System, once upgraded, will handle the partial cancellation of Orders to reduce their share size. The proposed filing also addresses issues with the existing Rule text and the current implementation of that Rule text by the System.

In pertinent part, existing Rule 4756(a)(3) states as follows, with respect how the Exchange handles partial Order cancellations to reduce share size:

> In addition, a partial cancellation of an Order to reduce its share size will not affect the priority of the Order on the book; provided, however, that such a partial cancellation may not be made with respect to an MOO Order, an LOO Order, an OIO Order, an MOC Order, an LOC Order, an IO Order, or a Pegged Order (including a Discretionary Order that is Pegged).

The first clause of this text states the general rule that participants may instruct the Exchange to partially cancel their Orders to reduce share size, and when handling such partial cancellation instructions, the Exchange will adjust the size of the Orders without affecting their existing priority. The second clause states an exception to this general rule, which the Exchange intends to mean that when the Exchange processes partial cancellations of Market On Open (''MOO''), Limit on Open (''LOO''), Opening Imbalance Only (''OIO''), Market on Close (''MOC''), Limit on Close (''LOC''), and Imbalance Only Orders (''IO''), as well as Orders with the Pegging Attribute (including Discretionary Orders with Pegging) that participants enter via RASH or FIX or QIX (as opposed to OUCH or FLITE), the partially cancelled Orders will lose their priority.

Going forward, planned upgrades will provide for the Exchange to process partial cancellations of all Order Types and Attributes entered through all of its available and applicable Order Entry Protocols, including RASH, OUCH, FIX, QIX and FLITE,[10] and it will do so without loss of priority, such that the existing exception to the general rule in 4756(a)(3) will no longer be necessary. Thus, the Exchange proposes to eliminate this exception by deleting the following text from the Rule: ''provided, however, that such a partial cancellation may not be made with respect to an MOO Order, an LOO Order, an OIO Order, an MOC Order, an LOC Order, an IO Order, or a Pegged Order (including a Discretionary Order that is Pegged).'' This proposal will provide better outcomes to participants by enabling them to reduce the share size of their Orders without the need to sacrifice the priority of their Orders.

The Exchange believes that it is reasonable to allow the partial

[3] An ''Order Type'' is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. *See* Equity 1, Section 1(a)(7).

[4] An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. *See id.*

[5] The RASH (Routing and Special Handling) Order entry protocol is a proprietary protocol that allows members to enter Orders, cancel existing Orders and receive executions. RASH allows participants to use advanced functionality, including discretion, random reserve, pegging and routing. *See http://nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/rash_sb.pdf.*

[6] The OUCH Order entry protocol is a Nasdaq proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from members, and if there are matching Orders, they will execute. Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for members to send Orders and receive status updates on those Orders. *See https://www.nasdaqtrader.com/Trader.aspx?id=OUCH.*

[7] The Exchange designed the OUCH protocol to enable members to enter Orders quickly into the System. As such, the Exchange developed OUCH with simplicity in mind, and it therefore lacks more complex order handling capabilities. By contrast, the Exchange specifically designed RASH to support advanced functionality, including discretion, random reserve, pegging and routing. Once the System upgrades occur, then the Exchange intends to propose further changes to its Rules to permit participants to utilize OUCH, in addition to RASH, to enter order types that require advanced functionality.

[8] The Exchange notes that its sister exchanges, Nasdaq BX and Nasdaq PSX, plan to file similar proposed rule changes with the Commission shortly. However, certain Order Types affected by the proposed rule change are associated with the Nasdaq Opening and Closing Crosses (LOC, MOC, LOO, MOO, IO, and OIO Orders, discussed below), and thus are not applicable to either Nasdaq BX or Nasdaq PSX.

[9] *See* Securities Exchange Act Release No. 34–93245 (October 4, 2021), 86 FR 56302 (October 8, 2021) (SR–NASDAQ–2021–075); Securities Exchange Act Release No. 34–92180 (June 15, 2021), 86 FR 33420 (June 24, 2021) (SR–NASDAQ–2021–044); Securities Exchange Act Release No. 34–91109 (February 11, 2021), 86 FR 10141 (February 18, 2021) (SR–NASDAQ–2020–090); Securities Exchange Act Release No. 34–90389 (November 10, 2020), 85 FR 73304 (November 17, 2020) (SR–NASDAQ–2020–071).

[10] The Exchange notes that while the QIX Order Entry Protocol still exists, the Exchange plans to retire it in the near future and has begun transitioning participants away from its use.

cancellation of an Order without the Order losing priority because the participant that entered the Order continues to express its willingness to trade at the price entered when the Order first came onto the Book. Moreover, if the Order is displayed, other participants quoting at the same price are aware of the priority of their Orders relative to the partially cancelled Order. While a partial cancellation may provide these other participants with greater opportunities to provide a fill, the Exchange does not believe that it would be reasonable for these participants to jump ahead of an Order with time priority merely because the size of the Order has been reduced. Similarly, if the partially cancelled Order is non-displayed, other participants would have no awareness of its price, its original size, or its reduced size. Again, while other participants at that price may have an increased opportunity to provide a fill when the Order's size is reduced, they would not have an expectation that the priority of their Orders would change vis-à-vis that of an Order that arrived on the Book at an earlier time.

Moreover, the Exchange notes that the proposal will simplify and harmonize the Exchange's processing of partial cancellations across its Order Entry Protocols.

Additionally, the proposed Rule change will address ambiguities in the existing Rule text. The existing Rule text does not state expressly the Exchange's current practice of restricting the loss of priority following a partial cancellation to LOO, MOO, MOC, LOC, and Pegged Orders when such Orders are entered through RASH or FIX or QIX. The existing language suggests that partial cancellations of these Orders cause a loss of priority in all cases, regardless of the Exchange's Order Entry Protocol utilized to enter the Orders. In fact, the Exchange does process partial cancellations of these Orders without loss of priority when the Orders are entered through OUCH and FLITE. The proposed Rule change will address this issue by providing for consistent handling of partial cancellations across all Orders and all applicable and available Order Entry Protocols and by eliminating exceptions in the existing Rule text.

Similarly, the existing Rule is ambiguous as to the intended scope of its exception to the general rule for ''Pegged Orders.'' Although the Rule states that the exception applies to ''Pegged Orders (including a Discretionary Order that is Pegged),'' the Exchange does not intend for Orders with Midpoint Pegging to be part of this exception, and it applies the Rule accordingly. In other words, the Exchange processes partial cancellations for Orders with Midpoint Pegging (*i.e.,* Midpoint Peg Post-Only Orders, Midpoint Extended Life Orders, and Midpoint Extended Life Plus Continuous Book Orders, as well as Non-Display Orders assigned the Midpoint Peg Attribute) without loss of priority. The Exchange recognizes that the Rule text does not specifically address Orders with Midpoint Pegging. Again, the proposed Rule change will eliminate this issue going forward because the Exchange will adopt consistent handling of partial cancellations across all Orders and available and applicable Order Entry Protocols.

Finally, the proposed Rule change will address a problem that the Exchange has uncovered with the manner in which the System presently processes OIO and IO Orders entered though RASH and FIX and QIX. As noted above, the Exchange intends for the existing Rule to mean that partially cancelled OIO and IO Orders entered through RASH or FIX or QIX lose priority. Nevertheless, the Exchange discovered, during the course of preparing its upgrades that the System presently processes partial cancellations of OIO and IO Orders entered through RASH or FIX or QIX without loss of priority. The Exchange believes that the proposed Rule will render the existing Rule text problem moot, and will better serve participants by improving the efficiency of their activity on the Exchange as well as their potential outcomes.

The Exchange intends to implement the foregoing changes during the Second Quarter of 2022. The Exchange will issue an Equity Trader Alert at least 7 days in advance of implementing the changes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] 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.

The Exchange believes that its proposed amendment to Rule 4756(a)(3) is consistent with the Act. Eliminating the exception to the general Rule providing for the Exchange to process partial cancellations without loss of priority will benefit participants by enabling them to reduce the share size of their Orders without the need to sacrifice the priority of their Orders.

The Exchange believes that it is reasonable to allow the partial cancellation of an Order without the Order losing priority because the participant that entered the Order continues to express its willingness to trade at the price entered when the Order first came onto the Book. Moreover, if the Order is displayed, other participants quoting at the same price are aware of the priority of their Orders relative to the partially cancelled Order. While a partial cancellation may provide these other participants with greater opportunities to provide a fill, the Exchange does not believe that it would be reasonable for these participants to jump ahead of an Order with time priority merely because the size of the Order has been reduced. Similarly, if the partially cancelled order is non-displayed, other participants would have no awareness of its price, its original size, or its reduced size. Again, while other participants at that price may have an increased opportunity to provide a fill when the Order's size is reduced, they would not have an expectation that the priority of their Orders would change vis-à-vis that of an Order that arrived on the Book at an earlier time.

Moreover, the proposal will simplify and harmonize the Exchange's processing of partial cancellations across its Order Entry Protocols. This proposed amendment reflects planned upgrades that will allow the Exchange to process partial cancellation of Orders entered through all pertinent and available Order Entry Protocols without loss of priority.

Additionally, the proposed Rule change is consistent with the Act because it will eliminate ambiguities in the existing Rule text that do not fully reflect the Exchange's intended meaning or application of the Rule. As noted above, the existing Rule text does not state that the Exchange limits the loss of priority for partially cancelled Orders to LOO, MOO, MOC, LOC, and Pegged Orders when such Orders are entered through RASH or FIX or QIX. The existing language suggests that partial cancellations of these Orders lose priority in all cases, regardless of the Exchange's Order Entry Protocol utilized to enter the Orders. In fact, the Exchange does process partial cancellations of these Orders without loss of priority when the Orders are entered through OUCH or FLITE. The

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

proposed Rule change will address this issue by providing for consistent handling of partial cancellations across all applicable and available Orders and Order Entry Protocols and by eliminating exceptions in the existing Rule text.

Similarly, the existing Rule does not reflect the Exchange's intent that Orders with Midpoint Pegging are not included in this exception, even though it applies the Rule in this manner. In other words, the Exchange processes partial cancellations for Midpoint Pegging Orders without loss of priority. The Exchange recognizes that the Rule text does not specifically address Orders with Midpoint Pegging. Again, the proposed Rule change will eliminate this issue going forward because the Exchange will adopt consistent handling of partial cancellations across all Orders and applicable and available Order Entry Protocols.

The proposed Rule change is consistent with the Act because it will address a problem that the Exchange has uncovered with the manner in which the System presently processes OIO and IO Orders entered though RASH and FIX and QIX. As noted above, the Exchange intends for the existing Rule to mean that partially cancelled OIO and IO Orders entered through RASH or FIX or QIX lose priority. Nevertheless, during the course of preparing its upgrades, the Exchange discovered that the System presently does process partial cancellations of OIO and IO Orders entered through RASH and FIX and QIX without loss of priority. The Exchange believes that the proposed Rule will render the existing Rule text problem moot, and will better serve participants by improving the efficiency of their activity on the Exchange as well as their potential outcomes. Furthermore, it is consistent with the Act to ensure that the Exchange's Rules and practices are, and remain, in sync.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that its proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As a general principle, the proposed changes are reflective of the significant competition among exchanges and non-exchange venues for order flow. In this regard, proposed changes that facilitate enhancements to the Exchange's System and Order Entry Protocols as well as those that amend and clarify the Exchange's Rules regarding its Order Types and Attributes, are pro-competitive because they bolster the efficiency, integrity, and overall attractiveness of the Exchange in an absolute sense and relative to its peers.

Moreover, the proposed changes will not unduly burden intra-market competition among various Exchange participants. The Exchange's proposal to allow the partial cancellation of an Order without the Order losing priority will not impact intra-market competition because the participant that entered the Order continues to express its willingness to trade at the price entered when the Order first came onto the Book. Moreover, if the Order is displayed, other participants quoting at the same price are aware of the priority of their Orders relative to the partially cancelled Order. While a partial cancellation may provide these other participants with greater opportunities to provide a fill, the Exchange does not believe that it would be reasonable for these participants to jump ahead of an Order with time priority merely because the size of the Order has been reduced. Similarly, if the partially cancelled Order is non-displayed, other participants would have no awareness of its price, its original size, or its reduced size. Again, while other participants at that price may have an increased opportunity to provide a fill when the Order's size is reduced, they would not have an expectation that the priority of their Orders would change vis-à-vis that of an Order that arrived on the Book at an earlier time.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) 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–NASDAQ–2022–020 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2022–020. 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

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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–2022–020, and should be submitted on or before April 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06511 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94497; File No. SR–FICC–2021–009]**

## Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Enhance Capital Requirements and Make Other Changes

March 23, 2022.

### I. Introduction

On December 13, 2021, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2021–009 (the ''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on December 29, 2021,[3] and the Commission received no comment letters regarding the changes proposed in the Proposed Rule Change.

On January 26, 2022, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[5] This order institutes proceedings, pursuant to Section 19(b)(2)(B) of the Act,[6] to determine whether to approve or disapprove the Proposed Rule Change.

### II. Summary of the Proposed Rule Change

As described in the Notice, FICC proposes to amend the Government Securities Division (''GSD'') Rulebook (the ''GSD Rules'') and the Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (the ''MBSD Rules,'' and together with the GSD Rules, the ''Rules'') of FICC in order to (1) revise its capital requirements for GSD members and MBSD members (collectively, ''members''), (2) streamline its two credit risk monitoring systems, Watch List and enhanced surveillance list, and (3) make certain other clarifying, technical, and supplementary changes to implement items (1) and (2).[7]

First, FICC proposes to revise various aspects of its capital requirements for several types of members. FICC proposes to increase minimum capital requirements for certain members. FICC also proposes to revise how it measures certain members' capital by incorporating common equity tier 1 capital and the standards established in the capital adequacy rules and regulations of the Federal Deposit Insurance Corporation. FICC would revise the reporting requirements concerning the capital requirements for certain members. In addition, for certain types of members who currently do not have specific amounts for their minimum capital requirements, the proposal would establish such a requirement.

Second, FICC proposes to revise its Watch List and enhanced surveillance list, which are both currently used to identify participants who would receive additional or enhanced credit risk monitoring. FICC proposes to revise its Watch List and delete its enhanced surveillance list. FICC also proposes to clarify that members on the Watch List are reported to FICC's management committees and regularly reviewed by FICC's senior management.

Third, FICC proposes to (1) revise or add headings and sub-headings and renumbering sections as appropriate, (2) revise defined terms and add appropriate defined terms to facilitate the proposed changes, (3) rearrange and consolidate paragraphs to promote readability, (4) fix typographical and other errors, and (5) other changes in order to improve the accessibility and transparency of the Rules.

### III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [8] 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. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, providing the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Act,[9] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Act,[10] and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Act,[11] which requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and to protect investors and the public interest;
- Section 17A(b)(3)(I) of the Act,[12] which requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act;
- Rule 17Ad–22(e)(18) under the Act,[13] which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 93857 (December 22, 2021), 86 FR 74130 (December 29, 2021) (SR–FICC–2021–009) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] Securities Exchange Act Release No. 94066 (January 26, 2022), 87 FR 5523 (February 1, 2022) (SR–FICC–2021–009).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] The description of the Proposed Rule Change is based on the statements prepared by FICC in the Notice. *See* Notice, *supra* note 3. Capitalized terms used herein and not otherwise defined herein are defined in the Rules, *available at https://www.dtcc.com/legal/rules-and-procedures.*

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *Id.*

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 15 U.S.C. 78q–1(b)(3)(I).

[13] 17 CFR 240.17Ad–22(e)(18).

open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.

**IV. 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 Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act,[14] Section 17A(b)(3)(I) of the Act,[15] Rule 17Ad–22(e)(18) under the Act,[16] or any other provision of the Act, or the rules and regulations thereunder.

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change should be approved or disapproved by April 20, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 4, 2022.

The Commission asks that commenters address the sufficiency of FICC's statements in support of the Proposed Rule Change, which are set forth in the Notice,[17] in addition to any other comments they may wish to submit about the Proposed Rule Change.

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–FICC–2021–009 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–FICC–2021–009. 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 FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2021–009 and should be submitted on or before April 20, 2022. Rebuttal comments should be submitted by May 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06515 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee

[18] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94496; File No. SR–CboeEDGX–2022–004]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Codify Certain Practices and Requirements Related to the Exchange's Port Message Rate Thresholds

March 23, 2022.

On January 21, 2022, Cboe EDGX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to codify certain practices and requirements related to the Exchange's port message rate thresholds. The proposed rule change was published for comment in the **Federal Register** on February 9, 2022.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is March 26, 2022. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates May 10, 2022 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeEDGX–2022–004).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06514 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94144 (February 3, 2022), 87 FR 7519.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94511; File No. SR–CboeBZX–2022–021]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

March 24, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 14, 2022, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided as Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its fee schedule for its equity options platform (''BZX Options'') to adopt fees for Certification Logical Port fees, effective March 1, 2022.[3]

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange's System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports,[4] Logical Ports with Bulk Quoting Capabilities,[5] Purge Ports,[6] GRP Ports and Multicast PITCH Server Ports.[7] For each type of the aforementioned logical ports that is used in the production environment, the Exchange also offers corresponding ports which provide Members and non-Members access to the Exchange's certification environment to test proprietary systems and applications (*i.e.,* ''Certification Logical Ports''). The certification environment facilitates testing using replicas of the Exchange's production environment process configurations which provide for a robust and realistic testing experience. For example, the certification environment allows unlimited firm-level testing of order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancelations, and purge requests. Historically, the Exchange has not assessed fees for Certification Logical Ports. The Exchange now proposes to establish a monthly fee for Certification Logical Ports. Particularly, the Exchange proposes to adopt a monthly fee of $250 per Certification Logical Port. However, the Exchange notes that it will continue to offer free of charge one Certification Logical Port per logical port type offered in the production environment (*i.e.,* Logical Ports, Logical Ports with Bulk Quoting Capabilities, Purge Ports, GRP Ports and Multicast PITCH Server Ports) to each Member or non-Member, as applicable. Any additional Certification Logical Ports will be assessed $250 per month per port.[8] Additionally, Members and non-Members are not required to purchase any particular production logical port in order to receive a corresponding Certification Logical Port free of charge.[9] Further, the Exchange notes that purchasing additional Certification Logical Ports is voluntary and not required in order to participate in the production environment, including live production trading on the Exchange. The Exchange also notes that other exchanges similarly assess fees related to their respective testing environments.[10]

Lastly, the Exchange does not intend to prorate Certification Logical Ports for the first month of service and intends to make this clear in the notes section under the Options Logical Port Fees section of the Fees Schedule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[11] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and

[3] The Exchange initially filed the proposed fee changes on March 1, 2022 (SR–CboeBZX–2022–013). On March 14, 2022, the Exchange withdrew that filing and submitted this proposal.

[4] Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

[5] Bulk Quoting Capabilities Ports provide users with the ability to submit and update multiple bids and offers in one message through logical ports enabled for bulk-quoting.

[6] Purge Ports allow users to submit a cancelation for all open orders, or a subset thereof, across multiple sessions under the same Executing Firm ID (''EFID'').

[7] Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH data feeds.

[8] For example, if a Member maintains 3 FIX Certification Logical Ports, 1 Purge Certification Logical Port, and 1 set of Multicast PITCH Spin Server Certification Logical Port, the Member will be assessed $500 per month for Certification Logical Port Fees (*i.e.,* 1 FIX, 1 Purge and 1 set of Multicast PITCH Spin Server Certification Logical Ports × $0 and 2 FIX Certification Logical Ports × $250).

[9] For example, a Member may obtain a Certification Purge Port free of charge, even if that Member has not otherwise purchased a Purge Port for the live production environment. Certification Logical Ports are not automatically enabled for each User, but rather must be proactively requested by users.

[10] *See e.g.,* Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. *See also* MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[13] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As noted above, the Exchange's certification environment provides a robust and realistic testing experience using a replica of the Exchange's production environment process configurations. This environment enables market participants to manage risk more effectively through testing software development changes in certification prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. As such, the Exchange believes it's reasonable to adopt a Certification Logical Port fee as it better enables the Exchange to continue to maintain and improve its testing environment, which the Exchange believes serves to improve live production trading on the Exchange. The Exchange also believes the proposed Certification Logical Port fee is reasonable because while such ports will no longer be completely free, Members and non-Members will continue to be entitled to receive free of charge one Certification Logical Port for each type of logical port that are currently offered in the production environment. Notably, the Exchange believes one Certification Logical Port per logical port type will be sufficient for most users and indeed anticipates that the majority of users will not purchase additional Certification Logical Ports. More specifically, while the Exchange has no way of predicting with certainty the impact of the proposed changes, it anticipates approximately 17% of Users to be assessed fees for Certification Logical Ports (*i.e.,* request Certification Ports in excess of the Certification Logical Ports provided free of charge). For those users who wish to obtain additional Certification Logical Ports based on their respective business needs, they are able to do so for a modest fee. Indeed, the proposed fee is lower than the fees assessed for the corresponding logical ports used in the Exchange's production environment.[14] Additionally, the Exchange notes other exchanges similarly assess fees relating to their respective testing environments.[15] Further, the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.[16]

The Exchange believes the proposed fee is also equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to obtain additional Certification Logical Ports. The Exchange also believes the proposed fee is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to be efficient with their respective Certification Logical Port usage. Without some sort of fee for its Certification Logical Ports, the Exchange believes that Members and non-Members may be less efficient in testing their systems, potentially resulting in excessive time and resources being consumed by the Exchange in supporting testing and certifying Members and non-Members to the detriment of all market participants as Exchange resources are diverted away from other trading operations. Additionally, similar to its production environment, the Exchange's certification environment does not have unlimited system capacity to support unlimited testing. As such, the proposed fee structure also ensures that firms that use the most capacity pay for that capacity, rather than placing that burden on market participants that have more modest needs. The Exchange lastly believes that its proposed fee is aligned with the goals of the Commission in facilitating a competitive market for all firms that trade on the Exchange and of ensuring that critical market infrastructure has ''levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets.'' [17]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed fee creates an undue burden on competition because the Exchange will continue to offer free of charge one Certification Logical Port per each logical port type offered in the production environment. Although the Exchange now proposes to charge users for additional Certification Logical Ports, the Exchange believes without some sort of fee assessed for excess Certification Logical Ports, Members and non-Members may be less efficient in testing their systems, potentially resulting in excessive time and resources being consumed by the Exchange and also potentially impacting the certification environment's capacity thresholds. The proposed fee structure therefore would ensure that market participants that pay the proposed fee are the ones that demand the most resources from the Exchange. Also as discussed, the purchase of additional ports is optional and based on the business needs of each market participant. Moreover, such market participants will continue to benefit from access to the certification environment, which the Exchange believes provides a robust and realistic testing experience via a replica of the production environment.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's certification environment. Additionally, the Exchange notes that it operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges, as well as off-exchange venues, where competitive products are

[13] 15 U.S.C. 78f(b)(4).

[14] *See* Cboe BZX Options Fees Schedule, Options Logical Port Fees.

[15] *See e.g.,* Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. *See also* MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

[16] Although many Users use Certification Logical Ports on a daily basis, the Exchange notes frequency of use of Certification Logical Ports varies by User and depends on a User's business needs. To the extent a User purchases additional Certification Logical Ports and its respective needs change or it determines it no longer wishes to maintain excess Certification Logical Ports, the User is free to cancel such ports for the following month(s).

[17] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) (File No. S7–01–13) (Regulation SCI Adopting Release).

available for trading. Indeed, participants can readily choose to send their orders to other exchange, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [18] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[19] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [20] and paragraph (f) of Rule 19b–4 [21] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2022–021 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2022–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–021 and should be submitted on or before April 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06633 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

[18] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[19] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f).

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94516; File No. SR–NYSE–2021–42]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Withdrawal of Proposed Rule Change To Amend the Requirements of Section 102.06 of the NYSE Listed Company Manual To Allow an Acquisition Company To Contribute a Portion of Its Trust Account to a New Acquisition Company and Spin-Off the New Acquisition Company to Its Shareholders

March 24, 2022.

On August 23, 2021, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the requirements of Section 102.06 of the NYSE Listed Company Manual to allow an acquisition company to contribute a portion of the amount held in its trust account to a trust account of a new acquisition company and spin off the new acquisition company to its shareholders in certain situations. The proposed rule change was published for comment in the **Federal Register** on September 8, 2021.[3]

On September 30, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92839 (Sep. 1, 2021), 86 FR 50408. Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2021-42/srnyse202142.htm.*

[4] 15 U.S.C. 78s(b)(2).

determine whether to disapprove the proposed rule change.[5] On December 3, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On March 4, 2022, the Commission extended the period for consideration of the proposed rule change to May 6, 2022.[8] On March 21, 2022, the Exchange withdrew the proposed rule change (SR–NYSE–2021–42).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06638 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94504; File No. SR–OCC–2022–801]**

## Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Extension of Review Period of Advance Notice Concerning the Options Clearing Corporation's Margin Methodology for Incorporating Variations in Implied Volatility

March 24, 2022.

On January 24, 2022, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–OCC–2022–801 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i)[2] under the Securities Exchange Act of 1934 (''Exchange Act'')[3] to change quantitative models related to certain volatility products.[4] The Advance Notice was published for public comment in the **Federal Register** on February 11, 2022.[5] The Commission received a comment regarding the changes proposed in the Advance Notice.[6]

Section 806(e)(1)(G) of the Clearing Supervision Act provides that OCC may implement the changes if it has not received an objection to the proposed changes within 60 days of the later of (i) the date that the Commission receives the Advance Notice or (ii) the date that any additional information requested by the Commission is received,[7] unless extended as described below.

Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension.[8]

Here, as the Commission has not requested any additional information, the date that is 60 days after OCC filed the Advance Notice with the Commission is March 25, 2022. However, the Commission finds the issues raised by the Advance Notice complex because OCC proposes to change three models within its margin methodology, in part, to build the foundation for a single, consistent framework to model equity volatility products in margin and stress testing.[9] Therefore, the Commission finds it appropriate to extend the review period of the Advance Notice for an additional 60 days under Section 806(e)(1)(H) of the Clearing Supervision Act.[10]

Accordingly, the Commission, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[11] extends the review period for an additional 60 days so that the Commission shall have until May 24, 2022 to issue an objection or non-objection to advance notice SR–OCC–2022–801.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06627 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

[5] *See* Securities Exchange Act Release No. 93222, 86 FR 55671 (Oct. 6, 2021). The Commission designated December 7, 2021 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 93714, 86 FR 70150 (Dec. 9, 2021).

[8] *See* Securities Exchange Act Release No. 94362, 87 FR 13780 (Mar. 10, 2022).

[9] 17 CFR 200.30–3(a)(12).

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] *See* Notice of Filing *infra* note 5, at 87 FR 8063.

[5] Securities Exchange Act Release No. 94166 (Feb. 7, 2022), 87 FR 8063 (Feb. 11, 2022) (File No. SR–OCC–2022–801) (''Notice of Filing''). On January 24, 2022, OCC also filed a related proposed rule change (SR–OCC–2022–001) with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder (''Proposed Rule Change''). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. In the Proposed Rule Change, which was published in the **Federal Register** on February 11, 2022, OCC seeks approval of proposed changes to its rules necessary to implement the Advance Notice. Securities Exchange Act Release No. 94165 (Feb. 7, 2022), 87 FR 8072 (Feb. 11, 2022) (File No. SR–OCC–2022–001). The comment period for the related Proposed Rule Change filing closed on March 4, 2022.

[6] Since the proposal contained in the Advance Notice was also filed as a proposed rule change, all public comments received on the proposal are considered regardless of whether the comments are submitted on the Proposed Rule Change or the Advance Notice. Comments on the Proposed Rule Change are available at *https://www.sec.gov/comments/sr-occ-2022-001/srocc2022001.htm.*

[7] 12 U.S.C. 5465(e)(1)(G).

[8] 12 U.S.C. 5465(e)(1)(H).

[9] *See* Notice of Filing, 87 FR 8063.

[10] 12 U.S.C. 5465(e)(1)(H).

[11] *Id.*

[12] 17 CFR 200.30–3(a)(94).

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–604, OMB Control No. 3235–0657]**

## Proposed Collection; Comment Request; Extension: Form N–MFP and Rule 30b1–7

*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.*), the Securities and Exchange Commission (''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(b) of the Investment Company Act of 1940 (''Investment Company Act'')[1] provides that ''[e]very registered investment company shall file with the Commission . . . such information, documents, and reports (other than financial statements), as the Commission may require to keep reasonably current the information and documents contained in the registration statement of such company. . . .''[2] Rule 30b1–7 under the Investment Company Act, entitled ''Monthly Report for Money Market Funds,'' provides that every registered investment company, or series thereof, that is regulated as a money market funds under rule 2a–7[3] must file with the Commission a monthly report of portfolio holdings on Form N–MFP[4] no later than the fifth business day of each month.[5] Form N–

[1] 15 U.S.C. 80a–1 *et seq.*

[2] 15 U.S.C. 80a–29(b).

[3] 17 CFR 270.2a–7.

[4] 17 CFR 274.201.

[5] 17 CFR 270.30b1–7.

MFP sets forth the specific disclosure items that money market funds must provide. Filers must submit this report electronically using the Commission's electronic filing system (''EDGAR'') in Extensible Markup Language (''XML'').

Compliance with rule 30b1–7 is mandatory for any fund that holds itself out as a money market fund in reliance on rule 2a–7. Responses to the disclosure requirements 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.

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

The Commission calculates there are currently 353 [6] money market funds that report information on Form N–MFP, with approximately 8 [7] of them being new money market funds that are filing reports on Form N–MFP for the first time.

We estimate that 35% of money market funds (or 124 money market funds, broken down into 121 existing funds and 3 new funds) [8] license a software solution and file reports on Form N–MFP in house; we further estimate that each fund that files reports on Form N–MFP in house requires an average of approximately 47 burden hours to compile (including review of the information), tag, and electronically file the Form N–MFP for the first time and an average of approximately 13 burden hours for subsequent filings.[9] Therefore, we estimate the per fund average annual hour burden is 156 hours [10] for existing funds and 190 hours [11] for new money market funds. Based on an estimate of 121 existing funds and 3 new funds each year, we estimate that filing reports on Form N–MFP in house takes 19,446 hours and costs funds, in aggregate, $6,319,950 per year.[12]

We estimate that 65% of money market funds (or 229 money market funds, broken down into 224 existing funds and 5 new funds) [13] retain the services of a third party to provide data aggregation and validation services as part of the preparation and filing of reports on Form N–MFP on the fund's behalf; we further estimate that each fund requires an average of approximately 26 burden hours to compile and review the information with the service provider prior to electronically filing the report for the first time and an average of approximately 9 burden hours for subsequent filings. Therefore, we estimate the per fund average annual hour burden is 108 hours [14] for existing funds and 125 hours [15] for new money market funds. Based on an estimate of 224 existing funds and 5 new funds each year, we estimate that filing reports on Form N–MFP using a service provider takes 24,817 hours and costs funds, in aggregate, $8,065,525 per year.[16] In sum, we estimate that filing reports on Form N–MFP imposes a total annual hour burden of 44,263 hours,[17] at an aggregate cost of $14,385,475 on all money market funds.[18]

Cost burden is the cost of goods and services purchased in connection with complying with the collection of information requirements of rule 30b1–7 and Form N–MFP. The cost burden does not include the cost of the hour burden discussed above.

Based on discussions with industry participants, we estimate that money market funds that file reports on Form N–MFP in house license a third-party software solution to assist in filing their reports at an average cost of $3,900 per fund per year. In addition, we estimate that money market funds that use a service provider to prepare and file reports on Form N–MFP pay an average fee of $9,300 per fund per year. In sum, we estimate that all money market funds

[6] This estimate is based on staff review of reports on Form N–MFP filed with the Commission for the month ended December 31, 2021 and includes both feeder and non-feeder money market funds.

[7] This calculation is based on staff review of reports on Form N–MFP filed with the Commission for 2019 (16 new funds), 2020 (5 new funds) and 2021 (2 new funds). Averaging those numbers over three years provides an estimate of 8 new funds per year.

[8] The estimate is based on the following calculation: (353 money market funds × 35% = 124 money market funds. Of that amount, we estimate that 3 are new money market funds (8 new money market funds each year × 35% = 2.8 funds, rounded to 3). Therefore, 124 money market funds − 3 new money market funds = 121 existing money market funds.

[9] We understand that the required information is currently maintained by money market funds pursuant to other regulatory requirements or in the ordinary course of business. Accordingly, for the purposes of our analysis, we do not ascribe any time to producing the required information.

[10] This estimate is based on the following calculation: 12 filings per year × 13 burden hours per filing = 156 burden hours per year.

[11] This estimate is based on the following calculation: (First month's initial filing × 47 burden hours) + (11 subsequent monthly filings × 13 burden hours per filing) = 190 burden hours per year.

[12] These estimates are based on the following calculations: Existing funds: (156 hours × blended hourly rate of $325 for a financial reporting manager ($318 per hour), senior accountant ($237 per hour), senior database administrator ($373 per hour), senior portfolio manager ($360 per hour) and compliance manager ($339 per hour)) = $44,772. The blended hourly rate was calculated as ($318 + $237 + $373 + $360 + $339/5 = $325. There are 121 existing money market funds that use in house solutions × 156 hours with an internal time cost of $50,700 per fund = 18,876 hours with an internal time cost of $6,134,700.

New money market funds: (190 hours × blended hourly rate of $325 for a financial reporting manager ($318 per hour), senior accountant ($237 per hour), senior database administrator ($373 per hour), senior portfolio manager ($360 per hour) and compliance manager ($339 per hour)) = $61,750. The blended hourly rate was calculated as ($318 + $237 + $373 + $360 + $339/5 = $325. Three new money market funds × 190 hours with an internal time cost of $61,750 per fund = 570 hours with an internal time cost of $185,250.

Aggregate annual hourly burden for all funds filing reports on Form N–MFP in house: 18,876 hours + 570 hours = 19,446 hours.

Aggregate annual costs for all funds filing reports on Form N–MFP in house: $6,134,700 + $185,250 = $6,319,950.

[13] The estimate is based on the following calculation: (353 money market funds × 65% = 229 money market funds. Of that amount, we estimate that 5 are new money market funds (8 new money market funds each year × 65% = 5.2 funds, rounded to 5). Therefore, 229 money market funds—5 new money market funds = 224 existing money market funds.

[14] This estimate is based on the following calculation: 12 filings per year × 9 burden hours per filing = 108 burden hours per year.

[15] This estimate is based on the following calculation: (First month's initial filing × 26 burden hours) + (11 subsequent month filings × 9 burden hours per filing) = 125 burden hours per year.

[16] These estimates are based on the following calculations: existing funds: (108 hours × blended hourly rate of $325 for a financial reporting manager ($318 per hour), senior accountant ($237 per hour), senior database administrator ($373 per hour), senior portfolio manager ($360 per hour) and compliance manager ($339 per hour)) = $35,000. The blended hourly rate was calculated as ($318 + $237 + $373 + $360 + $339)/5 = $325. There are 224 existing money market funds who use a third-party service provider × 108 hours with an internal time cost of $35,100 per fund = 24,192 hours with an internal time cost of $7,862,400.

New money market funds: (125 hours × blended hourly rate of $325 for a financial reporting manager ($318 per hour), fund senior accountant ($237 per hour), senior database administrator ($373 per hour), senior portfolio manager ($360 per hour) and compliance manager ($339 per hour)) = $40,625. The blended hourly rate was calculated as ($318 + $237 + $373 + $360 + $339)/5 = $325. Five new money market funds × 125 hours with an internal cost of $40,625 per fund = 625 hours with an internal time cost of $203,125.

Aggregate annual hourly burden for all funds filing reports on Form N–MFP using a third party service provider: 24,192 6 hours + 625 hours = 24,817 hours.

Aggregate annual costs for all funds filing reports on Form N–MFP using a third party service provider: $7,862,400 + $203,125 = $8,065,525.

[17] This estimate is based on the following calculation: 19,446 hours for filers licensing a software solution and filing in-house + 24,817 hours for filers using a third-party service provider = 44,263 hours in total.

[18] This estimate is based on the following calculation: $6,319,950 (in-house filers) + $8,065,525 (filers using a service provider) = $14,385,475.

incur on average, in the aggregate, external annual costs of $2,613,300.[19]

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 by May 31, 2022.

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: March 25, 2022.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06704 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

[19] This estimate is based on the following calculation: (124 money market funds (121 existing funds + 3 new funds) that file reports on Form N–MFP in house x $3,900 per fund, per year) + (229 money market funds (224 existing funds + 5 new funds) that file reports on Form N–MFP using a service provider × $9,300 per fund, per year) = $2,613,300.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94505; File No. SR–LCH SA–2022–003]**

## Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to the Restructuring Notification Process for Swaptions

March 24, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2022, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by LCH SA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

(a) Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), is proposing to amend its (i) CDS Clearing Supplement (''Supplement'') and (ii) CDS Clearing Procedures (''Procedures'') to incorporate new terms and to make conforming, clarifying and clean-up changes to implement a delegation mechanism for clients of CDSClear clearing members which applies in the context of the restructuring process for swaptions (the ''Proposed Rule Change'').

The text of the Proposed Rule Change has been annexed [sic] as Exhibit 5.[3]

The implementation of the Proposed Rule Change will be contingent on LCH SA's receipt of all necessary regulatory approvals.

(b) Not applicable.

(c) Not applicable.

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, LCH SA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

*A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Purpose

The purpose of the Proposed Rule Change is to to [sic] amend the restructuring notification process applicable in respect of swaptions registered in a Client Account Structure. Currently, in the event of a restructuring which would be applicable to a component transaction of the underlying index transaction to which a set of swaptions relate, Clearing Members would be in charge of sending and receiving the relevant notices in respect of this restructuring and notifying LCH SA of any such notice delivered or received by no later than 5:00 p.m. on the cut-off date. Where such restructuring also relate to swaptions registered in a Client Account Structure, this also implies from the Client that it shall first deliver the restructuring notice to its Clearing Member and its Clearing Member delivers the equivalent notice to the other Clearing Member to allow for this notification requirement by the relevant Clearing Member to LCH SA by no later than 5:00 p.m. on the cut-off date.

The proposed amendments to the restructuring process for swaptions registered in a Client Account Structure will remove any dependency between the notification duties in the context of a restructuring. The proposed rule change will provide for a delegation mechanism whereby Clearing Members shall appoint their Clients as their Restructuring Delegation Beneficiaries for the purposes of sending and receiving the relevant notices to the other Clearing Member(s) or Client(s) in the event of a restructuring affecting the swaptions registered in their relevant Client Account Structure. The notification duty vis-à-vis LCH SA following the sending or receiving of the notices will also rely on such Restructuring Delegation Beneficiary. These amendments replicate the current delegation legal mechanism which is used in the context of the exercise process in respect of swaptions registered in a Client Account Structure.

1. Supplement

LCH SA is proposing to modify Part C of the Supplement (''Part C'') to incorporate terms for implementing the delegation mechanism for the restructuring process and to make certain conforming and clean-up changes to improve clarity of Part C.

Section 1.2 (*Terms defined in the CDS Clearing Supplement*) of Part C would be amended by adding the following new defined terms.

The term ''Restructuring Delegation Beneficiary'' would be added to refer to a Client of a Clearing Member designated by such Clearing Member pursuant to new Section 5.7 (*Delegation by Clearing Members to Clients*) as being entitled to send and receive Credit Event Notices and Notices to Exercise Movement Option in respect of the relevant Swaption Restructuring Cleared Transactions on such Clearing Member's behalf.

The term ''Swaption Restructuring CCM Client Notice would be added to make a cross reference to its definition as set out in Mandatory Provision 7.3 (*Duty to Deliver Swaption Restructuring CCM Client Notice*) in Appendix VIII to Part C.

[3] All capitalized terms not defined herein have the same definition as in the CDS Clearing Rule Book, Supplement or Procedures, as applicable.

The existing term ''Exercise Delegation Beneficiary'' would be amended for clarification purpose as the current reference to ''The'' Client seems to imply that only a single Client of a Clearing Member could be appointed as an Exercise Delegation Beneficiary irrespective of whether the Clearing Member is acting on behalf of other Clients and therefore this reference will be replaced by ''A'' Client for the sake of clarity.

Because of the new Section 5.7 (*Delegation by Clearing Members to Clients*) added to Part C, any cross-references to Sections 5 following this new Section 5.7 should be renumbered. Therefore the cross-references in the definitions of ''Swaption Restructuring Clearing Member Notice'' and ''Swaption Restructuring Clearing Member Notice Deadline'' would be updated accordingly.

A new sub-paragraph (ii) would be added to Section 1.7 (c) (*Application to FCM/BD Clearing Members*) to provide that, notwithstanding an FCM/BD Clearing Member acting as agent for the account of an FCM/BD Client with respect to Index Swaption Cleared Transactions, an FCM/BD Clearing Member shall designate its FCM/BD Client to send and receive the relevant restructuring notices on its behalf as its Restructuring Delegation Beneficiary in accordance with the relevant provisions of Part C. As a result, the current equivalent paragraph (c) in respect of the exercise process has been renumbered as a sub-paragraph (i).

Section 5 (*Restructuring*) of Part C would be amended to add new provisions to implement this delegation mechanism for the restructuring process involving swaptions registered in a Client Account Structure.

Sections 5.1, 5.3, 5.5 and 5.6 of Part C would be amended by adding references to the new defined term of Restructuring Delegation Beneficiary where needed.

An additional paragraph would be added at the end of Section 5.1 to provide for the express consent from the Clearing Member on the disclosure of its information needed for the purpose of the restructuring process.

A new Section 5.7 (*Delegation by Clearing Members to Clients*) is proposed to be added in order to provide for the legal mechanism of delegation which will apply for Clients and will replicate the equivalent provisions of Section 6.4 (*Delegation by Clearing Members to Clients*) applicable in respect of the exercise process. Specifically, Section 5.7 would provide that, with respect to the sending of the relevant notices for Swaption Restructuring Cleared Transactions of a Swaption Restructuring Matched Pair which are Client Cleared Transactions, Clearing Members shall designate their relevant Clients to act on their behalf and such designation will take effect as soon as reasonably practicable following receipt by LCH SA of duly completed and signed Delegation Forms. The Client so designated will be the Restructuring Delegation Beneficiary. Such designation may be withdrawn provided that there is no Swaption Restructuring Cleared Transaction registered in the relevant Client Account Structure. Where a Clearing Member designates its Client in accordance with new Section 5.7, any delivery or receipt of a restructuring notice by the designated Client will be deemed to constitute the delivery or receipt of a valid restructuring notice by its Clearing Member. Similarly, any reference in Part C to a restructuring notice delivered or received by a designated Client will be interpreted as delivery or receipt by a Clearing Member.

Because of the insertion of this new Section 5.7 (*Delegation by Clearing Members to Clients*) in Part C, the following Sections 5 would be renumbered and any cross-reference in Part C to the renumbered Sections would be amended accordingly.

Section 5.8 (*Swaption Restructuring Clearing Member Notices*) of Part C would be amended to include the appropriate references to the Client designated as a Restructuring Delegation Beneficiary which will notify LCH SA of the delivery or receipt of the relevant restructuring notices on behalf of its Clearing Member in order that LCH SA may give effect to the relevant restructuring notices exchanged between the parties to a Swaption Restructuring Cleared Transaction. There will be also references to the new defined term of Swaption Restructuring CCM Client Notice to be added and which, pursuant to Mandatory Provision 7.3 of Appendix VIII to Part C, will refer to the notice sent to LCH SA or the relevant Clearing Member by a Restructuring Delegation Beneficiary following receipt or delivery of a restructuring notice.

Paragraph (b) of Section 8.1 (*General Rules relating to Notices*) to [sic] remove the reference to the occurrence of an Electronic Exercise Platform (''EEP'') Failure Event since the scope of this paragraph will be broader than the exercise process as it will include a new reference to a Restructuring Delegation Beneficiary.

Finally, Section 13 (*Exclusion of Liability*) of Part C would be amended to add a new Section 13(c) replicating the provisions of Section 13(b) and specifying that LCH SA would have no liability to a Clearing Member which has delegated to a Restructuring Delegation Beneficiary its power to send or receive the relevant restructuring notices on its behalf for any loss, cost or expense arising out of any failure of such Restructuring Delegation beneficiary to perform its obligations in relation with such delegation or in connection with or arising from the delivery of such notices.

Part C would be also amended to make the following conforming changes that are not related to the restructuring delegation.

In Section 6.1 (*Creation and Notification of Exercise Matched Pairs*) of Part C, the provisions on the content of the Protected Exercise Matched Pair Report would be amended to remove any reference to contact details of the relevant parties. Indeed, since such contract details will be the subject of a separate notification by LCH SA, a new paragraph would be added at the end of sub-paragraph (ii) of Section 6.5(a) which would be entitled as ''Access to the Protected Exercise Matched Pair Report and other information''. As a result of this change, any reference to the Protected Exercise Matched Pair Report in Part C, including but not limited to Section 8, would be amended by either removing the reference to this report to keep general notification's references or adding a reference to any other information which is notified by LCH SA for the purpose of the exercise process for consistency purposes. Similarly to the amendment made under Section 5.1, an additional paragraph will be added at the end of Section 6.1 to require for the express consent from the Clearing Member on the disclosure of its information needed for the purpose of the exercise process.

In addition, and on the basis of new Section 5.7, Section 6.4 would specify that the designation of a Client as an Exercise Delegation Beneficiary may be withdrawn provided that there is no Exercise Cleared Transaction registered in the relevant Client Account Structure.

Appendix VIII (CCM Client Transaction Requirements) to Part C would be amended for the purposes of including references to the new delegation mechanism for the restructuring process. Any Client designated as a Restructuring Delegation Beneficiary will be in charge of sending and receiving the relevant restructuring notice for the relevant Swaption Index Cleared Transaction directly to the relevant Clearing Member or Client on behalf of its Clearing Member. As a

result, there will be no longer the need for them to send restructuring notices to their Clearing Members to allow them to send equivalent notice to the other Clearing Member comprised in the relevant Matched Pair. Mandatory Provision 4 will be therefore amended to remove the reference to the restructuring notices that could be sent by a CCM Client to its CCM in respect of the mirroring transaction between such CCM Client and CCM.

The changes made to Section 6.1 (*Creation and Notification of Exercise Matched Pairs*) of Part C would be replicated in Mandatory Provisions 5.4 and 5.8 to remove the reference to the Protected Exercise Matched Pair Report which is too restrictive or refer to other notice details provided by LCH SA for the purposes of the exercise process.

Mandatory Provision 5.6 would be amended to add a reference to the CCM since contact details of a CCM Client could be also provided by a CCM to LCH SA.

The current Mandatory Provision 7 is entirely removed from Appendix VIII as it applies to the delivery of notices in respect of the mirroring transaction between a CCM Client and its CCM in the event of restructuring, which will be no longer needed following the implementation of the proposed rule change. New Mandatory Provision 7 will be entitled ''Designation of CCM Client as a Restructuring Delegation Beneficiary by CCM'' and replicates the equivalent provisions of Mandatory Provision 5 (Designation of CCM Client as an Exercise Delegation Beneficiary) subject to the necessary amendments linked to the restructuring process. New paragraph 7.1 will provide for the mandatory designation of a CCM Client as a Restructuring Delegation Beneficiary by its CCM in accordance with new Section 5.7 of Part C. New paragraph 7.2 will provide that neither the CCM nor the CCM Client shall send the relevant restructuring notices for the mirroring transaction between the CCM and its CCM Client but instead the CCM Client as the Restructuring Delegation Beneficiary shall send or receive the relevant restructuring notices for the corresponding CCM Client Cleared Transaction pursuant to Part C, such restructuring notices being deemed sent or received in respect of the relevant mirroring transaction. The following new paragraph 7.3 provides for the duty to deliver a Swaption Restructuring CCM Client Notice to LCH SA by the Restructuring Delegation Beneficiary. If such notification is not made within the required timeframe, LCH SA will decide either to give effect to the restructuring notices pursuant to Section 5.8(c) of Part C or not to give effect to the restructuring notices then, following Exercise, an amount shall be payable between the Clearing Members equal to the difference between the value of the Matched Buyer Contract had the Swaption Restructuring CCM Client Notice been given to LCH SA within the required timeframe and the value of such contract in the absence of such Swaption Restructuring CCM Client Notice having been given. This amount shall be determined and paid in accordance with the provisions of this new paragraph. New paragraph 7.4 relates to the contact details of LCH SA and the CCM Client to be used for the purposes of delivering the relevant notices. Last paragraph 7.5 provides for a confidentiality waiver regarding the notice details provided by the CCM Client.

Finally, the proposed amendments to the Supplement also contain typographical corrections in Sections 3.1 and 8.1(c) of Part C and Mandatory Provisions 5.1 and 5.4 of Appendix VIII to Part C without affecting the meanings of such Sections or Mandatory Provisions.

2. Procedures

LCH SA also proposes to modify Section 5 of the Procedures to incorporate terms for implementing the new delegation mechanism for the purposes of the restructuring process applicable in respect of swaptions.

Section 5.19.1 which currently deals with the delegation applicable to the exercise process will be amended for taking into account the delegation for the restructuring process. Consequently, Section 5.19.1 will be entitled ''Delegation by Clearing Members to Clients'' and Section 5.19 ''Delegation by Clearing Members to Clients and Electronic Exercise Platform''.

Pursuant to amended Section 5.19.1, a Clearing Member which has delegated to a Client the power to send and receive the relevant notices in the context of a restructuring for swaptions in accordance with Section 5 of Part C shall notify such Restructuring Delegation by sending the relevant form to LCH SA which will be defined as the Delegation Form as it will contain both Exercise Delegation and Restructuring Delegation. The defined term of ''Exercise Delegation Withdrawal'' will be also replaced by ''Delegation Withdrawal'' to cover the possibility for withdrawing the delegation applicable in respect of the restructuring process and references to provisions of Part C that are equivalent to the withdrawal for the exercise process will be added for the restructuring process.

Other amendments will be made to Section 5.19.1 in order to include the references to either the Restructuring Delegation Beneficiary or the Restructuring Delegation where relevant.

(b) Statutory Basis

LCH SA believes that the Proposed Rule Change is consistent with the requirements of Section 17A of the Securities Exchange Act of 1934 [4] (the ''Act'') and the regulations thereunder, including the standards under Rule 17Ad–22.[5] Section 17(A)(b)(3)(F) [6] of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. As noted above, the Proposed Rule Change is designed to implement the delegation legal mechanism to operationally facilitate any required restructuring notification process for swaptions which will improve the process for sending and receiving of restructuring notices to more promptly and accurately reflect the restructuring status of the cleared option transaction in LCH systems.

Further, LCH SA believes that the proposed changes to the Rule Book, Supplement and Procedures are consistent with requirements of Rule 17Ad–22(e)(17).[7] Rule 17Ad–22(e)(17) requires a covered clearing agency to manage operational risks by (i) identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls; (ii) ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity; and (iii) establishing and maintaining a business continuity plan that addresses events posing a significant risk of disrupting operations.[8]

As described above, the Proposed Rule Change will enable LCH SA to more effectively manage the operational notification risks associated with the restructuring event process by providing an alternative solution with an operational delegation mechanism for

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 240.17Ad–22.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17Ad–22(e)(17).

[8] 17 CFR 240.17Ad–22(e)(17).

the restructuring notification process. Specifically, the current bilateral notification process creates plausible operational and legal risks if LCH SA is not provided in due time by its Clearing Member with the relevant restructuring notice sent by the client. To remove any unnecessary dependency on the bilateral notification process and duties between the Clearing Members(s) and client(s) in the context of a restructuring event for swaptions, the Proposed Rule Change is designed to implement a delegation mechanism whereby clients of Clearing Members shall be appointed as their Restructuring Delegation Beneficiaries for the purposes of sending and receiving the relevant notices to the other Clearing Member(s) or Client(s) in the event of a restructuring affecting the swaptions registered in their relevant Client Account Structure.

By implementing a relevant and consistent delegation legal mechanism, the Proposed Rule Change is reducing potential legal risk at LCH SA and is therefore consistent with the requirements of a well-founded, clear, transparent, and enforceable legal framework of Exchange Act Rule 17Ad–22(e)(1).[9]

For the reasons stated above, LCH SA believes that the Proposed Rule Change with respect to the Supplement and Procedures in connection with the implementation of the delegation mechanism for the restructuring notification process for swaptions are consistent with the requirements of prompt and accurate clearance and settlement of securities transactions in Section 17(A)(b)(3)(F)[10] of the Act and the requirements of operational risk management in Rule 17Ad–22(e)(17)[11] and of a well-founded legal framework in Rule 17Ad–22(e)(1).[12]

*B. Clearing Agency's Statement on Burden on Competition*

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[13] LCH SA does not believe that the proposed rule change would impose burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the proposed changes to the Supplement and Procedures would apply equally to all Clearing Members and their Clients. This would remove the burden on clearing brokers from needing the operational capacity to intermediate the sending and receiving of notices from clients, thereby improving the competitive landscape for clearing brokers wishing to support the clearing of options. Therefore, LCH SA does not believe that the proposed rule change would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. LCH SA will notify the Commission of any written comments received by LCH SA.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–LCH SA–2022–003 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–LCH SA–2022–003. 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 LCH SA and on LCH SA's website at: *https://www.lch.com/resources/rulebooks/proposed-rule-changes.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–LCH SA–2022–003 and should be submitted on or before April 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06628 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 17 CFR 240.17Ad–22(e)(1).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 240.17Ad–22(e)(17).

[12] 17 CFR 240.17Ad–22(e)(1).

[13] 15 U.S.C. 78q–1(b)(3)(I).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94515; File No. SR–LTSE–2022–02]**

## Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Continuing Education Requirements

March 24, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2022, Long-Term Stock Exchange, Inc.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''LTSE'' 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 is filing with the Commission a proposed rule change to adopt new LTSE Rule 2.154 and amend LTSE Rule 2.160. The proposed rule change is based on recent changes made by the Financial Industry Regulatory Authority, Inc. (''FINRA'') to its Continuing Education Program [3] (the ''CE Transformation Initiative''), which includes a change to provide a path through continuing education for individuals to maintain their qualification following the termination of a registration.

The text of the proposed rule change is available at the Exchange's website at *https://longtermstockexchange.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 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 sets forth certain continuing education requirements for persons associated with a Member which are based on certain FINRA rules.[4] The proposed rule change seeks to amend certain LTSE rules to more closely mirror FINRA rules, as amended as part of the CE Transformation Initiative.

Specifically, the proposed rule change would (i) adopt new LTSE Rule 2.154 to incorporate by reference FINRA Rule 1240(c) and Supplementary Material .01 and .02, which addresses how an associated person of a member can maintain their qualifications following the termination of a registration category, (ii) delete LTSE Rule 2.160(o) (Lapse of Registration and Expiration of SIE) because its substance is being replaced by new Rule 2.154, and (iii) amend Supplementary Material .01 to LTSE Rule 2.160(g) to state that effective March 15, 2022, LTSE will not accept any new initial designations for waiver for persons working for a financial services industry affiliate of a Member as specified therein. Each of these proposed changes align with changes to FINRA's Continuing Education Program,[5] which are scheduled to become effective on March 15, 2022.[6]

The proposed rule change is part of a larger initiative in which LTSE intends to align the structure of its registration, continuing education and supervision rules with those of FINRA. As noted above, however, the proposed rule change addresses only those changes that become effective on March 15, 2022.

(i) Maintenance of Qualification After Termination of Registration

Effective March 15, 2022, FINRA has established a program providing eligible individuals who terminate any of their representative or principal registrations with the option of maintaining their qualification for certain terminated registrations by completing annual continuing education (''Maintaining Qualifications Program'' or ''MQP''). The rule change provides individuals who elect this option a maximum of five years in which to re-register with a member firm without having to requalify by exam or having to obtain an exam waiver by adopting paragraph (c) under FINRA Rule 1240 and related Supplementary Material .01 and .02.The amended FINRA rule did not eliminate the two-year qualification period.[7] Rather, it provides such individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration(s). Eligible individuals who elect not to participate in the proposed continuing education program will continue to be subject to the current two-year qualification period. This rule change is generally aligned with other professional continuing education programs that allow individuals to maintain their qualification to work in their respective fields during a period of absence from their careers (including an absence of more than two years) by satisfying continuing education requirements for their credentials. FINRA's rule change would impose the following conditions and limitations:

- Individuals would be required to be registered in the terminated registration category for at least one year immediately prior to the termination of that category; [8]
- individuals could elect to participate when they terminate a registration or within two years from the termination of a registration; [9]
- individuals would be required to complete annually all prescribed continuing education;
- individuals would have a maximum of five years in which to re-register; [10]
- individuals who have been CE inactive for two consecutive years, or who become CE inactive for two consecutive years during their participation, would not be eligible to participate or continue; [11] and
- individuals who are subject to a statutory disqualification, or who become subject to a statutory disqualification following the termination of their registration or during their participation, would not be eligible to participate or continue.[12]

FINRA has included a look-back provision in the amended rules that would, subject to specified conditions, extend the proposed option to individuals who have been registered as a representative or principal within two years immediately prior to the implementation date of the rule change and individuals who have been Financial Services Affiliate Waiver Program (''FSAWP'') participants [13]

[3] *See* Securities Exchange Act Rel. No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR–FINRA–2021–015) (the ''Approval Order'').

[4] *Id.*

[5] *Id.*

[6] *See* FINRA Rules 1210 and 1240. In *FINRA Regulatory Notice* 21–41 (November 17, 2021), FINRA announced the amendment of Rules 1210 and 1240, noting effective dates, March 15, 2022 (with respect to paragraph (c) of Rule 1240 and Supplementary Material .09 to Rule 1210)); January 1, 2023 (all other rule changes).

[7] *See* Approval Order, *supra* note 3 at 53360 (The ''two-year qualification period'' is defined as, ''Currently, individuals whose registrations as representatives or principals have been terminated for two or more years may reregister as representatives or principals only if they requalify by retaking and passing the applicable representative- or principal-level examination or if they obtain a waiver of such examination(s).'').

[8] *See* FINRA Rule 1240(c)(1).

[9] *See* FINRA Rule 1240(c)(2).

[10] *See* FINRA Rule 1240(c).

[11] *See* FINRA Rules 1240(c)(4) and (c)(5).

[12] *See* FINRA Rules 1240(c)(1) and (c)(6).

[13] *See* Supplementary Material .09 to FINRA Rule 1210.

immediately prior to the implementation date of the proposed rule change.[14]

In addition, the amended Supplementary Material .02 to FINRA Rule 1240 includes a re-eligibility provision that would allow individuals to regain eligibility to participate each time they re-register with a firm for a period of at least one year and subsequently terminate their registration, provided that they satisfy the other participation conditions and limitations.[15] Eligible participating individuals would be eligible to maintain their qualifications for up to five years.

To align with the changes discussed above, proposed new LTSE Rule 2.154 would state that LTSE Members and associated persons of a Member shall comply with FINRA Rule 1240(c) and Supplementary Material .01 and .02, as if such Rule were part of the Exchange's Rules. Additionally, for the purpose of LTSE Rule 2.154, cross-references in incorporated FINRA Rule 1240(c) to FINRA Rule 1240(a)(2) shall refer to LTSE Rule 2.160(p)(1) (Regulatory Element). The proposed rule change would delete LTSE Rule 2.160(o) as the approach to a lapse in registration would be covered by new LTSE Rule 2.154.

(ii) Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member

In connection with this new continuing education regime, FINRA amended Supplementary Material .09 to its Rule 1210 to state that it will not accept any new participants for the FSAWP beginning on March 15, 2022. To mirror changes to its FSAWP, LTSE has added new language to Supplementary Material .01 in LTSE Rule 2.160(g) to note that effective March 15, 2022, LTSE will not accept any new initial designations for individuals under its identical FSAWP.

2. Statutory Basis

LTSE believes that its proposal is consistent with Section 6(b) of the Act [16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to prevent fraudulent and manipulative 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.

As noted above, the proposed rule change seeks to align the Exchange's Rules with certain recent changes to FINRA rules which have been approved by the Commission.[18] The Exchange believes the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[19] which requires, among other things, that Exchange Rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(c)(3) of the Act,[20] which authorizes the Exchange to prescribe standards of training, experience and competence for persons associated with the Exchange. The proposed changes are based on the changes approved by the Commission in the Approval Order,[21] and the Exchange is proposing to adopt such changes substantially in the same form proposed by FINRA with respect to the MQP and FSAWP provisions. The Exchange believes the proposal is consistent with the Act for the reasons described above and for those reasons cited in the Approval Order.[22]

The Exchange believes that establishing a path for individuals to maintain their qualification following the termination of a registration will reduce unnecessary impediments to requalification and promote greater diversity and inclusion in the securities industry without diminishing investor protection.

*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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change, which harmonizes its rules with recent rule changes adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [23] and Rule 19b–4(f)(6) [24] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing. Rule 19b–4(f)(6)(iii) [25] requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

Waiver of the 30-day operative delay would allow the Exchange to implement proposed changes to the Maintaining Qualifications Program by March 15, 2022 to coincide with FINRA's announced implementation date, thereby eliminating the possibility of a significant regulatory gap between the FINRA and LTSE rules, providing more uniform standards across the securities industry, and helping to avoid confusion for registered persons of the Exchange that are also FINRA members. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and

[14] *See* Supplementary Material .01 to FINRA Rule 1240.

[15] *See* Supplementary Material .02 to FINRA Rule 1240.

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(6).

[18] *See* Approval Order, *supra* note 3.

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(c)(3).

[21] *See* Approval Order, *supra* note 3.

[22] *Id.*

[23] 15 U.S.C. 78s(b)(3).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

designates the proposal operative upon filing.[26]

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–LTSE–2022–02 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–LTSE–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 LTSE and on its internet website at *https://longterm stockexchange.com/.*

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–LTSE–2022–02 and should be submitted on or before April 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06637 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

[26] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94514; File No. SR–C2–2022–007]**

## Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

March 24, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 14, 2022, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2 Options'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fees Schedule to adopt fees for Certification Logical Port fees, effective March 1, 2022.[3]

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange's System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers BOE and FIX Logical Ports, [4] BOE Bulk Logical Ports, [5] Drop Logical Ports, [6] Purge Ports, [7] GRP Ports and Multicast PITCH/Top Spin Server Ports.[8] For each type of the aforementioned logical ports that is used in the production environment, the Exchange also offers corresponding ports which provide Trading Permit Holders (''TPHs'') and non-TPHs access to the Exchange's certification environment to test proprietary systems and applications (*i.e.,* ''Certification Logical Ports''). The certification

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee changes on March 1, 2022 (SR–C2–2022–006). On March 14, 2022, the Exchange withdrew that filing and submitted this proposal.

[4] BOE or FIX Logical Ports provide users the ability to enter order/quotes.

[5] BOE Bulk Ports provide users with the ability to submit single and bulk order messages to enter, modify, or cancel orders designated as Post Only Orders with a Time-in-Force of Day or GTD with an expiration time on that trading day.

[6] Drop Logical Ports grants users the ability to receive and/or send drop copies.

[7] Purge Ports allow users to submit a cancelation for all open orders, or a subset thereof, across multiple sessions under the same Executing Firm ID (''EFID'').

[8] Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH/Top data feeds.

environment facilitates testing using replicas of the Exchange's production environment process configurations which provide for a robust and realistic testing experience. For example, the certification environment allows unlimited firm-level testing of order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancelations, and purge requests. Historically, the Exchange has not assessed fees for Certification Logical Ports. The Exchange now proposes to establish a monthly fee for Certification Logical Ports. Particularly, the Exchange proposes to adopt a monthly fee of $250 per Certification Logical Port. However, the Exchange notes that it will continue to offer free of charge one Certification Logical Port per logical port type offered in the production environment (*i.e.,* BOE, FIX, BOE Bulk, Drop Logical, Purge, GRP and Multicast PITCH/Top Spin Server Ports) to each TPH or non-TPH, as applicable. Any additional Certification Logical Ports will be assessed $250 per month per port.[9] The Exchange notes that purchasing additional Certification Logical Ports is voluntary and not required in order to participate in the production environment, including live production trading on the Exchange. Additionally, TPHs and non-TPHs are not required to purchase any particular production logical port in order to receive a corresponding Certification Logical Port free of charge.[10] Further, the Exchange also notes that other exchanges similarly assess fees related to their respective testing environments.[11]

Lastly, the Exchange does not intend to prorate Certification Logical Ports for the first month of service and intends to make this clear in the notes section under the Logical Connectivity Fees section of the Fees Schedule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, 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. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[14] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

As noted above, the Exchange's certification environment provides a robust and realistic testing experience using a replica of the Exchange's production environment process configurations. This environment enables market participants to manage risk more effectively through testing software development changes in certification prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. As such, the Exchange believes it's reasonable to adopt a Certification Logical Port fee as it better enables the Exchange to continue to maintain and improve its testing environment, which the Exchange believes serves to improve live production trading on the Exchange. The Exchange also believes the proposed Certification Logical Port fee is reasonable because while such ports will no longer be completely free, TPHs and non-TPHs will continue to be entitled to receive free of charge one Certification Logical Port for each type of logical port that are currently offered in the production environment. Notably, the Exchange believes one Certification Logical Port per logical port type will be sufficient for most users and indeed anticipates that the majority of users will not purchase additional Certification Logical Ports. More specifically, while the Exchange has no way of predicting with certainty the impact of the proposed changes, it anticipates approximately 29% of Users to be assessed fees for Certification Logical Ports (*i.e.,* request Certification Ports in excess of the Certification Logical Ports provided free of charge). For those users who wish to obtain additional Certification Logical Ports based on their respective business needs, they are able to do so for a modest fee. Indeed, the proposed fee is lower than the fees assessed for the corresponding logical ports used in the Exchange's production environment.[15] Additionally, the Exchange notes other exchanges similarly assess fees relating to their respective testing environments.[16] Further, the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.[17]

The Exchange believes the proposed fee is also equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to obtain additional Certification Logical Ports. The Exchange also believes the proposed fee is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to be efficient with their respective Certification Logical Port usage. Without some sort of fee for its Certification Logical Ports, the Exchange believes that TPHs and non-TPHs may be less efficient in testing their systems, potentially resulting in excessive time and resources being consumed by the Exchange in supporting testing and certifying TPHs and non-TPHs to the detriment of all market participants as Exchange resources are diverted away from other trading operations. Additionally, similar to its production environment, the Exchange's certification environment does not have unlimited system capacity to support unlimited testing. As such, the proposed

[9] For example, if a TPH maintains 3 FIX Certification Logical Ports, 1 Purge Certification Logical Port, and 1 set of Multicast PITCH Spin Server Certification Logical Port, the TPH will be assessed $500 per month for Certification Logical Port Fees (*i.e.,* 1 FIX, 1 Purge and 1 set of Multicast PITCH Spin Server Certification Logical Ports × $0 and 2 FIX Certification Logical Ports × $250).

[10] For example, a TPH may obtain a Certification Purge Port free of charge, even if that TPH has not otherwise purchased a Purge Port for the live production environment. Certification Logical Ports are not automatically enabled for each User, but rather must be proactively requested by users.

[11] *See e.g.,* Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. *See also* MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(4).

[15] *See* C2 Options Fees Schedule, Logical Connectivity Fees.

[16] *See e.g.,* Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. *See also* MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

[17] Although many Users use Certification Logical Ports on a daily basis, the Exchange notes frequency of use of Certification Logical Ports varies by User and depends on a User's business needs. To the extent a User purchases additional Certification Logical Ports and its respective needs change or it determines it no longer wishes to maintain excess Certification Logical Ports, the User is free to cancel such ports for the following month(s).

fee structure also ensures that firms that use the most capacity pay for that capacity, rather than placing that burden on market participants that have more modest needs. The Exchange lastly believes that its proposed fee is aligned with the goals of the Commission in facilitating a competitive market for all firms that trade on the Exchange and of ensuring that critical market infrastructure has ''levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets.'' [18]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule changes in connection with surcharge [sic] fees will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed fee creates an undue burden on competition because the Exchange will continue to offer free of charge one Certification Logical Port per each logical port type offered in the production environment. Although the Exchange now proposes to charge users for additional Certification Logical Ports, the Exchange believes without some sort of fee assessed for excess Certification Logical Ports, TPHs and non-TPHs may be less efficient in testing their systems, potentially resulting in excessive time and resources being consumed by the Exchange and also potentially impacting the certification environment's capacity thresholds. The proposed fee structure therefore would ensure that market participants that pay the proposed fee are the ones that demand the most resources from the Exchange. Also as discussed, the purchase of additional ports is optional and based on the business needs of each market participant. Moreover, such market participants will continue to benefit from access to the certification environment, which the Exchange believes provides a robust and realistic testing experience via a replica of the production environment.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's certification environment. Additionally, the Exchange notes that it operates in a highly competitive market. TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges, as well as off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchange, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [19] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[N]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[20] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [21] and paragraph (f) of Rule 19b–4 [22] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–C2–2022–007 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–C2–2022–007. 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

[18] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) (File No. S7–01–13) (Regulation SCI Adopting Release).

[19] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[20] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f).

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–C2–2022–007 and should be submitted on or before April 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06636 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

[23] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94512; File No. SR–CBOE–2022–011]**

## Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

March 24, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 14, 2022, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fees Schedule to adopt fees for Certification Logical Port fees, effective March 1, 2022.[3]

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange's System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers BOE and FIX Logical Ports,[4] BOE Bulk Logical Ports,[5] Drop Logical Ports,[6] Purge Ports,[7] GRP Ports and Multicast PITCH/Top Spin Server Ports.[8] For each type of the aforementioned logical ports that are used in the production environment, the Exchange also offers corresponding ports which provide Trading Permit Holders (''TPHs'') and non-TPHs access to the Exchange's certification environment to test proprietary systems and applications (*i.e.,* ''Certification Logical Ports''). The certification environment facilitates testing using replicas of the Exchange's production environment process configurations which provide for a robust and realistic testing experience. For example, the certification environment allows unlimited firm-level testing of order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancelations, and purge requests. Historically, the Exchange has not assessed fees for Certification Logical Ports. The Exchange now proposes to establish a monthly fee for Certification Logical Ports. Particularly, the Exchange proposes to adopt a monthly fee of $250 per Certification Logical Port. However, the Exchange notes that it will continue to offer free of charge one Certification Logical Port per logical port type offered in the production environment (*i.e.,* BOE, FIX, BOE Bulk, Drop Logical, Purge, GRP and Multicast PITCH/Top Spin Server Ports) to each TPH or non-TPH, as applicable. Any additional Certification Logical Ports will be assessed $250 per month per port.[9] The Exchange notes that purchasing additional Certification Logical Ports is voluntary and not required in order to participate in the production environment, including live production trading on the Exchange. Additionally, TPHs and non-TPHs are not required to purchase any particular production logical port in order to receive a corresponding Certification Logical Port free of charge.[10] Further, the Exchange also notes that other exchanges similarly

[3] The Exchange initially filed the proposed fee changes on March 1, 2022 (SR–CBOE–2022–007). On March 14, 2022, the Exchange withdrew that filing and submitted this proposal.

[4] BOE or FIX Logical Ports provide users the ability to enter order/quotes.

[5] BOE Bulk Ports provide users with the ability to submit single and bulk order messages to enter, modify, or cancel orders designated as Post Only Orders with a Time-in-Force of Day or GTD with an expiration time on that trading day.

[6] Drop Logical Ports grants users the ability to receive and/or send drop copies.

[7] Purge Ports allow users to submit a cancelation for all open orders, or a subset thereof, across multiple sessions under the same Executing Firm ID (''EFID'').

[8] Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH/Top data feeds.

[9] For example, if a TPH maintains 3 FIX Certification Logical Ports, 1 Purge Certification Logical Port, and 1 set of Multicast PITCH Spin Server Certification Logical Port, the TPH will be assessed $500 per month for Certification Logical Port Fees (*i.e.,* 1 FIX, 1 Purge and 1 set of Multicast PITCH Spin Server Certification Logical Ports × $0 and 2 FIX Certification Logical Ports × $250).

[10] For example, a TPH may obtain a Certification Purge Port free of charge, even if that TPH has not otherwise purchased a Purge Port for the live production environment. Certification Logical Ports are not automatically enabled for each User, but rather must be proactively requested by users.

assess fees related to their respective testing environments.[11]

Lastly, the Exchange does not intend to prorate Certification Logical Ports for the first month of service and intends to make this clear in the notes section under the Logical Connectivity Fees section of the Fees Schedule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, 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. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[14] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

As noted above, the Exchange's certification environment provides a robust and realistic testing experience using a replica of the Exchange's production environment process configurations. This environment enables market participants to manage risk more effectively through testing software development changes in certification prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. As such, the Exchange believes it's reasonable to adopt a Certification Logical Port fee as it better enables the Exchange to continue to maintain and improve its testing environment, which the Exchange believes serves to improve live production trading on the Exchange. The Exchange also believes the proposed Certification Logical Port fee is reasonable because while such ports will no longer be completely free, TPHs and non-TPHs will continue to be entitled to receive free of charge one Certification Logical Port for each type of logical port that is currently offered in the production environment. Notably, the Exchange believes one Certification Logical Port per logical port type will be sufficient for most users and indeed anticipates that the majority of users will not purchase additional Certification Logical Ports. More specifically, while the Exchange has no way of predicting with certainty the impact of the proposed changes, it anticipates approximately 41% of Users to be assessed fees for Certification Logical Ports (*i.e.,* request Certification Ports in excess of the Certification Logical Ports provided free of charge). For those users who wish to obtain additional Certification Logical Ports based on their respective business needs, they are able to do so for a modest fee. Indeed, the proposed fee is lower than the fees assessed for the corresponding logical ports used in the Exchange's production environment.[15] Additionally, the Exchange notes other exchanges similarly assess fees relating to their respective testing environments.[16] Further, the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.[17]

The Exchange believes the proposed fee is also equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to obtain additional Certification Logical Ports. The Exchange also believes the proposed fee is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to be efficient with their respective Certification Logical Port usage. Without some sort of fee for its Certification Logical Ports, the Exchange believes that TPHs and non-TPHs may be less efficient in testing their systems, potentially resulting in excessive time and resources being consumed by the Exchange in supporting testing and certifying TPHs and non-TPHs to the detriment of all market participants as Exchange resources are diverted away from other trading operations. Additionally, similar to its production environment, the Exchange's certification environment does not have unlimited system capacity to support unlimited testing. As such, the proposed fee structure also ensures that firms that use the most capacity pay for that capacity, rather than placing that burden on market participants that have more modest needs. The Exchange lastly believes that its proposed fee is aligned with the goals of the Commission in facilitating a competitive market for all firms that trade on the Exchange and of ensuring that critical market infrastructure has ''levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets.'' [18]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed fee creates an undue burden on competition because the Exchange will continue to offer free of charge one Certification Logical Port per each logical port type offered in the production environment. Although the Exchange now proposes to charge users for additional Certification Logical Ports, the Exchange believes without some sort of fee assessed for excess Certification Logical Ports, TPHs and non-TPHs may be less efficient in testing their systems, potentially resulting in excessive time and resources being consumed by the Exchange and also potentially impacting the certification environment's capacity

[11] *See e.g.,* Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. *See also* MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(4).

[15] *See* Cboe Options Fees Schedule, Logical Connectivity Fees.

[16] *See e.g.,* Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. *See also* MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

[17] Although many Users use Certification Logical Ports on a daily basis, the Exchange notes frequency of use of Certification Logical Ports varies by User and depends on a User's business needs. To the extent a User purchases additional Certification Logical Ports and its respective needs change or it determines it no longer wishes to maintain excess Certification Logical Ports, the User is free to cancel such ports for the following month(s).

[18] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) (File No. S7–01–13) (Regulation SCI Adopting Release).

thresholds. The proposed fee structure therefore would ensure that market participants that pay the proposed fee are the ones that demand the most resources from the Exchange. Also as discussed, the purchase of additional ports is optional and based on the business needs of each market participant. Moreover, such market participants will continue to benefit from access to the certification environment, which the Exchange believes provides a robust and realistic testing experience via a replica of the production environment.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's certification environment. Additionally, the Exchange notes that it operates in a highly competitive market. TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges, as well as off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [19] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .''.[20] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [21] and paragraph (f) of Rule 19b–4 [22] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2022–011 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–CBOE–2022–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. All submissions should refer to File Number SR–CBOE–2022–011 and should be submitted on or before April 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06634 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

[19] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[20] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f).

[23] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94506; File No. SR–CboeBZX–2022–020]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule

March 24, 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 March 14, 2022, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'' or ''BZX Equities'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its fee schedule for its equities platform (''BZX Equities'') to adopt fees for Certification Logical Port fees, effective March 1, 2022.[3]

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange's System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Particularly, the Exchange offers Logical Ports,[4] Purge Ports,[5] Multicast PITCH GRP Ports, and Multicast PITCH Spin Server Ports.[6] For each type of the aforementioned logical ports that is used in the production environment, the Exchange also offers corresponding ports which provide Members and non-Members access to the Exchange's certification environment to test proprietary systems and applications (*i.e.,* ''Certification Logical Ports''). The certification environment facilitates testing using replicas of the Exchange's production environment process configurations which provide for a robust and realistic testing experience. For example, the certification environment allows unlimited firm-level testing of order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancelations, and purge requests. Historically, the Exchange has not assessed fees for Certification Logical Ports. The Exchange now proposes to establish a monthly fee for Certification Logical Ports. Particularly, the Exchange proposes to adopt a monthly fee of $250 per Certification Logical Port. However, the Exchange notes that it will continue to offer free of charge one Certification Logical Port per logical port type offered in the production environment (*i.e.,* Logical Ports, Purge, Multicast PITCH GRP, and Multicast PITCH Spin Server) to each Member or non-Member, as applicable. Any additional Certification Logical Ports will be assessed $250 per month per port.[7] The Exchange notes that purchasing additional Certification Logical Ports is voluntary and not required in order to participate in the production environment, including live production trading on the Exchange. Additionally, Members and non-Members are not required to purchase any particular production logical port in order to receive a corresponding Certification Logical Port free of charge.[8] Further, the Exchange also notes that other exchanges similarly assess fees related to their respective testing environments.[9]

Lastly, the Exchange does not intend to prorate Certification Logical Ports for the first month of service and intends to make this clear in the notes section under the Purge and Market Data Logical Port Fees section of the Fees Schedule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, 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. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As noted above, the Exchange's certification environment provides a robust and realistic testing experience using a replica of the Exchange's production environment process configurations. This environment enables market participants to manage risk more effectively through testing software development changes in certification prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. As such, the Exchange believes it's reasonable to adopt a Certification Logical Port fee as it better

[3] The Exchange initially filed the proposed fee changes on March 1, 2022 (SR–CboeBZX–2022–012). On March 14, 2022, the Exchange withdrew that filing and submitted this proposal.

[4] Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

[5] Purge Ports are dedicated ports that permit a User to simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports by requesting the Exchange to effect such cancellation.

[6] Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH data feeds.

[7] For example, if a Member maintains 3 FIX Certification Logical Ports, 1 Purge Certification Logical Port, and 1 set of Multicast PITCH Spin Server Certification Logical Port, the Member will be assessed $500 per month for Certification Logical Port Fees (*i.e.,* 1 FIX, 1 Purge and 1 set of Multicast PITCH Spin Server Certification Logical Ports × $0 and 2 FIX Certification Logical Ports × $250).

[8] For example, a Member may obtain a Certification Purge Port free of charge, even if that Member has not otherwise purchased a Purge Port for the live production environment. Certification Logical Ports are not automatically enabled for each User, but rather must be proactively requested by users.

[9] *See e.g.,* Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. *See also* MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(4).

enables the Exchange to continue to maintain and improve its testing environment, which the Exchange believes serves to improve live production trading on the Exchange. The Exchange also believes the proposed Certification Logical Port fee is reasonable because while such ports will no longer be completely free, Members and non-Members will continue to be entitled to receive free of charge one Certification Logical Port for each type of logical port that are currently offered in the production environment. Notably, the Exchange believes one Certification Logical Port per logical port type will be sufficient for most users and indeed anticipates that the majority of users will not purchase additional Certification Logical Ports. More specifically, while the Exchange has no way of predicting with certainty the impact of the proposed changes, it anticipates approximately 20% of Users to be assessed fees for Certification Logical Ports (*i.e.,* request Certification Ports in excess of the Certification Logical Ports provided free of charge). For those users who wish to obtain additional Certification Logical Ports based on their respective business needs, they are able to do so for a modest fee. Indeed, the proposed fee is lower than the fees assessed for the corresponding logical ports used in the Exchange's production environment.[13] Additionally, the Exchange notes other exchanges similarly assess fees relating to their respective testing environments.[14] Further, the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.[15]

The Exchange believes the proposed fee is also equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to obtain additional Certification Logical Ports. The Exchange also believes the proposed fee is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to be efficient with their respective Certification Logical Port usage. Without some sort of fee for its Certification Logical Ports, the Exchange believes that Members and non-Members may be less efficient in testing their systems, potentially resulting in excessive time and resources being consumed by the Exchange in supporting testing and certifying Members and non-Members to the detriment of all market participants as Exchange resources are diverted away from other trading operations. Additionally, similar to its production environment, the Exchange's certification environment does not have unlimited system capacity to support unlimited testing. As such, the proposed fee structure also ensures that firms that use the most capacity pay for that capacity, rather than placing that burden on market participants that have more modest needs. The Exchange lastly believes that its proposed fee is aligned with the goals of the Commission in facilitating a competitive market for all firms that trade on the Exchange and of ensuring that critical market infrastructure has ''levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets.'' [16]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed fee creates an undue burden on competition because the Exchange will continue to offer free of charge one Certification Logical Port per each logical port type offered in the production environment. Although the Exchange now proposes to charge users for additional Certification Logical Ports, the Exchange believes without some sort of fee assessed for excess Certification Logical Ports, Members and non-Members may be less efficient in testing their systems, potentially resulting in excessive time and resources being consumed by the Exchange and also potentially impacting the certification environment's capacity thresholds. The proposed fee structure therefore would ensure that market participants that pay the proposed fee are the ones that demand the most resources from the Exchange. Also as discussed, the purchase of additional ports is optional and based on the business needs of each market participant. Moreover, such market participants will continue to benefit from access to the certification environment, which the Exchange believes provides a robust and realistic testing experience via a replica of the production environment.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's certification environment. Additionally, the Exchange notes that it operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing

[13] *See* Cboe BZX Equities Fees Schedule, Purge and Market Data Logical Port Fees and Match Capacity Fees.

[14] *See e.g.,* Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. *See also* MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

[15] Although many Users use Certification Logical Ports on a daily basis, the Exchange notes frequency of use of Certification Logical Ports varies by User and depends on a User's business needs. To the extent a User purchases additional Certification Logical Ports and its respective needs change or it determines it no longer wishes to maintain excess Certification Logical Ports, the User is free to cancel such ports for the following month(s).

[16] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) (File No. S7–01–13) (Regulation SCI Adopting Release).

[17] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[18] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and paragraph (f) of Rule 19b–4 [20] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2022–020 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2022–020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–020 and should be submitted on or before April 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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[18] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94498; File No. SR–FINRA–2022–006]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Trade Reporting Fees Applicable to Participants That Use the FINRA/NYSE Trade Reporting Facility

March 23, 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 March 16, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

FINRA is proposing to amend FINRA Rule 7620B (Trade Reporting Facility Reporting Fees) to modify the trade reporting fees applicable to participants that use the FINRA/NYSE Trade Reporting Facility (''FINRA/NYSE TRF'').

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The FINRA/NYSE TRF, which is operated by NYSE Market (DE), Inc. (''NYSE Market (DE)''), is one of four FINRA facilities [3] that FINRA members can use to report over-the-counter (''OTC'') trades in NMS stocks. While members are required to report all OTC trades in NMS stocks to FINRA, they may choose which FINRA Facility (or Facilities) to use to satisfy their trade reporting obligations.[4]

NYSE Market (DE) proposes to modify the trade reporting fees applicable to FINRA members that use the FINRA/NYSE TRF (''Participants''). NYSE Market (DE) proposes to subject each Participant to a monthly fee that will be based on whether that Participant submitted trade reports to the FINRA/NYSE TRF during the relevant month, and if so, how many trade reports it submitted. FINRA is proposing to amend FINRA Rule 7620B (FINRA/NYSE Trade Reporting Facility Reporting Fees) accordingly. There is no new product or service accompanying the proposed fee change.

Background

The FINRA/NYSE TRF

Under the governing limited liability company agreement,[5] the FINRA/NYSE TRF has two members: FINRA and NYSE Market (DE). FINRA, the ''SRO Member,'' has sole regulatory responsibility for the FINRA/NYSE TRF. NYSE Market (DE), the ''Business Member,'' is primarily responsible for the management of the FINRA/NYSE TRF's business affairs to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA.

The Business Member establishes pricing applicable to FINRA/NYSE TRF Participants for use of the FINRA/NYSE TRF. That pricing is then implemented pursuant to FINRA rules that FINRA must file with the Commission and that must be consistent with the Act. Specifically, FINRA/NYSE TRF Participants are charged fees pursuant to Rule 7620B and may qualify for transaction credits under Rule 7610B (Securities Transaction Credit) (such credits, ''Securities Transaction Credits'').[6] The relevant FINRA rules are administered by NYSE Market (DE), in its capacity as the Business Member and operator of the FINRA/NYSE TRF on behalf of FINRA,[7] and the Business Member collects all fees on behalf of the FINRA/NYSE TRF.

According to the Business Member, the FINRA/NYSE TRF operates in a competitive environment. The FINRA Facilities have different pricing [8] for their respective participants and compete for FINRA members' trade report activity. The FINRA/NYSE TRF is smaller than the FINRA/Nasdaq TRF in terms of reported volume. For the month of December 2021, FINRA members used the FINRA/NYSE TRF to report approximately 17% of shares in NMS stocks traded OTC, compared to approximately 83% for the FINRA/Nasdaq TRF.

Operating Costs

The overall costs of operating and maintaining the FINRA/NYSE TRF involve both fixed and variable components. The variable component constitutes the majority of the cost and largely relates to the number of reports that the FINRA/NYSE TRF, on behalf of its subscribers, reports for public dissemination (or ''tape'') purposes. It also reflects the number of reports submitted to the FINRA/NYSE TRF that are not published to the tape. Specifically, if the number of tape reports increases, the Business Member's variable costs increase, and conversely, if the number of tape reports decreases, the Business Member's variable costs decrease. The variable costs associated with tape reports are not related to the size (number of shares) of the reported transaction. Accordingly, the variable costs relating to a tape report for a trade for one share (or even less than one share) are the same as the variable costs relating to a tape report for 100,000 shares reported to the FINRA/NYSE TRF.

The Business Member is entitled to any profits and must cover any losses that arise from operating the FINRA/NYSE TRF. According to the Business Member, the profits or losses generally are the difference between:

1. The revenue (''Revenue'') from: (a) Subscriber fees charged in accordance with FINRA Rule 7620B (''Subscriber Fee Revenue''), and (b) market data revenue for the transaction information provided to the securities information processors (''SIPs'') via the FINRA/NYSE TRF less the Securities Transaction Credits (together, ''Net Market Data Revenue''); and
2. the costs of operating and maintaining the FINRA/NYSE TRF.

According to the Business Member, in 2020 and 2021, costs of operating and maintaining the FINRA/NYSE TRF were greater than Revenues, causing the FINRA/NYSE TRF to run at a loss. According to the Business Member, during that time, the number of tape reports increased (particularly for smaller-sized transactions) and total Subscriber Fee Revenue decreased, without a relative change to the difference in total share volume reported to the FINRA/NYSE TRF as compared to other FINRA Facilities. More specifically, compared to the 2018 monthly average, as of December 31, 2021, monthly average tape report activity for the FINRA/NYSE TRF had increased by 329% and monthly average costs had increased by 146%. At the same time, monthly average Subscriber Fee Revenue had decreased by 19%. Net Market Data Revenue varied during the period, but overall it decreased as compared to the first quarter of 2018. Ultimately, the Business Member believes that the FINRA/NYSE TRF would continue to incur a significant loss if the current fee and credit structure remained in place, and that such losses would make the FINRA/NYSE TRF unsustainable in the long term.

Accordingly, the Business Member proposes to amend the fees set forth in FINRA Rule 7620B. By so doing, it has proposed a change that it believes

[3] The four FINRA facilities are the FINRA/NYSE TRF, two FINRA/Nasdaq Trade Reporting Facilities (together, the ''FINRA/Nasdaq TRF''), and the Alternative Display Facility (''ADF'' and together, the ''FINRA Facilities'').

[4] Members can use the FINRA/NYSE TRF as a backup system and reserve bandwidth if there is a failure at another FINRA Facility that supports the reporting of OTC trades in NMS stocks. As set forth in Trade Reporting Notice 1/20/16 (OTC Equity Trading and Reporting in the Event of Systems Issues), a firm that routinely reports its OTC trades in NMS stocks to only one FINRA Facility must establish and maintain connectivity and report to a second FINRA Facility, if the firm intends to continue to support OTC trading as an executing broker while its primary facility is experiencing a widespread systems issue.

[5] *See* the Second Amended and Restated Limited Liability Company Agreement of FINRA/NYSE Trade Reporting Facility LLC. The limited liability company agreement, which was submitted as part of the rule filing to establish the FINRA/NYSE TRF and was subsequently amended and restated, can be found in the FINRA Manual.

[6] Pursuant to Rule 7630B (Aggregation of Activity of Affiliated Members), affiliated members can aggregate their activity for purposes of fees and credits that are dependent upon the volume of their activity. No change is proposed to be made to Rules 7610B or 7630B, and so there will be no change to the requirements for, or process of, securities transaction credits and the aggregation of affiliated member activity.

[7] FINRA's oversight of this function performed by the Business Member is conducted through a recurring assessment and review of the FINRA/NYSE TRF operations by an outside independent audit firm.

[8] Because the FINRA/NYSE TRF and FINRA/Nasdaq TRF are operated by different business members competing for market share, FINRA does not take a position on whether the pricing for one TRF is more favorable or competitive than the pricing for the other TRF.

should allow the monthly Subscriber Fee Revenue to cover the total costs of operating and maintaining the FINRA/NYSE TRF. The proposed changes are expected to allow the FINRA/NYSE TRF to continue operating without amassing losses similar to those it currently has.

Proposed Amendments to Rule 7620B

Under the current fee structure,[9] Participants are either ''Retail Participants'' [10] or Participants that are not Retail Participants (''Non-Retail Participants''). The former are exempt from the monthly fee, while the latter are subject to a monthly fee based, where applicable, on the Participant's ''FINRA/NYSE TRF Market Share.'' [11] The fees set forth in Rule 7620B are tiered.

Under the proposed, simplified fee structure, the monthly fee would no longer depend on whether a Participant were a Retail Participant or its FINRA/NYSE TRF Market Share, and the current tiered structure would be removed. Rather, if a Participant submitted one or more trade reports to the FINRA/NYSE TRF during a given calendar month, the Participant would pay a monthly fee equal to the sum of (a) $1,000 plus (b) $0.0055 per published tape report. If a Participant submitted no trade reports to the FINRA/NYSE TRF during that calendar month, the Participant would pay a monthly fee of $2,000.

To effect the change, Rule 7620B would be amended as follows. First, the text ''with the exception that Retail Participants shall not be subject to a monthly fee'' would be deleted from the first paragraph. Second, the following text would be added to the end of the first paragraph:

The monthly fee will be calculated as follows:

(a) If the participant submits one or more trade reports to the FINRA/NYSE Trade Reporting Facility during a given calendar month, the participant will pay a monthly fee equal to the sum of (i) $1,000 plus (ii) $0.0055 per published tape report.

(b) If the participant submits no trade reports to the FINRA/NYSE Trade Reporting Facility during a given calendar month, the participant will pay a monthly fee of $2,000.

Finally, the current subsections (a) and (b), including the table in subsection (b), would be deleted.

The monthly fee would continue to be charged at the end of the calendar month. As is true now, if a new FINRA/NYSE TRF Participant submitted the participant application agreement and reported no shares traded in a given month, the Participant would not be charged the monthly fee for the first two calendar months in order to provide time to connect to the FINRA/NYSE TRF.[12] The monthly fees paid by FINRA/NYSE TRF Participants would continue to include unlimited use of the Client Management Tool, as well as full access to the FINRA/NYSE TRF and supporting functionality, *e.g.,* trade submission, reversal and cancellation.[13]

Application of Proposed Fee Schedule

The Business Member believes that pricing is the key factor for FINRA members when choosing which FINRA Facility to use. The Business Member expects that the proposed change would result in a fee increase for most FINRA/NYSE TRF Participants. In this competitive environment, FINRA members can report their OTC trades in NMS stocks to the FINRA/NYSE TRF's competitors if they deem pricing levels at the other FINRA Facilities to be more favorable, so long as they are participants of such other facilities. As a result, the Business Member believes that the proposed fee change will likely reduce its reported volumes. It is not possible to fully predict the number of FINRA members that would reduce their use of the FINRA/NYSE TRF or cease being a FINRA/NYSE TRF Participant as a result of the fee increase. Similarly, it is not possible to predict what the change in reporting to the FINRA/NYSE TRF would be.

As stated above, under the proposed fee structure, the monthly fee would no longer depend on whether a Participant were a Retail Participant or its FINRA/NYSE TRF Market Share, and the current tiered structure would be removed. The proposed fee schedule would be applied in the same manner to all FINRA members that are, or elect to become, FINRA/NYSE TRF Participants and would not apply differently to different sizes or types of Participants. Participants that are currently Retail Participants would be subject to the same monthly fee for not submitting any trade reports in a given month as current Non-Retail Participants.

By setting a base flat fee and tying the remainder of the fee to the number of tape reports a Participant submits to the FINRA/NYSE TRF during a given month, if any, the Business Member believes that the resulting fee would relate to the cost of operating and maintaining the facility more closely. Specifically, the Business Member's total cost of operating the FINRA/NYSE TRF does not differ based on whether the Participant is a Retail Participant or not. As a general matter, the flat portions of the proposed fees are designed to address the fixed costs, while the portion that is charged per published tape report is meant to address variable costs. The proposed rule is designed to have the monthly Subscriber Fee Revenue generally cover total costs, which would allow the FINRA/NYSE TRF to continue operating without amassing losses similar to those it recently has amassed.

Tying the fee directly to the number of trade reports the Participant submits to the FINRA/NYSE TRF during the month means that the Participant's fee will increase or decrease in line with any changes in the volume of such trade reports. This makes the proposed fee more directly tied to the Participant's usage of the FINRA/NYSE TRF, matching a Participant's fee with its activity and the related costs. For example, under the proposal, if a Participant submitted 6,000,000 trade reports to the FINRA/NYSE TRF during one month, it would have a monthly fee of $34,000. If it then submitted a lower volume of 6,000 trade reports to the FINRA/NYSE TRF during the following month, its fee would be reduced to $1,033. In recent years, there has been

[9] *See* Securities Exchange Act Release No. 88324 (March 5, 2020), 85 FR 14275 (March 11, 2020) (SR–FINRA–2020–006) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Trade Reporting Fees Applicable to the FINRA/NYSE Trade Reporting Facility). Under Rule 7620B, Participants are charged a flat fee for access to the complete range of functionality offered by the FINRA/NYSE TRF rather than a separate fee for each activity (*e.g.,* a per trade or per side fee for reporting a trade, a separate per trade fee for canceling a trade, etc.) or a separate fee for connectivity. *See, e.g.,* Rules 7510(a) and 7520 (trade reporting fees and connectivity charges for the ADF) and Rule 7620A (trade reporting fees for the FINRA/Nasdaq TRF).

[10] A Participant ''is a 'Retail Participant' if substantially all of its trade reporting activity on the FINRA/NYSE Trade Reporting Facility comprises Retail Orders.'' In turn, a ''Retail Order'' is ''an order that originates from a natural person, provided that, prior to submission, 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.'' FINRA Rule 7620B(a).

[11] *See* FINRA Rule 7620B(b). ''The rate of the monthly fee for participants that are not Retail Participants will be based, where applicable, on the participant's 'FINRA/NYSE TRF Market Share,' which is defined as the percentage calculated by dividing the total number of shares reported to the FINRA/NYSE Trade Reporting Facility for public dissemination (or 'tape') purposes during a given calendar month that are attributable to the participant by the total number of all shares reported to the CTA or UTP SIP, as applicable, during that period.''

[12] As is the case today, after the first two calendar months, the Participant will be charged regardless of connectivity.

[13] *See* Securities Exchange Act Release No. 87205 (October 3, 2019), 84 FR 54219 (October 9, 2019) (SR–FINRA–2019–024) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend FINRA Rule 7620B to Modify the Trade Reporting Fees Applicable to Participants That Use the FINRA/NYSE Trade Reporting Facility).

an increase in the volume of trade reports submitted. If that trend should abate, the fees would decrease as well.

Current Retail Participants

Under the proposed change, there would no longer be a distinction between Retail Participants and other Participants. Based on experience, the Business Member believes that most, if not all, of the current Retail Participants do not report any trades to the FINRA/NYSE TRF during a given month. For example, using December 2021 data, two of the three current Retail Participants were inactive. Currently, all Retail Participants are exempt from the monthly fee.

That would change under the proposed rule change, as the current Retail Participants would become subject to a monthly fee. If, like most current Retail Participants, a Participant submitted no trade reports to the FINRA/NYSE TRF during a calendar month, it would pay a monthly fee of $2,000. Using December 2021 data, the two Retail Participants that were inactive, under the proposed fee change, would be assessed a fee of $2,000 for the month (compared to $0 under the current fee structure). If a Participant submitted one or more trade reports to the FINRA/NYSE TRF during a given calendar month, the Participant would pay a monthly fee equal to the sum of (a) $1,000 plus (b) $0.0055 per published tape report. The Retail Participant that was active in December 2021 would be assessed a fee of $1,799 for the month based on its reporting activity (compared to $0 under the current fee structure).

Current Non-Retail Participants

Participants that currently are Non-Retail Participants would no longer be subject to a fee that varied based on their FINRA/NYSE TRF Market Share. Rather, they would be subject to the same fees as all other Participants, as described above.

To facilitate comparison, the following table shows the estimated effect of the proposed change on the current Non-Retail Participants.

| FINRA/NYSE TRF market share | Count of tape reports to FINRA/NYSE TRF | Current monthly participant fee | Estimated new monthly participant fee |
|---|---|---|---|
| Greater than or equal to 1.25% | More than 25,000 trade reports | $30,000 | * $83,598 |
| Greater than or equal to 1.00% but less than 1.25%. | More than 25,000 trade reports | 25,000 | * 69,828 |
| Greater than or equal to 0.75% but less than 1.00%. | More than 25,000 trade reports | 20,000 | * 43,156 |
| Greater than or equal to 0.50% but less than 0.75%. | More than 25,000 trade reports | 15,000 | * 47,815 |
| Greater than or equal to 0.25% but less than 0.50%. | More than 25,000 trade reports | 10,000 | * 36,793 |
| Greater than or equal to 0.20% but less than 0.25%. | More than 25,000 trade reports | 7,500 | ** 28,821 |
| Greater than or equal to 0.10% but less than 0.20%. | More than 25,000 trade reports | 5,000 | * 20,849 |
| Less than 0.10% | More than 25,000 trade reports | 2,000 | * 4,559 |
| n/a | Between 15,001 and 25,000 trade reports | 2,000 | *** 1,237 |
| n/a | Between 5,001 and 15,000 trade reports | 1,000 | * 1,038 |
| n/a | Between 101 and 5,000 trade reports | 750 | * 1,010 |
| n/a | Between 1 and 100 trade reports | 250 | * 1,001 |
| n/a | No trade reports | 2,000 | 2,000 |

* Based on the monthly average of published tape reports submitted to the FINRA/NYSE TRF by Participants in the relevant tier for 2021.
** There was no activity within the tier in 2021. The value represented is the average of the prior tier (greater than or equal to 0.25% but less than 0.50%) and the subsequent tier (greater than or equal to 0.10% but less than 0.20%).
*** There was no activity in this tier in 2021. Estimate assumes the highest number of trade reports in the range.

Based on the assumptions made in the table, current Non-Retail Participants that have no trade reports would not see a change in their fee, Non-Retail Participants with between 15,001 and 25,000 trade reports would see a decrease in their fee, and all other current Non-Retail Participants would see fee increases. As reflected in the table, based on the stated assumptions, Non-Retail Participants with fee increases would be subject to a monthly fee approximately equal to just over one to four times their current fee. If there were no change in reporting to the FINRA/NYSE TRF, such that Non-Retail Participants' reported volume stayed the same as it was in the first six months of 2021, under the proposed fee schedule, current Non-Retail Participants that have no trade reports would not see a change in their fee, but most other current Non-Retail Participants would see fee increases.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be June 1, 2022.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b) of the Act,[14] in general, and Section 15A(b)(5) of the Act,[15] in particular, which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[16] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(9) of the Act,[17] which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

As a general matter, the proposed fee schedule will be assessed in the same manner for all FINRA members that are, or elect to become, FINRA/NYSE TRF

[14] 15 U.S.C. 78*o*–3(b).
[15] 15 U.S.C. 78*o*–3(b)(5).
[16] 15 U.S.C. 78*o*–3(b)(6).
[17] 15 U.S.C. 78*o*–3(b)(9).

Participants. It will not be applied differently to different sizes or types of Participants. Access to the FINRA/NYSE TRF is offered on fair and non-discriminatory terms.

The Proposed Rule Change Is an Equitable Allocation of Reasonable Fees

FINRA believes that the proposed rule change provides for an equitable allocation of reasonable fees for the following reasons.

The Business Member believes that the FINRA/NYSE TRF would incur a significant loss if the current fee and credit structure remained in place. Accordingly, it proposes amendments to FINRA Rule 7620B, as discussed herein.

The Business Member believes that the proposed rule change is a reasonable amendment to the fee structure to address the current rate of losses, which if they continued, the Business Member believes would make the FINRA/NYSE TRF unsustainable in the long term. By setting a base flat fee and tying the remainder of the fee to the number of tape reports a Participant submits to the FINRA/NYSE TRF during a given month, if any, the Business Member believes that the proposed fee structure would correlate more closely to the manner by which the Business Member incurs the total costs associated with operating and maintaining the Facility. As stated above, as a general matter, the flat portions of the proposed fees are designed to address the fixed costs, while the portion that is charged per published tape report is meant to address variable costs. The proposed rule is reasonably designed to achieve a fee structure whereby the monthly fee revenue generally covers total costs, which would allow the FINRA/NYSE TRF to continue operating without amassing losses similar to those it recently has amassed.

The Business Member believes that partially tying the fee directly to the number of trade reports the Participant submits to the FINRA/NYSE TRF during the month is equitable, because the Participant's fee will increase or decrease in line with any changes in the number of submitted trade reports. This aspect of the fee structure ties the proposed fee more directly to the Participant's usage of the FINRA/NYSE TRF. In recent years, there has been an increase in the number of trade reports submitted. If that trend should abate, the fees would decrease as well.

The Business Member also believes that it is reasonable and equitable to charge a Participant a flat fee even if it does not submit any tape reports to the FINRA/NYSE TRF during the relevant month. First, the FINRA/NYSE TRF bears costs for operating the FINRA/NYSE TRF, even when a Participant does not submit tape reports during a given month. Second, the Business Member believes that the fee for inactivity during a particular month, which has not changed for Non-Retail Participants and would now apply to Retail Participants, is a reasonable method of encouraging all Participants to utilize the FINRA/NYSE TRF.

Currently, all Retail Participants are exempt from fees under FINRA Rule 7620B for reporting to the FINRA/NYSE TRF, but would become subject to trade reporting fees under the proposed rule change. The Business Member believes that the proposed rule change would be equitable because it would treat all Participants the same and the applicable fee would no longer depend on whether a Participant were a Retail Participant.[18]

Similarly, the Business Member believes that applying the proposed fee structure, which is not based on the Participant's market share, also is equitable for Participants, including Retail Participants. As would be the case for a Non-Retail Participant, the proposed fee would be tied directly to the number of trade reports a Participant submits to the FINRA/NYSE TRF during the month and would not be tiered based on the Participant's FINRA/NYSE TRF Market Share. In this way, the proposed fee would be more directly tied to a Participant's access to and usage of the FINRA/NYSE TRF.

Thus, all Participants would be subject to monthly fees. The proposed fee schedule would be applied in the same manner to all firms that are, or elect to become, FINRA/NYSE TRF Participants. It would not apply differently to different sizes of Participants. By tying a portion of the fee directly to the number of trade reports that the Participant submits to the FINRA/NYSE TRF during the month, a Participant's trade reporting fess would in part correspond with a Participant's activity over the period.

The Business Member believes that the proposed change would significantly simplify Rule 7620B, removing the distinction between Retail Participants and Non-Retail Participants and removing the multiple fee tiers in current subsection (b). As a result, the proposed change would make it easier for market participants to determine their monthly fee and would add clarity to the rules.

[18] The Business Member also notes that Rule 7610B does not differentiate between Retail and Non-Retail Participants. As Rule 7610B would not change, all Retail Participants would continue to qualify for transaction credits in accordance with Rule 7610B as they do now.

The Proposed Rule Change is Not Unfairly Discriminatory

FINRA believes that the proposed rule change is not unfairly discriminatory for the following reasons.

The Business Member believes that the FINRA/NYSE TRF would incur a significant loss if the current fee structure remained in place. Accordingly, it proposes to amend the fees set forth in FINRA Rule 7620B. By so doing, the Business Member has proposed a change that it believes is not unfairly discriminatory, as it believes that the resulting fee would correspond more closely with the total costs of operating and maintaining the Facility. The proposed rule is reasonably designed to tie the monthly fee revenue to the cost of operating and maintaining the FINRA/NYSE TRF, which would allow the FINRA/NYSE TRF to continue operating without amassing losses similar to those it recently has amassed.

The Business Member believes that it is not unfairly discriminatory to charge a Participant a flat fee even if it does not submit any tape reports to the FINRA/NYSE TRF during a given month. First, the FINRA/NYSE TRF bears ongoing costs for operating the FINRA/NYSE TRF, even when a Participant does not submit tape reports in a given month. Second, the Business Member believes that the inactivity fee, which has not changed, is a reasonable method of encouraging Participants to utilize the FINRA/NYSE TRF.

The Business Member believes that the proposed fee structure is not unfairly discriminatory because it would not differ for different types of Participants, and Retail Participants would be subject to the same fee structure as Non-Retail Participants. The Business Member believes that the proposed rule change would not be unfairly discriminatory because all FINRA member Participants would be treated the same.

Similarly, the Business Member believes that applying the proposed fee structure, which is not based on the Participant's market share, is not unfairly discriminatory. As would be the case for a Non-Retail Participant, the proposed fee would be tied directly to the number of trade reports a Participant submits to the FINRA/NYSE TRF during the month and would not be tiered based on the Participant's FINRA/NYSE TRF Market Share. Rather, the proposed fee would be more directly tied to a Participant's access to and usage of the FINRA/NYSE TRF Facility.

By tying a portion of the fee directly to the number of trade reports the Participant submits to the FINRA/NYSE

TRF during the month, a Participant could reduce its monthly fee simply by reducing the volume of such trade reports. This makes the proposed fee more directly tied to the Participant's usage of the FINRA/NYSE TRF, allowing variable fees to better correspond with a Participant's activity over the period.

The Business Member believes that the proposed change is not unfairly discriminatory because a Participant that saw an increase in its monthly fee would be able to utilize another FINRA Facility. FINRA members can report their OTC trades in NMS stocks to the FINRA/NYSE TRF's competitors if they deem pricing levels at the other FINRA Facilities to be more favorable, so long as they are participants of such other facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*Intramarket Competition.* For the month of December 2021, FINRA members used the FINRA/NYSE TRF to report approximately 17% of shares in NMS stocks traded OTC, compared to approximately 83% for the FINRA/Nasdaq TRF. The Business Member believes that pricing is the key factor for FINRA members when choosing which FINRA Facility to use. The Business Member expects that the proposed change would result in a fee increase for most Participants, which in turn could result in decreased use of the FINRA/NYSE TRF, if Participants were to shift to using other facilities.

Nonetheless, the Business Member does not believe that the proposed rule change would result in a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Simply put, the Business Member believes that the proposed change is a rational response to increased losses. According to the Business Member, in 2020 and 2021, costs of operating and maintaining the FINRA/NYSE TRF were greater than Revenues, causing the FINRA/NYSE TRF to run at a loss. According to the Business Member, during that time, the volume of tape reports increased and the total Subscriber Fee Revenue decreased. More specifically, compared to the 2018 monthly average, as of December 31, 2021, monthly average tape report activity for the FINRA/NYSE TRF had increased by 329% and monthly average costs had increased by 146%. At the same time, monthly average Subscriber Fee Revenue had decreased by 19%. Net Market Data Revenue varied during the period, but overall it decreased as compared to the first quarter of 2018. Ultimately, the Business Member believes that the FINRA/NYSE TRF would continue to incur a significant loss if the current fee and credit structure remained in place.

The Business Member does not believe that such losses are sustainable in the long run. Accordingly, it proposes to amend the fees set forth in FINRA Rule 7620B. By so doing, the Business Member has proposed a change that it believes should ensure that the monthly fees cover the costs of operating and maintaining the FINRA/NYSE TRF, which would allow it to continue operating without amassing losses similar to those it currently has. The Business Member believes that the continued existence of the FINRA/NYSE TRF would be an asset to the competitive environment.

The Business Member does not believe that the proposed fee would place some market participants at a relative disadvantage compared to other market participants, because the proposed fee schedule would be applied in the same manner to all FINRA members that are, or elect to become, FINRA/NYSE TRF Participants. It would not apply differently to different sizes of Participants. Different types of Participants will be treated the same, and the amount of the monthly fee would no longer depend on whether a Participant were a Retail Participant or its FINRA/NYSE TRF Market Share.

As set forth above, if there were no change in reporting to the FINRA/NYSE TRF such that Participants' reporting volume stayed the same as it was in the first six months of 2021, under the proposed fee schedule, current Non-Retail Participants that have no trade reports would not see a change in their fee, but most Retail Participants would see fee increases. More specifically, currently there are three Retail Participants that will be impacted and would incur fee increases under the proposed rule change. Using December 2021 data, the two Retail Participants that were inactive, under the proposed fee change, would be assessed a fee of $2,000 for the month (compared to $0 under the current fee structure). The Retail Participant that was active in December 2021 would be assessed a fee of $1,779 for the month based on its reporting activity (compared to $0 under the current fee structure). The Business Member nonetheless believes that the proposed fee amendment is reasonable in light of the ongoing costs of operating and maintaining the FINRA/NYSE TRF and as a means of addressing the current losses.

Participants may potentially alter their trade reporting activity in response to the proposed rule change. Specifically, those Participants that would incur higher fees may refrain from reporting to the FINRA/NYSE TRF and may choose to report to another FINRA Facility. Alternatively, such firms may continue reporting or new firms may start reporting to the FINRA/NYSE TRF if they find that the proposed net cost of reporting and other functionalities provided represent the best value to their business.[19]

*Intermarket Competition.* The FINRA/NYSE TRF operates in a competitive environment. The proposed fee would not impose a burden on competition on other FINRA Facilities that is not necessary or appropriate. The FINRA Facilities have different pricing and compete for FINRA members' trade report activity. The pricing structures of the FINRA/NYSE TRF and other FINRA Facilities are publicly available, allowing FINRA members to make informed decisions regarding which FINRA Facility they use to report OTC trades in NMS stocks.

The Business Member represents that the FINRA/NYSE TRF would continue to incur significant losses if the current fee and credit structure remained in place, and it does not believe that such losses are sustainable in the long run. Accordingly, it proposes to amend the fees set forth in FINRA Rule 7620B. By so doing, the Business Member has proposed a change that it believes will allow it to continue operating without amassing losses similar to those it currently has. The Business Member believes that its continued existence would be an asset to the competitive environment.

FINRA members can choose among four FINRA Facilities when reporting OTC trades in NMS stocks: The FINRA/NYSE TRF, the two FINRA/Nasdaq TRFs, or ADF. FINRA members can report their OTC trades in NMS stocks to a given FINRA Facility's competitors if they determine that the fees and credits of another FINRA Facility are more favorable, so long as they are participants of such other facility.

[19] The FINRA/NYSE TRF does not impose a fee on new Participants, and so a FINRA member that opts to become a Participant would not incur an additional cost from the FINRA/NYSE TRF. In some cases, a new Participant may incur incidental costs to connect to the FINRA/NYSE TRF, but those are not charged by the FINRA/NYSE TRF. An existing Participant that ceases to be a Participant is not subject to any change fee by the FINRA/NYSE TRF.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [20] and paragraph (f)(2) of Rule 19b–4 thereunder.[21] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2022–006 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2022–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2022–006 and should be submitted on or before April 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06516 Filed 3–29–22; 8:45 am]

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[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(2).

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94509; File No. SR–CboeEDGX–2022–015]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

March 24, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 14, 2022, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its fee schedule for its equity options platform (''EDGX Options'') to adopt fees for Certification Logical Port fees, effective March 1, 2022.[3]

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange's System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports,[4] Logical Ports with Bulk Quoting Capabilities,[5] Purge Ports,[6] GRP Ports and Multicast PITCH Server Ports.[7] For each type of the aforementioned logical ports that is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee changes on March 1, 2022 (SR–CboeEDGX–2022–011). On March 14, 2022, the Exchange withdrew that filing and submitted this proposal.

[4] Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

[5] Bulk Quoting Capabilities Ports provide users with the ability to submit and update multiple bids and offers in one message through logical ports enabled for bulk-quoting.

[6] Purge Ports allow users to submit a cancelation for all open orders, or a subset thereof, across multiple sessions under the same Executing Firm ID (''EFID'').

[7] Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH data feeds.

used in the production environment, the Exchange also offers corresponding ports which provide Members and non-Members access to the Exchange's certification environment to test proprietary systems and applications (*i.e.,* ''Certification Logical Ports''). The certification environment facilitates testing using replicas of the Exchange's production environment process configurations which provide for a robust and realistic testing experience. For example, the certification environment allows unlimited firm-level testing of order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancelations, and purge requests. Historically, the Exchange has not assessed fees for Certification Logical Ports. The Exchange now proposes to establish a monthly fee for Certification Logical Ports. Particularly, the Exchange proposes to adopt a monthly fee of $250 per Certification Logical Port. However, the Exchange notes that it will continue to offer free of charge one Certification Logical Port per logical port type offered in the production environment (*i.e.,* Logical Ports, Logical Ports with Bulk Quoting Capabilities, Purge Ports, GRP Ports and Multicast PITCH Server Ports) to each Member or non-Member, as applicable. Any additional Certification Logical Ports will be assessed $250 per month per port.[8] The Exchange notes that purchasing additional Certification Logical Ports is voluntary and not required in order to participate in the production environment, including live production trading on the Exchange. Additionally, Members and non-Members are not required to purchase any particular production logical port in order to receive a corresponding Certification Logical Port free of charge.[9] Further, the Exchange also notes that other exchanges similarly assess fees related to their respective testing environments.[10]

Lastly, the Exchange does not intend to prorate Certification Logical Ports for the first month of service and intends to make this clear in the notes section under the Options Logical Port Fees section of the Fees Schedule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[11] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, 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. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[13] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As noted above, the Exchange's certification environment provides a robust and realistic testing experience using a replica of the Exchange's production environment process configurations. This environment enables market participants to manage risk more effectively through testing software development changes in certification prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. As such, the Exchange believes it's reasonable to adopt a Certification Logical Port fee as it better enables the Exchange to continue to maintain and improve its testing environment, which the Exchange believes serves to improve live production trading on the Exchange. The Exchange also believes the proposed Certification Logical Port fee is reasonable because while such ports will no longer be completely free, Members and non-Members will continue to be entitled to receive free of charge one Certification Logical Port for each type of logical port that are currently offered in the production environment. Notably, the Exchange believes one Certification Logical Port per logical port type will be sufficient for most users and indeed anticipates that the majority of users will not purchase additional Certification Logical Ports. More specifically, while the Exchange has no way of predicting with certainty the impact of the proposed changes, it anticipates approximately 16% of Users to be assessed fees for Certification Logical Ports (*i.e.,* request Certification Ports in excess of the Certification Logical Ports provided free of charge). For those users who wish to obtain additional Certification Logical Ports based on their respective business needs, they are able to do so for a modest fee. Indeed, the proposed fee is lower than the fees assessed for the corresponding logical ports used in the Exchange's production environment.[14] Additionally, the Exchange notes other exchanges similarly assess fees relating to their respective testing environments.[15] Further, the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.[16]

The Exchange believes the proposed fee is also equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to obtain additional Certification Logical Ports. The Exchange also believes the proposed fee is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to be efficient with their respective Certification Logical Port usage. Without some sort of fee for its Certification Logical Ports, the Exchange believes that Members and non-Members may be less efficient in testing their systems, potentially resulting in excessive time and resources being consumed by the

[8] For example, if a Member maintains 3 FIX Certification Logical Ports, 1 Purge Certification Logical Port, and 1 set of Multicast PITCH Spin Server Certification Logical Port, the Member will be assessed $500 per month for Certification Logical Port Fees (*i.e.,* 1 FIX, 1 Purge and 1 set of Multicast PITCH Spin Server Certification Logical Ports × $0 and 2 FIX Certification Logical Ports × $250).

[9] For example, a Member may obtain a Certification Purge Port free of charge, even if that Member has not otherwise purchased a Purge Port for the live production environment. Certification Logical Ports are not automatically enabled for each User, but rather must be proactively requested by users.

[10] *See e.g.,* Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. *See also* MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(4).

[14] *See* Cboe EDGX Options Fees Schedule, Options Logical Port Fees.

[15] *See e.g.,* Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. *See also* MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

[16] Although many Users use Certification Logical Ports on a daily basis, the Exchange notes frequency of use of Certification Logical Ports varies by User and depends on a User's business needs. To the extent a User purchases additional Certification Logical Ports and its respective needs change or it determines it no longer wishes to maintain excess Certification Logical Ports, the User is free to cancel such ports for the following month(s).

Exchange in supporting testing and certifying Members and non-Members to the detriment of all market participants as Exchange resources are diverted away from other trading operations. Additionally, similar to its production environment, the Exchange's certification environment does not have unlimited system capacity to support unlimited testing. As such, the proposed fee structure also ensures that firms that use the most capacity pay for that capacity, rather than placing that burden on market participants that have more modest needs. The Exchange lastly believes that its proposed fee is aligned with the goals of the Commission in facilitating a competitive market for all firms that trade on the Exchange and of ensuring that critical market infrastructure has ''levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets.'' [17]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed fee creates an undue burden on competition because the Exchange will continue to offer free of charge one Certification Logical Port per each logical port type offered in the production environment. Although the Exchange now proposes to charge users for additional Certification Logical Ports, the Exchange believes without some sort of fee assessed for excess Certification Logical Ports, Members and non-Members may be less efficient in testing their systems, potentially resulting in excessive time and resources being consumed by the Exchange and also potentially impacting the certification environment's capacity thresholds. The proposed fee structure therefore would ensure that market participants that pay the proposed fee are the ones that demand the most resources from the Exchange. Also as discussed, the purchase of additional ports is optional and based on the business needs of each market participant. Moreover, such market participants will continue to benefit from access to the certification environment, which the Exchange believes provides a robust and realistic testing experience via a replica of the production environment.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's certification environment. Additionally, the Exchange notes that it operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges, as well as off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchange, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [18] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[19] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [20] and paragraph (f) of Rule 19b–4 [21] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2022–015 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2022–015. 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

[17] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) (File No. S7–01–13) (Regulation SCI Adopting Release).

[18] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[19] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f).

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. All submissions should refer to File Number SR–CboeEDGX–2022–015 and should be submitted on or before April 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06632 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94507; File No. SR–CboeBYX–2022–004]**

## Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule

March 24, 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 March 14, 2022, Cboe BYX Exchange, Inc. (''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'' or ''BYX Equities'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fees Schedule to adopt fees for Certification Logical Port fees, effective March 1, 2022.[3]

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange's System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports,[4] Purge Ports,[5] Multicast PITCH GRP Ports and Multicast PITCH Spin Server Ports.[6] For each type of the aforementioned logical ports that is used in the production environment, the Exchange also offers corresponding ports which provide Members and non-Members access to the Exchange's certification environment to test proprietary systems and applications (*i.e.,* ''Certification Logical Ports''). The certification environment facilitates testing using replicas of the Exchange's production environment process configurations which provide for a robust and realistic testing experience. For example, the certification environment allows unlimited firm-level testing of order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancelations, and purge requests. Historically, the Exchange has not assessed fees for Certification Logical Ports. The Exchange now proposes to establish a monthly fee for Certification Logical Ports. Particularly, the Exchange proposes to adopt a monthly fee of $250 per Certification Logical Port. However, the Exchange notes that it will continue to offer free of charge one Certification Logical Port per logical port type offered in the production environment (*i.e.,* Logical Ports, Purge, Multicast PITCH GRP, and Multicast PITCH Spin Server Ports) to each Member or non-Member, as applicable. Any additional Certification Logical Ports will be assessed $250 per month per port.[7] The Exchange notes that purchasing additional Certification Logical Ports is voluntary and not required in order to participate in the production environment, including live production trading on the Exchange. Additionally, Members and non-Members are not required to purchase any particular production logical port in order to receive a corresponding Certification Logical Port free of charge.[8] Further, the Exchange also notes that other exchanges similarly assess fees related

[3] The Exchange initially filed the proposed fee changes on March 1, 2022 (SR– CboeBYX–2022–002). On March 14, 2022, the Exchange withdrew that filing and submitted this proposal.

[4] Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

[5] Purge Ports are dedicated ports that permit a User to simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports by requesting the Exchange to effect such cancellation.

[6] Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH data feeds.

[7] For example, if a Member maintains 3 FIX Certification Logical Ports, 1 Purge Certification Logical Port, and 1 set of Multicast PITCH Spin Server Certification Logical Port, the Member will be assessed $500 per month for Certification Logical Port Fees (*i.e.,* 1 FIX, 1 Purge and 1 set of Multicast PITCH Spin Server Certification Logical Ports × $0 and 2 FIX Certification Logical Ports × $250).

[8] For example, a Member may obtain a Certification Purge Port free of charge, even if that Member has not otherwise purchased a Purge Port for the live production environment. Certification Logical Ports are not automatically enabled for each User, but rather must be proactively requested by Users.

to their respective testing environments.[9]

Lastly, the Exchange does not intend to prorate Certification Logical Ports for the first month of service and intends to make this clear in the notes section under the Logical Port Fees section of the Fees Schedule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, 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. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As noted above, the Exchange's certification environment provides a robust and realistic testing experience using a replica of the Exchange's production environment process configurations. This environment enables market participants to manage risk more effectively through testing software development changes in certification prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. As such, the Exchange believes it's reasonable to adopt a Certification Logical Port fee as it better enables the Exchange to continue to maintain and improve its testing environment, which the Exchange believes serves to improve live production trading on the Exchange. The Exchange also believes the proposed Certification Logical Port fee is reasonable because while such ports will no longer be completely free, Members and non-Members will continue to be entitled to receive free of charge one Certification Logical Port for each type of logical port that are currently offered in the production environment. Notably, the Exchange believes one Certification Logical Port per logical port type will be sufficient for most users and indeed anticipates that the majority of users will not purchase additional Certification Logical Ports. More specifically, while the Exchange has no way of predicting with certainty the impact of the proposed changes, it anticipates approximately 19% of Users to be assessed fees for Certification Logical Ports (*i.e.,* request Certification Ports in excess of the Certification Logical Ports provided free of charge). For those users who wish to obtain additional Certification Logical Ports based on their respective business needs, they are able to do so for a modest fee. Indeed, the proposed fee is lower than the fees assessed for the corresponding logical ports used in the Exchange's production environment.[13] Additionally, the Exchange notes other exchanges similarly assess fees relating to their respective testing environments.[14] Further, the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.[15]

The Exchange believes the proposed fee is also equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to obtain additional Certification Logical Ports. The Exchange also believes the proposed fee is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to be efficient with their respective Certification Logical Port usage. Without some sort of fee for its Certification Logical Ports, the Exchange believes that Members and non-Members may be less efficient in testing their systems, potentially resulting in excessive time and resources being consumed by the Exchange in supporting testing and certifying Members and non-Members to the detriment of all market participants as Exchange resources are diverted away from other trading operations. Additionally, similar to its production environment, the Exchange's certification environment does not have unlimited system capacity to support unlimited testing. As such, the proposed fee structure also ensures that firms that use the most capacity pay for that capacity, rather than placing that burden on market participants that have more modest needs. The Exchange lastly believes that its proposed fee is aligned with the goals of the Commission in facilitating a competitive market for all firms that trade on the Exchange and of ensuring that critical market infrastructure has ''levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets.''[16]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed fee creates an undue burden on competition because the Exchange will continue to offer free of charge one Certification Logical Port per each logical port type offered in the production environment. Although the Exchange now proposes to charge users for additional Certification Logical Ports, the Exchange believes without some sort of fee assessed for excess Certification Logical Ports, Members and non-Members may be less efficient in testing their systems, potentially resulting in excessive time and resources being consumed by the Exchange and also potentially impacting

[9] *See e.g.,* Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. *See also* MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(4).

[13] *See* Cboe BYX Fees Schedule, Logical Port Fees.

[14] *See e.g.,* Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. *See also* MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

[15] Although many Users use Certification Logical Ports on a daily basis, the Exchange notes frequency of use of Certification Logical Ports varies by User and depends on a User's business needs. To the extent a User purchases additional Certification Logical Ports and its respective needs change or it determines it no longer wishes to maintain excess Certification Logical Ports, the User is free to cancel such ports for the following month(s).

[16] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) (File No. S7–01–13) (Regulation SCI Adopting Release).

the certification environment's capacity thresholds. The proposed fee structure therefore would ensure that market participants that pay the proposed fee are the ones that demand the most resources from the Exchange. Also as discussed, the purchase of additional ports is optional and based on the business needs of each market participant. Moreover, such market participants will continue to benefit from access to the certification environment, which the Exchange believes provides a robust and realistic testing experience via a replica of the production environment.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's certification environment. Additionally, the Exchange notes that it operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .''.[18] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and paragraph (f) of Rule 19b–4 [20] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBYX–2022–004 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBYX–2022–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBYX–2022–004 and should be submitted on or before April 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06630 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

[17] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[18] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94508; File No. SR–CboeEDGX–2022–014]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule

March 24, 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 March 14, 2022, Cboe EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'' or ''EDGX Equities'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its fee schedule for its equities platform (''EDGX Equities'') to adopt fees for Certification Logical Port fees, effective March 1, 2022.[3]

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange's System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports,[4] Purge Ports,[5] Multicast PITCH GRP Ports and Multicast PITCH Spin Server Ports.[6] For each type of the aforementioned logical ports that is used in the production environment, the Exchange also offers corresponding ports which provide Members and non-Members access to the Exchange's certification environment to test proprietary systems and applications (*i.e.,* ''Certification Logical Ports''). The certification environment facilitates testing using replicas of the Exchange's production environment process configurations which provide for a robust and realistic testing experience. For example, the certification environment allows unlimited firm-level testing of order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancelations, and purge requests. Historically, the Exchange has not assessed fees for Certification Logical Ports. The Exchange now proposes to establish a monthly fee for Certification Logical Ports. Particularly, the Exchange proposes to adopt a monthly fee of $250 per Certification Logical Port. However, the Exchange notes that it will continue to offer free of charge one Certification Logical Port per logical port type offered in the production environment (*i.e.,* Logical Ports, Purge, Multicast PITCH GRP, and Multicast PITCH Spin Server Ports) to each Member or non-Member, as applicable. Any additional Certification Logical Ports will be assessed $250 per month per port.[7] The Exchange notes that purchasing additional Certification Logical Ports is voluntary and not required in order to participate in the production environment, including live production trading on the Exchange. Additionally, Members and non-Members are not required to purchase any particular production logical port in order to receive a corresponding Certification Logical Port free of charge.[8] Further, the Exchange also notes that other exchanges similarly assess fees related to their respective testing environments.[9]

Lastly, the Exchange does not intend to prorate Certification Logical Ports for the first month of service and intends to make this clear in the notes section under the Logical Port Fees section of the Fees Schedule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, 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. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As noted above, the Exchange's certification environment provides a robust and realistic testing experience using a replica of the Exchange's production environment process configurations. This environment enables market participants to manage risk more effectively through testing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee changes on March 1, 2022 (SR–CboeEDGX–2022–010). On March 14, 2022, the Exchange withdrew that filing and submitted this proposal.

[4] Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

[5] Purge Ports are dedicated ports that permit a User to simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports by requesting the Exchange to effect such cancellation.

[6] Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH data feeds.

[7] For example, if a Member maintains 3 FIX Certification Logical Ports, 1 Purge Certification Logical Port, and 1 set of Multicast PITCH Spin Server Certification Logical Port, the Member will be assessed $500 per month for Certification Logical Port Fees (*i.e.,* 1 FIX, 1 Purge and 1 set of Multicast PITCH Spin Server Certification Logical Ports × $0 and 2 FIX Certification Logical Ports × $250).

[8] For example, a Member may obtain a Certification Purge Port free of charge, even if that Member has not otherwise purchased a Purge Port for the live production environment. Certification Logical Ports are not automatically enabled for each User, but rather must be proactively requested by users.

[9] *See e.g.,* Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. *See also* MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(4).

software development changes in certification prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. As such, the Exchange believes it's reasonable to adopt a Certification Logical Port fee as it better enables the Exchange to continue to maintain and improve its testing environment, which the Exchange believes serves to improve live production trading on the Exchange. The Exchange also believes the proposed Certification Logical Port fee is reasonable because while such ports will no longer be completely free, Members and non-Members will continue to be entitled to receive free of charge one Certification Logical Port for each type of logical port that are currently offered in the production environment. Notably, the Exchange believes one Certification Logical Port per logical port type will be sufficient for most users and indeed anticipates that the majority of users will not purchase additional Certification Logical Ports. More specifically, while the Exchange has no way of predicting with certainty the impact of the proposed changes, it anticipates approximately 13% of Users to be assessed fees for Certification Logical Ports (*i.e.,* request Certification Ports in excess of the Certification Logical Ports provided free of charge). For those users who wish to obtain additional Certification Logical Ports based on their respective business needs, they are able to do so for a modest fee. Indeed, the proposed fee is lower than the fees assessed for the corresponding logical ports used in the Exchange's production environment.[13] Additionally, the Exchange notes other exchanges similarly assess fees relating to their respective testing environments.[14] Further, the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.[15]

The Exchange believes the proposed fee is also equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to obtain additional Certification Logical Ports. The Exchange also believes the proposed fee is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to be efficient with their respective Certification Logical Port usage. Without some sort of fee for its Certification Logical Ports, the Exchange believes that Members and non-Members may be less efficient in testing their systems, potentially resulting in excessive time and resources being consumed by the Exchange in supporting testing and certifying Members and non-Members to the detriment of all market participants as Exchange resources are diverted away from other trading operations. Additionally, similar to its production environment, the Exchange's certification environment does not have unlimited system capacity to support unlimited testing. As such, the proposed fee structure also ensures that firms that use the most capacity pay for that capacity, rather than placing that burden on market participants that have more modest needs. The Exchange lastly believes that its proposed fee is aligned with the goals of the Commission in facilitating a competitive market for all firms that trade on the Exchange and of ensuring that critical market infrastructure has ''levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets.'' [16]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed fee creates an undue burden on competition because the Exchange will continue to offer free of charge one Certification Logical Port per each logical port type offered in the production environment. Although the Exchange now proposes to charge users for additional Certification Logical Ports, the Exchange believes without some sort of fee assessed for excess Certification Logical Ports, Members and non-Members may be less efficient in testing their systems, potentially resulting in excessive time and resources being consumed by the Exchange and also potentially impacting the certification environment's capacity thresholds. The proposed fee structure therefore would ensure that market participants that pay the proposed fee are the ones that demand the most resources from the Exchange. Also as discussed, the purchase of additional ports is optional and based on the business needs of each market participant. Moreover, such market participants will continue to benefit from access to the certification environment, which the Exchange believes provides a robust and realistic testing experience via a replica of the production environment.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's certification environment. Additionally, the Exchange notes that it operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17] The

[13] *See* Cboe EDGX Equities Fees Schedule, Logical Port Fees.

[14] *See e.g.,* Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. *See also* MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

[15] Although many Users use Certification Logical Ports on a daily basis, the Exchange notes frequency of use of Certification Logical Ports varies by User and depends on a User's business needs. To the extent a User purchases additional Certification Logical Ports and its respective needs change or it determines it no longer wishes to maintain excess Certification Logical Ports, the User is free to cancel such ports for the following month(s).

[16] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) (File No. S7–01–13) (Regulation SCI Adopting Release).

[17] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[18] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and paragraph (f) of Rule 19b–4 [20] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2022–014 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2022–014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2022–014 and should be submitted on or before April 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06631 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

[18] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94494; File No. SR–NSCC–2021–016]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Enhance Capital Requirements and Make Other Changes

March 23, 2022.

## I. Introduction

On December 13, 2021, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2021–016 (the ''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on December 29, 2021,[3] and the Commission has received comments regarding the changes proposed in the Proposed Rule Change.[4]

On January 26, 2022, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6] This order institutes proceedings, pursuant to Section 19(b)(2)(B) of the Act,[7] to determine whether to approve or disapprove the Proposed Rule Change.

## II. Summary of the Proposed Rule Change

As described in the Notice, NSCC proposes to amend the Rules and Procedures (''Rules'') in order to (1) revise its capital requirements for Members and Limited Members (collectively, ''members''), (2) streamline its two credit risk monitoring systems, Watch List and enhanced surveillance list, and (3) make certain other clarifying, technical, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 93856 (December 22, 2021), 86 FR 74185 (December 29, 2021) (SR–NSCC–2021–016) (''Notice'').

[4] Comments are available at *https://www.sec.gov/comments/sr-nscc-2021-016/srnscc2021016.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 94068 (January 26, 2022), 87 FR 5544 (February 1, 2022) (SR–NSCC–2021–016).

[7] 15 U.S.C. 78s(b)(2)(B).

supplementary changes to implement items (1) and (2).[8]

First, NSCC proposes to revise various aspects of its capital requirements for several types of members. NSCC proposes to increase minimum capital requirements for certain members. For example, for U.S. broker-dealers, the capital requirements would be determined using a tiered system based generally on the volatility component of a member's margin (referred to as the value-at-risk tier). NSCC also proposes to revise how it measures certain members' capital by incorporating common equity tier 1 capital, and the standards established in the capital adequacy rules and regulations of the Federal Deposit Insurance Corporation. NSCC would revise the reporting requirements concerning the capital requirements for certain members. In addition, for certain types of members who currently do not have specific amounts for their minimum capital requirements, the proposal would establish such a requirement.

Second, NSCC proposes to revise its Watch List and enhanced surveillance list, which are both currently used for credit risk monitoring. NSCC proposes to revise its Watch List and delete its enhanced surveillance list. NSCC also proposes to clarify that members on the Watch List are reported to NSCC's management committees and regularly reviewed by NSCC's senior management.

Third, NSCC proposes to (1) revise or add headings and sub-headings as appropriate, (2) revise defined terms and add appropriate defined terms to facilitate the proposed changes, (3) rearrange and consolidate paragraphs to promote readability, (4) fix typographical and other errors, and (5) other changes in order to improve clarity and the accessibility and transparency of the Rules.

## III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[9] 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. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, providing the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Act,[10] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Act,[11] and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Act,[12] which requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and to protect investors and the public interest;
- Section 17A(b)(3)(I) of the Act,[13] which requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act;
- Rule 17Ad–22(e)(18) under the Act,[14] which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.

## IV. 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 Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act,[15] Section 17A(b)(3)(I) of the Act,[16] Rule 17Ad–22(e)(18) under the Act,[17] or any other provision of the Act, or the rules and regulations thereunder.

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change should be approved or disapproved by April 20, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 4, 2022.

The Commission asks that commenters address the sufficiency of NSCC's statements in support of the Proposed Rule Change, which are set forth in the Notice,[18] in addition to any other comments they may wish to submit about the Proposed Rule Change.

Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NSCC–2021–016 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–NSCC–2021–016. 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

[8] The description of the Proposed Rule Change is based on the statements prepared by NSCC in the Notice. *See* Notice, *supra* note 3. Capitalized terms used herein and not otherwise defined herein are defined in the Rules, *available at https://www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[9] 15 U.S.C. 78s(b)(2)(B).

[10] *Id.*

[11] 15 U.S.C. 78q–1.

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 15 U.S.C. 78q–1(b)(3)(I).

[14] 17 CFR 240.17Ad–22(e)(18).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 15 U.S.C. 78q–1(b)(3)(I).

[17] 17 CFR 240.17Ad–22(e)(18).

[18] *See* Notice, *supra* note 3.

public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2021–016 and should be submitted on or before April 20, 2022. Rebuttal comments should be submitted by May 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06512 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

[19] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94513; File No. SR–CBOE–2022–012]**

## Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rules Relating to the Continuing Education for Registered Persons as Provided Under Exchange Rule 3.33 and To Amend Related Registration Requirements as Provided Under Rule 3.30

March 24, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2022, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') 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 Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to the Continuing Education for Registered Persons as provided under Exchange Rule 3.33 and to amend related Registration Requirements as provided under Rule 3.30. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

(i) Background

The continuing education program for registered persons of broker-dealers (''CE Program'') currently requires registered persons to complete continuing education consisting of a Regulatory Element and a Firm Element. The Regulatory Element is delivered through a web-based delivery method called ''CE Online,'' which is administered through the Financial Industry Regulatory Authority, Inc. (''FINRA'') online continuing education system, and focuses on regulatory requirements and industry standards, while the Firm Element is provided by each firm and focuses on securities products, services and strategies the firm offers, firm policies and industry trends. The CE Program for registered persons is codified under Exchange Rule 3.33.

The Securities and Exchange Commission (the ''SEC'' or the ''Commission'') recently approved a proposal submitted by FINRA relating to its CE Program.[5] The Exchange understands that other exchanges have or will propose similar amendments based on FINRA's rule changes. Therefore, the Exchange proposes to amend and enhance its own CE Program as provided under Rule 3.33 and its related Registration Requirements as provided under Rule 3.30 in response to FINRA's amended CE Program and to facilitate compliance with the Exchange's CE Program requirements by members of multiple exchanges. The Exchange proposes to implement the proposed rule changes to align with FINRA's CE Program implementation dates.[6] Specifically, the proposed implementation dates are as follows: Changes relating to proposed Rule 3.33(c) (Continuing Education Program for Persons Maintaining Their Qualification Following the Termination of a Registration Category) will become effective March 15, 2022; changes relating to Rule 3.30.09 (Waiver of Examination for Individuals Working for a Financial Services Industry Affiliate of a TPH)[7] (referred to as the ''FSA waiver program'' or ''FSAWP'') will become effective March 15, 2022; and all other changes, including changes to Rules 3.33(a) (Regulatory Element)[8] and 3.33(b) (Firm Element) will become effective January 1, 2023.

a. *Regulatory Element*

Exchange Rule 3.33(a) currently requires a registered person to complete the applicable Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date.[9] The Exchange may extend these

[5] *See* Securities and Exchange Act No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (SR–FINRA–2021–015) (Order Approving a Proposed Rule Change To Amend FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements)).

[6] *See* FINRA Regulatory Notice 21–41 (November 17, 2021).

[7] ''TPH'' refers to Trading Permit Holder. *See* Rule 1.1.

[8] An individual's initial annual Regulatory Element due date will be December 31, 2023.

[9] *See* Rule 3.33(a). An individual's registration anniversary date is generally the date they initially registered in the Central Registration Depository (''CRD®'') system. However, an individual's registration anniversary date would be reset if the individual has been out of the industry for two or

time frames for good cause shown.[10] Unless otherwise determined, any registered persons who have not completed the Regulatory Element of the program within the prescribed time frames will have their registration(s) deemed inactive and will be designated as ''CE inactive'' in the CRD system until the requirements of the Regulatory Element have been satisfied.[11] A CE inactive person is prohibited from performing, or being compensated for, any activities requiring registration, including supervision. Moreover, if registered persons remain CE inactive for two consecutive years, they must requalify by retaking required examinations (or obtain a waiver of the applicable qualification examinations).[12]

The Regulatory Element currently consists of a subprogram for registered persons generally, and a subprogram for principals and supervisors.[13] While some of the current Regulatory Element content is unique to particular registration categories, most of the content has broad application to both representatives and principals.[14] The Regulatory Element was originally designed at a time when most individuals had to complete the Regulatory Element at a test center, and its design was shaped by the limitations of the test center-based delivery model. In 2015, the delivery of the Regulatory Element was transitioned to an online platform, referred to above as CE Online, which allows individuals to complete the content online at a location of their choosing, including their private residence. This online delivery provides for much greater flexibility in updating content in a timelier fashion, developing content tailored to each registration category and presenting the material in an optimal learning format.

b. Firm Element

Rule 3.33(c) (Firm Element) currently requires each firm to develop and administer an annual Firm Element training program for covered registered persons.[15] The rule requires firms to conduct an annual needs analysis to determine the appropriate training.[16] Currently, at a minimum, the Firm Element must cover training in ethics and professional responsibility as well as the following items concerning securities products, services and strategies offered by the member: (1) General investment features and associated risk factors; (2) suitability and sales practice considerations; and (3) applicable regulatory requirements.[17] A firm, consistent with its needs analysis, may determine to apply toward the Firm Element other required training. The current rule does not expressly recognize other required training, such as training relating to the anti-money laundering (''AML'') compliance program and training relating to the annual compliance meeting, for purposes of satisfying Firm Element training.[18]

c. Termination of a Registration

Currently, individuals whose registrations as representatives or principals have been terminated for two or more years may reregister as representatives or principals only if they requalify by retaking and passing the applicable representative- or principal-level examination or if they obtain a waiver of such examination(s) (the ''two-year qualification period'').[19] The two-year qualification period was adopted prior to the creation of the CE Program and was intended to ensure that individuals who reregister are relatively current on their regulatory and securities knowledge.

(ii) Proposed Rule Change

After extensive work with the Securities Industry/Regulatory Council on Continuing Education (''CE Council''), FINRA, other Self-Regulatory Organizations and industry participants, the Exchange proposes the following changes under Rules 3.30 and 3.33 to align with FINRA's Rule 1240.

a. Transition to Annual Regulatory Element for Each Registration Category

As noted above, currently, the Regulatory Element generally must be completed every three years, and the content is broad in nature. Based on changes in technology and learning theory, the Regulatory Element content can be updated and delivered in a timelier fashion and tailored to each registration category, which would further the goals of the Regulatory Element.[20] Therefore, to provide

more years and is required to requalify by examination, or obtain an examination waiver, in order to reregister. An individual's registration anniversary date would also be reset if the individual obtains a conditional examination waiver that requires them to complete the Regulatory Element by a specified date. Non-registered individuals who are participating in the waiver program under Rule 3.30.09 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a TPH) (''FSAWP participants'') are also subject to the Regulatory Element. *See also* proposed Rule 3.33(a)(5) (Definition of Covered Person). The Regulatory Element for FSAWP participants correlates to their most recent registration(s), and it must be completed based on the same cycle had they remained registered. FSAWP participants are eligible for a single, fixed seven-year waiver period from the date of their initial designation, subject to specified conditions. Registered persons who become subject to a significant disciplinary action, as specified in Rule 3.33(a)(2) (Disciplinary Actions), may be required to retake the Regulatory Element within 120 days of the effective date of the disciplinary action, if they remain registered. Further, their cycle for participation in the Regulatory Element may be adjusted to reflect the effective date of the disciplinary action rather than their registration anniversary date.

[10] *See* Rule 3.33(a)(1).

[11] *Supra* note 9. Individuals must complete the entire Regulatory Element session to be considered to have ''completed'' the Regulatory Element; partial completion is the same as non-completion.

[12] *See* Rule 3.33(g). This CE inactive two-year period is calculated from the date such persons become CE inactive, and it continues to run regardless of whether they terminate their registrations before the end of the two-year period. Therefore, if registered persons terminate their registrations while in a CE inactive status, they must satisfy all outstanding Regulatory Element prior to the end of the CE inactive two-year period in order to reregister with a member without having to requalify by examination or having to obtain an examination waiver.

[13] The S101 (General Program for Registered Persons) and the S201 (Registered Principals and Supervisors).

[14] The current content is presented in a single format leading individuals through a case that provides a story depicting situations that they may encounter in the course of their work.

[15] The rule defines ''covered registered persons'' as any registered person or any associated person who has direct contact with customers in the conduct of a Trading Permit Holder's or TPH organization's securities sales, trading or investment banking activities, and the immediate supervisors of any such persons. *See* Rule 3.33(c)(1) (Persons Subject to the Firm Element).

[16] *See* Rule 3.33(c)(2) (Standards).

[17] *Id.*

[18] *See, e.g.* Rules 8.12 and 8.16(g).

[19] *See* Rule 3.33(g). The two-year qualification period is calculated from the date individuals terminate their registration and the date the Exchange receives a new application for registration. The two-year qualification period does not apply to individuals who terminate a limited registration category that is a subset of a broader registration category for which they remain qualified. Such individuals have the option of reregistering in the more limited registration category without having to requalify by examination or obtain an examination waiver so long as they continue to remain qualified for the broader registration category. Further, the two-year qualification period only applies to the representative- and principal-level examinations; it does not extend to the Securities Industry Essentials (''SIE'') examination. The SIE examination is valid for four years, but having a valid SIE examination alone does not qualify an individual for registration as a representative or principal. Individuals whose registrations as representatives or principals have been revoked pursuant to Exchange Rule 13.11 (Judgment and Sanction) may only requalify by retaking the applicable representative- or principal-level examination in order to reregister as representatives or principals, in addition to satisfying the eligibility conditions for association with a firm. Waivers are granted either on a case-by-case basis under Rule 3.30.03 (Qualification Examinations and Waivers of Examinations) or as part of the FSA waiver program under Rule 3.30.09 (Waiver of Examination for Individuals Working for a Financial Services Industry Affiliate of a TPH).

[20] When the CE Program was originally adopted in 1995, registered persons were required to

Continued

registered persons with more timely and relevant training on significant regulatory developments, the Exchange proposes amending Rule 3.33(a) to require registered persons to complete the Regulatory Element annually by December 31.[21] The proposed amendment would also require registered persons to complete Regulatory Element content for each representative or principal registration category that they hold, which would also further the goals of the Regulatory Element.[22]

Under the proposed rule change, TPHs and TPH organizations would have the flexibility to require their registered persons to complete the Regulatory Element sooner than December 31, which would allow TPHs and TPH organizations to coordinate the timing of the Regulatory Element with other training requirements, including the Firm Element.[23] For example, a TPH or TPH organization could require its registered persons to complete both their Regulatory Element and Firm Element by October 1 of each year.

Individuals who would be registering as a representative or principal for the first time on or after the implementation date of the proposed rule change would be required to complete their initial Regulatory Element for that registration category in the next calendar year following their registration.[24] In addition, subject to specified conditions, individuals who would be reregistering as a representative or principal on or after the implementation date of the proposed rule change would also be required to complete their initial Regulatory Element for that registration category in the next calendar year following their reregistration.[25]

Consistent with current requirements, individuals who fail to complete their Regulatory Element within the prescribed period would be automatically designated as CE inactive.[26] However, the proposed rule change preserves the Exchange's ability to extend the time by which a registered person must complete the Regulatory Element for good cause shown.[27]

The Exchange also proposes amending Rule 3.33(a) to provide that: (1) Individuals who are designated as CE inactive would be required to complete all of their pending and upcoming annual Regulatory Element, including any annual Regulatory Element that becomes due during their CE inactive period, to return to active status;[28] (2) the two-year CE inactive period is calculated from the date individuals become CE inactive, and it continues to run regardless of whether individuals terminate their registrations;[29] (3) individuals who become subject to a significant disciplinary action may be required to complete assigned continuing education content as prescribed by the Exchange;[30] (4) individuals who have not completed any Regulatory Element content for a registration category in the calendar year(s) prior to reregistering would not be approved for registration for that category until they complete that Regulatory Element content, pass an examination for that registration category or obtain an unconditional examination waiver for that registration category, whichever is applicable;[31] and (5) the Regulatory Element requirements apply to individuals who are registered, or in the process of registering, as a representative or principal.[32] In addition, the Exchange proposes making conforming amendments to Rule 3.30.07.

Under the proposed rule change, the amount of content that registered persons would be required to complete in a three-year, annual cycle for a particular registration category is expected to be comparable to what most registered persons are currently completing every three years. In some years, there may be more required content for some registration categories depending on the volume of rule changes and regulatory issues. In addition, an individual who holds multiple registrations may be required to complete additional content compared to an individual who holds a single registration because, as noted above, individuals would be required to complete content specific to each registration category that they hold. However, individuals with multiple registrations would not be subject to duplicative regulatory content in any given year. The more common registration combinations would likely share much of their relevant regulatory content each year. For example, individuals registered as General Securities Representatives and General Securities Principals would receive the same content as individuals solely registered as General Securities Representatives, supplemented with a likely smaller amount of supervisory-specific content on the same topics. The less common registration combinations may result in less topic overlap and more content overall.

b. Recognition of Other Training Requirements for Firm Element and Application of Firm Element to Covered Registered Persons

To better align the Firm Element requirement with other required training, the Exchange proposes to revise/adopt proposed Rule 3.33(b) to expressly allow TPHs and TPH organizations to consider training relating to the AML compliance program and the annual compliance meeting toward satisfying an individual's annual Firm Element requirement.[33] The Exchange also proposes amending the definition of ''covered registered persons'' who are subject to the Firm Element requirement to any person registered with a TPH, including any person who maintains solely a permissive registration consistent with Rule 3.30.02 (Permissive Registrations), thereby further aligning the description of ''covered registered persons'' in the Firm Element requirement with the description of ''covered persons'' in the Regulatory Element requirement.[34] In conjunction with this proposed change, the Exchange proposes modifying the current minimum training criteria under Rule 3.33(b) to instead provide that the training must cover topics related to the role, activities, or responsibilities of the registered person and to professional responsibility.

complete the Regulatory Element on their second, fifth and 10th registration anniversary dates. *See* Securities Exchange Act Release No. 35341 (February 8, 1995), 60 FR 8426 (February 14, 1995) (Order Approving File Nos. SR–AMEX–94–59; SR–CBOE–94–49; SR–CHX–94–27; SR–MSRB–94–17; SR–NASD–94–72; SR–NYSE–94–43; SR–PSE–94–35; and SR–PHLX–94–52). The change to the current three-year cycle was made in 1998 to provide registered persons more timely and effective training, consistent with the overall purpose of the Regulatory Element. *See* Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998) (Order Approving File Nos. SR–CBOE–97–68; SR–MSRB–98–02; SR–NASD–98–03; and SR–NYSE–97–33).

[21] *See* proposed Rules 3.33(a)(1) and (a)(4).

[22] *See* proposed Rules 3.30.07 and 3.33(a)(1).

[23] *See* proposed Rules 3.33(a)(1) and (a)(4).

[24] *See* proposed Rule 3.33(a)(1).

[25] *See* proposed Rule 3.33(a)(4).

[26] *See* proposed Rule 3.33(a)(2).

[27] *Id.* The proposed rule change clarifies that the request for an extension of time must be in writing and include supporting documentation, which is consistent with current practice.

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *See* proposed Rule 3.33(a)(4).

[32] *See* proposed Rule 3.33(a)(5).

[33] *See* proposed Rule 3.33(b)(2)(D).

[34] The group of persons who may be considered a ''covered registered person'' under the Firm Element provisions in proposed Rule 3.33(b)(1) is a subset of the group of persons who may be considered a ''covered person'' under the Regulatory Element provisions in proposed Rule 3.33(a)(5). *See also* note 15, *supra,* and surrounding discussion for comparison on the current definition of ''covered registered person.''

c. Maintenance of Qualification After Termination of Registration

The Exchange proposes to adopt Rules 3.33(c), 3.33.01, and 3.33.02 to provide eligible individuals who terminate any of their representative or principal registrations the option of maintaining their qualification for any of the terminated registrations by completing continuing education. The proposed rule change would not eliminate the two-year qualification period. Rather, it would provide such individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration(s). Eligible individuals who elect not to participate in the proposed continuing education program would continue to be subject to the current two-year qualification period. The proposed rule change is generally aligned with other professional continuing education programs that allow individuals to maintain their qualification to work in their respective fields during a period of absence from their careers (including an absence of more than two years) by satisfying continuing education requirements for their credential.

The proposed rule change would impose the following conditions and limitations:

- Individuals would be required to be registered in the terminated registration category for at least one year immediately prior to the termination of that category; [35]
- individuals could elect to participate when they terminate a registration or within two years from the termination of a registration; [36]
- individuals would be required to complete annually all prescribed continuing education; [37]
- individuals would have a maximum of five years in which to reregister; [38]
- individuals who have been CE inactive for two consecutive years, or who become CE inactive for two consecutive years during their participation, would not be eligible to participate or continue; [39] and
- individuals who are subject to a statutory disqualification, or who become subject to a statutory disqualification following the termination of their registration or during their participation, would not be eligible to participate or continue.[40]

The proposed rule change also includes a look-back provision that would, subject to specified conditions, extend the proposed option for maintaining qualifications following a registration category termination to (i) individuals who have been registered as a representative or principal within two years immediately prior to the planned March 15, 2022 implementation date of the proposed rule change, and (ii) individuals who have been FSAWP participants immediately prior to the planned March 15, 2022 implementation date of the proposed rule change.[41] With respect to the FSAWP, the Exchange proposes to make the look-back provision available to individuals who are participants in the Exchange's FSAWP or the FSA waiver programs of Exchange's affiliate, Cboe C2 Exchange, Inc. (''C2 Options''), and/or FINRA immediately preceding March 15, 2022. In addition, effective March 15, 2022, the Exchange proposes to not accept any new initial designations for individuals under the Exchange's FSAWP. Effectively, upon implementation, the FSAWP would not be available for new participants and what remains of the program would only be applicable to pre-existing participants. Ultimately, the FSAWP will expire in favor of the new proposed maintenance of qualification requirements.[42]

In addition, the proposed rule change includes a re-eligibility provision that would allow individuals to regain eligibility to participate each time they reregister with a TPH or TPH Organization for a period of at least one year and subsequently terminate their registration, provided that they satisfy the other participation conditions and limitations.[43] Finally, the Exchange proposes making conforming amendments to Rule 3.30, including making ministerial changes and adding references to proposed Rules 3.33(a) and (c) under Rule 3.30.08. The proposed rule change will have several important benefits. It will provide individuals with flexibility to address life and career events and necessary absences from registered functions without having to requalify each time. It will also incentivize them to stay current on their respective securities industry knowledge following the termination of any of their registrations. The continuing education under the proposed option will be as rigorous as the continuing education of registered persons, which promotes investor protection. Further, the proposed rule change will enhance diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals.

Significantly, the proposed rule change will be of particular value to women, who continue to be the primary caregivers for children and aging family members and, as a result, are likely to be absent from the industry for longer periods.[44] In addition, the proposed rule change will provide longer-term relief for women, individuals with low incomes and other populations, including older workers, who are at a higher risk of a job loss during certain economic downturns and who are likely to remain unemployed for longer periods.[45]

[35] *See* proposed Rule 3.33(c)(1).

[36] *See* proposed Rule 3.33(c)(2).

[37] *See* proposed Rule 3.33(c)(3). However, upon a participant's request and for good cause shown, the Exchange would have the ability to grant an extension of time for the participant to complete the prescribed continuing education. A participant who is also a registered person must directly request an extension of the prescribed continuing education from the Exchange.

[38] *See* proposed Rule 3.33(c).

[39] *See* proposed Rule 3.33(c)(4) and (c)(5).

[40] *See* proposed Rules 3.33(c)(1) and (c)(6). Individuals who are subject to a statutory disqualification would not be eligible to enter the proposed continuing education program. Individuals who become subject to a statutory disqualification while participating in the proposed continuing education program would not be eligible to continue in the program. Further, any content completed by such participants would be retroactively nullified upon disclosure of the statutory disqualification. The following example illustrates the application of the proposed rule change to individuals who become subject to a statutory disqualification while participating in the proposed continuing education program. Individual A participates in the proposed continuing education program for four years and completes the prescribed content for each of those years. During year five of his participation, he becomes subject to a statutory disqualification resulting from a foreign regulatory action. In that same year, the Exchange receives a Form U4 submitted by a member on behalf of Individual A requesting registration with the Exchange. The Form U4 discloses the statutory disqualification event. the Exchange would then retroactively nullify any content that Individual A completed while participating in the proposed continuing education program. Therefore, in this example, in order to become registered with the Exchange, he would be required to requalify by examination. This would be in addition to satisfying the eligibility conditions for association with an Exchange TPH or TPH Organization. *See also* Exchange Act Sections 3(a)(39) and 15(b)(4).

[41] *See* proposed Rule 3.33.01. Such individuals would be required to elect whether to participate by the March 15, 2022 implementation date of the proposed rule change. If such individuals elect to participate, they would be required to complete their initial annual content by the end of 2022 (*i.e.,* by the end of the calendar year in which the proposed rule change is implemented). In addition, if such individuals elect to participate, their initial participation period would be adjusted based on the date that their registration was terminated.

[42] *See* proposed changes to Rule 3.30.09.

[43] *See* proposed Rule 3.33.02.

[44] *See* The Female Face of Family Caregiving (November 2018), available at *https://www.nationalpartnership.org/our-work/resources/economic-justice/femaleface-family-caregiving.pdf.*

[45] *See* The COVID–19 Recession is the Most Unequal in Modern U.S. History (September 30, 2020), available at *https://www.washingtonpost.com/graphics/2020/business/coronavirus-*

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d. Other Changes to Rule 3.33

The Exchange proposes to restructure and modify the rule text of Rule 3.33 to align with FINRA Rule 1240 numbering, provisions and rule text.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[46] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[47] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[48] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to move to an annual Regulatory Element training with content tailored to an individual's representative or principal registration categories is designed to protect investors and is in the public interest. As noted in the order approving the similar changes to the FINRA CE Program,[49] the Commission found that ''the rule is reasonably designed to minimize the potential adverse impact on firms and their registered persons. Furthermore, increasing the timeliness of registered persons' training, as well as the relevance of the training's content by tailoring it to each registration category that they hold, would enhance their education and compliance with their regulatory obligations.''

The Exchange believes that the proposed changes to the Regulatory Element and Firm Element portions of its CE Program will ensure that all registered persons receive timely and relevant training, which will, in turn, enhance compliance and investor protection. Further, the Exchange believes that establishing a path for individuals to maintain their qualification following the termination of a registration will reduce unnecessary impediments to requalification and promote greater diversity and inclusion in the securities industry without diminishing investor protection.

The Exchange also believes that the proposed rule change will bring consistency and uniformity with FINRA's recently amended CE Program, which will, in turn, assist TPHs and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule changes makes ministerial changes to the Exchange's continuing education rules to align them with registration and qualification rules of FINRA and other exchanges as discussed above, in order to prevent unnecessary regulatory burdens and to promote efficient administration of the rules. The change also makes minor updates and corrections to the Exchange's rules which improve readability.

*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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule changes which are, in all material respects, based upon and substantially similar to, recent rule changes adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of the CE Program requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[50] and Rule 19b–4(f)(6) thereunder.[51]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing. In addition, Rule 19b–4(f)(6)(iii)[52] requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

Waiver of the 30-day operative delay would allow the Exchange to implement proposed changes to its Continuing Education Rules by March 15, 2022 to coincide with one of FINRA's announced implementation dates, thereby eliminating the possibility of a significant regulatory gap between the FINRA and Exchange rules, providing more uniform standards across the securities industry, and helping to avoid confusion for registered persons of the Exchange that are also FINRA members. For this reason, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[53]

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

*recessionequality/* and Unemployment's Toll on Older Workers Is Worst in Half a Century (October 21, 2020), available at *https://www.aarp.org/work/working-at-50-plus/info-2020/pandemic-unemployment-older-workers/.*

[46] 15 U.S.C. 78f(b).

[47] 15 U.S.C. 78f(b)(5).

[48] *Id.*

[49] *Supra* note 5.

[50] 15 U.S.C. 78s(b)(3)(A)(iii).

[51] 17 CFR 240.19b–4(f)(6).

[52] 17 CFR 240.19b–4(f)(6)(iii).

[53] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2022–012 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2022–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2022–012 and should be submitted on or before April 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06635 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

[54] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94503; File No. SR–OCC–2022–001]**

## Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Concerning the Options Clearing Corporation's Margin Methodology for Incorporating Variations in Implied Volatility

March 24, 2022.

On January 24, 2022, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2022–001 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to change quantitative models related to certain volatility products.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on February 11, 2022.[4] The Commission received a comment regarding the Proposed Rule Change.[5]

Section 19(b)(2)(i) of the Exchange Act [6] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved unless the Commission extends the period within which it must act as provided in Section 19(b)(2)(ii) of the Exchange Act.[7] Section 19(b)(2)(ii) of the Exchange Act allows the Commission to designate a longer period for review (up to 90 days from the publication of notice of the filing of a proposed rule change) if the Commission finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents.[8]

The 45th day after publication of the Notice of Filing is March 28, 2022. In order to provide the Commission with sufficient time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change and therefore is extending this 45-day time period.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,[9] designates May 12, 2022 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–OCC–2022–001.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06626 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, at 87 FR 8072.

[4] Securities Exchange Act Release No. 94165 (Feb. 7, 2022), 87 FR 8072 (Feb. 11, 2022) (File No. SR–OCC–2022–001) (''Notice of Filing''). OCC also filed a related advance notice (SR–OCC–2022–801) (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) under the Exchange Act. 12 U.S.C. 5465(e)(1). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Advance Notice was published in the **Federal Register** on February 11, 2022. Securities Exchange Act Release No. 94166 (Feb. 7, 2022), 87 FR 8063 (Feb. 11, 2022) (File No. SR–OCC–2022–801).

[5] The comment on the Proposed Rule Change is available at *https://www.sec.gov/comments/sr-occ-2022-001/srocc2022001.htm.*

[6] 15 U.S.C. 78s(b)(2)(i).

[7] 15 U.S.C. 78 s(b)(2)(ii).

[8] *Id.*

[9] *Id.*

[10] 17 CFR 200.30–3(a)(31).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94495; File No. SR–DTC–2021–017]**

## Self-Regulatory Organizations; The Depository Trust Company; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Enhance Capital Requirements and Make Other Changes

March 23, 2022.

### I. Introduction

On December 13, 2021, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2021–017 (the ''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities

Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on December 29, 2021,[3] and the Commission received no comment letters regarding the changes proposed in the Proposed Rule Change.

On January 26, 2022, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[5] This order institutes proceedings, pursuant to Section 19(b)(2)(B) of the Act,[6] to determine whether to approve or disapprove the Proposed Rule Change.

## II. Summary of the Proposed Rule Change

As described in the Notice, DTC proposes to amend its Rules, By-Laws and Organization Certificate (''Rules'') in order to (1) revise the capital requirements applicable to its participants, (2) streamline its two credit risk monitoring systems, Watch List and enhanced surveillance list, and (3) make certain other clarifying, technical, and supplementary changes to implement items (1) and (2).[7]

First, DTC proposes to revise various aspects of its capital requirements for several types of participants. DTC proposes to increase minimum capital requirements for certain participants. DTC also proposes to revise how it measures certain participants' capital by incorporating common equity tier 1 capital and the standards established in the capital adequacy rules and regulations of the Federal Deposit Insurance Corporation. DTC would revise the reporting requirements concerning the capital requirements for certain participants. In addition, for certain types of participants who currently do not have specific amounts for their minimum capital requirements, the proposal would establish such a requirement.

Second, DTC proposes to revise its Watch List and enhanced surveillance list, which are both currently used to identify participants who would receive additional or enhanced credit risk monitoring. DTC proposes to revise its Watch List and delete its enhanced surveillance list. DTC also proposes to clarify that participants on the Watch List are reported to DTC's management committees and regularly reviewed by DTC's senior management.

Third, DTC proposes to (1) revise or add headings and sub-headings and renumbering sections as appropriate, (2) delete undefined terms and add appropriate defined terms to facilitate the proposed changes, (3) consolidate paragraphs to promote readability, (4) fix typographical and other errors, and (5) other changes in order to improve the accessibility and transparency of the Rules.

## III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[8] 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. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, providing the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Act,[9] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Act,[10] and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Act,[11] which requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and to protect investors and the public interest;
- Section 17A(b)(3)(I) of the Act,[12] which requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act;
- Rule 17Ad–22(e)(18) under the Act,[13] which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.

## IV. 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 Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act,[14] Section 17A(b)(3)(I) of the Act,[15] Rule 17Ad–22(e)(18) under the Act,[16] or any other provision of the Act, or the rules and regulations thereunder.

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change should be approved or disapproved by April 20, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 4, 2022.

The Commission asks that commenters address the sufficiency of DTC's statements in support of the Proposed Rule Change, which are set forth in the Notice,[17] in addition to any other comments they may wish to submit about the Proposed Rule Change.

Comments may be submitted by any of the following methods:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 93854 (December 22, 2021), 86 FR 74122 (December 29, 2021) (SR–DTC–2021–017) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] Securities Exchange Act Release No. 94067 (January 26, 2022), 87 FR 5548 (February 1, 2022) (SR–DTC–2021–017).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] The description of the Proposed Rule Change is based on the statements prepared by DTC in the Notice. *See* Notice, *supra* note 3. Capitalized terms used herein and not otherwise defined herein are defined in the Rules, *available at https://www.dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.pdf.*

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *Id.*

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 15 U.S.C. 78q–1(b)(3)(I).

[13] 17 CFR 240.17Ad–22(e)(18).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 15 U.S.C. 78q–1(b)(3)(I).

[16] 17 CFR 240.17Ad–22(e)(18).

[17] *See* Notice, *supra* note 3.

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2021–017 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–DTC–2021–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2021–017 and should be submitted on or before April 20, 2022. Rebuttal comments should be submitted by May 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–06513 Filed 3–29–22; 8:45 am]

**BILLING CODE 8011–01–P**

[18] 17 CFR 200.30–3(a)(31).

## SMALL BUSINESS ADMINISTRATION

### National Small Business Development Center Advisory Board

**AGENCY:** Small Business Administration.

**ACTION:** Notice of open Federal Advisory committee meeting.

**SUMMARY:** The SBA is issuing this notice to announce the date, time and agenda for a meeting of the National Small Business Development Center Advisory Board. The meeting will be open to the public; however, advance notice of attendance is required.

**DATES:** Tuesday, April 19, 2022 at 2 p.m. EST.

**ADDRESSES:** Meeting will be held via Microsoft Teams.

**FOR FURTHER INFORMATION CONTACT:** Rachel Karton, Office of Small Business Development Centers, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; *Rachel.newman-karton@sba.gov;* 202–619–1816. If anyone wishes to be a listening participant or would like to request accommodations, please contact Rachel Karton at the information above.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), the SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

*Purpose:* The purpose of the meeting is to discuss the following issues pertaining to the SBDC Program:

- SBA|OSBDC Leadership Transition
- Strategy for Increasing Board Awareness and Understanding of the SBDC Program
- Board Leadership Election
- ASBDC Conference

**Andrienne Johnson,**

*Committee Management Officer.*

[FR Doc. 2022–06662 Filed 3–29–22; 8:45 am]

**BILLING CODE P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No: SSA–2022–0014]**

### Agency Information Collection Activities: Proposed 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 one new, and one revision 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–2022–0014].

(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–2022–0014].

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than May 31, 2022. Individuals can obtain copies of the collection instrument by writing to the above email address.

**1. Disability Perception Survey (DPS)—0960—NEW**

**Background**

The Social Security Administration's (SSA's) Social Security Disability Insurance (SSDI) program provides crucial financial support to individuals unable to work due to a medical condition. Having access to and understanding information about SSDI among working adults is an important factor in connecting people with benefits. The purpose of the survey to is understand the type of information working adults currently have about the SSDI program to improve projections of disability applications and incidence.

SSA is requesting clearance to administer the Disability Perception Survey (DPS) to a sample of working age adult SSDI program recipients, and those who may qualify for this benefit, to capture attitudes and perceptions about SSDI among working-age adults in the general population, and to

determine what roles those factors ultimately play in an individual's decision to apply to the program.

The DPS evaluation will consist of two parts: (1) The DPS survey administered to working-age adults (18 to 64 years of age) SSDI program recipients, and those who may qualify for SSDI benefits; and (2) links of the survey data, including the individuals' social security numbers, to individuals' administrative records for research purpose. SSA will use the data the DPS collects to learn about the average American SSDI adult recipient's knowledge and understanding of the SSDI program and about who qualifies for these benefits. Section 1110(a) of the Social Security Act (Act) gives the Commissioner of Social Security authorization to help fund research or demonstration projects relating to the prevention and reduction of dependency. SSA contracted with NORC at the University of Chicago to conduct the DPS data collection.

**DPS Project Description**

The DPS survey will focus on a series of multiple-choice, open-ended, and vignette-style questions across five topic areas:

- General knowledge about the SSDI program, including perspectives on the causes of disability, eligibility requirements, the likelihood of receiving benefits, and the documentation required to apply for the program;
- Perceptions about the impact of work-limiting impairments—including how and to what degree people with disabilities participate in the workforce, their work outcomes, use of services, barriers to work, and knowledge about Social Security Administration (SSA) programs designed to help beneficiaries find and keep jobs;
- Thoughts about SSDI based on personal experience or associations with SSDI beneficiaries and others, the likelihood of receiving benefits due to changes in one's personal health status, the impact of reduced financial resources, and factors considered when deciding whether to apply for SSDI;
- Opinions and reactions to how impairments described in brief vignettes of work-limiting and disabling experiences may affect current or future employment; and
- The impact of the COVID–19 pandemic on employment or participation in SSDI or other safety net programs.

The DPS is targeting 5,011 completed interviews among 18–64 year old adults across the U.S. population.

*Recruitment*

NORC will sample respondents for the study through NORC's AmeriSpeak sampling frame. AmeriSpeak uses a multi-stage probability sample that fully represents the U.S. household population. NORC uses a two-stage process for AmeriSpeak panel recruitment:

- *Initial recruitment:* NORC will invite panelists to participate in the DPS by email and or SMS text, with an invitation through the AmeriSpeak member web portal, which alerts panelist there is a survey available to them. The participant will receive an email with the survey URL which allows them to log into AmeriSpeak. NORC will also invite panelists who previously indicated their preference for responding to surveys by telephone. For those who request a telephone survey, NORC's telephone interviewers will call the respondent and ask them to participate in the survey, if the respondent wants to participate NORC will conduct the survey.
- *Non-response follow-ups:* NORC will sample a portion of non-responders and follow-up with a face-to face recruitment of the sampled non-responders. Non-response follow-up reduces non-response bias significantly by improving the representativeness of the AmeriSpeak Panel with respect to certain hard-to-reach segments of the population underrepresented by recruitment relying only on mail and telephone.

Eligibility criteria include those ages 18–64 years old who understand English or Spanish, and who have the ability to provide informed consent as well as a Social Security Number.

Participants in the DPS will receive the Informed Consent as part of the first screens of the survey. If NORC conducts the survey by telephone, the interviewer will review the main points on the consent with the participant. The Informed Consent, whether online or read by the interviewer, will include:

- The purpose of the survey and the primary topics addressed in the survey questions;
- The information that the respondents may withdraw at any time;
- The voluntary nature of the study;
- A statement that the information collected is completely confidential and will not be used by SSA for the purposes of determining eligibility for benefits, nor for purposes other than research or program evaluation;
- The approximate time it will take to complete the survey;
- The incentive amount for participation, and how the respondent will receive their incentive;
- Information on who to call if they have questions about their rights as a survey participants;

If the respondents give their informed consent, but cannot provide their SSN, the survey will end, and the respondent will not continue further. Survey participants will receive $20 as reimbursement for completing the DPS.

Following the emailing of the survey URL, NORC will follow up 10 times over the course of a 32-week field period to remind respondents to complete the survey. NORC will send the participants reminder scripts both by email and text messages to complete the survey. NORC will also send reminders by mail, via a reminder letter and postcard. The respondents are working adults (age 18–64) SSDI program recipients, and those who may qualify for SSDI benefits for SSDI benefits.

*Type of Request:* Request for a new 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) ** |
|---|---|---|---|---|---|---|
| DPS (Web version) | 4259 | 1 | 17 | 1,207 | * $10.95 | ** $13,217 |
| DPS (Phone version) | 752 | 1 | 17 | 213 | * 10.95 | ** 2,332 |
| Totals | 5,011 | | | 1,420 | | $15,549 |

* We based this figure on 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.*

**2. COVID–19 Symptoms Screener for In-Person Hearings, and VIPr Mobile Application and Telephone Screener for Office Visits—20 CFR 404.929, 404.933, 416.1429, 416.1433, 418.1350, 422.103–422.110, and 422.203–0960–0824.**

**Background**

During the recent COVID–19 pandemic, SSA conducted its services almost exclusively online or by telephone, to protect the health of both the public and our employees. We took these measures in accordance with relevant Centers for Disease Control COVID–19 pandemic guidance, and to comply with existing Occupational Safety and Health Act provisions regarding workplace safety.

While in-person hearings have not been available since March 2020, claimants or their appointed representatives who wished to appeal a redetermination could choose to participate in an online video hearing or phone hearing instead. In addition, SSA also restricted in-person field office visits to limited appointments only, with prioritization of requests for new Social Security Number cards. During this period, we used the initial version of the CDC-suggested COVID–19 screening symptoms questionnaire with people who had these limited field office appointments.

We made the questionnaire available for in-office visits via telephone or SSA mobile application (VIPr App). We required satisfactory answers to the screening questions, *i.e.,* demonstrating that field office visitors did not demonstrate symptoms of COVID–19 and had not been exposed to someone with COVID–19, for the appointment to proceed. If the individuals answered yes to any of the COVID screening questions, we offered them the option of completing their interview via video teleconferencing or using our online options, or we offered to reschedule their in-person interview for a later date.

We are resuming in-person hearings and field office visits on a limited-capacity basis. Initially, we plan to keep the number of in-person hearings to an average of three separate hearings per hearings office per day, to ensure the continued health and safety of the public and SSA employees. We also plan to keep the number of in-person field office visits to a limited number, based on the capacity of each field office, but hope to also allow for walk-ins, as we expand our plans for reentry. We may revise the number of in-person hearings per hearing office or reassess our capacity per field office for in-person visits, over the course of reentry; therefore, our information for the public and the unions make it clear that the screener questions are subject to revision as workplace safety guidance changes.

**Information Collection Description**

Because of COVID–19 health and safety considerations, we plan to continue requiring all members of the public entering an SSA field office for a visit, or a hearing office to participate in an in-person hearing, to complete a brief screener questionnaire designed to identify COVID–19 symptoms.

For individuals visiting a hearings office, we may provide a link to the screener questionnaire in the mailed notice of scheduled hearings. People participating in a hearing can complete and submit the questionnaire online within 24 hours before the start of the hearing. If hearings participants do not wish to use the internet, they can call the hearings office where the hearing is scheduled and complete the questionnaire over the phone.

Similarly, we may give field office visitors the option of completing the screener questionnaire through SSA's mobile application, VIPr, prior to entering the building. We also have a poster in our field office windows visible from the outside instructing visitors about the need to complete the screening questionnaire and about our masking policies. We will continue to request satisfactory completion of the screener in advance of entering the building as a prerequisite for entering the field office.

SSA's screener questionnaire asks questions relating to personal experience of any COVID symptoms; exposure to someone diagnosed with COVID; or travel by means other than land travel, such as car, bus, ferry, or train. SSA uses the screener responses to determine if the participant is ''cleared'' or ''not cleared'' to enter an SSA field or hearing office. If participants answer ''no'' to all questions, they are ''cleared'' to participate. If they answer ''yes'' to any part of the screener, they will be considered ''not cleared.'' Individuals who are not cleared may request SSA to provide an alternative service method or reschedule their visit.

**Alternatives To Completing the Information Collection**

Although we will continue to require completion of the screener questionnaire any in-person hearing or field office visit, we do not require this screener questionnaire for other modalities of appeals hearings, or field office services. One may choose an online video hearing or telephone hearing as an alternative to an in-person hearing, just as we also have online and telephone services for field office transactions. Claimants may obtain Social Security payments regardless of the hearing method they choose, and field office visitors may submit their documentation using our internet services, telephone requests, or by mailing their documentation to SSA.

The respondents are beneficiaries or applicants requesting an in-person hearing, or members of the public entering a field office.

*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 office or for teleservice centers (minutes) ** | Total annual opportunity cost (dollars) **** |
|---|---|---|---|---|---|---|---|
| COVID Screener Questionnaire | 359,160 | 1 | 10 | 59,860 | * $19.01 | ** 10 | **** $2,275,877 |
| VIPr Mobile App | 16,554 | 1 | 5 | 1,380 | * 27.07 | *** 21 | **** 194,200 |
| Telephone Screener | 661,554 | 1 | 10 | 110,259 | * 27.07 | *** 21 | **** 9,252,607 |

| 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 office or for teleservice centers (minutes) ** | Total annual opportunity cost (dollars) **** |
|---|---|---|---|---|---|---|---|
| Totals ..... | 1,037,268 | ..... | ..... | 171,499 | ..... | ..... | **** 11,722,684 |

* We based the Covid Screener Questionnaire figure on 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 the VIPr Mobile App and Telephone Screener 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 on the average FY 2022 wait times for hearing offices, based on SSA's current management information data.

*** We based this figure on the average FY 2022 wait times for 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.*

Dated: March 25, 2022.

**Naomi Sipple,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 2022–06734 Filed 3–29–22; 8:45 am]

**BILLING CODE 4191–02–P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No: SSA–2022–0015]**

## Agency Information Collection Activities: Proposed Request and 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 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–2022–0015].

(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–2022–0015].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than May 31, 2022. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Application for Widow's or Widower's Insurance Benefits—20 CFR 404.335–404.338, & 404.603—0960–0004. Section 2029(e) and 202(f) of the Social Security Act (Act) set forth the requirements for entitlement to widow(er)'s benefits, including the requirements to file an application. For SSA to make a formal determination for entitlement to widow(er)'s benefits, we use Form SSA–10 to determine whether an applicant meets the statutory and regulatory conditions for entitlement to widow(er)'s Title II benefits. SSA employees interview individuals applying for benefits either face-to-face or via telephone, and enter the information on the paper form or into the Modernized Claims System (MCS). The respondents are applicants for widow(er)'s benefits.

*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 or teleservice centers (minutes) ** | Total annual opportunity cost (dollars) *** |
|---|---|---|---|---|---|---|---|
| SSA–10 (Paper) ..... | 2,116 | 1 | 30 | 1,058 | * $27.07 | ..... | *** $28,640 |
| SSA–10 (MCS) ..... | 570,540 | 1 | 30 | 285,270 | * 27.07 | ** 21 | *** 13,127,840 |
| Totals ..... | 572,656 | ..... | ..... | 286,328 | ..... | ..... | *** 13,156,480 |

* 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 2022 wait times for 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.*

2. Request to be Selected as a Payee—20 CFR 404.2010–404.2055, and 416.601–416.665—0960–0014. SSA requires an individual applying to be a representative payee for a Social Security beneficiary or Supplemental Security Income (SSI) recipient to complete Form SSA–11–BK, or supply the same information to a field office

technician. SSA obtains information from applicant payees regarding their relationship to the beneficiary, personal qualifications; concern for the beneficiary's well-being; and intended use of benefits if appointed as payee. The respondents are individuals, private sector businesses and institutions, and State and local government institutions and agencies applying to become representative payees.

*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) ** |
|---|---|---|---|---|---|---|
| Individuals/Households (90%): | | | | | | |
| Representative Payee System (RPS) | 1,761,300 | 1 | 12 | 352,260 | * $39 | ** $13,738,140 |
| Paper Version | 70,452 | 1 | 12 | 14,090 | * 39 | ** 549,510 |
| Totals | 1,831,752 | | | 366,350 | | ** 14,287,650 |
| Private Sector (9%): | | | | | | |
| Representative Payee System (RPS) | 176,130 | 1 | 12 | 35,226 | * 39 | ** 1,373,814 |
| Paper Version | 7,045 | 1 | 12 | 1,409 | * 39 | ** 54,951 |
| Totals | 183,175 | | | 36,635 | | ** 1,428,765 |
| State/Local/Tribal Government (1%): | | | | | | |
| Representative Payee System (RPS) | 19,570 | 1 | 12 | 3,914 | * 39 | ** 152,646 |
| Paper Version | 350 | 1 | 12 | 70 | * 39 | ** 2,730 |
| Totals | 19,920 | | | 3,984 | | ** 155,376 |
| Grand Totals | 2,034,847 | | | 406,969 | | ** 15,871,791 |

* We based these figures by averaging the average hourly wages for Social and Human Service Assistants (*https://www.bls.gov/oes/current/oes211093.htm*); average hourly wages for Lawyers (*https://www.bls.gov/oes/current/oes231011.htm*); 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#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.*

3. Statement for Determining Continuing Eligibility for Supplemental Security Income Payment—20 CFR 416.204—0960–0145. SSA uses Form SSA–8202–BK to conduct low and middle-error profile (LEP/MEP) telephone, or face-to-face redetermination interviews with SSI recipients and representative payees, if applicable. SSA conducts LEP redeterminations interviews on a 6-year cycle, and MEP redeterminations annually. SSA requires the information we collect during the interview to determine whether: (1) SSI recipients met, and continue to meet, all statutory and regulatory requirements for SSI eligibility; and (2) the SSI recipients received, and are still receiving, the correct payment amounts. This information includes non-medical eligibility factors such as income, resources, and living arrangements. To complete Form SSA–8202–BK, the respondents may need to obtain information from employers or financial institutions. The respondents are SSI recipients and their representatives, if applicable.

*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 or teleservice centers (minutes) ** | Total annual opportunity cost (dollars) *** |
|---|---|---|---|---|---|---|---|
| SSA–8202–BK | 67,698 | 1 | 21 | 23,694 | * $10.95 | | *** $259,449 |
| SSI Claims System | 1,764,207 | 1 | 20 | 588,069 | * 10.95 | ** 21 | *** 13,200,674 |
| Totals | 1,831,905 | | | 611,763 | | | *** 13,460,123 |

* 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 by averaging the average FY 2022 wait times for 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.*

4. Application for Supplemental Security Income—20 CFR 416.305–416.335, Subpart C—0960–0444. SSA uses Form SSA–8001–BK to determine an applicant's eligibility for SSI and SSI payment amounts. SSA employees also collect this information during interviews with members of the public who wish to file for SSI. SSA uses the

information for two purposes: (1) To formally deny SSI for nonmedical reasons when information the applicant provides results in ineligibility; or (2) to establish a disability claim, but defer the complete development of non-medical issues until SSA approves the disability. The respondents are applicants for 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 or teleservice centers (minutes) ** | Total annual opportunity cost (dollars) *** |
|---|---|---|---|---|---|---|---|
| SSI Claims System .. | 800,963 | 1 | 20 | 266,988 | * $19.01 | ** 21 | *** $10,404,648 |
| iClaim and SSI Claims System ..... | 129,736 | 1 | 20 | 43,245 | * 19.01 | ** 21 | *** 1,685,294 |
| SSA–8001–BK (Paper Version) .... | 31,776 | 1 | 20 | 10,592 | * 19.01 | ** 21 | *** 412,783 |
| Totals ..... | 962,475 | ..... | ..... | 320,825 | ..... | ..... | *** 12,502,725 |

* 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 by averaging the average FY 2022 wait times for 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.*

5. Employer Verification of Records for Children Under Age 7—20 CFR 404.801–404.803, and 404.821–404.822—0960–0505. To ensure we credit the correct person with the reported earnings, SSA verifies wage reports for children under age seven with the children's employers before posting to the earnings record. SSA uses form SSA–L3231, Request for Employer Information for this purpose. SSA technicians mail the form to the employer(s) and request they complete it and mail it back to the appropriate processing center. The respondents are employers who report earnings for children under age seven.

*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–L3231 ..... | 4,633 | 1 | 10 | 772 | * $27.07 | ** $20,898 |

* 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.*

6. Wage Reports and Pension Information—20 CFR 422.122(b)—0960–0547. Pension plan administrators annually file plan information with the Internal Revenue Service, which then forwards the information to SSA. SSA maintains and organizes this information by plan number, plan participant's name, and Social Security number. Per Section 1131(a) of the Act, pension plan participants are entitled to request this information from SSA. The Wage Reports and Pension Information regulation, 20 CFR 422.122(b) of the Code of Federal Regulations, stipulates that before SSA disseminates this information, the requestor must first submit a written request with identifying information to SSA. The respondents are requestors of pension plan information.

*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 for teleservice centers (minutes) ** | Total annual opportunity cost (dollars) *** |
|---|---|---|---|---|---|---|---|
| Requests for Pension Plan Information ..... | 580 | 1 | 30 | 290 | * $27.07 | ** 19 | *** 12,831 |

* 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 on the average FY 2022 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.*

7. Centenarian and Medicare Non-Utilization Project Development Worksheets: Face-to-Face Interview and Telephone Interview—20 CFR 416.204(b) and 422.135—0960–0780. SSA conducts interviews with centenary Title II beneficiaries and Title XVI recipients, and Medicare Non-Utilization Project (MNUP) beneficiaries age 90 and older to: (1) Assess if the beneficiaries are still living; (2) prevent fraud through identity misrepresentation; and (3) evaluate the well-being of the recipients to determine if they need a representative payee, or a change in representative payee. SSA field office personnel obtain the information through one-time, in-person interviews with the centenarians and MNUP beneficiaries, who are those Title II beneficiaries ages 90–99, who show non-utilization of Medicare benefits for an extended period and the absence of private insurance, health maintenance organization, or nursing home, which are all indicators that an individual may be deceased. If the centenarians and MNUP beneficiaries have representatives or caregivers, SSA personnel invite them to the interviews. During these interviews, SSA employees make overall observations of the centenarians, MNUP beneficiaries, and their representative payees (if applicable). The interviewer uses the appropriate Development Worksheet as a guide for the interview, in addition to documenting findings during the interview. SSA conducts the interviews either over the telephone or through a face-to-face discussion with the respondents either in a field office, or at the Centenarian or MNUP beneficiary's residence. Respondents are MNUP and Centenarian beneficiaries, and their representative payees, or their caregivers.

*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 or teleservice centers (minutes) *** | Total annual opportunity cost (dollars) **** |
|---|---|---|---|---|---|---|---|
| Centenarian Project—Title XVI Only * | 194 | 1 | 15 | 49 | ** $27.07 | *** 21 | **** $3,167 |
| MNUP—All Title II Responses | 4,210 | 1 | 15 | 1,053 | ** 27.07 | *** 21 | **** 68,406 |
| Totals | 4,404 | | | 1,102 | | | **** 71,573 |

* Some cases are T2 rollovers from prior Centenarian workloads.

** 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 2022 wait times for 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.*

II. 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 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than April 29, 2022. Individuals can obtain copies of these OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

Farm Self-Employment Questionnaire—20 CFR 404.1082(c) & 404.1095—0960–0061. SSA collects the information on Form SSA–7156 on a voluntary and as-needed basis to determine the existence of an agriculture trade or business which may affect the monthly benefit, or insured status, of the applicant. SSA requires the existence of a trade or business before determining if an individual or partnership has net earnings from self-employment. When an applicant indicates self-employment as a farmer, SSA uses the SSA–7165 to obtain the information we need to determine the existence of an agricultural trade or business, and subsequent covered earnings for Social Security entitlement purposes. As part of the application process, we conduct a personal interview, either face-to-face or via telephone, and document the interview using Form SSA–7165. We also allow applicants to complete a fillable version of the form available on our website, which they can complete, print, and sign. The respondents are applicants for Social Security benefits whose entitlement depends on whether the worker received covered earnings from self-employment as a farmer.

*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 or teleservice centers (minutes) ** | Total annual opportunity cost (dollars) *** |
|---|---|---|---|---|---|---|---|
| SSA–7156 | 1,000 | 1 | 10 | 167 | * $14.49 | ** 21 | *** $7,491 |

* We based this figure on average Farmworkers and Laborers, Crop, Nursery, and Greenhouse salaries, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes452092.htm*).

** We based this figure by averaging the average FY 2022 wait times for 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.*

Dated: March 25, 2022.

**Naomi Sipple,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 2022–06700 Filed 3–29–22; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[DOT–OST–2022]**

### Research, Engineering, and Development Advisory Committee (REDAC); Notice of Public Meeting

**AGENCY:** Federal Aviation Administration, Department of Transportation.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a meeting of the Research, Engineering, and Development Advisory Committee (REDAC).

**DATES:** The meeting will be held on April 14, 2022, from 10:00 a.m.–5:00 p.m. EST.

Requests for accommodations to a disability must be received by March 31, 2022. Individuals requesting to speak during the meeting must submit a written copy of their remarks to DOT by March 31, 2022. Requests to submit written materials to be reviewed during the meeting must be received no later than March 31, 2022.

**ADDRESSES:** The meeting will be held virtually. Virtual attendance information will be provided upon registration. A detailed agenda will be available on the REDAC internet website at *http://www.faa.gov/go/redac* at least one week before the meeting, along with copies of the meeting minutes after the meeting.

**FOR FURTHER INFORMATION CONTACT:** Chinita Roundtree-Coleman, REDAC PM/Lead, FAA/U.S. Department of Transportation, at *chinita.roundtree-coleman@faa.gov* or (609) 485–7149. Any committee-related request should be sent to the person listed in this section.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Research, Engineering, and Development Advisory Committee was created under the Federal Advisory Committee Act (FACA), in accordance with Public Law 100–591 (1988) and Public Law 101–508 (1990) to provide advice and recommendations to the FAA Administrator in support of the Agency's Research and Development (R&D) portfolio.

#### II. Agenda

At the meeting, the agenda will cover the following topics:

- FAA Research and Development Strategies, Initiatives and Planning,
- Impacts of emerging technologies, new entrant vehicles, and dynamic operations within the National Airspace System.

#### III. Public Participation

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

There will be 45 minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the FAA may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks for inclusion in the meeting records and circulation to REDAC members before the deadline listed in the **DATES** section. All prepared remarks submitted on time will be accepted and considered as part of the meeting's record. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on this 24th day of March.

**Chinita Roundtree-Coleman,**

*REDAC PM/Lead, Federal Aviation Administration.*

[FR Doc. 2022–06622 Filed 3–29–22; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Final Agency Actions on Proposed Railroad Project in California on Behalf of the California High Speed Rail Authority

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** FRA, on behalf of the California High-Speed Rail Authority (Authority), is issuing this notice to announce actions taken by the Authority that are final. By this notice, FRA is advising the public of the time limit to file a claim seeking judicial review of the actions. The actions relate to the California High-Speed Rail Burbank to Los Angeles Project Section (Project). These actions grant approvals for project implementation pursuant to the National Environmental Policy Act (NEPA) and other laws, regulations, and executive orders.

**DATES:** A claim seeking judicial review of the agency actions on the Project will be barred unless the claim is filed on or before March 29, 2024. If Federal law later authorizes a time period of less than 2 years for filing such claim, then that shorter time period applies.

**FOR FURTHER INFORMATION CONTACT:**

*For the Authority:* Scott Rothenberg, NEPA Assignment Manager, Environmental Services, California High-Speed Rail Authority, telephone: (916) 403–6936; email: *Scott.Rothenberg@hsr.ca.gov.*

*For FRA:* Andréa Martin, Senior Environmental Protection Specialist, Office of Railroad Policy and Development (RPD), telephone: (202) 493–6201, email: *Andrea.Martin@dot.gov.*

**SUPPLEMENTARY INFORMATION:** Effective July 23, 2019, FRA assigned, and the State of California acting through the Authority assumed, environmental responsibilities for the California High-Speed Rail (HSR) System pursuant to 23 U.S.C. 327. Notice is given that the Authority has taken final agency actions subject to 23 U.S.C. 139(*l*)(1); 49 U.S.C. 24201(a)(4) by issuing approvals for the Project.

The purpose of the California HSR System [1] is to provide a reliable, high-speed, electric-powered train system that links the major metropolitan areas of California, delivering predictable and consistent travel times. A further objective is to provide an interface with commercial airports, mass transit, and the highway network, and to relieve capacity constraints of the existing transportation system as increases in intercity travel demand in California occur, in a manner sensitive to and

[1] The California HSR System will be implemented in two phases. Phase 1 will connect San Francisco to Los Angeles and Anaheim via the Pacheco Pass and the southern Central Valley. Phase 2 will extend the HSR system from the Central Valley (starting at the Merced Station) to the state's capital in Sacramento and from Los Angeles to San Diego.

protective of California's unique natural resources. The Authority has selected the HSR Build Alternative with the Burbank Station and a modified Los Angeles Union Station, as identified in the Final Environmental Impact Statement (Final EIS) and Record of Decision (ROD), for the Burbank to Los Angeles Project because the Selected Alternative (1) best satisfies the Purpose, Need, and Objectives for the Project and (2) minimizes impacts on the natural and human environment by utilizing an existing transportation corridor where practicable and incorporating mitigation measures where practicable. The actions by the Authority, and the laws under which such actions were taken, are described in the Project's Final EIS and ROD, approved on March 7, 2022. The ROD, Final EIS, and other documents will be available online in PDF at the Authority's website (*www.hsr.ca.gov*) and via CD–ROM by calling (916) 324–1541.

This notice applies to the ROD, Final EIS, and all other Federal agency decisions with respect to the Project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. NEPA;
2. Council on Environmental Quality regulations (1978); [2]
3. Fixing America's Surface Transportation Act (FAST Act);
4. Department of Transportation Act of 1966, Section 4(f);
5. Land and Water Conservation Fund (LWCF) Act of 1965, Section 6(f);
6. Clean Air Act Amendments of 1990;
7. Clean Water Act of 1977 and 1987;
8. Endangered Species Act of 1973;
9. Migratory Bird Treaty Act;
10. National Historic Preservation Act of 1966, as amended;
11. Executive Order 11990, Protection of Wetlands;
12. Executive Order 11988, Floodplain Management;
13. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations;
14. Executive Order 13112, Invasive Species.

[2] The Council on Environmental Quality (CEQ) issued new regulations on July 14, 2020, effective September 14, 2020, updating the NEPA implementing procedures at 40 CFR 1500 through 1508. However, this project initiated NEPA before the effective date and relies on the CEQ regulations as they existed prior to September 14, 2020. All subsequent citations to the CEQ regulations in the ROD and Final EIS refer to the 1978 regulations, consistent with 40 CFR 1506.13 (2020) and the preamble at 85 FR 43340.

Issued in Washington, DC.

**Jamie P. Rennert,**

*Director, Office of Infrastructure Investment.*

[FR Doc. 2022–06703 Filed 3–29–22; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA–2021–0100]**

### Notice of Availability of a Final General Conformity Determination for the California High-Speed Rail System, San Jose to Merced Section

**AGENCY:** Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** FRA is providing this notice to advise the public that it is issuing a Final General Conformity Determination (FCD) for the San Jose to Merced Section of the California High-Speed Rail (HSR) System.

**FOR FURTHER INFORMATION CONTACT:** Andréa Martin, Senior Environmental Protection Specialist, Office of Railroad Policy and Development (RPD), telephone: (202) 493–6201, email: *Andrea.Martin@dot.gov;* or Marlys Osterhues, Chief Environment and Project Engineering, RPD, telephone: (202) 493–0413, email: *Marlys.Osterhues@dot.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to 23 U.S.C. 327 (Section 327), the California High-Speed Rail Authority (CHSRA or Authority) has assumed FRA's environmental review responsibilities under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). However, under Section 327, FRA remains responsible for compliance with the Clean Air Act General Conformity requirements. In compliance with NEPA and the California Environmental Quality Act (CEQA), the Authority published a Final Environmental Impact Record/Final Environmental Impact Statement (EIR/EIS) for the San Jose to Merced Section of the California High-Speed Rail (HSR) System on February 25, 2022.

FRA prepared a Draft General Conformity Determination, pursuant to 40 CFR part 93, subpart B, which establishes the process for complying with the General Conformity requirements of the Clean Air Act. FRA published a notice in the **Federal Register** on November 26, 2021 advising the public of the availability of the Draft Conformity Determination for a 30-day review and comment period. The Draft Conformity Determination was published at *http://www.regulations.gov,* Docket No. FRA–2021–0100. The comment period of the Draft Conformity Determination closed on December 30, 2021. FRA received two comments expressing support for the project and Draft General Conformity Determination.

FRA prepared the Final General Conformity Determination pursuant to 40 CFR part 93 Subpart B, and based on the Authority's coordination with the U.S. Environmental Protection Agency (EPA), Bay Area Air Quality Management District (BAAQMD), San Joaquin Valley Air Pollution Control District (SJVAPCD), and the California Air Resources Board (CARB). The analysis found that construction period emissions would exceed the General Conformity *de minimis* threshold for Nitrogen Oxides ($NO_X$). However, operation of the Project would result in an overall reduction of regional emissions of all applicable air pollutants and would not cause a localized exceedance of an air quality standard. Consistent with the General Conformity Rule, the Authority will ensure all remaining emissions that exceed the *de minimis* thresholds, after implementation of the impact avoidance and minimization features and onsite mitigation measures, will be completely mitigated to zero through agreements with the applicable air districts. Based on this commitment, FRA determined the Project will conform to the requirements in the approved State Implementation Plan.

The Final General Conformity Determination is available at *http://www.regulations.gov,* Docket No. FRA–2021–0100, and FRA's website at *https://railroads.dot.gov/environment/environmental-reviews/clean-air-act-california-general-conformity-determinations.*

Issued in Washington, DC.

**Jamie P. Rennert,**

*Director, Office of Infrastructure Investment.*

[FR Doc. 2022–06724 Filed 3–29–22; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number MARAD–2022–0057]**

### Every Mariner Builds a Respectful Culture (EMBARC)—Procedure and Sexual Assault and Sexual Harassment Prevention Standards

**AGENCY:** Maritime Administration, Department of Transportation

**ACTION:** Notice and request for comments.

**SUMMARY:** After consulting with operators of commercial vessels and other Sea Year stakeholders, on December 15, 2021, the Maritime Administration (MARAD) released on its website agency guidance entitled *Every Mariner Builds a Respectful Culture* (EMBARC). The EMBARC standards enumerate sexual assault and sexual harassment (SASH) prevention and response safety criteria for commercial vessel operators approved to carry cadets from the U.S. Merchant Marine Academy (USMMA) for training purposes. EMBARC includes compliance procedures, and sexual assault and sexual harassment (SASH) prevention and response standards that all commercial vessel operators should implement before the USMMA entrusts them with the at-sea training of midshipmen. EMBARC will help strengthen the maritime industry's efforts to prevent and respond to incidents of SASH and other forms of misconduct and help ensure a safer training environment for all cadets. By this notice, MARAD is seeking public comment on its EMBARC policy.

**DATES:** Comments must be received on or before May 31, 2022. MARAD will consider comments filed after this date to the extent practicable.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2022–0057 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0057 and follow the instructions for submitting comments.
- *Email: EMBARC@dot.gov.* Include MARAD–2022–0057 in the subject line of the message and provide your comments in the body of the email or as an attachment.
- *Mail or Hand Delivery:* The Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2022–0057, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590. Due to flexible work schedules in response to Covid 19, call 202–493–0402 to determine facility hours prior to hand delivery.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, and/or a telephone number in a cover page so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Chris Wahler, Director of Maritime Labor and Training, (202) 366–5469 or via email at *EMBARC@dot.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question. You will receive a reply during normal business hours. You may send mail to Department of Transportation, Maritime Administration, Maritime Labor and Training, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

## Background

EMBARC is comprised of SASH prevention and response policies and procedures, a Self-Assessment Check List, and a Statement of Compliance. In this notice, MARAD has published the SASH policies, procedures, and standards for public review. The Self-Assessment Check List, Statement of Compliance, and Frequently Asked Questions (FAQs) are also available for review on the docket. Please feel free to provide any comments on those documents as well.

As a prerequisite to graduation from the USMMA, cadets must obtain training at sea. This training is required before a cadet may obtain a U.S. Coast Guard (USCG) license for an unlimited deck or engineering credential—also a prerequisite for graduation. The U.S. Department of Transportation (DOT) has stated that all commercial vessel operators that carry USMMA cadets should adopt and follow EMBARC—a set of standards and procedures to help prevent and respond to incidents of SASH. EMBARC is also intended to guide the provision of appropriate support to survivors of sexual assault and sexual harassment and other forms of misconduct. As a prerequisite to employing USMMA midshipmen as cadets aboard their vessels, MARAD expects commercial vessel operators to evidence implementation of EMBARC and to sign the EMBARC Statement of Compliance.

The EMBARC standards replace earlier commitments made by vessel operators to comply with Sea Year eligibility requirements previously established by MARAD's Shipboard Climate Compliance Team (SCCT). EMBARC standards apply to owners and operators of vessels subject to the International Convention for Safety of Life at Sea 1974 (SOLAS). However, MARAD seeks comments and recommendations related to applying EMBARC, or substantially similar standards to vessels not subject to the Convention. We may amend EMBARC so that it will apply to vessels not required to comply with SOLAS, or we may establish alternative criteria for such vessels to carry USMMA cadets.

DOT, MARAD, and the USMMA are committed to ongoing evaluation and improvement of EMBARC and will incorporate best and promising practices and engage with stakeholders to further strengthen MARAD's EMBARC guidance. Current EMBARC materials, including frequently asked questions (FAQs), are maintained and available to the public on MARAD's website at *https://www.maritime.dot.gov/education/sea-year-training-program-criteria/every-mariner-builds-respectful-culture-embarc.*

## Discussion of Public Input Received and MARAD Actions to Date

Prior to the issuance of MARAD's EMBARC guidance on December 15, 2021, MARAD, USMMA, and DOT officials heard from stakeholders both internal and external to the U.S. Government. DOT and MARAD staff visited the USMMA to hear directly from midshipmen, staff, USMMA alumni, and community members in roundtable-format and small group meetings. MARAD, USMMA, and DOT officials also met with the U.S. Coast Guard (USCG), the U.S. Department of Education, Members and staff of the U.S. Congress, representatives from maritime labor, ship owners and operators, SMA leaders, and seafarers. Additional interested parties consulted included maritime workforce associations and non-maritime organizations with expertise in sexual assault and sexual harassment response and survivor support. MARAD also held a public workshop to hear from interested stakeholders and members of the public. This series of meetings took place from September through mid-December 2021.

At these meetings, MARAD and DOT received stakeholders' individual comments and recommendations on policies and procedures that could help strengthen safety for cadets embarked at

sea—and for all mariners—by helping prevent sexual assault and sexual harassment, improve support provided to survivors, and support a culture of accountability.

Following these meetings, MARAD, USMMA, and DOT developed principles to guide the development of new criteria that would be applied to commercial vessel operators that train USMMA cadets. These principles formed the basis for the EMBARC ''Core Tenets'' on which MARAD seeks comments.

1. Build and maintain a shipboard culture of inclusion and respect.
2. Establish zero tolerance policies for SASH, harassment, and hostile work environment, as well as zero tolerance for retaliation against anyone who reports assault or harassment.
3. Eliminate the barriers that survivors and bystanders face in reporting SASH incidents.
4. Support survivors and bystanders who report SASH incidents.
5. Promptly address any report of behavior that is inconsistent with EMBARC standards, using every available resource.
6. Provide for a comprehensive review of all company and vessel policies and procedures to ensure that they fully support a work environment in which assault and harassment in any form—and retaliation against those who report assault or harassment—are not tolerated.
7. Provide for the proper implementation of cadet safety standards and ensure the adoption of updates as they are promulgated by MARAD.
8. Incorporate SASH prevention, response, and reporting procedures into the Company and Vessel Safety Management Systems.

Consistent with these principles, MARAD, DOT, and the USMMA sought individual input on a draft version of the *Every Mariner Builds a Respectful Culture (EMBARC)* criteria. MARAD received input from USMMA midshipmen, vessel owners and operators, maritime labor, state maritime academies, maritime workforce leaders, staff of the U.S. Congress, USCG, the Department of Education, and a non-maritime organization with expertise in sexual assault and sexual harassment response and survivor support. Among the stakeholders' individual recommendations, commenters suggested that the EMBARC Standards should:

- Ensure that all standards that are immediately applicable to carriers are implemented before cadets are embarked;
- clarify the training requirements—including the frequency of training—for crew members and for cadets;
- not designate the Designated Person Ashore—a position identified under the SOLAS convention—as a carrier's SASH contact for cadets;
- clarify the communications procedures between a carrier's SASH contact and cadets;
- clarify the training requirements for carriers' SASH contacts; and
- delay certain proposed requirements that may require vessels to be unavailable for service.

On December 15, 2021, MARAD released on its website the EMBARC Standards and Self-Assessment Check List on which comments are now sought. MARAD has continued to meet with stakeholders to clarify EMBARC requirements and receive comments. For example, MARAD and USMMA met with representatives of the SMAs, vessel owners and operators, and maritime labor on January 27, 2022, to clarify EMBARC check list items and hear stakeholders' individual comments and concerns regarding EMBARC. MARAD also released a ''Frequently Asked Questions'' (FAQ) on its website on February 8, 2022.

Consistent with its commitment to continuous review and improvement of EMBARC and continuing its extensive outreach to stakeholders, MARAD believes that this notice with request for comments will further improve its EMBARC agency guidance.

**Scope of Comments Requested**

MARAD is interested in learning how EMBARC could be improved, while also ensuring comprehensive support and adoption by the maritime industry and other stakeholders. Accordingly, MARAD specifically seeks comment on the following: (1) Any areas of sexual assault and sexual harassment prevention and response not properly addressed or accounted for in the EMBARC guidance; (2) any method MARAD could employ that would assist with oversight of, and compliance with, EMBARC; and, (3) other policies, procedures, or programs MARAD should consider to help ensure the safety and security of mariner cadets.

MARAD also seeks comment on the application of EMBARC, or standards similar to EMBARC, to owners or operators of vessels other than commercial carriers that must comply with SOLAS. Such other owners or operators include state and local governments, state maritime academies (SMA), and Great Lakes commercial vessel operators. Application to the SMAs would include the SMAs as operators of vessels upon which USMMA cadets receive training, and the SMAs as institutions of higher education that place their cadets on commercial vessels would be required to meet Coast Guard licensing requirements.

**Content of Comments Requested**

In making your comments, direct experience and quantifiable data are more useful than anecdotal descriptions. Likewise, if a commenter believes that there is a more effective alternative, the commenter should describe that alternative in verifiable detail.

**Public Participation Instructions**

*How long do I have to submit comments?*

We are providing a 60-day comment period.

*How do I prepare and submit comments?*

Your comments must be written in English.

To ensure that your comments are correctly filed in the Docket, please include the docket number shown at the beginning of this document in your comments.

If you are submitting comments electronically as a PDF (Adobe) File, MARAD asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing MARAD to search and copy certain portions of your submissions. Comments may be submitted to the docket electronically at *http://www.regulations.gov.* Search using the MARAD docket number in this notice and follow the online instructions for submitting comments.

You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Please note that pursuant to the Data Quality Act, for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines.*

*I provided MARAD comments on EMBARC, orally or in writing, in another forum. May I provide comments in response to this notice as well?*

Yes, MARAD encourages any member of the public to submit relevant comments for the docket, including input that has previously been communicated to MARAD. Doing so will ensure that your comments are considered in the development of future policies and MARAD response to your concerns.

*How can I be sure that my comments were received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

*How do I submit confidential business information?*

Confidential business information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. MARAD will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket. Submissions containing PROPIN should be sent to the email address provided in the **FOR FURTHER INFORMATION CONTACT** section. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. Any comments MARAD receives that are not specifically designated as PROPIN will be placed in the public docket for this notice.

*Will the agency consider late comments?*

MARAD will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

*How can I read the comments submitted by other people?*

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket Management Unit are indicated above in the same location. You may also see the comments on the internet. To read the comments on the internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. Please note that even after the comment closing date, MARAD will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

**Privacy Act**

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT''s compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

**EMBARC Policies, Procedures, and Standards on Which MARAD Seeks Comment**

In developing the policies, procedures, standards and definitions in EMBARC, MARAD relied on authorities including: 46 U.S.C. 10104; 46 U.S.C. 51318; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e; U.S. Equal Employment Opportunity Commission Guidance; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681; U.S. Department of Education, Office for Civil Rights Guidance; Best Practices Guide on Prevention of Sexual Harassment & Sexual Assault in the U.S. Merchant Marine (SOCP BPG); Ship Operations Cooperative Program (SOCP), June 2017; and USMMA Superintendent Instruction 2018–04 Sexual Assault, Sexual or Gender-Based Harassment, Relationship Violence, Stalking and Retaliation Policy. MARAD seeks comment and suggestions for improvement from interested members of the public on all elements of EMBARC posted on its website at *https://maritime.dot.gov/education/sea-year-training-program-criteria.* The following is a consolidation of both the EMBARC Policies and Procedures and the EMBARC Standards documents.

**Every Mariner Builds a Respectful Culture (EMBARC)**

*Procedure*

I. Purpose

The mission of the United States Merchant Marine Academy (USMMA) is to educate and graduate leaders of exemplary character who are inspired to serve the national security, marine transportation, and economic needs of the United States. As USMMA educates and trains the next generation of leaders, it is committed to ensuring that all members of the Academy community learn and work in safe and supportive environments.

Realizing these goals depend on fostering a community of mutual respect, support, and accountability. Accordingly, the U.S. Department of Transportation (DOT), Maritime Administration (MARAD), and USMMA require all commercial vessel owners and operators that participate in USMMA cadet training to adopt and follow the Every Mariner Builds a Respectful Culture (EMBARC) Sexual Assault and Sexual Harassment (SASH) Prevention Mandatory Standards (EMBARC Standards)—a set of policies, programs, procedures, and practices to help strengthen a culture of SASH prevention and support appropriate responses to incidents of sexual violence and sexual harassment and other forms of misconduct—and complete enrollment before embarking any cadet.

The policies, procedures, and culture of DOT, MARAD, and USMMA must support effective implementation of the standards outlined in EMBARC. Therefore, DOT, MARAD, and USMMA are revising policies and procedures for Sea Year to enable midshipmen to safely obtain the sea time needed to qualify them to sit for their licensing examinations. Specific policies and procedures already under development are described in more detail below.

DOT, MARAD, and USMMA are committed to ongoing evaluation and improvement of the EMBARC standards to incorporate emerging best practices and will engage closely and regularly with USMMA cadets and other stakeholders to assess implementation and discuss options to further strengthen the EMBARC program. Similarly, DOT, MARAD, and USMMA will continue to evaluate and strengthen USMMA's policies and procedures regarding implementation of Sea Year, including closely and regularly engaging with USMMA cadets and other stakeholders regarding the design and implementation of these policies and procedures.

II. Core Tenets

The following Core Tenets frame all aspects of the implementation of Sea Year at USMMA:

- Build and maintain a shipboard culture of inclusion and respect.
- Establish *zero tolerance* policies for SASH, harassment, and hostile work

environment, *zero tolerance* for retaliation against anyone who reports assault or harassment, and proportionate responses to policy infractions.

- Eliminate the barriers that survivors, witnesses, and bystanders face in reporting SASH incidents.
- Support survivors, witnesses, and bystanders who report SASH incidents.
- Promptly address any report of behavior that is inconsistent with EMBARC Standards, using every available resource.
- Review all company and vessel policies and procedures to ensure such policies fully support a work environment in which assault, harassment, and retaliation against those who report assault or harassment—are not tolerated.
- Implement SASH best practices and commit to adopting updates when such practices are promulgated by MARAD. (See *Best Practices Guide on Prevention of Sexual Harassment & Sexual Assault in the U.S. Merchant Marine (SOCP BPG)*; Ship Operations Cooperative Program (SOCP), June 2017.)
- Incorporate SASH prevention, response, and reporting procedures into the Company and Vessel Safety Management Systems.

III. Actions by DOT, MARAD, and USMMA

To help support a safe and supportive learning environment for every cadet during Sea Year and on the USMMA campus, DOT, MARAD, and USMMA will continue to review and revise policies and procedures to strengthen safety; support a culture of SASH prevention and appropriate response to any type of SASH-involved behavior, bullying, or hostile work environment; and support an inclusive culture—including by seeking guidance from outside experts. As first steps, DOT, MARAD, and USMMA will do the following:

- Develop a Superintendent Instruction on Sea Year policy that includes the following:
  - A Sea Year Assignment Policy detailing how Sea Year assignments are made. The revised policy will formalize the practice of assigning two or more cadets to each ship participating in Sea Year. The policy will also formalize the process for removing cadets from ships after reporting a SASH incident or for any other reason (such as illness, family emergency, etc.), including making clear that USMMA will work with students who leave ships to ensure that they are able to obtain required sea time with minimal disruption to academic progress.
  - Procedures for Handling Restricted (confidential) and Unrestricted (not confidential) reports of SASH, gender-based harassment, relationship violence, and stalking at sea, including:
    - Explicit definitions of these behaviors;
    - description of the roles of the parties including shipboard training personnel and Sexual Assault Prevention and Response staff (SAPR), such as victim advocates; and
    - support resources for survivors, witnesses, and bystanders.
  - A new Amnesty Policy for survivors, witnesses, and bystanders issued earlier this month.[1]
  - Procedures for the use of satellite phones and satellite texting devices at sea. These devices enhance cadet safety and well-being by allowing immediate contact with authorized representatives of the SAPR Office and other Academy personnel as well as a cadet's family, friends, and support networks.
  - Procedures for the training and credentialing of victim advocates who can provide crisis intervention, referrals, and ongoing non-clinical support to survivors of sexual assault, sexual or gender-based harassment, relationship violence, or stalking.
  - A Midshipmen Sea Year Mentorship Program to ensure that first time sailors (sophomores or Midshipmen Third Class) will be connected in advance of their first Sea Year assignment to a senior Midshipman mentor. The senior Midshipman mentor will be available to provide insight into all aspects of Sea Year sailing and to answer questions as needed. Mentors will immediately refer any SASH concerns to the SAPR office.
- Update the USMMA Sea Year Guide to ensure that it incorporates all revised SASH reporting policies and procedures outlined in the Superintendent Instruction, as well as the EMBARC program requirements. The Sea Year Guide will be focused on supporting USMMA cadets.
- Provide Midshipmen with a pocket guide detailing how to make restricted and unrestricted reports of SASH.
- Strengthen the SAPR Office, including creating and staffing a new Director position for the Office and adding staff positions to expand response capabilities and better support training and prevention efforts across the USMMA community.
- Continue to Coordinate with the U.S. Coast Guard, which is the regulator of the maritime industry and provides law enforcement at sea, to champion broader changes across the industry, including by supporting efforts to strengthen regulatory requirements regarding the reporting of sexual harassment and predatory behavior, where authorized by law.

To ensure effective support and oversight of USMMA efforts, DOT and MARAD will:

- Develop an EMBARC Compliance Review Process: As soon as practicable, MARAD will stand up a new office to review vessel compliance with EMBARC and USMMA policy and procedures. Once staffed, this office will carry out the inspection responsibilities USMMA shipboard training personnel previously performed. Until this new office is organized and staffed, MARAD will assign personnel from its Office of Strategic Sealift to conduct vessel compliance reviews.
- Establish Task Force on USMMA Governance and Culture: DOT will create a Task Force to assess and, as needed, recommend changes to transform USMMA's external and internal governance and Academy culture.

*Sexual Assault and Harassment Prevention and Response Standards*

IV. Compliance With EMBARC Standards for Sea Year Eligibility

- Each Vessel Operator agrees to comply with the EMBARC Standards, which replace the SCCT Sea Year Eligibility Requirements (dated March 16, 2020), by confirming completion of the immediate actions (set forth in Section III, below) on the EMBARC Accession checklist and submitting the checklist to MARAD. Vessel operators shall submit copies of their SASH policies together with the accession checklist and statement of compliance document.
- Each Vessel Operator agrees to conduct self-assessments of its compliance with the EMBARC Standards annually thereafter and to submit confirmation of such self-assessments and any resultant changes from the annual self-assessments to MARAD. Vessel Operators shall submit copies of their SASH policies together with assessment results.
- Each Vessel Operator agrees to permit MARAD—including third parties engaged by MARAD—to conduct recurring assessments of its compliance with the EMBARC Standards.

V. Immediate Actions by Each Vessel Operator

Before accepting cadets on board, each operator shall take the following actions:

[1] The USMMA revised the Superintendent's Instruction that includes an amnesty provision on December 22, 2022.

• Safety Management System.

○ Affirm that SASH reporting policies and procedures that ensure compliance with the Standards of the EMBARC program will be operational upon enrollment and will be documented within the Safety Management System (SMS) within 90 days of enrollment.

• Designated SASH Contact.

○ Designate a person ashore who will be the primary contact for all SASH issues (SASH Contact). The SASH Contact must have completed the free 40-hour Victim Assistance Training Online provided by the Office for Victims of Crime Training & Technical Assistance Center, and received the Certificate of Completion, or have completed an equivalent training program.

• Meetings Between the SASH Contact and Cadet.

○ Confirm that cadets will have (1) a virtual or in-person meeting with the SASH Contact before joining a ship; or (2) if there is inadequate time between a cadet's assignment to a vessel and the cadet's embarkation, the SASH Contact shall have contact with the cadet within 48 hours of the cadet's embarkation.

• Communication Measures.

○ Implement measures to—

▪ Confirm that SASH Contacts and cadets can communicate as needed once a cadet is on board, including adopting measures to require that the SASH Contact initiate contact with each assigned cadet within the first 7 days of vessel onboarding;

▪ Confirm that the SASH Contact shall respond to cadet outreach no later than the next business day;

▪ Ensure that whenever a cadet is aboard a vessel for more than 30 days, the SASH Contact shall initiate contact, via email, with the cadet at least every 14 days;

▪ Require the SASH Contact to encourage and honor requests from cadets for increased frequency of check-ins; and

▪ Ensure the SASH Contact makes a record of any possible violations and ensures prompt and thorough investigation and corrective action, where appropriate, and/or referral to proper authorities.

• Safety practices.

○ Reinforce Vessel Operator safety practices (including SASH prevention, bystander intervention, reporting procedures, and alcohol prohibitions) frequently with every cadet and crew member through onboard or virtual meetings in accordance with company procedures to strengthen a culture of prevention and build industry-wide understanding and accountability.

• Crew-Cadet Interaction.

○ Adopt policies that prohibit cadets from entering the stateroom of any other crew member; prohibit ship's crew members from entering cadets' private staterooms for any reason other than official maintenance or housekeeping duties during appropriate working hours and with adequate notice; and provide functional door locks for all cadet staterooms. Vessel Operator SASH policies shall include a list of all master key holders with access to cadet staterooms identified by position. Vessel Operator policies shall also establish and maintain open-door office or workspace interaction between cadets and other ship's employees, except when impractical due to vessel compartment configuration or safety procedures.

• Vessel Operator training requirements.

○ Safety Management Systems shall establish quarterly training requirements on SASH prevention, bystander intervention, reporting, and response procedures for all shipboard personnel (regardless of whether cadets are onboard). Cadets shall participate in, but shall not have any role in managing, this training.

○ All officers and crew shall be required to complete the *Maritime Sexual Assault and Sexual Harassment Prevention Training* before a cadet is embarked and to repeat the training annually. The interactive Computer Based Training (CBT) is available at no charge from SOCP.

○ Incorporate SASH discussions in periodic Vessel Safety Meetings using materials similar to those in the Facilitator's Guide and Student Workbook in the SOCP SASH Tool Kit. The SOCP SASH Tool Kit is available at no charge from SOCP.

○ Provide copies of vessel operator's SASH prevention policies and reporting procedures to each cadet upon boarding the vessel.

○ Display company policies prohibiting SASH, retaliation, drug and alcohol usage, and cadet presence in crew member staterooms/crew member presence in cadet staterooms on board.

○ Display posters and guides that support a respectful and inclusive workplace culture. Display SASH prevention, reporting, and response posters prominently in common areas of the vessel. Vessel Operators shall also display such posters in shoreside facilities to which cadets have access.

○ Distribute the quick reference guide brochures in the SOCP SASH Tool Kit or other comparable materials to all crew, officers, cadets, and all shore-based personnel who interact with, or have responsibilities related to, officers, crew and cadets. Tips for prevention of, and response to, SASH behaviors shall be provided as appropriate for each intended audience.

○ Vessel operators agree to reinforce training, by specifically:

▪ Requiring Vessel Masters to introduce cadets to ship's company employees as soon as practicable after boarding to foster an open, welcoming environment for Sea Year students.

▪ Requiring Vessel Masters to ensure that cadets are familiarized with the ship during onboarding in accordance with the Safety Management System.

▪ Reporting procedures provided to officers, crew, cadets, and posted on the vessel shall include: (1) Contact information for the Vessel Operator's SASH Contact(s) and (2) Point of contact information for notifications to the Coast Guard.

Notifications can be made to the Coast Guard National Command Center at (202) 372–2100, or through the CG Tips, a web-based and mobile alternative to submit either attributed or anonymous reports about crimes witnessed or experienced aboard a vessel directly to a Coast Guard criminal investigator. The CG Tips App can be downloaded from a mobile provider's marketplace. For more information about CGIS, or to submit a tip via the web, visit: *https://www.uscg.mil/Units/Coast-Guard-Investigative-Service/.*

• Reporting.

○ When cadets are embarked, Vessel Operators shall immediately (within 24 hours after learning of an allegation) notify USMMA of an allegation of SASH-involved behavior, regardless of whether the behavior involves a cadet. If the incident involves a cadet, operators shall provide a complete report of investigation to USMMA when concluded. Vessel Operator policies shall require that: (1) Thorough investigation of alleged violations of the SASH policy meet best practices for investigations of sexual assaults and sexual harassments; and, (2) interviews be conducted using trauma-informed interview methods.

○ The Vessel Operator's company policies shall require that all shipboard complaints of a sexual offense prohibited under current law must be immediately reported to the Coast 1 (202) 372–2100, or as an attributed report through CG Tips—a web-based and mobile alternative to submit reports about crimes witnessed or experienced aboard a vessel directly to a Coast Guard criminal investigator. The CG Tips App can be downloaded from a mobile provider's marketplace. For more information about CGIS, or to submit a tip via the web, visit: *https://www.uscg.mil/Units/Coast-Guard-Investigative-Service/.*

○ Vessel Operator company leadership should inform the Coast Guard of adverse or disciplinary actions that result in termination or a probationary status of any crewmember for harassment or SASH. Reports of mariner misconduct should be made to nearest Coast Guard Officer In Charge, Marine Inspection which can be found at the following website: *https://www.uscg.mil/contact/.*

• Best Practices.

Each Vessel Operator shall review company policies within the Safety Management System to determine if they are at least as comprehensive as those listed in the current version of the SOCP Best Practices Guide and revise as necessary, including but not limited to the following policies:

○ Employee Best Practices:

- Best Practice #1: Reporting of Sexual Harassment & Sexual Assault
- Best Practice #2: Basic Do's and Don'ts
- Best Practice #3: Safety on Shore Leave
- Best Practice #4: Response to Sexual Harassment & Sexual Assault
- Drugs & Alcohol
- Company Investigation Process
- Victim Advocacy
- ''Did You Know?''

○ Vessel Operator Company Best Practices:

- Best Practice #1: Defining Sexual Harassment & Sexual Assault
- Best Practice #2: Nurturing a Culture Free of Sexual Harassment & Sexual Assault
- Best Practice #3: Development of Prevention Policies
- Best Practice #4: Effective Training on Sexual Harassment & Sexual Assault Prevention and Response
- Best Practice #5: Establishing Reporting Options
- Best Practice #6: Response to Sexual Harassment & Sexual Assault

Vessel operators shall comply with the reporting procedures listed herein instead of any obsolete reporting procedures in the SOCP Best Practices Guide.

• Compliance Review.

○ Vessel Operators shall meet with DOT, MARAD, USMMA and other invited government and industry participants quarterly, or as called by DOT/MARAD/USMMA, to assess compliance with SASH policies and implement any necessary adjustments and/or corrections.

VI. Intermediate Actions To Be Taken by Vessel Operators, To Be Completed Within the Times Noted Below After Adoption of These EMBARC Standards

• Within one year, implement vessel master key control systems, manual or electronic.

• Within one year, develop and implement recommended SASH Contact training and annual refresher training for designated SASH contacts to include survivor advocacy and instruction in training and education principles. Each Vessel Operator shall designate and train an appropriate number of designated SASH Contacts to ensure that an adequate number (a minimum of one primary and one alternate) are always available.

• Within one year, work with other Vessel Operators, labor, academies, SOCP and/or other industry organizations, SASH subject matter experts, MARAD and other stakeholders to review and enhance SASH policies used by vessel operators. MARAD will initiate revisions of the SOCP SASH Best Practices Guide. Such revisions will include, among other things updates to best practices and templates to support incorporation of SASH prevention, reporting, and response as well as internal audit and external audit procedures into Company and Vessel Safety Management Systems.

• Within one year, work with other Vessel Operators, labor, academies, industry organizations, SASH subject matter experts, MARAD and other stakeholders to develop and implement enhanced policies and training pertaining to bystander reporting requirements and bystander duty to intervene in SASH incidents.

• Within eighteen months, collaborate with other Vessel Operators, mariner unions, Academies, union training schools, SASH subject matter experts, MARAD, USCG and other stakeholders to develop and implement expanded mandatory annual SASH training for all crew members including, but not limited to:

○ SASH (including bystander intervention);

○ Micro aggression consciousness;

○ Cadet relationships;

○ Creating and maintaining a respectful work environment; and

○ Training regimens and methods that enable effective crew awareness of SASH prevention principles.

• As soon as practicable, but not later than two years, work with other Vessel Operators, labor, Academies, industry organizations, SASH subject matter experts, MARAD, USCG, and other stakeholders, to develop, establish and participate in, to the extent permissible under law, the maintenance and operation of a SASH perpetrator information exchange.

○ The exchange shall contain the names of all merchant mariners who are the subjects of substantiated reports of discriminatory, SASH-related, violent, or other violative behavior, or who were terminated in related proceedings; the incident dates; the bases of substantiation; and the disposition of each circumstance shall be recorded and accessible to all operators of U.S.-flag vessels.

VII. Long-Term Actions To Be Taken by Vessel Operators

These will be developed in coordination with the MARAD and other Government and maritime industry participants and may include:

• Consideration of a range of possible measures to address accountability for the SASH climate onboard Vessel Operator ships that could include:

○ training on records maintenance;

○ identified perpetrator tracking and record keeping, to the extent permissible by law;

○ recorded video monitoring of, at a minimum, passageways immediately adjacent to cadet staterooms;

○ enhanced Diversity, Equity, and Inclusion (DEI) initiatives and practices in the mariner workforce; and

○ training and credentialing of officers at the Provisional level by the National Advocate Credentialing Program.

• Collaboration with the U.S. Coast Guard, other Vessel Operators, mariner unions, and industry organizations to develop the requirements of a merchant mariner credential that satisfies training requirements for SASH Contacts and designated onboard officers or other persons ashore to attain and maintain respective Basic and Provisional NACP training levels.

VIII. Definitions

The following definitions and examples are derived from the 2017 Best Practices Guide on Prevention of Sexual Assault and Sexual Harassment in the U.S. Merchant Marine (SOCP BPG), published by the Ship Operations

Cooperative Program with support from the U.S. Department of Transportation Maritime Administration under Agreement No. DTMA 91H1600008 and the U.S. Merchant Marine Academy's 2018 *Sexual Assault, Sexual or Gender-Based Harassment, Relationship Violence, Stalking, and Retaliation Policy.*

• Sexual Assault is a crime of violence defined as intentional touching of a sexual nature against the will (by use of force, physical threat, coercive conduct, or abuse of authority), or without the consent of another person, or where that person is incapacitated (*e.g.,* ''passed out,'' sleeping, or impaired due to the use of alcohol or drugs, including prescription medications) or otherwise incapable of giving consent. The other person can be male or female and the perpetrator of the sexual assault can be of the same or opposite sex. Sexual assault includes, but is not limited to, the following:

○ Sexual intercourse, including anal, oral, or vaginal penetration, however slight, with a body part (*e.g.,* penis, finger, hand or tongue) or an object;

○ Kissing, touching, groping, fondling, or other intentional contact with the breasts, buttocks, groin, or genitals (over or under an individual's clothing) for purposes of sexual gratification or when such private body parts are otherwise touched in a sexual manner;

○ Sexual contact with someone who is unable to say ''no'' and/or change their mind due to the presence of coercion or intimidation; or

○ Sexual contact with someone who is under the age of consent in the jurisdiction in which the sexual assault occurs.

• Sexual Harassment and Gender-Based Harassment: Sexual harassment is any unwelcome sexual advance, request for sexual favors, or other unwelcome verbal, non-verbal, graphic, or physical conduct of a sexual nature, including, but not limited to the following:

○ Submission to or rejection of such conduct is either an explicit or implicit term or condition of an individual's employment or advancement in employment, evaluation of academic work or advancement in an academic program, or basis for participation in any aspect of an Academy program or activity, including shipboard training *(quid pro quo);*

○ Submission to or rejection of such conduct by an individual is used as a basis for decisions affecting the individual (*quid pro quo);* or

○ Such conduct has the purpose or effect of unreasonably interfering with an individual's learning, working, or living environment; in other words, it is sufficiently severe, pervasive, or persistent as to create an intimidating, hostile, or offensive learning, working, or living environment under both an objective—a reasonable person's view—and subjective—the Complainant's view—standard (hostile environment).

○ Examples of Sexual Harassment include, but are not limited to, the following behaviors:

▪ Verbal conduct such as epithets, derogatory or off-color jokes or comments of a sexual nature, slurs or unwanted sexual advances, invitations, or comments, discussing sexual activities, commenting on physical attributes, using demeaning names, or using crude language;

▪ Visual conduct such as derogatory or sexually oriented posters, photography, cartoons, drawings, or gestures, or exposing oneself;

▪ Physical conduct such as unwanted or unnecessary touching, the blocking of voluntary movement, or interfering with a person's work due to the refusal of sexual advances or a person's sexual orientation;

▪ Threats and demands to submit to sexual requests as a condition of continued employment or to avoid discipline; and

▪ Rewards and offers of employment benefits in return for sexual favors.

• Gender-Based Harassment includes harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature. Examples of sexual or gender-based harassment include, but are not 1imited to, the following:

○ Unwanted flirtation, advances or propositions of a sexual nature;

○ Verbal conduct, including lewd or sexually suggestive comments, jokes, or innuendos, or unwelcome comments about an individual's sexual orientation or gender identity;

○ Written conduct, including letters, notes, or electronic communications containing comments, words, jokes, or images that are lewd or sexually suggestive, or relate in an unwelcome manner to an individual's sexual orientation or gender identity.

• Relationship Violence refers to controlling, abusive behavior, including any act of violence or threatened act of violence, against a person who is, or has been involved, in a sexual, dating, domestic, cohabiting or married relationship with that person. Relationship violence can take place in heterosexual or same-sex relationships, and sometimes also involves violence against the children in the family. Relationship violence can take a number of forms including physical, verbal, emotional, economic, and sexual abuse, or any combination thereof.

○ Domestic violence: The term ''domestic violence'' includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the applicable jurisdiction, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the applicable jurisdiction.

○ Dating violence: The term ''dating violence'' means violence committed by a person (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (b) where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) The length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

• Stalking is a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress. Such conduct includes, but is not limited to, unwelcome acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property. It includes cyber-stalking, in which electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used. Stalking can occur in a dating relationship, friendship, or past relationship, or can be perpetrated by a stranger.

• Harassment is the act of systematic and/or continued unwanted and annoying actions of one party or a group, including threats and demands. The purpose may vary, including racial prejudice, personal malice, and attempt to force someone to quit a job or grant sexual favors, or merely gain sadistic pleasure from making someone fearful or anxious.

• Bullying is the use of force, threat, or coercion to abuse, intimidate or aggressively dominate others. The behavior is often repeated and habitual. One essential prerequisite is the perception, by the bully or by others, of an imbalance of social or physical power, which distinguishes bullying from conflict.

• Consent means clear words or overt acts by a competent person indicating freely given agreement to engage in mutually agreed upon sexual conduct. An expression of refusal through words or conduct means there is no consent. Consent may not be inferred from silence, passivity, or lack of resistance alone. Consent to one form of sexual activity does not imply consent to other forms of sexual activity, and the existence of a current or previous dating or sexual relationship is not sufficient to constitute consent to additional sexual activity. Consent may be initially given but can be withdrawn at any time.

○ Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness, being asleep, being involuntarily restrained, or being coerced or intimidated. Depending on the degree of intoxication, an individual who is under the influence of alcohol, drugs, or other intoxicants, may be incapacitated and, therefore, unable to consent.

• Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another person for their own advantage or benefit or for the advantage or benefit of anyone else. Examples of sexual exploitation include but are not limited to the following:

○ Voyeurism (such as watching or taking pictures, videos, or audio recordings of another person engaging in a sexual act, in a state of undress, or in a place and time where such person has the reasonable expectation of privacy, such as a changing room, toilet, bathroom, or shower, each without the affirmative consent of all parties);

○ Disseminating, streaming, or posting pictures or video of another in a state of undress or of a sexual nature without the person's affirmative consent;

○ Exposing one's genitals to another person without affirmative consent; or

○ Knowingly exposing another individual to a sexually transmitted infection or virus without the other individual's knowledge.

• Retaliation (sometimes referred to as reprisal) means taking or threatening to take any adverse action taken against an individual for making a good faith report of conduct prohibited under the organization's Policy, or for participating in any investigation or proceeding resulting from such a report. Retaliation includes threatening, intimidating, harassing, or any other conduct that would discourage a reasonable person from making a report, or from participating in proceedings related to such a report. Examples of retaliation include, but are not limited, to the following:

○ Disadvantaging or restricting a person in their status as an employee or cadet, or in their ability to gain benefits or opportunities available at the organization or the USMMA;

○ Precluding a person from filing a report of prohibited conduct;

○ Pressuring someone to drop or not support a complaint, or to provide incomplete, false, or misleading information; or

○ Adversely altering the educational or work environment of someone who has r participated in the complaint process.

By order of the Acting Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2022–06672 Filed 3–29–22; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2021–0068]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Request for Comment; Petitions for Hearings on Notification and Remedy of Defects

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments on a request for extension of a currently approved information collection.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) summarized below will be submitted to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. This ICR is for a request for extension of NHTSA's currently approved information collection for petitions for hearings on notification and remedy of defects. A **Federal Register** Notice with a 60-day comment period soliciting comments on the ICR was published on January 18, 2022. No comments were received.

**DATES:** Comments must be submitted on or before April 29, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain.* To find this particular information collection, select ''Currently under Review—Open for Public Comment'' or use the search function.

**FOR FURTHER INFORMATION CONTACT:** For additional information or access to background documents, contact Nicholas LaBruna, Recall Management Division (NEF–107), Room W46–438, NHTSA, 1200 New Jersey Ave. SE, Washington, DC 20590. Telephone: (202) 366–1781. Please identify the relevant collection of information by referring to its OMB Control Number (2127–0039).

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted OMB.

*Title:* Petitions for Hearings on Notification and Remedy of Defects.

*OMB Control Number:* 2127–0039.

*Form Numbers(s):* N/A.

*Type of Request:* Extension of a currently approved information collection.

*Type of Review Requested:* Regular.

*Requested Expiration Date of Approval:* 3 Years from the date of approval.

*Summary of the Collection of Information:* NHTSA reviews filed complaints from vehicle owners and other information related to alleged defects or noncompliances to decide whether to open an investigation. Should a manufacturer determine or NHTSA decide, through testing, inspection, investigation or research, that a motor vehicle or motor vehicle equipment contains a defect related to motor vehicle safety or does not comply with an applicable Federal motor vehicle safety standard (FMVSS),

Section 30118 of title 49 of the United States Code requires the manufacturer of motor vehicles or replacement equipment to notify NHTSA, owners, purchasers, and dealers of the safety defect or noncompliance. Section 30120 requires the manufacturer to remedy, without charge, the defect or non-compliance and specifies the ways in which a noncompliance or defect can be remedied. Sections 30118(e) and 30120(e) of title 49 specify that any interested person may petition the Secretary of Transportation (NHTSA by delegation) to hold a hearing to determine whether a manufacturer of motor vehicles or motor vehicle equipment has reasonably met its obligation to notify owners, purchasers, and dealers of vehicles or equipment of a safety-related defect or noncompliance with a FMVSS in the manufacturer's products and to remedy that defect or noncompliance.

To implement these statutory provisions, NHTSA promulgated 49 CFR part 557, Petitions for Hearings on Notification and Remedy of Defects. Part 557 establishes procedures for the submission and disposition of petitions for hearings on the issues of whether the manufacturer has reasonably met its obligation to notify owners, purchasers, and dealers of safety-related defects or noncompliance, or to remedy such defect or noncompliance free of charge.

*Description of the Need for the Information and Proposed Use of the Information:* Persons who believe that a manufacturer has been deficient in notifying owners, purchasers, or dealers of a safety related defect or noncompliance with FMVSS, or has not remedied the problem in accordance with statutory requirements, may petition the agency pursuant to 49 CFR part 557. The agency uses the information collected in the petition, and may use other information available to it, to determine whether a hearing is necessary to determine whether a manufacturer has reasonably met its obligation to notify owners, purchasers, and dealers of the safety defect or noncompliance with FMVSS, or to remedy that defect or noncompliance. Should the agency, on the basis of information provided at that hearing or other information, determine the manufacturer has not reasonably met its obligations, the agency orders the manufacturer to take specified action to bring itself into compliance with those obligations.

*60-Day Notice:* A **Federal Register** notice with a 60-day comment period soliciting public comments on the following information collection was published on January 18, 2022 (87 FR 2664). No comments were received.

*Affected Public:* Businesses or other interested persons.

*Estimated Number of Respondents:* 1 respondent.

*Frequency:* On occasion.

*Estimated Total Annual Burden Hours:* 1 hour.

When NHTSA last sought approval for the extension of this information collection, the agency estimated it would receive one petition a year and estimated that, with an estimated one hour of preparation time for each petition, the total annual burden for this collection would be 1 hour. The agency now believes that a more accurate estimate would be 0 petitions and 0 burden hours each year, based on the agency not receiving of any such petitions submitted in recent years. However, NHTSA continues to estimate that the time to prepare a petition is 1 hour and, to account for the possibility of receiving a petition in a given year, NHTSA estimates the total annual burden of this collection to be 1 hour (1 petition × 1 hour to prepare).

*Estimated Total Annual Burden Cost:* $7.95.

NHTSA estimates that the only cost burden to respondents (*i.e.,* petitioners) except for the time invested (opportunity cost) associated with the time to submit the petition will be postage costs. NHTSA estimates that each mailed response is estimated to cost $7.95 (priority flat rate envelope from USPS). Therefore, the total cost for the estimated 1 request per year is $7.95.

*Public Comments Invited:* You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Authority*: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

**Stephen Ridella,**

*Director, Office of Defects Investigation, NHTSA.*

[FR Doc. 2022–06728 Filed 3–29–22; 8:45 am]

BILLING CODE P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2022–0029]**

### Denial of Motor Vehicle Defect Petition, DP21–005

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Denial of petition for a defect investigation.

**SUMMARY:** This notice sets forth the reasons for the denial of a petition submitted on September 27, 2021, by Mr. James Lamb to NHTSA's Office of Defects Investigation (ODI). The petition requests that the Agency initiate an investigation into alleged ''defects in the 2006 J1939 databus,'' citing a 2016 research paper published through the University of Michigan. On December 23, 2021, NHTSA opened Defect Petition DP21–005 to evaluate the petitioner's request. After reviewing the information provided by the petitioner regarding the alleged defect and conducting searches of complaints from vehicle owners, operators, and fleet supervisors, NHTSA has concluded that there is insufficient evidence to warrant further action at this time. Accordingly, the Agency has denied the petition.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ryan Rahimpour, Medium and Heavy-Duty Vehicle Defects Division, Office of Defects Investigation, NHTSA, 1200 New Jersey Ave. SE, Washington, DC 20590 (telephone 202–366–8756).

**SUPPLEMENTARY INFORMATION:**

### 1.0 Introduction

Pursuant to 49 CFR 552.1, interested persons may petition NHTSA requesting that the Agency initiate an investigation to determine whether a motor vehicle or item of replacement equipment fails to comply with applicable motor vehicle safety standards or contains a defect that relates to motor vehicle safety. 49 U.S.C. 30162; 49 CFR part 552. Upon receipt of a properly filed petition, the Agency conducts a technical review of the petition, material submitted with the petition, and any additional information. 49 U.S.C. 30162(c); 49 CFR

552.6. After the technical review and considering appropriate factors, which may include, among other factors, Agency priorities, and the likelihood of success in litigation that might arise from a determination of a noncompliance or a defect related to motor vehicle safety, the Agency will grant or deny the petition. 49 U.S.C. 30162(d); 49 CFR 552.8.

**2.0 Petition**

Mr. James Lamb (the petitioner), Executive Director of the Small Business in Transportation Coalition (SBTC), submitted a petition to NHTSA on September 27, 2021. The petition requested NHTSA to initiate a defect investigation into the potential hacking susceptibility of the Society of Automotive Engineers (SAE) J1939 Data Bus standard.

In support of the petition, the petitioner cited a 2016 study from University of Michigan (Michigan) researchers, entitled Truck Hacking: An Experimental Analysis of the SAE J1939 Standard, which alleges a SAE J1939 Data Bus vulnerability in a Model Year (MY) 2001 school bus and a MY 2006 Class-8 semi-tractor.[1] The study alleges that, due to the vulnerability, vehicle critical safety functions such as the accelerator control or braking systems are susceptible to unauthorized access and control, increasing motor vehicle safety risks. The petition includes no other specification with respect to affected makes or models of vehicles with the alleged safety defect.

**3.0 Analysis**

On December 23, 2021, ODI opened Defect Petition Investigation DP21–005 to evaluate the petitioner's request. In evaluating the petition, ODI reviewed the cited University of Michigan study to understand and determine the scope and feasibility of the alleged defect and reviewed the NHTSA database for similar complaints.

The petitioner did not specify the make and model of the vehicles with the alleged safety defect. The only categories of relevant subject vehicles specified were found in the Michigan study: MY 2001 school buses and MY 2006 Class-8 semi-tractors.

After reviewing the available information and using ODI's risk-based processes, ODI has not identified evidence that would support opening a defect investigation into the subject vehicles. The vehicle vulnerabilities reported in the Michigan study required physical access to the J1939 connector in order to affect vehicle critical safety functions such as the accelerator control or braking systems. Whether there is a potential for remote compromise is a factor that NHTSA has considered in evaluating the likelihood or frequency of a potential safety defect. The Michigan study did not demonstrate a remote compromise of these vehicles. In addition, based on the age of the subject model year school buses and semi-tractors, they do not have over-the-air software update capabilities or an internet connection to make remote compromise possible.

ODI conducted a search for similar complaints received by the Agency and found no complaints of any type related to this alleged vulnerability, aside from the Petition. This evaluation included searches of complaints from vehicle owners, operators, and fleet supervisors. ODI has not found any similar events, complaints, or allegations suggesting a real-life vulnerability based on the available information. Therefore, given a thorough analysis of the potential for finding a safety-related defect in the subject vehicles, and in view of NHTSA's enforcement priorities, a defects investigation is unlikely to result in a finding that a defect related to motor vehicle safety exists.

**4.0 Conclusion**

NHTSA is authorized to issue an order requiring notification and remedy of a defect if the Agency's investigation shows a defect in the design, construction, or performance of a motor vehicle that presents an unreasonable risk to safety. 49 U.S.C. 30102(a)(9), 30118. Given that the existing information does not provide evidence of a real-life vulnerability in the alleged subject vehicles, caused by a vehicle-based defect, it is unlikely that an order concerning the notification and remedy of a safety-related defect would be issued due to any investigation opened upon grant of this petition. Therefore, and upon full consideration of the information presented in the petition and the potential risks to safety, the petition is denied. The denial of this petition does not foreclose the Agency from taking further action if warranted or making a future finding that a safety-related defect exists based upon additional information the Agency may receive.

*Authority:* 49 U.S.C. 30162(d); delegations of authority at CFR 1.95 and 501.8.

**Anne L. Collins,**

*Associate Administrator for Enforcement.*

[FR Doc. 2022–06683 Filed 3–29–22; 8:45 am]

BILLING CODE 4910–59–P

[1] Burakova, Y., Hass, B., Millar, L., Weimerskirch, A., (2016). Truck Hacking: An Experimental Analysis of the SAE J1939 Standard. *woot16-paper-burakova.pdf* (usenix.org).

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

**FOR FURTHER INFORMATION CONTACT:** OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability**

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

**Notice of OFAC Actions**

On March 25, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

**Individuals**

1. HEIN, Zaw, Burma; DOB 01 Jan 1974 to 31 Dec 1975; citizen Burma; Gender Male (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(iii)(A) of Executive Order 14014 of February 10, 2021, ''Blocking Property With Respect to The Situation In Burma'' (''E.O. 14014''), 86

FR 9429, for being a foreign person who is or has been a leader or official of the military or security forces of Burma, or any successor entity to any of the foregoing.

2. OO, Ko Ko, Zayyarthiri, Nay Pyi Taw, Burma; DOB 02 Dec 1972; POB Bhamaw, Burma; nationality Burma; Gender Male; Passport OM039639 (Burma) issued 13 Nov 2015 expires 12 Nov 2020 (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14014, for being a foreign person who is or has been a leader or official of the military or security forces of Burma, or any successor entity to any of the foregoing.

3. AUNG, Naing Htut, Burma; DOB 27 Jan 1968; nationality Burma; Gender Male (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(i) of E.O. 14014 for operating in the defense sector of the Burmese economy or any other sector of the Burmese economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State.

4. AUNG, Sit Taing (a.k.a. ASUNG, Sit Thaing; a.k.a. AUNG, Sitt Thaing), Burma; DOB 13 Nov 1971; nationality Burma; citizen Burma; Gender Male (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(i) of E.O. 14014 for operating in the defense sector of the Burmese economy or any other sector of the Burmese economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State.

5. OO, Aung Hlaing, Burma; DOB 11 Jun 1977; nationality Burma; Gender Male (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(i) of E.O. 14014 for operating in the defense sector of the Burmese economy or any other sector of the Burmese economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State.

## Entities

1. 66TH LIGHT INFANTRY DIVISION (a.k.a. LIGHT INFANTRY DIVISION 66; a.k.a. ''66 LID''; a.k.a. ''#66 DIVISION''; a.k.a. ''DIV. 66''; a.k.a. ''LID 66''), Pyay Township, Bago Region, Burma; Target Type Government Entity [BURMA–EO14014].

Designated pursuant to section 1(a)(ii)(D) of E.O. 14014 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, the arbitrary detention or torture of any person in Burma or other serious human rights abuse in Burma.

2. INTERNATIONAL GATEWAYS GROUP OF COMPANY LIMITED, Pyay Road No. 3X, Highland Avenue 6 Ward, 7 Mile, Mayangone Township, Yangon Region, Burma; Organization Type: Activities of holding companies; Target Type Private Company; Registration Number 182733636 (Burma) issued 29 Jun 2011 [BURMA–EO14014] (Linked To: AUNG, Naing Htut).

Designated pursuant to section 1(a)(vii) of E.O. 14014 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, the military or security forces of Burma or any person whose property and interests in property are blocked pursuant to this order.

3. MYANMAR CHEMICAL AND MACHINERY COMPANY LIMITED (a.k.a. MCM GROUP), No. 566/KA, Yazahtarni Road, Paung Laung 2 Quarter, Pyinmana Township, Naypyitaw, Burma; NO.2, 7 Mile Hill, MG Weik Housing, Mayangone Township, Yangon Region, Burma; Organization Type: Wholesale of other machinery and equipment; Target Type Private Company; Registration Number 100220040 (Burma) issued 10 Feb 2001 [BURMA–EO14014] (Linked To: OO, Aung Hlaing).

Designated pursuant to section 1(a)(vii) of E.O. 14014 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, the military or security forces of Burma or any person whose property and interests in property are blocked pursuant to this order.

4. HTOO GROUP OF COMPANIES (a.k.a. HTOO GROUP; a.k.a. ''HCG''), No. 5, Pyay Road, Hlaing Township, Yangon, Burma; Organization Type: Activities of holding companies; Target Type Private Company [BURMA–EO14014] (Linked To: ZA, Tay).

Designated pursuant to section 1(a)(vii) of E.O. 14014 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, TAY ZA, a person whose property and interests in property are blocked pursuant to this order.

5. ASIA GREEN DEVELOPMENT BANK LTD (a.k.a. AGD BANK; a.k.a. ASIA GREEN DEVELOPMENT BANK LIMITED; a.k.a. ASIA GREEN DEVELOPMENT BANK PUBLIC COMPANY LIMITED), No. 73/75, Sule Pagoda Road, Pebadan Township, Yangon, Burma; SWIFT/BIC AGDBMMMY; website *http://www.agdbank.com;* Organization Type: Other financial service activities, except insurance and pension funding activities, n.e.c.; National ID No. 103903351 (Burma) [BURMA–EO14014].

Designated pursuant to section 1(a)(vii) of E.O. 14014 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, HTOO GROUP OF COMPANIES, a person whose property and interests in property are blocked pursuant to this order.

**Authority:** E.O. 14014, 86 FR 9429

Dated: March 25, 2022.

**Andrea M. Gacki,**

*Director, Office of Foreign Assets Control, U.S. Department of the Treasury.*

[FR Doc. 2022–06685 Filed 3–29–22; 8:45 am]

**BILLING CODE 4810–AL–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Rev. Proc. 2006–10

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning information collection requirements related to guidance for qualification as an acceptance agent, and execution of an agreement between an acceptance agent and the Internal Revenue Service relating to the issuance of certain taxpayer identifying numbers.

**DATES:** Written comments should be received on or before May 31, 2022 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *omb.unit@irs.gov.*

Include ''OMB Number 1545–1499—Guidance for qualification as an acceptance agent, and execution of an agreement between an acceptance agent and the Internal Revenue Service relating to the issuance of certain taxpayer identifying numbers'' in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Guidance for qualification as an acceptance agent, and execution of an agreement between an acceptance agent and the Internal Revenue Service relating to the issuance of certain taxpayer identifying numbers.

*OMB Number:* 1545–1499.

*Revenue Procedure Number:* 2006–10.

*Abstract:* This revenue procedure describes application procedures for becoming an acceptance agent and the requisite agreement that an agent must execute with the Internal Revenue Service.

*Current Actions:* There are no changes being made to the burden associated with this collection.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals, business or other for-profit organizations, not-for-profit institutions, Federal Government, and state, local or tribal governments.

*Estimated Number of Respondents:* 8,000.

*Estimated Time per Respondent:* 3 hrs., 7 mins.

*Estimated Total Annual Burden Hours:* 24,960.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 2022.

**Martha R. Brinson,**

*Tax Analyst.*

[FR Doc. 2022–06624 Filed 3–29–22; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### 2022 Report on the Effectiveness of the Terrorism Risk Insurance Program

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Request for comment.

**SUMMARY:** The Terrorism Risk Insurance Act of 2002, as amended (TRIA), established the Terrorism Risk Insurance Program (TRIP or Program). TRIA requires the Secretary of the Treasury (Secretary) to submit a report to Congress by June 30, 2022 concerning, in general, the overall effectiveness of TRIP. To assist the Secretary in formulating the report, the Federal Insurance Office (FIO) within the Department of the Treasury (Treasury) is seeking comments from the insurance sector and other stakeholders on the statutory factors to be analyzed in the report, as well as feedback on other issues relating to the effectiveness of TRIP.

**DATES:** Submit comments on or before May 16, 2022.

**ADDRESSES:** Submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site, or by mail to the Federal Insurance Office, Attn: Richard Ifft, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delays, it is recommended that comments be submitted electronically. If submitting comments by mail, please submit an original version with two copies. Comments concerning the 2022 report on the effectiveness of the Terrorism Risk Insurance Program should be captioned with ''2022 TRIP Effectiveness Report.'' In general, Treasury will post all comments to *www.regulations.gov* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. All comments, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly. Where appropriate, a comment should include a short Executive Summary (no more than five single-spaced pages).

*Additional Instructions.* Responses should also include: (1) The data or rationale, including examples, supporting any opinions or conclusions; and (2) any specific legislative, administrative, or regulatory proposals for carrying out recommended approaches or options.

**FOR FURTHER INFORMATION CONTACT:** Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, (202) 622–2922, Sherry Rowlett, Program Analyst, Federal Insurance Office, (202) 622–1890, Jeremiah Pam, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, (202) 622–7009, or Saurav Banerjee, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, (202) 622–5330. Persons who have difficulty hearing or speaking may access these numbers via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

TRIA [1] requires participating insurers to make insurance available for losses resulting from acts of terrorism and provides a federal government backstop for the insurers' resulting financial exposure. TRIA established TRIP within Treasury, and TRIP is administered by the Secretary with the assistance of FIO. TRIA Section 104(h)(2) requires the Secretary to periodically prepare and submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on, among other things, the impact and effectiveness of TRIP (Effectiveness Report). TRIA was reauthorized in December 2019 with an additional requirement that Treasury's Effectiveness Reports analyze the availability and affordability of terrorism risk insurance, including specifically for houses of worship. The Effectiveness Report that is to be submitted by June 30, 2022 will include an analysis of information that is being collected by Treasury through the 2022 TRIP Data Call,[2] as well as data that Treasury collected in prior TRIP Data Calls. Treasury's data calls are conducted to obtain information to facilitate Treasury's analysis of the effectiveness of TRIP and the competitiveness of small insurers in the terrorism risk insurance marketplace,[3] as well as to assist Treasury more generally in the administration of TRIP.

### II. Solicitation for Comments

Treasury seeks comments on each of the following factors, which Treasury is required under TRIA Section 104(h)(2) to consider in the Effectiveness Report:

1. The overall effectiveness of TRIP;
2. The availability and affordability of terrorism risk insurance, including specifically for places of worship;
3. Any changes or trends relating to the data Treasury collects in its annual TRIP Data Calls, and the implications of such observations with regard to the effectiveness of TRIP;
4. Whether any aspects of TRIP have the effect of discouraging or impeding insurers from providing one or more lines of commercial property and casualty insurance coverage or coverage for acts of terrorism; and

[1] Public Law 107–297, 116 Stat. 2322, codified at 15 U.S.C. 6701, note. Because the provisions of TRIA (as amended) appear in a note, instead of particular sections, of the United States Code, the provisions of TRIA are identified by the sections of the law.

[2] Terrorism Risk Insurance Program 2022 Data Call, 86 FR 64600 (November 18, 2021) (identifying proposed changes to 2022 TRIP Data Call).

[3] TRIA section 108(h).

5. Any impact of TRIP on workers' compensation insurers in particular.

This request for comment will provide stakeholders the opportunity to provide qualitative feedback and analysis that may not be otherwise observable through the results of the TRIP Data Calls. Information and views of stakeholders on the factors listed above will assist Treasury in the formulation of the Effectiveness Report and provide meaningful opportunity for stakeholder engagement. In addition, and more generally, such public input may assist the Secretary in the administration of TRIP.

In addition to seeking comments on the above factors outlined in Section 104(h)(2) of TRIA, Treasury understands that other issues and factors in the insurance market relating to terrorism risk insurance, in addition to those factors specified in TRIA, could have an impact on the effectiveness of the Program. Treasury accordingly also seeks comments on the following topics:

*General Questions*

1. Whether any lines of insurance or coverages within certain lines of insurance currently subject to the Program no longer require the support of TRIP to ensure the availability and affordability of terrorism risk insurance;

2. Whether any lines of insurance or coverages within certain lines of insurance currently not subject to the Program should be included within TRIP to promote the availability and affordability of terrorism risk insurance;

3. Whether, and in what fashion, insurance market changes associated with the impact of the COVID–19 pandemic have also affected the market for terrorism risk insurance;

4. The availability of terrorism risk insurance coverage for losses arising from nuclear, biological, chemical, or radiological (NBCR) exposures, and the availability of reinsurance or capital markets support for such terrorism risk insurance;

*Cyber-Related Questions*

5. The current state of the cyber insurance market, including the scope of coverage available, the availability and affordability of such coverage, and the effect of ransomware-related losses on the market;

6. Terrorism risk insurance issues presented by cyber-related losses, and the impact of TRIP in connection with such exposures, including views on cyber-related terrorism losses that are included within TRIP and those losses outside of TRIP;

7. Any potential changes to TRIA or TRIP that would encourage the take up of insurance for cyber-related losses arising from acts of terrorism as defined under TRIA, including but not limited to the modification of the lines of insurance covered by TRIP and revisions to the current sharing mechanisms for cyber-related losses;

8. The availability of reinsurance or capital markets support for cyber-related losses arising from acts of terrorism as defined under TRIA;

*Other Questions*

9. The manner in which captive insurers access TRIP, including the extent to which coverage is provided on a standalone versus embedded basis, or for NBCR risks only, and the reasons behind such choices;

10. The current status of terrorism risk modeling capabilities, and the use of those techniques in the placement of terrorism risk insurance;

11. Given the increasing availability of more granular information than state or metropolitan level information (such as ZIP code level or geocoded information), please provide views on how FIO could leverage such information to further augment its analysis of the terrorism risk insurance market and TRIP, particularly since the immediate physical impact of individual terrorism-related events may be localized; and

12. Any other issues relating to TRIP, terrorism risk insurance, or reinsurance that may be relevant to FIO's assessment of the effectiveness of TRIP in the report.

**Steven E. Seitz,**

*Director, Federal Insurance Office.*

[FR Doc. 2022–06681 Filed 3–29–22; 8:45 am]

**BILLING CODE 4810–AK–P**

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Proposed Collection; Comment Request; State Small Business Credit Initiative

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Notice.

**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 comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be received on or before May 31, 2022.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, by the following method:

• *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number TREAS–DO–2022–0009 and the specific Office of Management and Budget (OMB) control number 1505–0227.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Stout, State Small Business Credit Initiative (SSBCI), at (866) 220–9050 or *ssbci_information@treasury.gov.* Further information may be obtained from the SSBCI website, *https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci,* or by contacting *ssbci_information@treasury.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* State Small Business Credit Initiative Information Collection Activities.

*OMB Control Number:* 1505–0227.

*Type of Review:* Revision of currently approved information collection activities.

*Description:* This information collection captures information related to the State Small Business Credit Initiative (SSBCI). The American Rescue Plan Act of 2021 (ARPA) reauthorized and amended the Small Business Jobs Act of 2010 (SBJA) to provide $10 billion to fund the SSBCI as a response to the economic effects of the COVID–19 pandemic.[1] SSBCI is a federal program administered by the U.S. Department of the Treasury (Treasury) that was created to strengthen the programs of eligible jurisdictions (*i.e.,* states, the District of Columbia, territories, Tribal governments) that support private financing for small businesses.

• *Capital Program Application.* In order to determine the eligibility of jurisdictions to receive SSBCI funds for capital programs, Treasury must collect the following types of information in an application: Points of contact for the eligible jurisdiction and those administering the program; how the eligible jurisdiction plans to use the funds to provide access to capital for businesses in underserved communities; details on the eligible jurisdiction's proposed capital programs; how the proposed capital programs comply with the SSBCI statute, regulations, and guidance; and the eligible jurisdiction's compliance and oversight capabilities. Treasury will collect application

[1] ARPA, Public Law 117–2, sec. 3301, codified at 12 U.S.C. 5701 *et seq.* SSBCI was originally established in Title III of the Small Business Jobs Act of 2010.

information from eligible jurisdictions through an online portal.

• *Capital Program Reports.* Treasury must collect SSBCI information in annual and quarterly reports to implement the SSBCI, determine the participating jurisdiction's compliance with the SSBCI statute, regulations, and guidance, and evaluate program outcomes. The quarterly report must include basic information about the participating jurisdiction's SSBCI-supported programs (*e.g.,* program name and type) and program-level information on the use of the participating jurisdiction's SSBCI funds (*e.g.,* total allocated funds expended, obligated, or transferred). The annual report must include information about the participating jurisdiction's SSBCI-supported program providers (*e.g.,* provider name and type), the specific terms of its SSBCI-supported loans and investments (*e.g.,* loan type, equity security type), demographics-related data of the businesses that participate in SSBCI (*e.g.,* gender and veteran status of the business's principal owners), and the performance of its SSBCI-supported loans and investments (*e.g.,* SSBCI funds lost due to loan default or loss of investment). Treasury will collect annual and quarterly reports from eligible jurisdictions through an online portal.

• *Technical Assistance (TA) Grant Program Application.* In order to determine the eligibility of jurisdictions to receive SSBCI funds to carry out TA plans, Treasury must collect the following types of information in an application: Points of contact for the eligible jurisdiction and those administering the program; how the eligible jurisdiction plans to use the funds to provide legal, accounting, and financial advisory services to very small businesses and business enterprises owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses); details on the eligible jurisdiction's proposed TA projects and the associated budgets; how the proposed TA plan complies with the SSBCI statute, regulations, and guidance; and the eligible jurisdiction's compliance and oversight capabilities. Treasury will collect application information from eligible jurisdictions through an online portal.

• *TA Grant Program Reports.* Treasury must collect financial and performance reports consistent with 2 CFR 200.328–329 in order for Treasury to determine compliance with the SSBCI statute, regulations, and guidance and to evaluate program outcomes. The financial and performance reports must include information about the participating jurisdiction's progress in implementing its TA plan and details on its use of TA funds.

*Form:* Capital Program Application and Quarterly and Annual Report forms.

*Affected Public:* States, the District of Columbia, territories, and Tribal governments.

*Estimated Number of Respondents:* 3,000.

*Frequency of Response:* Annually, Quarterly.

*Estimated Total Number of Annual Responses:* 177,500.

*Estimated Time per Response:* 9 minutes up to 5 hours.

*Estimated Total Annual Burden Hours:* 48,350 hours.

*Request for Comments:* Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget 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 agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

**Authority:** 44 U.S.C. 3501 *et seq.*

**Jacob Leibenluft,**

*Chief Recovery Officer.*

[FR Doc. 2022–06701 Filed 3–29–22; 8:45 am]

BILLING CODE 4810–AK–P

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Reports of Transactions With Foreign Financial Agencies

**AGENCY:** Departmental Offices, U.S. Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

**DATES:** Comments should be received on or before April 29, 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.

**FOR FURTHER INFORMATION CONTACT:** Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Reports of transactions with foreign financial agencies (31 CFR 1010.360).

*OMB Control Number:* 1506–0055.

*Type of Review:* Renewal without change of a currently approved information collection.

*Description:* The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (October 26, 2001), and other legislation, including most recently the Anti-Money Laundering Act of 2020 (AML Act).[1] The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, 31 U.S.C. 5311–5314 and 5316–5336, and includes notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement AML programs and compliance procedures. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

The Secretary is authorized to require any ''resident or citizen of the United States or a person in, and doing

business in, the United States, to . . . keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency.'' The term ''foreign financial agency'' (FFA) means any person engaging in any activities outside the United States of a ''financial agency,'' which the statute defines as ''a person acting for a person . . . as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities or gold, or a service provided with respect to money, securities, futures, precious metals, stones and jewels, or value that substitutes for currency.'' The Secretary is also authorized to prescribe exemptions to the reporting requirement and to prescribe other matters the Secretary considers necessary to carry out 31 U.S.C. 5314. The regulations implementing reports of transactions with foreign financial agencies are found at 31 CFR 1010.360.

31 CFR 1010.360(a) authorizes the Secretary, when the Secretary deems appropriate, to promulgate regulations requiring specified financial institutions to file reports of certain transactions with designated FFAs.

A regulation promulgated pursuant to 31 CFR 1010.360(a) must designate one or more of the following categories of information to be reported by the specified financial institution:

- Checks or drafts, including traveler's checks, received by a respondent financial institution for collection or credit to the account of a designated FFA, sent by the respondent financial institution to a foreign country for collection or payment, drawn by the respondent financial institution on a designated FFA, or drawn by a designated FFA on the respondent financial institution, including the following information: Name of maker or drawer; name of drawee or drawee financial institution; name of payee; date and amount of instrument; and names of all endorsers.
- Transmittal orders received by a respondent financial institution from a designated FFA or sent by the respondent financial institution to a designated FFA, including all information maintained by that institution pursuant to 31 CFR 1010.410 and 1020.410.
- Loans made by a respondent financial institution to or through a designated FFA, including the following information: Name of borrower; name of person acting for borrower; date and amount of loan; terms of repayment; name of guarantor; rate of interest; method of distributing proceeds; and collateral for loan.
- Commercial paper received or shipped by a respondent financial institution, including the following information: Name of maker; date and amount of paper; due date; certificate number; and amount of transaction.
- Stocks received or shipped by a respondent financial institution, including the following information: Name of corporation; type of stock; certificate number; number of shares; date of certificate; name of registered holder; and amount of transaction.
- Bonds received or shipped by a respondent financial institution, including the following information: Name of issuer; bond number; type of bond series; date issued; due date; rate of interest; amount of transaction; and name of registered holder.
- Certificates of deposit received or shipped by a respondent financial institution, including the following information: Name and address of issuer; date issued; dollar amount; name of registered holder; due date; rate of interest; certificate number; and name and address of issuing agent.

In issuing regulations as provided in 31 CFR 1010.360(a), the Secretary must prescribe: A reasonable classification of financial institutions subject to or exempt from a reporting requirement; a foreign country to which a reporting requirement applies if the Secretary decides that applying the requirement to all foreign countries is unnecessary or undesirable; the magnitude of transactions subject to a reporting requirement; and the kind of transaction subject to or exempt from a reporting requirement.

Regulations issued pursuant to 31 CFR 1010.360(a) may prescribe the manner in which the information is to be reported. However, the Secretary may authorize a designated financial institution to report in a different manner if the institution demonstrates to the Secretary that the form of the required report is unnecessarily burdensome on the institution as prescribed; that a report in a different form will provide all the information the Secretary deems necessary; and that submission of the information in a different manner will not unduly hinder the effective administration of 31 CFR Chapter X.

In issuing regulations under 31 CFR 1010.360(e), the Secretary: (i) Must consider the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a designated FFA; (ii) cannot issue a regulation under 31 CFR 1010.360(a) for the purpose of obtaining individually identifiable account information concerning a customer, as defined by the Right to Financial Privacy Act, where that customer is already the subject of an ongoing investigation for possible violation of the BSA, or is known by the Secretary to be the subject of an investigation for possible violation of any other Federal law; and (iii) may issue a regulation pursuant to 31 CFR 1010.360(a) requiring a financial institution to report transactions completed prior to the date it received notice of the reporting requirement. However, with respect to completed transactions, a financial institution may be required to provide information only from records required to be maintained pursuant to the requirements of 31 CFR Chapter X, or any other provision of state or Federal law, or otherwise maintained in the regular course of business.

31 CFR 1010.430(d) requires that all records that are required to be retained by Chapter X must be retained for a period of five years.

FinCEN is issuing this notice to renew the OMB control number for regulations requiring reports of transactions with designated FFAs.

*Form:* None.

*Affected Public:* Businesses or other for-profit institutions; non-profit institutions.

*Estimated Number of Respondents:* 9.

*Frequency of Response:* On occasion.

*Estimated Total Number of Annual Responses:* 84.

*Estimated Total Annual Burden Hours:* 11,897 hours.

*Authority:* 44 U.S.C. 3501 *et seq.*

**Molly Stasko,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2022–06643 Filed 3–29–22; 8:45 am]

**BILLING CODE 4810–02–P**

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Emergency Submission for OMB Review; Comment Request; Homeowner Assistance Fund Compliance Reporting

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance utilizing emergency review procedures in accordance with the Paperwork

Reduction Act of 1995. Emergency review and approval of this collection has been requested from OMB by April 12, 2022. The public is invited to submit comments on this request.

**DATES:** Written comments must be received on or before April 14, 2022.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, by the following method:

• *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number TREAS–DO–2022–0008 and the specific Office of Management and Budget (OMB) control number 1505–0269.

**FOR FURTHER INFORMATION CONTACT:** Copies of the submissions may be obtained from Christopher Sun by emailing *HAF@treasury.gov,* calling 877–398–5861, or viewing the entire information collection request at *www.reginfo.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Homeowner Assistance Fund.

*OMB Control Number:* 1505–0269.

*Type of Review:* Revision of a currently approved collection.

*Description:* On March 11, 2021, the President signed the American Rescue Plan Act of 2021 (the ''Act''), Public Law 117–2. Title III, subtitle B, section 3206 of the Act established the Homeowner Assistance Fund and provides $9.961 billion for the U.S. Department of the Treasury (Treasury) to make payments to States (defined to include the District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), Indian tribes or Tribally Designated Housing Entities, as applicable, and the Department of Hawaiian Home Lands (collectively the ''eligible entities'') to mitigate financial hardships associated with the coronavirus pandemic, including for the purposes of preventing homeowner mortgage delinquencies, defaults, foreclosures, loss of utilities or home energy services, and displacements of homeowners experiencing financial hardship after January 21, 2020, through qualified expenses related to mortgages and housing.

Treasury will collect a Quarterly Report at the end of each calendar year quarter for eligible entities that are a State or Tribal Government with a HAF allocation greater than $5 million. The Department of Hawaiian Home Lands and Tribal Governments with a HAF allocation less than $5 million will be required to submit a similar report once a year.

HAF participants will submit quarterly certifications and reports, including, among other things, details on program budget; HAF Homeowner applications approved; targeting metrics around Homeowners assisted; individual program information; and individual program design element information.

Additionally, Treasury will collect from each eligible participant an Annual Report once a year that will provide Treasury with high-level information on how the HAF participant is performing relative to their forecasted goals noted in their HAF Grantee Plan.

Treasury is requesting emergency processing to add compliance reporting (*i.e.,* Quarterly Report and Annual Report) this collection of information as provided under 5 CFR 1320.13. Treasury cannot reasonably comply with normal clearance procedures because Treasury will need to provide the Guidance on Participant Compliance and Reporting Responsibilities to HAF participants along with the Portal launch date and provide a high degree of certainty that it will not change, so that recipients can gather the necessary information and build their own tools/processes to comply. Additionally, delays due to insufficient guidance will more than likely impact established timelines for HAF participants to report on current quarter compliance and delay future quarter compliance. Delays in quarterly reporting will reduce Treasury's insight on current HAF participant compliance issues.

*Form:* Quarterly Compliance Reports.

*Affected Public:* State and tribal governments with allocations over $5 million dollars.

*Estimated Number of Respondents:* 67.

*Frequency of Response:* Quarterly, for the duration of the program, final report January 2027.

*Estimated Total Number of Annual Responses:* 268.

*Estimated Time per Response:* 4 hours.

*Estimated Total Annual Burden Hours:* 1,072 hours.

*Form:* Quarterly Compliance Reports.

*Affected Public:* Department of Hawaiian Home Lands and tribal governments with allocations less than $5 million dollars.

*Estimated Number of Respondents:* 584.

*Frequency of Response:* Annually.

*Estimated Total Number of Annual Responses:* 584.

*Estimated Time per Response:* 4 hours.

*Estimated Total Annual Burden Hours:* 2,336 hours.

*Form:* Annual Reports.

*Affected Public:* States, Department of Hawaiian Home Lands and tribal governments.

*Estimated Number of Respondents:* 651.

*Frequency of Response:* Annual.

*Estimated Total Number of Annual Responses:* 651.

*Estimated Time per Response:* 2 hours.

*Estimated Total Annual Burden Hours:* 1,302 hours.

*Authority: 44 U.S.C. 3501 et seq.*

**Molly Stasko,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2022–06705 Filed 3–29–22; 8:45 am]

BILLING CODE 4810–AK–P

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service Information Collection Requests

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

**DATES:** Comments must be received on or before April 29, 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 the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

**SUPPLEMENTARY INFORMATION:**

**Internal Revenue Service (IRS)**

*1. Title:* Notice Concerning Fiduciary Relationship and Notice Concerning Fiduciary Relationship of Financial Institution.

*OMB Control Number:* 1545–0013.

*Type of Review:* Extension of a currently approved collection.

*Description:* Form 56 is used to notify the IRS of the creation or termination of a fiduciary relationship under Internal Revenue Code (IRC) section 6903 and provide the qualification for the fiduciary relationship under IRC section 6036. Form 56–F is used by the federal agency acting as a fiduciary in order to notify the IRS of the creation, termination, or change in status of a fiduciary relationship with a financial institution.

*Form Number:* Forms 56 and 56–F.

*Affected Public:* Business or other for-profit organizations; and Individual or Households.

*Estimated Number of Respondents:* 174,050.

*Frequency of Response:* On Occasion.

*Estimated Total Number of Annual Responses:* 174,050.

*Estimated Time per Response:* 1.5 to 2 hours.

*Estimated Total Annual Burden Hours:* 349,786.

*2. Title:* Heavy Highway Vehicle Use Tax Return.

*OMB Control Number:* 1545–0143.

*Type of Review:* Extension of a current OMB approval.

*Description:* Form 2290 and 2290/SP are used to compute and report the tax imposed by section 4481 on the highway use of certain motor vehicles. The information is used to determine whether the taxpayer has paid the correct amount of tax.

*Form Number:* Form 2290 and Form 2290/SP.

*Affected Public:* Businesses or other for-profits; and Individuals or Households.

*Estimated Number of Respondents:* 554,098.

*Frequency of Response:* Annually.

*Estimated Total Number of Annual Responses:* 554,098.

*Estimated Time per Response:* 42 hours, 52 minutes.

*Estimated Total Annual Burden Hours:* 23,748,641 hours.

*3. Title:* Work Opportunity Credit.

*OMB Control Number:* 1545–0219.

*Type of Review:* Extension of a currently approved collection.

*Description:* Internal Revenue Code section 38(b)(2) allows a credit against income tax to employers hiring individuals from certain targeted groups such as welfare recipients, etc. The employer uses Form 5884 to compute this credit. The IRS uses the information on the form to verify that the correct amount of credit was claimed.

*Form Number:* Form 5884.

*Affected Public:* Business or other for-profit organizations; and Individuals or Households.

*Estimated Number of Respondents:* 10,000.

*Frequency of Response:* Annually.

*Estimated Total Number of Annual Responses:* 10,000.

*Estimated Time per Response:* 6 hours, 57 minutes.

*Estimated Total Annual Burden Hours:* 69,400 hours.

*4. Title:* Allocation of expenses by real estate mortgage investment conduits.

*OMB Control Number:* 1545–1018.

*Type of Review:* Extension of a currently approved collection.

*Description:* In general, a REMIC is a fixed pool of mortgages in which multiple classes of interests are held by investors and which elects to be taxed as a REMIC. The regulations under section 860D prescribe the way an entity elects status as a REMIC. The regulations under section 860F govern the filing of the REMIC's income tax return and, together with the regulations under sections 67 and 6049 require notice of income and other information to be provided to REMIC investors and the Internal Revenue Service. Investors use the information provided in sections 67 and 6049 while completing their income tax returns. The Internal Revenue Service will use this information to determine that taxpayers are complying with the applicable tax laws.

*Form Number:* TD 8366 and TD 8431.

*Affected Public:* Businesses or other for-profit.

*Estimated Number of Respondents:* 655.

*Frequency of Response:* Quarterly.

*Estimated Total Number of Annual Responses:* 9,725.

*Estimated Time per Response:* 6 minutes.

*Estimated Total Annual Burden Hours:* 978.

*5. Title:* TD 8352 (temp & final) Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes; TD 8531—Final Regulations Under Section 382.

*OMB Control Number:* 1545–1120.

*Type of Review:* Revision of a current OMB approval.

*Description:* These regulations require reporting by a corporation after it undergoes an ''ownership change'' under Code sections 382 and 383. Corporations required to report under these regulations include those with capital loss carryovers and excess credits. (TD 8531) These regulations provide rules for the treatment of options under Code section 382 for purposes of determining whether a corporation undergoes an ownership change. The regulation allows for certain elections for corporations whose stock is subject to options.

*Form Number:* TD 8352 and TD 8531.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 75,000.

*Frequency of Response:* Annually.

*Estimated Total Number of Annual Responses:* 75,000.

*Estimated Time per Response:* 2 hours, 56 minutes.

*Estimated Total Annual Burden Hours:* 220,500.

*6. Title:* Renewable Electricity, Refined Coal, and Indian Coal Production Credit.

*OMB Control Number:* 1545–1362.

*Type of Review:* Extension of a currently approved collection.

*Description:* Form 8835 is used to claim the renewable electricity production credit. The credit is allowed for the sale of electricity produced in the United States or U.S. possessions from qualified energy resources. The IRS uses the information reported on the form to ensure that the credit is correctly computed.

*Form Number:* Form 8835.

*Affected Public:* Business or other-for-profit organizations; and Individuals or Households.

*Estimated Number of Respondents:* 477.

*Frequency of Response:* On occasion.

*Estimated Total Number of Annual Responses:* 477.

*Estimated Time per Response:* 18 hours, 26 minutes.

*Estimated Total Annual Burden Hours:* 8,720.

*7. Title:* Pre-Screening Notice and Certification Request for the Work Opportunity Credit.

*OMB Control Number:* 1545–1500.

*Type of Review:* Extension of a currently approved collection.

*Description:* Employers use Form 8850 as part of a written request to a state employment security agency to certify an employee as a member of a targeted group for purposes of qualifying for the work opportunity credit. The work opportunity credit covers certain employees who begin work for the employer after December 31, 2020.

*Form Number:* Form 8850.

*Affected Public:* Business or other for-profit organizations; not-for-profit organizations.

*Estimated Number of Respondents:* 440,000.

*Frequency of Response:* Annually.

*Estimated Total Number of Annual Responses:* 440,000.

*Estimated Time per Response:* 7 hours, 24 minutes.

*Estimated Total Annual Burden Hours:* 3,242,800.

*8. Title:* Revenue Procedure 2015–41—Section 482—Allocation of Income and Deductions Among Taxpayers.

*OMB Control Number:* 1545–1503.

*Type of Review:* Extension of a currently approved collection.

*Description:* This revenue procedure provides guidance on the process of requesting and obtaining advance pricing agreements from the advance pricing agreement and mutual agreement program (''APMA''), to process applications, negotiate agreements, and to verify compliance with agreements and whether agreements require modification.

*Form Number:* Revenue Procedure 2015–41.

*Affected Public:* Business or other for-profits; and Individuals or Households.

*Estimated Number of Respondents:* 390.

*Frequency of Response:* On occasion.

*Estimated Total Number of Annual Responses:* 390.

*Estimated Time per Response:* 10 up to 60 hours.

*Estimated Total Annual Burden Hours:* 10,900.

*9. Title:* Tip Rate Determination Agreement (Gaming Industry).

*OMB Control Number:* 1545–1530.

*Type of Review:* Extension of a currently approved collection.

*Description:* Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code Section 6053(a), which requires employees to report all their tips monthly to their employers.

*Revenue Procedure Number:* 2020–47.

*Affected Public:* Business or other for-profit institutions.

*Estimated Number of Respondents:* 781.

*Frequency of Response:* On occasion.

*Estimated Total Number of Annual Responses:* 781.

*Estimated Time per Response:* 14 hours, 44 minutes.

*Estimated Total Annual Burden Hours:* 11,512 hours.

*10. Title:* Low-Income Taxpayer Clinics Grant Application Package and Guidelines.

*OMB Control Number:* 1545–1648.

*Type of Review:* Extension of a currently approved collection.

*Description:* Publication 3319 outlines requirements of the IRS Low-Income Taxpayer Clinics (LITC) program and provides instructions on how to apply for a LITC grant award. The IRS will review the information provided by applicants to determine whether to award grants for the Low-Income Taxpayer Clinics.

*Form Number:* Publication 3319, Form 13424, 13424–A, 13424–B, 13424–C, 13424–J, 13424–K, 13424–L, 13424–M, 13424–N, 13424–P, 13424–Q, and Project Abstracts.

*Affected Public:* Not for-profit institutions.

*Estimated Number of Respondents:* 130.

*Frequency of Response:* Annually.

*Estimated Total Number of Annual Responses:* 2,780.

*Estimated Time per Response:* 5 minutes up to 3 hours.

*Estimated Total Annual Burden Hours:* 9,338.

*11. Title:* Credit for Small Employer Pension Plan Startup Costs.

*OMB Control Number:* 1545–1810.

*Type of Review:* Revision of a currently approved collection.

*Description:* Qualified small employers use Form 8881 to claim a credit for start-up costs related to eligible retirement plans. Form 8881 implements section 45E, which provides a credit based on costs incurred by an employer in establishing or administering an eligible employer plan or for the retirement-related education of employees with respect to the plan. The credit is 50% of the qualified costs for the tax year, up to a maximum credit of $500 for the first tax year and each of the two subsequent tax years.

*Form Number:* Form 8881.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 66,667.

*Frequency of Response:* Annually.

*Estimated Total Number of Annual Responses:* 66,667.

*Estimated Time per Response:* 4 hours, 45 minutes.

*Estimated Total Annual Burden Hours:* 316,002.

*12. Title:* Application for Registration (For Certain Excise Tax Activities).

*OMB Control Number:* 1545–1835.

*Type of Review:* Revision of a currently approved collection.

*Description:* Form 637 is used to apply for excise tax registration. The registration applies to a person required to be registered under Revenue code section 4101 for purposes of the federal excise tax on taxable fuel imposed under Code sections 4041 and 4081; and to certain manufacturers or sellers and purchasers that must register under Code section 4222 to be exempt from the excise tax on taxable articles. The data is used to determine if the applicant qualifies for the exemption. Taxable fuel producers are required by Code section 4101 to register with the Service before incurring any tax liability.

*Form Number:* Form 637.

*Affected Public:* Business or other for-profit organizations; and Not-for-profit organizations.

*Estimated Number of Respondents:* 9,185.

*Frequency of Response:* On occasion.

*Estimated Total Number of Annual Responses:* 9,185.

*Estimated Total Annual Burden Hours:* 31,521.

*13. Title:* Assumption of Partner Liabilities.

*OMB Control Number:* 1545–1843.

*Type of Review:* Extension of a currently approved collection.

*Description:* This document contains final regulations relating to the definition of liabilities under Internal Revenue Code (IRC) section 752. These regulations provide rules regarding a partnership's assumption of certain fixed and contingent obligations in connection with the issuance of a partnership interest and provide conforming changes to certain regulations. These regulations also provide rules under IRC section 358(h) for assumptions of liabilities by corporations from partners and partnerships. Finally, this document also contains temporary regulations relating to the assumption of certain liabilities under IRC section 358(h).

*Regulation Project Number:* TD 9207.

*Affected Public:* Business or other for-profit organizations; and Individuals or Households.

*Estimated Number of Respondents:* 250.

*Frequency of Response:* On occasion.

*Estimated Total Number of Annual Responses:* 250.

*Estimated Time per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 125.

*14. Title:* Safe Harbor for Valuation and Mark to Market Accounting Method for Dealers Under Section 475.

*OMB Control Number:* 1545–1945.

*Type of Review:* Extension of a currently approved collection.

*Description:* These documents set forth an elective safe harbor that permits dealers in securities and dealers in commodities to elect to use the values of positions reported on certain financial statements as the fair market values of those positions for purposes of section 475 of the Internal Revenue Code (Code). This safe harbor is intended to reduce the compliance burden on taxpayers and to improve the administrability of the valuation requirement of section 475 for the IRS. TD 8700 contains final regulations providing guidance to enable taxpayers to comply with the mark-to-market

requirements applicable to dealers in securities.

*Regulation Project Number:* TD 9328 and TD 8700.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 15,708.

*Frequency of Response:* Annually.

*Estimated Total Number of Annual Responses:* 15,708.

*Estimated Time per Response:* 30 minutes up to 4 hours.

*Estimated Total Annual Burden Hours:* 52,182.

*15. Title:* Distilled Spirits Credit.

*OMB Control Number:* 1545–1982.

*Type of Review:* Extension of a currently approved collection.

*Description:* Form 8906, Distilled Spirits Credit, was developed to carry out the provisions of IRC section 5011(a). This section allows eligible wholesalers and persons subject to IRC section 5055 an income tax credit for the average cost of carrying excise tax on bottled distilled spirits. The form provides a means for the eligible taxpayer to compute the amount of credit.

*Form Number:* Form 8906.

*Affected Public:* Businesses and other for-profits.

*Estimated Number of Respondents:* 300.

*Frequency of Response:* Annually.

*Estimated Total Number of Annual Responses:* 300.

*Estimated Time per Response:* 1 hour 52 minutes.

*Estimated Total Annual Burden Hours:* 558.

*16. Title:* Energy Efficient Homes Credit; Manufactured Homes.

*OMB Control Number:* 1545–1994.

*Type of Review:* Extension of a currently approved collection.

*Description:* This notice supersedes Notice 2006–28 by substantially republishing the guidance contained in that publication. This notice clarifies the meaning of the terms equivalent rating network and eligible contractor and permits calculation procedures other than those identified in Notice 2006–28 to be used to calculate energy consumption. Finally, this notice clarifies the process for removing software from the list of approved software and reflects the extension of the tax credit through December 31, 2008. Notice 2006–28, as updated, provided guidance regarding the calculation of heating and cooling energy consumption for purposes of determining the eligibility of a manufactured home for the New Energy Efficient Home Credit under Internal Revenue Code § 45L. Notice 2006–28 also provided guidance relating to the public list of software programs that may be used to calculate energy consumption. Guidance relating to dwelling units other than manufactured homes is provided in Notice 2008–35.

*Form Number:* Notice 2008–36, Notice 2008–35.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 15.

*Frequency of Response:* Annually.

*Estimated Total Number of Annual Responses:* 15.

*Estimated Time per Response:* 4 hours.

*Estimated Total Annual Burden Hours:* 60.

*17. Title:* T.D. 9304—Guidance Necessary to Facilitate Business Electronic Filing Under Section 1561, T.D. 9329—Guidance Necessary to Facilitate Business Electronic Filing and Burden Reduction, T.D. 9451—Guidance Necessary to Facilitate Business Election Filing; Finalization of Controlled Group Qualification Rules and T.D. 9759—Limitations on the Importation of Net Built-In Losses.

*OMB Control Number:* 1545–2019.

*Type of Review:* Extension of a currently approved collection.

*Description:* TD 9304 regulations provide guidance to taxpayers regarding how to allocate the amounts of tax benefit items under section 1561(a) amongst the component members of a controlled group of corporations which have an apportionment plan in effect. TD 9329 contains final regulations that simplify, clarify, or eliminate reporting burdens and also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. TD 9451 provides guidance to taxpayers for determining which corporations are included in a controlled group of corporations. TD 9759 provides guidance for preventing the importation of loss when a corporation that is subject to U.S. income tax acquires loss property tax-free in certain transactions and the loss in the acquired property accrued outside the U.S. tax system by requiring the bases of the assets received to be equal to value.

*Form Number:* TD 9304 (REG–161919–05), TD 9329 (REG134317–05), TD 9451 (REG–161919–05) and TD 9759 (REG–161948–05).

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 225,000.

*Frequency of Response:* On occasion.

*Estimated Total Number of Annual Responses:* 225,000.

*Estimated Time per Response:* 1 hour 40 minutes.

*Estimated Total Annual Burden Hours:* 375,000.

*18. Title:* Election Involving the Repeal of the Bonding Requirement.

*OMB Control Number:* 1545–2120.

*Type of Review:* Extension of a currently approved collection.

*Description:* This revenue procedure affects taxpayers who are maintaining a surety bond or a Treasury Direct Account (TDA) to satisfy the low-income housing tax credit recapture exception in § 42(j)(6) of the Internal Revenue Code (the Code), as in effect on or before July 30, 2008. This revenue procedure provides the procedures for taxpayers to follow when making the election under section 3004(i)(2)(B)(ii) of the Housing Assistance Tax Act of 2008 (Pub. L. 110–289) (the Act) to no longer maintain a surety bond or a TDA to avoid recapture.

*Form Number:* RP 2008–60 and RP 2012–27.

*Affected Public:* Individuals and Households; and Businesses and other-for-profit organizations.

*Estimated Number of Respondents:* 7,810.

*Frequency of Response:* Annually; On occasion.

*Estimated Total Number of Annual Responses:* 7,810.

*Estimated Time per Response:* 1 hour.

*Estimated Total Annual Burden Hours:* 7,810.

*19. Title:* Application for Extension of Time for Payment of Tax Due to Undue Hardship.

*OMB Control Number:* 1545–2131.

*Type of Review:* Extension of a currently approved collection.

*Description:* Internal Revenue Code section 6161 allows individual and business taxpayers to request an extension of time for payment of tax shown or required to be shown on a return or for a tax due on a notice of deficiency. Form 1127 must be filed with supporting documentation to approve an extension, providing evidence the taxpayer would sustain a substantial financial loss if forced to pay the tax or deficiency on the due date.

*Form Number:* Form 1127.

*Affected Public:* Businesses or other for-profit organizations; and Not-for-profits.

*Estimated Number of Respondents:* 20.

*Frequency of Response:* Annually; On occasion.

*Estimated Total Number of Annual Responses:* 20.

*Estimated Time per Response:* 7 hours, 26 minutes.

*Estimated Total Annual Burden Hours:* 149 hours.

*20. Title:* Mortgage Assistance Payments.

*OMB Control Number:* 1545–2221.

*Type of Review:* Extension of a currently approved collection.

*Description:* This form is a statement reported to the IRS and to taxpayers. It will be filed and furnished by State Housing Finance Agencies (HFAs) and HUD to report the total amounts of mortgage assistance payments and homeowner mortgage payments made to mortgage servicers. The requirement for the statements are authorized by Notice 2011–14, supported by Public Law 111–203, sec. 1496, and Public Law 110–343, Division A, sec. 109.

*Form Number:* Form 1098–MA.

*Affected Public:* Individuals, Federal Government, State, Local, or Tribal Governments.

*Estimated Number of Respondents:* 52.

*Frequency of Response:* Annually.

*Estimated Total Number of Annual Responses:* 60,000.

*Estimated Time per Response:* 2 hours 50 minutes.

*Estimated Total Annual Burden Hours:* 170,400.

*Authority:* 44 U.S.C. 3501 *et seq.*

**Molly Stasko,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2022–06699 Filed 3–29–22; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Implementation of the PAWS for Veterans Therapy Act

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Department of Veterans Affairs (VA) is publishing this notice to inform the public about how it is implementing the Puppies Assisting Wounded Servicemembers for Veterans Therapy Act.

**DATES:** This notice is effective on March 30, 2022.

**FOR FURTHER INFORMATION CONTACT:** Stacey Pollack, 810 Vermont Avenue NW, Washington, DC 20420; 202–461–4174. This is not a toll-free telephone number.

**SUPPLEMENTARY INFORMATION:** The Puppies Assisting Wounded Servicemembers for Veterans Therapy Act (hereinafter referred to as ''the Act'') was signed into law by the President on August 25, 2021, (Pub. L. 117–37, 135 stat. 329). Section 2 of the Act requires VA to conduct a pilot program to provide canine training to eligible veterans diagnosed with posttraumatic stress disorder (PTSD) as an element of a complementary and integrative health program for such veterans. This notice provides information on how VA will implement the requirements of section 2 of the Act and is not a solicitation for public comment or request for information regarding VA's implementation of section 2 of the Act, as outlined below. Therefore, responses to this notice may not be used to inform VA's implementation of section 2 of the Act, and VA will not address such responses. A brief summary of the provisions in section 2 of the Act follows.

**Summary of Provisions in Section 2 of the Act**

- Section 2(a) requires that VA, not later than February 21, 2022, commence the conduct of a pilot program to provide canine training to eligible veterans diagnosed with PTSD as an element of a complementary and integrative health program for such veterans.
- Section 2(b) requires that the pilot program conducted under subsection (a) be carried out for a 5-year period beginning on the date of the commencement of the pilot program, by not fewer than 5 VA medical centers (VAMC) located in geographically diverse areas.
- Section 2(c) requires that, in carrying out the pilot program required under subsection (a), VA must seek to enter into agreements with nongovernmental entities that VA determines have the demonstrated ability to provide the canine training specified in subsection (a).
- Section 2(d) establishes certain conditions for inclusion in any agreements under subsection (c).
- Section 2(e) establishes that a veteran who has participated in the pilot program under subsection (a) may adopt a dog that the veteran assisted in training during the pilot program if the veteran and the veteran's health provider, in consultation with the entity that provided the canine training with respect to that dog under the pilot program, determine that it is in the best interest of the veteran. This section also includes language regarding the responsibility of the entity that provided the canine training under the pilot program to provide follow-up training support for the life of the dog, if the veteran who participated in the pilot program adopts the dog under this subsection.
- Section 2(f) establishes that participation in the pilot program under subsection (a) may not preclude a veteran from receiving any other medical care or treatment for PTSD furnished by VA for which the veteran is otherwise eligible.
- Section 2(g) establishes data collection requirements based on veterans' participation in the pilot program and such other factors as VA determines appropriate.
- Section 2(h) establishes VA's reporting requirements associated with the pilot program.
- Section 2(i) requires the Comptroller General to brief and report to Congress on the methodology of the pilot program.
- Section 2(j) establishes definitions, for purposes of section 2, for the following terms: Accredited service dog organization (SDO), eligible veteran and service dog training instructor.

**Implementation of the Pilot Program**

VA's implementation of the pilot program will reflect the following considerations:

*Canine Training*

Section 2(a) provides that VA must conduct a pilot program to provide canine training to eligible veterans diagnosed with PTSD as an element of a complementary and integrative health program for such veterans. The term canine training is not defined in the Act, and VA has not otherwise defined this term. However, the term canine training is characterized in the Act as ''an element of a complementary and integrative health program'' for veterans participating in the pilot program. The Act similarly does not contain a definition of the term complementary and integrative health (CIH); however, VA's internal policy defines CIH as a group of diverse medical and health care approaches and practices that are not considered to be part of conventional or allopathic medicine. *See Veterans Health Administration* (VHA) Directive 1137(2), Provision of Complementary and Integrative Health (May 18, 2017; amended July 2, 2021).

Based on its experience, VA has distinguished the following two types of CIH: Treatment services and well-being services. Unlike treatment services, well-being services are often practices offered outside of a clinical setting and involve a practitioner or instructor teaching veterans to advance their sense of well-being and improve their quality of life.

VA is implementing the canine training under the pilot program as an element of CIH well-being services. CIH well-being services are those activities that a veteran may complete without the need for assistance from a health care

professional or in a clinical setting and that may advance the veteran's sense of well-being and improve the veteran's quality of life. Because the canine training will be considered CIH well-being services, it is not a direct clinical intervention, and the training does not involve the provision of health care. This will allow more veterans to participate in canine training; thereby, affording more veterans potential well-being benefits.

*Commencement and Duration of the Pilot Program*

Section 2(a) requires that, not later than 180 days after the date of the enactment of the Act, VA must commence the conduct of a pilot program. As the Act was signed into law on August 25, 2021, VA was required to commence the conduct of a pilot program by February 21, 2022. By this date, VA selected the pilot program sites and initiated efforts at the sites to begin implementing the pilot program and to ensure VA staff are aware of the canine training to be conducted under the pilot program. However, the actual canine training did not begin by that date. VA is still working to form agreements with nongovernmental entities that will furnish the canine training. For purposes of section 2(b)(1), VA considers the date the pilot program commenced as February 21, 2022.

*Veteran Participation in the Pilot Program*

Section 2(j)(2) defines the term eligible veteran to mean a veteran who is enrolled in VA's patient enrollment system under 38 U.S.C. 1705 (regulated under 38 CFR 17.36), and who has been recommended for participation in the pilot program by a qualified mental health care provider or clinical team based on medical judgment that the veteran may benefit from such participation with respect to the PTSD symptoms of the veteran. In other words, to participate in the pilot, a veteran must meet three threshold conditions for eligibility; namely, the veteran must be (1) enrolled in the VA health care system; (2) diagnosed with PTSD; and (3) recommended by a VA mental health care provider or VA clinical team.

Section 2 does not define or characterize the phrase ''qualified mental health care provider or clinical team.'' Rather than define qualifications, VA interprets this phrase to mean that a VA mental health care provider or VA clinical team must recommend a veteran for participation in the pilot program. Limiting the recommendation to VA providers will allow VA to assess more consistently each veteran that may want to participate under the same criteria and will allow for more consistent collection of data, as required under section 2(g)(1)(B)–(D). Veterans, who receive care from non-VA providers under the Veterans Community Care Program and who wish to participate in the pilot program, can discuss the program with their non-VA provider but will need to obtain a recommendation from a VA mental health care provider or VA clinical team. Veterans interested in participating in the pilot program, who are receiving care from non-VA providers, should contact the participating VAMC where they receive care or authorization for non-VA care, for more information on how to participate in the pilot program.

Before a VA mental health care provider or VA clinical team can recommend the veteran for participation in the program, the veteran must have had an appointment with a primary care, mental health, whole health, recreation therapy or social work provider within the previous 3 months. VA will also require veterans participating in the program to remain engaged with one or more of these clinical areas; to remain engaged, a veteran must have an appointment at least once every 3 months until they have completed the pilot program. Section 2(j)(2)(B) requires a qualified mental health care provider or clinical team to form a medical judgment that participation in the pilot program may benefit the veteran with respect to the veteran's PTSD. Having regular appointments (at least 1 every 3 months) is essential to ensure that this judgment is still accurate. If a veteran who is interested in participating in the pilot program has not been seen for an appointment within the last 3 months, the veteran can schedule an appointment with a VA provider to begin the recommendation and screening process.

Once the veteran has had this appointment, the veteran can then be screened for participation. This screening will be performed by a licensed independent VA mental health care provider to confirm the diagnosis of PTSD through a clinical assessment and determine suitability for participation in the pilot program. This screening must occur within 3 months prior to the first canine training session. This may require subsequent screening in some cases; for example, if a veteran was screened and recommended for participation in the pilot program on January 1, but the veteran is unable to participate in the program until July 31, due to limited space or other issues, the veteran may need to be screened again prior to participation. This screening would not necessarily require the veteran to schedule another appointment with the licensed independent VA mental health care provider; although, a review of the veteran's medical chart may be sufficient. The licensed independent VA mental health care provider will make a clinical determination as to which, if any, reassessments are necessary for participation, and whether such reassessments require a direct interaction (either in person, by phone or by telehealth) with the veteran. VA will make every effort to ensure that all screening is completed in a timely manner and as conveniently as possible for the veteran. As noted above, screening must be performed by VA mental health care providers and recommendations must be from VA providers or clinical teams; meaning, that if VA were unable to offer a screening within the designated access standards under 38 CFR 17.4040, that would not authorize the veteran to elect to receive care in the community. These screenings would not constitute the delivery of medical services under such access standards. This also means that the screening will impose no copayment obligation on the veteran. The screenings entail clinical decision making and the exercise of medical judgment, as may occur in a research study or other clinical programs. We note; however, that the pilot program is not a research study.

In the screening, VA providers will assess veterans for criteria that would suggest that participation in the pilot program may not be appropriate, including, but not limited to frequent aggressive behaviors or homicidal ideation that may make it unsafe for the veteran to be with a dog or co-morbid diagnoses that would make training with a dog difficult or not feasible (*e.g.,* psychosis, delusions, certain cognitive impairment). We are stating these additional elements to explain to the public how qualified VA mental health care providers or clinical teams will make recommendations for participation in the pilot program. Once the veteran has been screened, VA will refer eligible veterans to the accredited SDO, as described below, for canine training. Given these organizations' limited capacity, not all veterans who meet eligibility criteria may be able to participate in the program. There will be a ''pilot champion'' at each of the five pilot sites; the pilot champion will be a VA staff member serving as a liaison between the VAMC and the SDO

furnishing canine training, pursuant to an agreement described in section 2(c).

The canine training model will have veterans engage in both basic obedience and other training of a dog, so that the dog may eventually become, in most cases, a service dog for another individual. Participating in the canine training may improve veterans' self-efficacy and increase their sense of purpose and self-worth. For example, participating veterans may work to train a dog to establish trust, build a relationship and practice socializing, and through that process, those veterans may better recognize and learn to optimally regulate their own emotional arousal to train the dog. These sessions are typically conducted in small group classes and will be overseen by a certified service dog training instructor. VA clinical staff will not accompany a veteran to attend canine training under the pilot program. The canine training sessions under the pilot program will typically meet once a week for 8 weeks, and participating veterans may work with multiple dogs and other veterans within their small group as a form of social engagement.

*Selection of VA Sites*

Section 2(b)(2) requires VA to ensure that the pilot program is carried out by not fewer than five VAMCs located in geographically diverse areas. In selecting the five pilot program sites, VA first considered the geographic proximity of VAMCs to accredited SDOs, because the nongovernmental entities that would provide the canine training under section 2(c) are further required to be an accredited SDO under section 2(d)(1). Section 2(j)(1) of the Act defines accredited SDO as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that: (1) Provides service dogs to veterans with PTSD and (2) is accredited by an accrediting organization with demonstrated experience, national scope and recognized leadership and expertise in the training of service dogs and education in the use of service dogs (as determined by VA). VA recognizes the expertise and national scope of the following two organizations that accredit SDOs under its regulations in 38 CFR 17.148(c)(1): Assistance Dogs International (ADI) and International Guide Dog Federation (IGDF). Between ADI-accredited and IGDF-accredited SDOs, only ADI-accredited SDOs provide the type of instruction discussed earlier. Therefore, VA considered the proximity of VAMCs to ADI-accredited SDOs, for purposes of identifying potential pilot program sites.

VA next considered VAMCs near ADI-accredited SDOs that expressed interest in participating in the pilot program for 5 years and would be able to conduct assessments and recommend veterans to the pilot program, as well as conduct other programmatic aspects of the pilot (such as data collection required under section 2(g)). Of the VAMCs that met the criteria above, VA then considered five sites that would be in geographically diverse areas, as required by section 2(b)(2). VA attempted to consider VAMCs that were in different Veterans Integrated Service Networks (VISN), which are VA's designated regional systems of care in the country. Given these factors, VA identified the following five VAMCs as the required pilot program sites under section 2(b)(2): Palo Alto, California; Anchorage, Alaska; Asheville, North Carolina; West Palm Beach, Florida; and San Antonio, Texas.

*Agreements With Entities To Furnish Canine Training*

Section 2(c) requires VA to seek to enter into agreements with nongovernmental entities that VA determines can provide canine training under the pilot program, and section 2(d) establishes minimum required conditions to be included in any such agreements. Section 2(d)(1) further establishes that any agreements formed between VA and a nongovernmental entity will include a certification from the entity that it is an accredited SDO. We reiterate from the discussion earlier in this notice, in accordance with section 2(j)(1), as well as VA's knowledge and recognition of ADI-accredited SDOs providing service dogs to veterans with PTSD, that VA will seek to enter into agreements under section 2(c) with ADI-accredited SDOs. Because section 2 does not confer any grant or cooperative agreement authority under which VA may conduct the pilot program, VA has engaged directly with ADI-accredited entities that are located near the five VA pilot sites, to gauge interest and determine their ability to furnish canine training under the pilot, to include Dogs for Life; Paws for Purple Hearts; and Warrior Canine Connection. VA anticipates the agreements formed with these entities will establish that SDOs will furnish canine training as in-kind services. The agreements further will include all conditions as required under section 2(d) and additional terms necessary. VA is entering into this agreement with SDOs that have the experience necessary to provide this model of training. In this manner, the agreements would reflect VA's understanding that these SDOs provide canine training to veterans at no cost to veterans. VA does not envision forming agreements under section 2(c) that would create any additional cost for VA or the veteran in terms of payment for the canine training.

*Adoption of a Dog*

Section 2(e) establishes that a veteran who has participated in the pilot may adopt a dog that the veteran assisted in training as part of the pilot program, if the veteran and veteran's provider (in consultation with the SDO that provided the canine training under the pilot program) determine that it is in the best interest of the veteran. The language in section 2(e) establishes a permissive authority related to adoption of a dog and does not compel the provision of a dog to a veteran. ADI-accredited organizations that will be furnishing the canine training under the pilot program train and pair qualified service dogs with individuals with disabilities and do not necessarily participate in the adoption of dogs.

Because the adoption provision in section 2(e) is permissive, and because the ADI-accredited organizations that will furnish canine training under the pilot program may not necessarily participate in the adoption of dogs, VA will not implement the adoption provisions under section 2(e). Determinations about whether it is in the best interest of a veteran to adopt a dog extends beyond VA providers' scope of licensure, the VA Scope of Practice and their sphere of clinical expertise. This does not prevent any veteran from independently seeking to adopt a dog; however, such adoption would not be an adoption under section 2(e)(1). Any veteran seeking to be prescribed a service dog and subsequent service dog benefits, instead of merely adopting a dog, would have to be separately evaluated by VA under the criteria in section 17.148 and prescribed a service dog, prior to owning the dog, to be considered for service dog benefits.

*Beneficiary Travel*

The canine training under the pilot is not considered examination, treatment or care for purposes of qualifying for reimbursement or payment of beneficiary travel (BT) expenses, should a veteran eligible for BT benefits need to travel to receive the canine training. Although BT benefits will not be available for any travel that may be associated with the canine training under the pilot, we believe in many cases that veterans who would participate in the pilot will be able to transport themselves. Other

transportation options, such as the Volunteer Transportation Network, may also be available.

*Appeals*

During the course of the pilot program, disagreements may arise regarding veteran participation. We anticipate that the vast majority of these disagreements will be subject to VA's clinical appeals process, as set forth currently in VHA Directive 1041, *Appeal of Veterans Health Administration Clinical Decisions* (September 28, 2020). The clinical appeals process applies to a written request for higher review of one or more medical determinations. Medical determinations usually concern the need for and appropriateness of specific types of medical care and treatment for an individual and generally include decisions by an appropriate health care professional based on their medical judgment.

Eligibility to participate in the pilot program is limited, by section 2(j)(2), to veterans who are: (1) Enrolled in the VA health care system; (2) diagnosed with PTSD; and (3) recommended for participation in the pilot program by a qualified mental health care provider or clinical team, based on medical judgment that the veteran may benefit from such participation with respect to the diagnosed PTSD of the veteran. While determinations of whether a veteran is enrolled in the VA health care system are administrative and not clinical, such matters are typically easily discernable and do not entail much dispute. Disagreements with administrative decisions are appealable to the Board of Veterans' Appeals. However, diagnosis of PTSD and a recommendation concerning the need for, and the appropriateness of, specific types of medical care and treatment, based on medical judgment, are decisions that are clinical in nature and therefore subject to the clinical appeals process in VHA Directive 1041.

Throughout the course of the pilot program, SDOs providing the canine training will have the discretion and authority to determine whether they will provide training to a veteran at a particular time. A veteran who is disruptive; incapable of or unwilling to follow directions; or presents a danger to themselves or others (including the dogs being trained) could be denied the ability to participate in the program on at least a temporary basis. In any of these situations, such information will be relayed to the pilot champion, who will coordinate with the provider or clinical team responsible for the initial recommendation for participation to determine if that recommendation is still applicable. If the provider's or team's medical judgment changes, based on this or any other information, such that they no longer recommend the veteran's participation, that decision would be a clinical decision appealable under VHA Directive 1041. If the SDO determines it will not or cannot provide the canine training for other reasons, such as limited resources or other constraints, the SDO and VA will attempt to ensure that eligible veterans who have been recommended for participation are able to do so at a later time. Participation will generally be granted on a first-come, first-served basis.

## Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on March 23, 2022 and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Luvenia Potts,**

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

[FR Doc. 2022–06735 Filed 3–29–22; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0002]**

## Agency Information Collection Activity: 21P–527 Income, Net Worth and Employment Statement; 21P–527EZ Application for Veterans Pension

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before May 31, 2022.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0002'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0002'' in any correspondence.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Authority:* 38 U.S.C. 5101(a), 38 CFR 1502, 38 CFR 1503.

*Title:* 21P–527 Income, Net Worth and Employment Statement; 21P–527EZ Application for Veterans Pension.

*OMB Control Number:* 2900–0002.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* The Department of Veterans Affairs (VA) through its Veterans Benefits Administration (VBA) administers an integrated program of benefits and services, established by law, for Veterans, service personnel, and their dependents and/or beneficiaries. Title 38 U.S.C. 5101(a), 38 CFR 1502, 38 CFR 1503 provides that a specific claim in the form provided by the Secretary must be filed in order for benefits to be

paid to any individual under the laws administered by the Secretary. VA Form 21P–527EZ, *Application for Pension,* is the prescribed form for Veterans Pension applications. VA Form 21P–527 *Income, Net Worth and Employment Statement,* is used by Veterans to apply for pension benefits after they have previously applied for pension or for service-connected disability compensation using one of the prescribed forms. A Veteran might reapply for pension using this form if a previous compensation or pension claim was denied or discontinued, or if the Veteran is receiving compensation and the veteran now believes that pension would be a greater benefit.

The following updates were made:

- VA Form 21P–527EZ, *Application for Veterans Pension*
- VA Form 21P–527, *Income, Net Worth and Employment Statement*

VA Form 21P–527EZ has been updated, to include:

- Updated instructions.
- Added an optional use Veterans Benefits Application Checklist for applicant's benefit to assist in organizing submission of claim
- Separated Section I and II to split Veteran's Identification Information from contact information
- Removed questions—How many times veteran married?/How many times Spouse married? as regulations allow
- Removed mailing address of nursing home or facility from Section VIII as this is covered in the Worksheet the claimant is directed to complete.
- Added an income source section and updated Section IX instructions to reflect this change.
- Added an Alternate Signer Certification and Signature (Section XIII).
- Restructured Worksheet for An Assisted Living, Adult Daycare, or a Similar Facility and the Worksheet for In-Home Attendant Expenses and questions removed for better clarity.

New standardization data points; to include optical character recognition boxes. This is a non-substantive change.

*Affected Public:* Individuals and households.

*Estimated Annual Burden:* 24,731 hours.

*Estimated Average Burden per Respondent:* 27.5 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 53,958.

By direction of the Secretary.

**Maribel Aponte,**

*VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2022–06651 Filed 3–29–22; 8:45 am]

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Part II

## Department of Homeland Security

Coast Guard

46 CFR Parts 401 and 404

Great Lakes Pilotage Rates—2022 Annual Review and Revisions to Methodology; Final Rule

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**46 CFR Parts 401 and 404**

**[Docket No. USCG–2021–0431]**

**RIN 1625–AC70**

# Great Lakes Pilotage Rates—2022 Annual Review and Revisions to Methodology

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** In accordance with the statutory provisions enacted by the Great Lakes Pilotage Act of 1960, the Coast Guard is issuing new base pilotage rates for the 2022 shipping season. This rule will adjust the pilotage rates to account for changes in district operating expenses, an increase in the number of pilots, and anticipated inflation. In addition, this rule will make a policy change to round up in the staffing model. The Coast Guard is also making methodology changes to factor in an apprentice pilot's compensation benchmark for the estimated number of apprentice pilots. The Coast Guard estimates that this rule will result in a 7-percent increase in pilotage operating costs compared to the 2021 season.

**DATES:** This final rule is effective April 29, 2022.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0431 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

**FOR FURTHER INFORMATION CONTACT:** For information about this document, call or email Mr. Brian Rogers, Commandant, Office of Waterways and Ocean Policy—Great Lakes Pilotage Division (CG–WWM–2), Coast Guard; telephone 202–372–1535, email *Brian.Rogers@uscg.mil,* or fax 202–372–1914.

**SUPPLEMENTARY INFORMATION:**

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## I. Abbreviations

APA American Pilots' Association
BLS Bureau of Labor Statistics
CFR Code of Federal Regulations
Coalition Shipping Federation of Canada, American Great Lakes Ports Association, and United States Great Lakes Shipping Association
CPA Certified public accountant
CPI Consumer Price Index
DHS Department of Homeland Security
Director U.S. Coast Guard's Director of the Great Lakes Pilotage
ECI Employment Cost Index
FOMC Federal Open Market Committee
FR Federal Register
GAO United States Government Accountability Office
GLPA Great Lakes Pilotage Authority (Canadian)
GLPAC Great Lakes Pilotage Advisory Committee
GLPMS Great Lakes Pilotage Management System
Great Lakes Pilots' comment The comment filed jointly by the Lakes Pilots Association, Saint Lawrence Seaway Pilotage Association, and Western Great Lakes Pilots Association
IRS Internal Revenue Service
LPA Lakes Pilots Association
NAICS North American Industry Classification System
NPRM Notice of proposed rulemaking
NTSB National Transportation Safety Board
OMB Office of Management and Budget
PCE Personal Consumption Expenditures
Q4 Fourth quarter
§ Section
SBA Small Business Administration
SLSDC St. Lawrence Seaway Development Corporation
SLSMC St. Lawrence Seaway Management Corporation
SLSPA Saint Lawrence Seaway Pilotage Association
U.S.C. United States Code
WGLPA Western Great Lakes Pilots Association

## II. Executive Summary

Pursuant to Title 46 of the United States Code (U.S.C.) Chapter 93,[1] the Coast Guard regulates pilotage for oceangoing vessels on the Great Lakes and St. Lawrence Seaway—including setting the rates for pilotage services and adjusting them on an annual basis for the upcoming shipping season. The shipping season begins when the locks open in the St. Lawrence Seaway, which allows traffic access to and from the Atlantic Ocean. The opening of the locks varies annually depending on

[1] Title 46 of the United States Code (U.S.C.), Sections 9301–9308.

waterway conditions but is generally in March or April. The rates for the 2022 season, which range from $342 to $834 per pilot hour (depending on which of the specific six areas pilotage service is provided), are paid by shippers to the pilot associations. The three pilot associations, which are the exclusive source of United States Registered Pilots on the Great Lakes, use this revenue to cover operating expenses, maintain infrastructure, compensate apprentice pilots (previously referred to as applicants) and registered pilots, acquire and implement technological advances, train new personnel, and allow pilots to participate in professional development.

In accordance with statutory and regulatory requirements, we employed a ratemaking methodology that was introduced originally in 2016.[2] Our ratemaking methodology calculates the revenue needed for each pilotage association (operating expenses, compensation for the number of pilots, and anticipated inflation), and then divides that amount by the expected demand for pilotage services over the course of the coming year, to produce an hourly rate. We currently use a 10-step methodology to calculate rates that we explain in detail in the Discussion of Methodological and Other Changes, in section V of the preamble to this rule.

As part of our annual review, in this rule we are establishing new pilotage rates for 2022 based on the existing methodology. The Coast Guard estimates that this rule will result in a 7-percent increase in pilotage operating costs compared to the 2021 season. There will be an increase in rates for all areas of District One and District Three, and for the undesignated area of District Two. The rate for the designated area of District Two will decrease.

These changes are largely due to a combination of three factors: (1) The addition of apprentice pilots to Step 3, ''Estimate Number of Registered Pilots and Apprentice Pilots,'' with a target wage of 36 percent of pilot target compensation (60 percent of the increase in revenue needed), (2) adjusting target pilot compensation for both the difference in past predicted and actual inflation and predicted future inflation (48 percent of the increase in revenue needed), and (3) a net reduction of 3 registered pilots at the beginning of the 2022 shipping season, representing the addition of 1 pilot for the undesignated area of District One due to rounding, the reduction of 2 pilots, and the addition of 1 pilot for the undesignated area due to rounding in District Two, and 3 retirements in District Three (an offsetting decrease representing −54 percent of the increase in revenue needed).[3] The other 46 percent of the increase in revenue needed results from differences in traffic levels between the 2018, 2019, and 2020 shipping seasons. The Coast Guard uses a 10-year average when calculating traffic to smooth out variations caused by global economic conditions, such as those caused by the COVID–19 pandemic.

The Coast Guard is also making one policy change and one change to the ratemaking methodology. First, in the staffing model (Volume 82 of the **Federal Register** (FR) at Page 41466, and table 6 at Page 41480, August 31, 2017), the Coast Guard will change the way we determine the maximum number of pilots needed for the upcoming season by always rounding up the final number to the nearest whole number. Second, we will also include in the methodology a calculation for a wage benchmark for apprentice pilots. Although it is not a change to existing ratemaking policy, we are listing apprentice pilot operating expenses within the approved operating expenses in title 46 of the Code of Federal Regulations (CFR), section 404.2, ''Procedure and criteria for recognizing association expenses,'' used in Step 1 of the ratemaking. These operating expenses have been included in past ratemakings, and this is a codification of existing policy in order to distinguish apprentice pilot expenses from apprentice pilot wage benchmark.

Based on the ratemaking model discussed in this rule, we are establishing the rates shown in table 1.

TABLE 1—EXISTING AND NEW PILOTAGE RATES ON THE GREAT LAKES

| Area | Name | Final 2021 pilotage rate | Final 2022 pilotage rate |
|---|---|---|---|
| District One: Designated | St. Lawrence River | $800 | $834 |
| District One: Undesignated | Lake Ontario | 498 | 568 |
| District Two: Designated | Navigable waters from Southeast Shoal to Port Huron, MI | 580 | 536 |
| District Two: Undesignated | Lake Erie | 566 | 610 |
| District Three: Designated | St. Marys River | 586 | 662 |
| District Three: Undesignated | Lakes Huron, Michigan, and Superior | 337 | 342 |

This rule will affect 51 United States Great Lakes pilots, 9 apprentice pilots, 3 pilot associations, and the owners and operators of an average of 293 oceangoing vessels that transit the Great Lakes annually. This rule is not economically significant under Executive Order 12866 and will not affect the Coast Guard's budget or increase Federal spending. The estimated overall annual regulatory economic impact of this rate change is a net increase of $2,154,342 in estimated payments made by shippers during the 2022 shipping season. This rule establishes the 2022 yearly compensation for pilots on the Great Lakes at $399,266 per pilot (a 5.37 percent increase over their 2021 compensation), adjusted for changes in inflation since the September 14, 2021 notice of proposed rulemaking (NPRM) for this final rule (*see,* 86 FR 51047). Because the Coast Guard must review, and, if necessary, adjust rates each year, we analyze these as single-year costs and do not annualize them over 10 years. Section VII of this preamble provides the regulatory impact analyses of this rule.

## III. Basis and Purpose

The legal basis of this rulemaking is 46 U.S.C. Chapter 93,[4] which requires foreign merchant vessels and United States vessels operating ''on register'' (meaning United States vessels engaged in foreign trade) to use United States or Canadian pilots while transiting the

[2] 81 FR 11907, March 7, 2016.

[3] The increase of two pilots from rounding is an increase of 36 percent, and the decrease of five pilots from retirements and attrition is −90 percent, for a net effect of a decrease of 54 percent.

[4] 46 U.S.C. 9301–9308.

United States waters of the St. Lawrence Seaway and the Great Lakes system.[5] For United States Great Lakes pilots, the statute requires the Secretary to ''prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' [6] The statute requires that rates be established or reviewed and adjusted each year, no later than March 1.[7] The statute also requires that base rates be established by a full ratemaking at least once every 5 years, and, in years when base rates are not established, they must be reviewed and, if necessary, adjusted.[8] The Secretary's duties and authority under 46 U.S.C. Chapter 93 have been delegated to the Coast Guard.[9]

The purpose of this rule is to issue new pilotage rates for the 2022 shipping season. The Coast Guard believes that the new rates will continue to promote our goals, as outlined in 46 CFR 404.1, of promoting safe, efficient, and reliable pilotage service; facilitating commerce throughout the Great Lakes and St. Lawrence Seaway; protecting the marine environment; and generating sufficient revenue for each pilotage association to reimburse its necessary and reasonable operating expenses, recruit qualified mariners, retain experienced United States Registered Pilots, support staffing model goals in accordance with National Transportation Safety Board (NTSB) recommendations regarding pilot fatigue, and provide appropriate revenue to use for improvements.

## IV. Discussion of Comments and Changes

In response to the NPRM for this ratemaking, the Coast Guard received six comment submissions. These submissions include one comment filed jointly by the Lakes Pilots Association, the Saint Lawrence Seaway Pilotage Association, and the Western Great Lakes Pilots Association (the Great Lakes Pilots' comment); one filed jointly by the Shipping Federation of Canada, the American Great Lakes Ports Association, and the United States Great Lakes Shipping Association (collectively, the Coalition); one from the president of the St. Lawrence Seaway Pilots' Association (SLSPA); one from the president of the Lakes Pilots Association (LPA); one from the president of the Western Great Lakes Pilot Association (WGLPA); and one from a retired United States Registered Pilot who provided pilotage service in District Three. As each of these commenters touched on numerous issues, for each response below we note which commenter raised the specific points addressed. In situations where multiple commenters raised similar issues, we provide one response to those issues.

### *A. Staffing Model*

The retired United States Registered Pilot in District Three commented that, while it is necessary to have enough staffing for association presidents to perform administrative duties without impairing pilotage service, he believes that doing so by always rounding up in the staffing model lacks a rational basis. He characterized the adjustment as essentially a random adjustment from +0.01 to +0.99 pilots, and while figures at the higher end of that range may result in enough additional staffing being available, figures at the lower end of that range would not.

The SLSPA commented that it believes the Coast Guard's decision to always round up the pilot numbers in the staffing model is a good step toward mitigating the impact of non-piloting duties on association presidents' workload. The WGLPA also supported the decision to always round up in the staffing model. They characterized the practice of always rounding up as providing some relief for the non-pilot responsibilities of presidents and providing a cushion for adequate staffing when unexpected injuries or illnesses occur, while rounding down would always leave the associations short-staffed. In support of rounding up, the WGLPA characterized it as ''ridiculous'' to acknowledge that a district has more demand for pilotage services than can be met by a specific number of pilots, and then round down to authorize that same inadequate number. The LPA also supported rounding up the number of pilots in the staffing model. The LPA were of the opinion that this approach still undercounts the need for staff, especially when the rounding is a small fraction, but does assist in addressing the need.

The Great Lakes Pilots' comment similarly noted that always rounding up the number of pilots in the staffing formula helps address the associations' staffing needs, but undercounts the need, especially when the rounding is a small fraction. It suggested that a dedicated position, in addition to rounding up, would be a better solution.

We disagree that rounding up the staffing model's final number to the nearest integer leads to an inadequate result or is a random adjustment. We also considered and rejected the alternative request to add a dedicated position. The Coast Guard's reasoning for always rounding up in the staffing model is as follows.

The staffing model focuses on the opening and closing of the shipping season. Weather conditions, ice coverage and formation, and the lack of aids to navigation have historically made it necessary to require double pilotage. Pilot association presidents do conduct a significant amount of piloting assignments and will continue to do so in the future, but during the opening and closing of the shipping season the pilot association presidents must coordinate with United States and Canadian agencies and numerous other stakeholders to facilitate commerce. Rounding up the pilot numbers in the staffing model is essential to provide some relief to accommodate the important non-piloting duties of the presidents.

Rounding up ensures that the Great Lakes and St. Lawrence Seaway have sufficient pilotage strength to safely and efficiently facilitate commerce at the opening and closing of the season. When a pilot president is not able to pilot full-time because of their facilitative role, they are essentially acting as a pilot on a less than full-time basis. However, the associations do not staff part-time pilots. In addition, when we round down the staffing model final number decimal as much as 0.49, we undercount the piloting needs for half a pilot. The part-time pilotage of the presidents, combined with the undercounted need of half a pilot from rounding down in the staffing model, could result in understaffing equivalent to the need for a full pilot. Rounding up to a whole pilot also provides added capacity when the association is short-staffed for unexpected reasons, such as a pilot's illness. It also ensures that the partial pilot indicated by the staffing model is actually provided to the district to satisfy the traffic demand.

The result of rounding up to the nearest integer is not random, as one commenter suggested, because the staffing model already shows a need for a partial pilot. Rounding up in the staffing model already occurs when the result for the number of pilots needed for the district has a decimal of 0.5 or greater, as with District Three's result of 21.55, which would round up to 22 pilots in any event.[10] Always rounding up to the nearest integer only creates a

[5] 46 U.S.C. 9302(a)(1).

[6] 46 U.S.C. 9303(f).

[7] *Id.*

[8] *Id.*

[9] Department of Homeland Security (DHS) Delegation 00170.1, Revision No. 01.2, paragraph (II)(92)(f).

[10] For a detailed calculation of the staffing model, see 82 FR 41466, table 6 at 41480 (August 31, 2017).

change from current practice when the result of a district is greater than 0.00 and less than 0.50, not between 0.01 and 0.99, as the commenter suggested.

Therefore, we believe that rounding up to a whole integer should sufficiently cover the need presented by the staffing model and pilot association presidents. In the staffing model calculations that we were already using, the demand for half of a pilot or more (0.50+) is rounded up to a whole integer. Rounding up the decimals incorporates some margin to account for the president who serves as pilot less than full-time due to their other oversight responsibilities.

We disagree that a dedicated position in addition to rounding up, as proposed, would be a better solution. Allowing an additional dedicated position for a pilot, in addition to rounding up, would surpass the need presented. The cost of adding an additional pilot slot for each of the three pilot associations, in addition to rounding up, would add three additional target pilot compensations (one in each district) to the operating expense base. We do not believe always allowing an additional pilot for each of the three pilotage associations is a reasonable expense, because we have determined that the need presented is satisfied by rounding up. Adding three permanent additional pilots to the ratemaking annually, in addition to rounding up, would overcount the need presented by the staffing model and the less than full-time pilotage provided by presidents. Therefore, we have determined that adding an additional slot for a pilot is not a necessary and reasonable cost to include in the ratemaking. We expect to include this topic and the staffing model as agenda items for a future Great Lakes Pilotage Advisory Committee (GLPAC) meeting.

The Coalition commented that it believes the decision to always round up in the staffing model is arbitrary and unsupported by evidence, as there is no data regarding the extent of the administrative burden on association presidents. It commented that the Coast Guard put off a decision on always rounding up in the 2021 final rule, pending additional research, but has not presented the results of that research. The Coalition suggested that the Coast Guard evaluate the real demand for administrative services, both in terms of the total hours required and the skills required to perform those tasks (so that a highly skilled pilot is not wasted on administrative work not requiring pilotage experience), and do so by district, in case the need is not consistent from district to district. The Coalition also asserted that, by always rounding up, the Coast Guard will effectively always provide one additional pilot in each of the three Great Lakes pilotage districts.

We disagree with the Coalition's comment. In the 2021 final rule, the Coast Guard did not adopt the proposed change to round up in the staffing model, noting we would ''gather more information on the best way to address this issue, based on concerns raised by the commenters.'' (86 FR 14190). The Coast Guard considered the concerns, information, and constraints discussed in the comments, as well as discussions with the interested parties, and believes the best way to address the pilot president being ''off the roles'' part of the time is by rounding up in the staffing model, based on the following facts and information.

The Coast Guard acknowledges that pilot presidents are still performing pilotage duties, as well as their nondelegable administrative oversight, and are essentially providing pilotage services on a less than full-time basis. During the annual GLPAC meeting on September 1, 2021, the association presidents discussed in detail their non-piloting duties and their piloting schedules. Attendees of the GLPAC meeting included the three association presidents, a representative for the shipping industry, a representative for the port operators, the Director of Great Lakes Pilotage, and several other members of the public, including pilots, industry representatives, and Coast Guard employees. The agenda topics for this meeting included stakeholder outreach and the staffing model used in the ratemaking methodology. The association presidents responded to inquiries regarding their stakeholder engagements over the last couple of years.

On pages 174–177 of the GLPAC transcript (available in the docket where indicated under the **ADDRESSES** section of the preamble), the presidents' discussion validates our assertion that they are often pulled away for nondelegable meetings and responsibilities that require the president's knowledge, authority, and piloting expertise, which results in them not being able to pilot full-time. The GLPAC transcript indicates the presidents' piloting time competes with attending conferences and meetings, outreach, serving on other advisory committees, and assisting with special projects and issues. These tasks require an experienced pilot to provide advice and solutions for issues facing pilotage in the Great Lakes. A non-pilot manager would not have the necessary piloting expertise to advise agencies and stakeholders in lieu of the association president. For these reasons, the Coast Guard determined that a reasonable approach to covering time spent performing tasks other than piloting was to round up, where we would have otherwise rounded down, rather than allow expenses for an additional administrative position.

Rounding up avoids the very real issue of understaffing where the staffing model already indicates that there is traffic demand and a need for pilots above the rounded-down integer. Adequate staffing is especially critical during the double-pilotage requirements that often occur during the opening and closing of the shipping season, when navigation is particularly challenging. During double pilotage, association presidents may be tasked with coordinating with agencies to facilitate commerce rather than providing pilotage. Because the staffing model focuses on the opening and closing season shipping demands, it could be detrimental to the Great Lakes shipping industry to provide fewer pilots than the number indicated by the staffing model.

In further response to the Coalition's comment, rounding up does not allocate pilot compensation costs toward the work of an administrative role. It is intended to cover the need for a partial pilot already demonstrated by the staffing model and the need presented by the president being off the rolls part of the time in order to perform tasks that cannot be delegated to a non-pilot. The Coast Guard may review the staffing model in a future rulemaking, and we would consider the factors suggested by the Coalition. By rounding down (up to .49 of a pilot), combined with the part-time service provided by the presidents, there is a clear discrepancy in how many pilots the staffing model says are needed and what is actually available to assist the shipping industry. Further, when compared with the prior staffing model, always rounding up to a whole integer only adds two additional pilots in this ratemaking, one in District One and one in District Two. In District Three, there is no additional pilot as a consequence of our change to the staffing model, because the prior staffing model would also have rounded up to a whole integer.[11]

The general concerns raised by the Coalition in response to the previous 2021 NPRM were that an additional pilot was not necessary and could be filled by a lower-cost administrative assistant. We considered that

[11] For a detailed calculation of the staffing model, see 82 FR 41466, table 6 at 41480 (August 31, 2017).

alternative. In evaluating the duties described in the GLPAC transcript, pages 174–177, we determined that only a pilot could supplement the piloting duties of a president only providing part time pilotage. Therefore, we determined that rounding up to allow for an additional pilot was necessary, versus hiring administrative staff.

In addition, the Coast Guard took into consideration additional cost factors, such as where any additional pilots would be factored into the ratemaking if an extra pilot was authorized. The Coast Guard reviewed the options of placing that pilot in either the designated waters or undesignated waters for ratemaking purposes. Where the pilot would be allocated was not a consideration proposed in the 2021 ratemaking NPRM proposal for rounding up in the staffing model. In the interest of maintaining rate stability, while also considering the shipping industry's projections for pilotage demands, the 2022 ratemaking NPRM proposed placing the additional pilot in undesignated waters. Based on the alternatives considered, information provided to us by the commenters, and the information presented at the GLPAC meeting, the Coast Guard believes this is the best solution to ensuring there are enough pilots allocated to the districts at this time.

*B. Apprentice Pilot Wage Benchmark and Applicant Trainee Compensation*

In past ratemakings, we have historically used the term ''applicant pilots'' as a collective way of referring to both applicant trainees and apprentice pilots. In each districts' operating expenses, the line item for applicant pilot salaries includes salaries for both apprentice pilots and applicant trainees. Beginning with the year 2022, we are adopting an apprentice pilot wage benchmark for funding all apprentices' salaries and will leave applicant trainees' salaries in the operating expenses. To help clarify this distinction, this rule adds definitions for the terms ''apprentice pilot'' and ''limited registration'' to the definition section in § 401.110.

An apprentice pilot is defined as a person, approved and certified by the Director, who is participating in an approved United States Great Lakes pilot training and qualification program and meets all the minimum requirements listed in 46 CFR 401.211. The apprentice pilot definition will not include applicant trainees, who are pilots in training who have not acquired the minimum service requirements in § 401.210(a)(1). Under this rule, salaries for applicant trainees will continue to be included in the district's operating expenses for the year they are incurred. The ''apprentice pilot'' definition will only be applicable in determining which pilots may be included in the apprentice pilot estimates, wage benchmark, and operating expenses discussed in new §§ 404.2(b)(7), 404.103(b), and 404.104(d) and (e) of this rule.

A limited registration is currently used in the apprentice pilot training process in the districts, but it is not defined in the Great Lakes pilotage regulations. We are adding a definition for ''limited registration'' that will align with the current use of the term in the industry. A limited registration is defined as an authorization given by the Director, upon the request of the respective pilot association, to an apprentice pilot to provide pilotage service without direct supervision from a fully registered pilot in a specific area or waterway.

The SLSPA commented that it believed that apprentice pilot compensation should not be restricted to apprentices with limited registration, because this creates a gap in compensation until the apprentices receive limited registration. The SLSPA suggested that this compensation should be given to ''trainees'' as soon as they enter training, for the purpose of attracting experienced mariners.

The Coast Guard agrees that apprentice pilots should be included in the compensation wage benchmark as soon as they achieve apprentice pilot status, which is as soon as they enter apprentice pilot training. In the initial proposal to apply this wage benchmark to apprentice pilots with limited registrations, we assumed that all apprentice pilots would have a limited registration. But the comments and additional information we received indicate that there is a potential for a few months to pass before the apprentice pilot actually receives the limited registration. We do not intend for there to be a gap before the wage benchmark becomes applicable. This wage benchmark was always intended to apply to all apprentice pilots, as applicants who progress through the training program will typically receive a limited registration. As a result, for ratemaking purposes, apprentice pilots with and without limited registrations will be considered equivalent. In this final rule, apprentice pilots with or without limited registration are included in Step 3 of the methodology, with a compensation of 36 percent of pilot target compensation. The projected number of apprentices needed for each district estimated in Step 3 of the methodology will not change. We estimated these numbers under the assumption that the apprentices would receive their limited registrations within the season.

The districts will continue to be reimbursed for all necessary and reasonable costs associated with applicant pilots (''trainees'' as the commenter refers to them), via the operating expenses portion of the methodology, 3 years after the costs have been incurred. The Coast Guard intends to keep costs associated with applicant pilots under the heading of recognized expenses in recognition of the fact that it is harder to accurately predict the number of applicants newly joining a program as opposed to apprentices, who must have already applied, been accepted, and started their training. To ensure the accuracy of this estimate going forward, the Coast Guard will continue to track the progress of applicants as they are accepted into programs and shift into apprentice roles, as well as the progress of apprentices toward becoming fully registered pilots.

A retired U.S. Registered Pilot in District Three commented that the Coast Guard made an incorrect statement when it said that the previous use of the 36-percent benchmark for apprentice pilots compensation was not opposed in the 2019 ratemaking. He also commented that he believed the administrative record does not support the decision to only allow 36 percent of target compensation. The LPA also disagreed with the 36-percent benchmark for apprentice pilots with limited registration, characterizing it as inadequate. The LPA's comment further stated that they consistently pay 75 percent of target pilot compensation for first-year apprentice pilots, 85 percent for second-year apprentice pilots, and 95 percent for third-year apprentice pilots; that this amount allows them attract and retain the most qualified mariners; and that they have operated this way for over 30 years.

We disagree with the retired pilot commenter and the LPA and respond to these comments with a recount of the 2019 administrative record and a discussion of why we determined that the 36-percent figure is reasonable.

In years prior to the 2019 ratemaking, we authorized a $150,000 surcharge to cover apprentice pilot compensation. The surcharge included both apprentice pilot wage benchmarks and expenses. In the 2019 ratemaking final rule, we explained that there was no cap on the apprentice pilot surcharges allowed to be collected in the operation expense year for 2016, and that the amounts actually collected totaled more than the 2016 surcharge percentage was

anticipated to collect (84 FR 20551, 20557, May 10, 2019). Therefore, in the 2019 final rule, the Coast Guard used a Director's adjustment to bring the 2016 surcharge expense for apprentice pilot compensation for District Two to a reasonable level in comparison to other districts. District Two has historically reported higher expenses for apprentice pilots, in comparison to the other districts, which they recently confirmed in a comment on the NPRM for this final rule.

When determining what is a necessary and reasonable apprentice pilot wage benchmark, the Director considers many factors, including past practices and a comparison of the expenses incurred by other districts for similar services. In developing the 2019 ratemaking, the Coast Guard reduced District Two's expenses to align with those of the other districts, which also closely aligned with the amount of the surcharges authorized in the years 2016 through 2018. Although we previously authorized $150,000 per apprentice pilot, two of the districts did not have actual apprentice pilot wage expenses above $128,000. Setting the apprentice pilot wage benchmark at 36 percent is both consistent with what we have authorized in the past 4 years and reasonable in consideration of what the districts actually paid.

Although the average compensation per apprentice for District Two exceeded the apprentice pilot salaries in the other districts, we have never allowed a district to claim more in apprentice pilot salaries simply because they have paid more than other districts. The Coast Guard will continue this practice of allowing up to a certain amount, using the 36-percent target for all districts. In any case, we believe it would be unfair to allow each district to claim a different amount of apprentice pilot salaries in the ratemaking. Similarly, we do not set different target pilot compensation amounts for each district. Doing so could disproportionately affect the ratemaking, lead to significant changes in the rates, and set a precedent that is unpredictable for all parties. It is consistent with past ratemakings to authorize the same apprentice pilot compensation in each district, because the $150,000 per apprentice previously authorized with the surcharge was the same for all districts, which is one reason why we adjusted District Two's apprentice pilot salaries in 2019 to the 36 percentage mark. Since then, we have determined that 36 percent is reasonable, based on actual expenses and the predictability it provides.

In addition, the Director also considers the associations' success with pilot retention and recruitment of qualified mariners. As noted above, the 36 percent apprentice pilot wage benchmark is consistent with what we have authorized in expenses in the past several ratemakings. The comments from the pilot associations did not present any actual inability to recruit and retain qualified apprentice pilots based on the past 4 years of allowable expenses. This is why we believe continuing this rate would be sufficient to ensure adequate apprentice pilot recruitment and retention, as long as the associations are able to recruit and retain apprentices.

The Great Lakes Pilots' comment noted that apprentice pilots and applicant trainees are highly trained mariners and, however their compensation is accounted for, they cannot be expected to work for significant periods of time without adequate compensation. The Great Lakes Pilots' comment supported establishing a clear understanding ahead of time as to what amounts the Coast Guard will approve for pilotage services, and requested that the approved amounts be accurate and not subject to after-the-fact adjustments.

The Great Lakes Pilots' comment suggested that the proposed apprentice pilot wage benchmark would be a better model for funding salaries for applicant trainee pilots than currently provided, and that the apprentice pilot wage benchmark should be structured in a manner more akin to the fully registered pilot target compensation. It further suggested that the wage benchmark should reflect the difference between an applicant trainee accumulating time and training trips and an apprentice pilot who is actually moving the vessel and generating revenue as the pilot of record.

As indicated above, we have determined that the 36-percent figure is a reasonable wage benchmark for apprentice pilots, based on actual expenses, historic data that indicates adequate apprentice pilot recruitment and retention, and the predictability it provides all parties involved. This wage benchmark is meant to cover wage expenses for apprentices that cannot otherwise be recouped. In instances where the apprentice pilot is operating as the pilot of record, shippers are being charged the rate of a registered pilot and, therefore, the district is able to recoup earnings to compensate the apprentice over the wage benchmark. By building the target apprentice pilot wage benchmark into the rate, the Coast Guard ensures that apprentice pilot wage benchmark will be appropriate and predictable moving forward and eliminates the need to adjust past expenses (once expenses are based on years where apprentices are built into the rate). The Coast Guard will only adjust past recognized apprentice pilot expenses for years that preceded the implementation of including apprentice pilots in Step 3 of the methodology. Adjustments will continue to be made through the 2025 ratemaking, which will use 2021 operating expenses as the basis.

The Coast Guard will continue to classify the necessary and reasonable applicant trainee salaries and benefits as recognized operating expenses going forward. The Coast Guard has opted not to use a wage benchmark approach for funding applicant trainee salaries because it could result in inaccurate compensation to the districts. Applicant trainees may only be training for part of a shipping season, because they can be brought on at any point or they may be promoted to apprentice pilots. Continuing to rely on the districts' actual operating expenses for applicant trainee salaries will ensure the Coast Guard allows a necessary and reasonable amount to be included in the ratemakings.

The WGLPA indicated that it supported the compensation methods for applicant and apprentice pilots proposed in the NPRM, noting that it is unreasonable to expect applicant and apprentice pilots to endure financial and personal hardship to join the pilot associations, and that these compensation methods are required to ensure that the best mariners continue to join the piloting ranks. The WGLPA requested that the applicant trainee compensation methods be implemented beginning with the 2022 rates, and criticized the 3-year lag in recouping those apprentice pilot wage operating expenses under the previous method.

The Coast Guard confirms that the apprentice pilot wage benchmark process in Steps 3 and 4 will start with this 2022 ratemaking. This was our intent when we proposed the change in the NPRM. As we stated in the NPRM, necessary and reasonable apprentice pilot salaries incurred in years 2019 through 2021 will also be reimbursed in the operating expenses included in ratemakings 2022 through 2024, because they have not yet been reimbursed in any way in the ratemakings.[12]

The Coalition's comment requested that we set the apprentice pilot wage benchmark at a flat $150,000 surcharge for wages, benefits, and expenses, rather

[12] 86 FR at 51056.

than 36 percent of target compensation, for a simple and transparent approach.

We disagree. Under the surcharge scheme, during periods of high traffic and pilotage demand, the apprentice would receive less money for wages because the costs associated with transportation, lodging, and other per diem expenses would increase. Conversely, during slow periods, the opposite would occur. The surcharge wage scheme would likely have a negative impact on apprentice retention because wages would be lowest during the highest demand periods.

The Coast Guard believes that the 36-percent wage benchmark for apprentice pilots is equally transparent because the calculations will be included in every ratemaking, and the percentage will not change year to year. Furthermore, in past years, the districts have collected more surcharge proceeds than intended, requiring subsequent Director's adjustments. The apprentice pilot benefits and expenses will continue to be line items in the expense reports, which are made available in the docket for this rulemaking. We also believe that setting the wage benchmark as a percentage of target pilot compensation is a better approach, because it captures the inflation adjustment that is performed on the target pilot salaries. A set surcharge would not take inflation into account as easily and would need adjusting year to year.

*C. Timing of Annual Audit*

The Great Lakes Pilots' comment requested that the Coast Guard conduct the third-party expense and revenue review earlier in the year, because holding the audit in October and November results in it being scheduled during their busiest shipping months, which is also when comments are generally due on the annual ratemaking NPRM. The SLSPA and LPA both made similar requests individually.

The annual audit is performed to ensure the Coast Guard can obtain accurate operating expenses and revenues for ratemakings. The timing of the audit is not specified in the regulatory text of the ratemaking methodology. Although shipping is cyclical, and no one can be certain which months will be busy due to the dynamic nature of commodity demand, the Coast Guard will work with the association presidents to find a timeframe to conduct the third-party reviews that best suits all parties involved.

*D. Exclusion of Legal Expenses From Operating Expenses*

The Great Lakes Pilots' comment argued that disallowing legal expenses for claims against the federal government arbitrarily and capriciously excludes expenses that are regularly allowed to all businesses under Internal Revenue Service (IRS) regulations.

The Coast Guard did not propose any changes to the treatment of legal expenses as operating expenses in the NPRM. The 2021 ratemaking final rule excluded legal fees against the Coast Guard related to our ratemaking responsibilities, and our response in that rule (46 FR at 14193, March 12, 2021) still applies here. We distinguished the IRS regulation from the pilotage associations' expenses, as the Equal Access to Justice Act and settlement terms often provide for reimbursement of the pilots' legal fees when the pilots prevail. In those cases, a court can determine a reasonable amount of legal fees to reimburse the pilot association. When a pilot association does not prevail on the merits, the legal fees associated with that lawsuit are, arguably, per the court's determination, not necessary for the safeguarding or production of its income. If allowed, those legal fees would inflate the pilot associations' operating expenses and, subsequently, the shipper's rates. Unlike other businesses and jurisdictions, shippers on the Great Lakes do not have the option to purchase service from another firm if they disagree with a firm's business practices, and may not have the choice to not purchase the service, because pilotage service is required for all foreign vessels and domestic vessels operating on register.

On the other hand, the Coalition's comment asserted that all pilot association legal fees related to rate setting should be excluded, including cases where the pilots intervene on behalf of the Coast Guard. The Coalition asserted that including the intervener legal fees means industry may have to pay the pilots' legal fees if the pilots challenge a Coast Guard decision, no matter how the challenge turns out, which discourages legal challenges from industry and unfairly favors the Coast Guard.

As we mentioned above, we did not propose any changes to the treatment of legal fees in determining pilot association operating expenses in the NPRM to this final rule. Necessary and reasonable legal fees that are not incurred in cases against the Coast Guard are still permitted as operating expenses, because we did not have the same basis to remove them from the operating expenses. As we stated in the 2021 final rule (86 FR 14193), pilots often have a legitimate interest in the outcome of lawsuits initiated by the shippers against the Coast Guard. Thus, the court may allow the pilots to intervene in the case to protect their own interests. The Coast Guard does not have the same justification to exclude these intervener legal expenses, because these expenses are not eligible for reimbursement under the Equal Access to Justice Act or via settlement with the Coast Guard. These legal fees incurred by pilot associations are not otherwise reimbursed by a more responsible party, so we must consider these costs of providing services in the rates per our statutory mandate. The exclusion of legal fees for pilots' cases against the Coast Guard is effectively a small benefit to the shippers, because it removes that financial responsibility from the ratemaking and places it on the responsible regulatory agency. We do not intend or predict that exclusion of legal fees will incentivize pilots to intervene in the Coast Guard's defense.

*E. Correction of Recognized Expenses for District Two*

The LPA commented that they did not agree with the 2019 license insurance total ($1,825) included in Other Pilotage Costs or the applicant health insurance total ($200) included in Applicant Pilotage Costs. These totals were included in table 16—2019 Recognized Expenses for District Two in the NPRM (86 FR at 51061). In its comment (and in an attached letter from its certified public accountant), LPA said these numbers should be $21,267 for license insurance total and $31,763.96 for applicant health insurance total.

CohnReznick, an independent accounting firm, reviewed the letter LPA's accountant provided with the comment and the association's expense reports provided in 2019. CohnReznick's official conclusion is available in the docket for this rulemaking. With that independent accountant review, the Coast Guard determines that the license insurance total of $1,825 is correct but was labeled incorrectly, so that the additional amount claimed in the comment was included in another line item. LPA is aware of this conclusion and concurs with it. After review of the applicant health insurance total, the Coast Guard determines that the figure of $200 for applicant health insurance in the NPRM was incorrect. We have updated the recognized expenses to reflect $31,764 for applicant health insurance, in

accordance with CohnReznick's conclusion.

*F. Changes to the NPRM's Estimate for District Two Pilot Numbers*

The Coast Guard estimated in the 2022 NPRM that District Two would have 16 fully working pilots based on the information we had at that time. The staffing model allows for a maximum of 16 working pilots after rounding up. In this final rule, we now estimate the number of fully working pilots in District Two to be 14. As a result, we are reducing the number of estimated fully working pilots in Step 3. Section 404.103 requires the Director to project the number of pilots expected to be fully working and compensated, based on the number of persons applying to become United States Registered Pilots and on information provided by the district's pilotage association. Only pilots who are expected to be fully working and compensated are permitted to be included in this estimate. Our justifications for removing two pilots from District Two's NPRM's projected numbers are as follows.

One of the pilots serving under a temporary registration performed part-time pilotage for the year of 2021. One pilot performed substantially less than the average assignments per pilot projected in the 2017 staffing model (82 FR 41466, table 5) for District Two, according to the official piloting trip records used by the pilotage association and the Coast Guard. Based on the information available to the Coast Guard at the time of this final rule, and information provided by the association, there is no indication that the pilot will perform pilotage on a full-time basis in the 2022 shipping season. Therefore, based on the information available to us now, we cannot authorize this pilotage position because we do not expect the pilot to be fully working and compensated in 2022.

Additionally, based on a statement from District Two that one apprentice pilot would be brought on as a fully registered pilot at the end of 2021, we estimated in the NPRM that there would be a 16th pilot in District Two for the 2022 shipping season. However, after the NPRM was published, the Director was made aware that the apprentice pilot will not be brought on as a registered pilot.[13] Therefore, the Director does not expect this position to be filled by a working pilot. While the staffing model allows for 16 pilots in District Two, the total estimates in Step 3 should only fund the amount of pilots that are expected to be fully working. We cannot justify funding positions that are not expected to be filled at this time. Based on the information discussed above, the Coast Guard estimates there will be 14 registered pilots fully working and compensated in District Two for the 2022 season. This is a net decrease of one pilot from the 2021 final rule, which authorized 15 working pilots in District Two for the 2021 shipping season.

*G. Changes to the NPRM's Estimate for District Three Pilot Numbers*

The WGLPA commented that, in 2019, they had 6 pilots assigned to designated waters, 13 pilots assigned to undesignated waters, 5 applicant pilots for the entire season, and another applicant pilot beginning September 23, 2019. They expressed concern that the expenses for the five applicant pilots do not flow through the ratemaking process. Further, the WGLPA questioned the Director's adjustment of $746,802 (surcharge collected in 2019 for applicant pilots), stating that they were unsure where that number came from and if it was correct.

After review, the Coast Guard has determined that, although District Three was allowed four applicant pilots for the 2019 season, it actually had five. This fifth applicant was approved by the Director. This additional pilot removes the need for the Director's adjustment of $1,921 for excess applicant salaries paid. District Three reported $520,158 in expenses for the salary of five applicant pilots, meaning the district paid an average of $104,032 per applicant, which is below the $129,559 target for 2019.

Additionally, the WGLPA commented that the Coast Guard should work with WGLPA to determine the need for additional pilots in the fiscal year 2022 rate because of an expected increase in the number of cruise ships (possibly in excess of 6,000 bridge hours in District Three) that may or may not materialize due to COVID–19 impacts on the cruise industry, the retirement of three pilots, and the unexpected retirement of another three pilots due to COVID–19.

While we were developing the NPRM, WGLPA stated that they would have a need for 22 pilots in 2022. This is the same number of pilots they had in the 2021 ratemaking. However, our current records, and pages 154 and 155 of the transcript of the September 1, 2021 GLPAC meeting (available in the docket for this rulemaking), indicate that District Three will not have 22 pilots for the beginning of the 2022 shipping season. Based on our numbers, which we track routinely, and the statements made by the WGLPA president during the GLPAC meeting, this group will have 19 pilots and 5 apprentice pilots at the beginning of the 2022 shipping season. If the district plans to hire additional pilots, we expect that these additional pilots will start as applicants, and their salaries will be reimbursable as operating expenses 3 years from the time of hire. The Coast Guard will continue to monitor pilotage demands and consult with WGLPA during the 2022 shipping season.

*H. Request for Cost-Effectiveness Study*

The Coalition's comment requested the Coast Guard begin a safety and efficiency study of pilotage on the Great Lakes to identify measures to improve cost-effectiveness. The Coalition observed that, during five of the last seven years, the Coast Guard has proposed a double-digit percentage increase for pilot services, and the cost-per-pilot has gone from $352,777 to $543,615.

We disagree with the Coalition's suggestion regarding the study. The United States Government Accountability Office (GAO) completed a comprehensive review of the United States Coast Guard Great Lakes Pilotage Program in 2019. The GAO's final report, ''Stakeholders' Views on Issues and Options for Managing the Great Lakes Pilotage Program,'' is available in the docket for this rulemaking.

We plan to evaluate the staffing model in a future rulemaking, per GLPAC's recommendation at its September 1, 2021 annual meeting. We are currently reviewing the regulations in 46 CFR part 400 to make necessary updates and enhance efficiency. The Coast Guard will consider measures to improve cost effectiveness within those future actions. We welcome information that could improve the regulations, ratemaking, and staffing model via comments or GLPAC meetings.

With regard to the substantial increases noted by the Coalition over the past 7 years, these increases have been due to the reimbursement of operating expenses, the need to account for inflation, the hiring of additional pilots, the need to address the problem of pilot retention, and deficiencies resulting from the past methodology. The deficiencies in the older methodology created issues with retaining pilots; unnecessary delays to vessel traffic; significant revenue shortfalls for necessary improvements to property, pilot boats, and assets; and reduced maritime safety. In recent years, the Coast Guard has increased the

[13] Email from Anthony Brandano, Lakes Pilots Association, to Vincent F. Berg, Marine Transportation Specialist, United States Coast Guard, January 25, 2022.

number of United States Registered Pilots, so that the pilot associations have sufficient personnel available to provide needed pilotage services while also being able to implement scientifically-based hours of service programs, in accordance with NTSB recommendations regarding pilot fatigue and Hours of Service Rules.[14] The methodology and staffing model take into account the NTSB recommendation for Hours of Service Rules, including limits on hours of service, providing predictable work and rest schedules, and human sleep and rest requirements. The NTSB report generally concluded, on page 58 of the report, that at the time of the accident, the first pilot was subject to the fatiguing effects of insufficient sleep from extended wakefulness, which adversely effected his ability to prevent the vessel from sheering. The methodology ensures funding for a sufficient number of registered pilots in consideration of preventing pilot fatigue and promoting maritime safety. We have also increased staffing to correct work-life balances to recruit and retain United States Registered Pilots. In addition, recent ratemakings have allowed for structural improvements to associations' docks and the purchase of newer pilot boats and property with on-site accommodations for pilots to rest between piloting. These allowances in the ratemaking improve the efficiencies and safety of the pilotage program and help reduce delays to vessel traffic.

In recent years, demand for pilotage service has increased and diversified. Historically, international dry-bulk commodity shippers accounted for nearly 95 percent of pilotage demand. More recently, the Canadian domestic fleet has voluntarily employed United States Registered Pilots, including during the winter months when the locks are closed. Additionally, petroleum tankers and cruise ships have consumed significant pilotage service. At least one foreign trade vessel has remained in the Great Lakes and required pilotage service throughout the year. This increase in pilotage demand has increased operating expenses and required the Coast Guard to increase staffing. These staffing levels are necessary to promote safe, efficient, and reliable pilotage service in order to facilitate commerce and protect the marine environment.

*I. Public Disclosure of Pilot Compensation*

The Coalition submitted a comment asserting that, in the interest of transparency and good governance, the Coast Guard should require pilot associations to make compensation levels of individual pilots public. The Coalition noted that one district voluntarily released this information prior to 2016, suggesting there is no reason why this information could not be released. The Coalition further suggested that public disclosure of individual pilot compensation is necessary to determine whether the Coast Guard's changes to the methodology in 2016 to address recruitment and retention concerns were successful.

The Coast Guard disagrees with the Coalition's recommendation to make compensation levels of individual pilots available to the public. The Coast Guard does not include the compensation of individual pilots in the expense base or methodology and, therefore, declines to add a regulatory requirement for pilot associations to publicly report the compensation of individual pilots. The Coast Guard does not use the actual earnings or even average earnings; we use a target pilot compensation, described in Step 3 of the existing methodology, which we have determined to be reasonable and necessary. Because actual salary values are not used in the ratemaking, we believe that a requirement to report pilot compensation is not in the public interest or necessary to provide for the costs of services. Progress toward pilot retention can be reviewed through other means, such as pilot turnover and the association's ability to promptly fill pilot vacancies for fully registered pilots and apprentice pilots.

The Coast Guard has solved the recruitment and retention challenges. We believe the Coalition's proposal would unnecessarily discourage qualified mariners from applying to, and experienced United States Registered Pilots from staying with, the United States Great Lakes pilot associations. The pilots have stated on numerous occasions that they do not want this personal information shared with the public. The Coalition has not identified the maritime safety issue their proposal would address or improve.

As the Coalition noted, the release of this information prior to 2016 was entirely voluntary on the part of one association. We do not intend to deviate from our precedent and require the associations to publish a list of their salaries.

## V. Discussion of Methodological and Other Changes

For 2022, the Coast Guard is making one policy change to the ratemaking model, and a methodological change to the ratemaking methodology. First, we are instituting a practice of always rounding up the pilot totals to the nearest whole number in the staffing model. We use the staffing model in Step 3 to determine how many pilots are needed. Second, in Steps 3 and 4 of the methodology, we are introducing a wage benchmark calculation for apprentice pilots conducting pilotage. This rule will also codify the current practice of allowing pilot associations to include necessary and reasonable apprentice pilot benefits and expenses as operating expenses for the year they are incurred.

Table 2 summarizes the changes between the NPRM and this final rule. In the NPRM we proposed to only apply the wage benchmark to apprentice pilots with limited registration, but in this final rule will apply it to all apprentice pilots, with or without limited registration. Doing so will avoid a potential gap in compensation before an apprentice pilot receives a limited registration. This will not change the projected number of apprentice pilots compensated in each district, because, in the NPRM rate calculation, we assumed that all apprentice pilots would receive limited registration within the season.

TABLE 2—CHANGES BETWEEN PROPOSED RULE AND FINAL RULE

| Change | Reasoning |
|---|---|
| Remove Director's adjustment for excess applicant salaries paid in District Three. | Coast Guard confirmed that District Three had five applicants in 2019, not four, as stated in the NPRM, meaning the average compensation for applicants was under the 36-percent target. |

[14] See Section 2.4, ''Fatigue,'' in ''Marine Accident Report: Collision of Tankship *Eagle Otome* with Cargo Vessel *Gull Arrow* and Subsequent Collision with the *Dixie Vengeance* Tow, Sabine-Neeches Canal, Port Arthur, Texas, January 23, 2010'' (adopted by the NTSB on September 27, 2011), *www.ntsb.gov/investigations/AccidentReports/Reports/MAR1104.pdf.*

TABLE 2—CHANGES BETWEEN PROPOSED RULE AND FINAL RULE—Continued

| Change | Reasoning |
|---|---|
| Revise number of pilots in District Three from 22 to 19 | District Three reported that they would have three retirements ahead of the 2022 season. |
| Revise number of pilots in District Two from 16 to 14 | District Two reported that one apprentice pilot would not become fully registered as planned, and our records indicate one pilot with a temporary registration was not performing full-time services. |
| Revise figure for applicant health insurance for District Two | District Two commented on the NPRM that the applicant health insurance figure listed was incorrect. The Coast Guard verified the correct figure and includes it in this final rule. |
| Add language clarifying that the 36-percent target will apply to apprentice pilots and apprentice pilots with a limited registration. | Several commenters noted confusion on the language using "limited registration." |
| Update inflation figures<br>• Updates 2021 Employment Cost Index (ECI) inflation from 3.5% listed in the NPRM to 4.8%.<br>• Updates 2021 Personal Consumption Expenditures (PCE) inflation from 2.4% listed in the NPRM to 5.1% CPI inflation.<br>• Updates 2022 PCE inflation from 2% listed in the NPRM to 2.2% | More recent figures were published since we conducted the analysis for the NPRM. |

*A. Changes to the Staffing Model*

The Director uses the staffing model to estimate how many pilots are needed to handle shipping from the opening through the closing of the season. The Coast Guard is changing the staffing model in § 401.220(a)(3) to always round up the final number to the nearest whole integer, instead of the current requirement to round to the nearest whole integer. The final number provides the maximum number of pilots authorized to be included in the ratemaking for a district.

In addition to always rounding up from the staffing model, we also specify that when the rounding up results in an additional pilot that would not have been authorized if we rounded to the nearest whole integer, that additional pilot will be added to the maximum number of pilots in the undesignated area for that district.[15] For example, if the total in a district were 17.25, we would round up to 18, and the additional pilot would be allocated to the undesignated area. If the total in a district were 17.55, we would authorize 18 pilots and we would not change existing allocations.

The reason for placing the additional pilot in undesignated waters is to reduce the impact of the additional pilot on the final rates. Allocating additional pilots to the undesignated waters in the ratemaking methodology will result in only incremental changes, which promotes rate stability. Rate stability is in the public interest, because it provides greater predictability to both shipping companies and the pilots. Undesignated waters have lower rates for pilotage services than designated waters, because the average number of bridge hours (denominator) is greater, which allows the operating expenses for those areas to be spread out over a greater number. Registered pilots in a district perform pilotage in both designated and undesignated waters. For ratemaking purposes, we assign pilots to either designated or undesignated waters to calculate the rates in each area.

Based on the existing staffing model, and the change to always round up the final number, the number of pilots authorized will not decrease in future years, unless the staffing model is adjusted by ratemaking. We acknowledge that the pilot associations' presidents are not able to serve as pilots full-time due to their administrative duties, and this continues to be the main reason for no longer rounding down the final number for some districts. The nondelegable administrative duties that require pilotage expertise include attending meetings and conferences with stakeholders, overseeing and ensuring the integrity of their training program, evaluating technology, and coordinating with the American Pilots' Association (APA) to implement and share best practices. Rounding down to the nearest integer in the current staffing model could result in too few pilots allocated to a district which, when coupled with the president's spending less time serving as pilot, may adversely impact recuperative rest goals for registered pilots that are essential for safe navigation.

The staffing model addresses the historic traffic at the opening and closing of the season. During this time, the Director has historically authorized or imposed double pilotage in the designated waters because the transits are likely to exceed the Coast Guard's tolerance for safety with a single pilot due to ice conditions, a lack of aids to navigation, and severe winter weather conditions. Pilotage demand reaches peaks during the opening and close of the seasons, which is also when pilot presidents are performing many nondelegable duties. The pilot association president's participation is required during various coordination meetings at the opening and closing of the shipping season, which reduces their availability to provide pilotage services. These meetings include coordination with the SLSDC in the United States and the St. Lawrence Seaway Management Corporation (SLSMC) in Canada, the Canadian Great Lakes Pilotage Authority (GLPA), the Shipping Federation of Canada, the United States Great Lakes Shipping Association, various United States and Canadian Great Lakes ports, and other stakeholders. Rounding up will ensure that the pilot president is free to participate in these meetings and the associations have sufficient strength to handle the burden of double pilotage.

We cannot continue to round down for some districts and undersupply pilots where the staffing model indicates more pilots are needed. By rounding up the staffing model final number, we ensure that we are always authorizing a sufficient number to cover the demand calculated according to the staffing model, which has been in place for many years. The staffing model takes into account the high demands during the open and close of the shipping season, where weather and ice conditions may result in double-pilotage requirements and higher demand for pilot services. The purpose of always rounding up where we otherwise would have rounded down is to account for the association's president time spent away from pilotage duties, especially during the high demand for pilotage during the beginning and close of the shipping

[15] For a detailed calculation of the staffing model, see 82 FR 41466, table 6 at 41480 (August 31, 2017).

seasons. We believe this rounding change will promote maritime safety by ensuring enough pilots are allocated to each district to cover the shipping demands and promote recuperative rest.

*B. Apprentice Pilot Wage Benchmark for Conducting Pilotage*

In this rule, the Coast Guard will factor in the apprentice pilots wage benchmark in the ratemaking methodology, at Steps 3 and 4. The wage benchmark will be applicable to apprentice pilots and apprentice pilots operating under a limited registration.

In Step 3, § 404.103, the Director will project the number of apprentice pilots and apprentice pilots with limited registrations expected to be in training and compensated. The Director will consider the number of persons applying under 46 CFR part 401 to become apprentice pilots, as well as traffic projections, information provided by the pilotage association regarding upcoming retirements, and any other relevant data.

In Step 4, § 404.104, the Director will determine the individual apprentice pilot wage benchmark at the rate of 36 percent of the individual target pilot compensation, as calculated according to Step 4. The Director will determine each pilot association's total apprentice pilot wage benchmark by multiplying the apprentice pilot wage benchmark by the number of apprentice pilots and apprentice pilots with limited registrations projected under § 404.103. For example, if the projected number of apprentice pilots is 4, we first take 36 percent of individual target pilot compensation (example: $359,887 × 0.36 = $129,559) and multiply that by 4 (example: $129,559 × 4 = $518,237) to obtain the total apprentice pilot wage benchmark for the district. This process is based on the way we factor the fully registered pilot compensation into the ratemaking in existing Step 3 (§ 404.103) and Step 4 (§ 404.104).

The Coast Guard will set the apprentice pilot wage benchmark at a percentage of the target pilot compensation, rather than a specific dollar amount, to allow for inflation each year. We factor inflation into the target pilot compensation calculation during Step 4. We take 36 percent of the inflated target pilot compensation to obtain the apprentice pilot wage benchmark value.

In ratemaking years 2016 through 2019, the Coast Guard authorized surcharges to cover the districts' apprentice pilot compensation. The Coast Guard never intended to use such surcharges as a permanent solution for compensating apprentice pilots, because the surcharge amounts were not derived from a formula that could take into consideration inflation and other reasonableness factors.

The purpose of the surcharges was to provide reimbursement to the associations so that they could immediately hire additional apprentice pilots, rather than waiting 3 years to be reimbursed in the rates. The Coast Guard used surcharges as a temporary method to help the districts with pilot hiring and retention issues. In those ratemaking years, the Coast Guard made many Director's adjustments to the authorized surcharges, in order to ensure that the ratemaking reflected a reasonable amount in compensation.

In the 2020 and 2021 ratemakings, the Coast Guard acknowledged that the pilot associations were able to hire a sufficient number of apprentice pilots and fully registered pilots, and authorized apprentice pilot salaries to be included in the association's operating expenses for 2017 and 2018, respectively. We allowed the apprentice pilot wage expenses to be included in the operating expenses after the districts' operating expenses were fully audited. In the 2021 ratemaking final rule, the Coast Guard reduced the 2018 apprentice pilot salary operating expense (referred to as applicant pilot in the 2021 ratemaking) for District One and District Two to $132,151 per apprentice pilot because they paid in excess of that amount (86 FR 14184, 14197, 14202, March 12, 2021). As District Three reported paying their apprentice pilots less than $132,151 per apprentice pilot each, no Director's adjustment was made.

The Coast Guard set the apprentice pilot wage benchmark at 36 percent of individual target pilot compensation based on reasonable amounts previously allowed in past ratemakings. In the 2019 rulemaking, we adjusted apprentice pilot salaries to approximately 36 percent of target pilot compensation. In the 2019 NPRM, the Coast Guard proposed to make an adjustment to District Two's request for reimbursement of $571,248 for two applicant pilots ($285,624 per applicant). Instead of permitting $571,248 for two applicant pilots, we proposed allowing $257,566, or $128,783 per applicant pilot, based upon discussions with other pilot associations at the time. This standard went into effect in the final rule for 2019. In the development of the 2021 proposed rule, we reached out to several pilot associations throughout the United States to see what percentage they pay their apprentice pilots. We factored in the sea time and experience required to become an apprentice pilot on the Great Lakes and discussed the percentage with each association to determine if it was fair and reasonable. For 2019, this was approximately 36 percent ($128,783 ÷ $359,887 = 35.78 percent). In the 2021 NPRM and final rule, the Coast Guard used the 36-percent benchmark for calculating each district's apprentice pilot wage benchmark in its operating expenses.

Going forward, we will authorize an apprentice pilot wage benchmark in the ratemaking to support hiring and retention in a way that is better calibrated to generate the specific amount of revenue needed than by assessing a surcharge. The associations will be funded for apprentice pilot wage benchmarks in the same year they are incurred, and the amount will be adjusted for inflation along with the target pilot compensation. We are also interested in building the apprentice pilot wage benchmark into the ratemaking for predictability and stability purposes. We previously authorized $150,000 per apprentice pilot when we used surcharges, but, in practice, that amount was reduced by Director's adjustments to reasonable and necessary amounts when compared to what others paid in the maritime industry per § 404.2(a). The apprentice pilot wage benchmark in the ratemaking will not be adjusted by Director's adjustments.

Some comments urged the Coast Guard to consider setting the apprentice pilot wage benchmark at a higher percentage than 36 percent of the fully registered pilot compensation, or implementing a gradual percentage increase for additional years served. This 36 percent equation creates a number consistent with what some districts paid and were reimbursed for apprentice pilots in previous ratemaking years. It is also reasonable in amount because it will cover only a wage benchmark and will not include apprentice pilot benefits and travel reimbursements. Those additional benefits will be reimbursed in full as allowable operating expenses for the districts. In the 2021 ratemaking, District Three reported paying apprentice pilot wages at an amount of $132,151 per apprentice pilot. At a wage benchmark of 36 percent of registered pilot target compensation, the apprentice pilots will be authorized wages in the amount of $129,559, which is reasonable in consideration of the time in training, services provided, and past ratemakings. This number will be subject to inflation annually. Additionally, setting the apprentice pilot wage benchmark at one amount,

irrespective of years in training, is consistent with our past practices and will help promote rate stability and predictability for all parties. We earlier explained that, on some trips, apprentice pilots will be the pilot and, therefore, generating revenue from which they can be compensated. This 36-percent figure ensures they can receive compensation for trips where they are strictly in a training mode and another pilot has to be assigned to the trip.

Compensating the apprentice pilots for performing pilotage services has historically been considered a reasonable and necessary cost included in the ratemakings as either surcharges or operating expenses. Instead of evaluating the apprentice pilot salaries annually for reasonableness in the operating expenses, the Coast Guard will include a specific and predictable apprentice pilot wage benchmark calculation into the ratemaking.

*C. Apprentice Pilots' Expenses and Benefits as Approved Operating Expenses*

In § 404.2, ''Procedure and criteria for recognizing association expenses,'' we insert the pilot association's expenses for apprentice pilots and apprentice pilots operating with limited registrations as approved operating expenses. These expenses have historically been allowed in previous ratemakings' operating expenses. With this final rule, we specifically list apprentice pilots' and apprentice pilots' with limited registrations expenses in the regulations to codify current practices and distinguish these expenses from the apprentice pilot wage benchmark that we include in Step 4 of the ratemaking methodology.

The associations will continue to include necessary and reasonable health care, travel expenses, training, and other expenses incurred on behalf of apprentice pilots and apprentice pilots with limited registrations, when determined to be necessary and reasonable by the Director. Associations currently fund travel and employment benefits for apprentice pilots in order to train pilots and provide pilotage services to the shipping industry. Apprentice pilots are expected to travel and be away from home while performing these duties. It is reasonable and consistent with industry practice for the association to cover their travel expenses. These travel costs are also allowed for fully registered pilots operating on the Great Lakes performing substantially similar services.

The approved operating expenses could include health care and other necessary and reasonable employment benefits as well. Apprentice pilots are often offered benefits to help with retention and recruitment. Allowing associations to include necessary and reasonable expenses for apprentice pilots and apprentice pilots with limited registrations as operating expenses in the ratemaking will continue to promote adequate funding for apprentice pilot training and provision of pilotage services in the Great Lakes.

## VI. Discussion of Rate Adjustments

In this final rule, based on the policy changes described in the previous section, we will implement new pilotage rates for 2022. We will conduct the 2022 ratemaking as an ''interim year,'' as was done in 2021, rather than a full ratemaking, as was conducted in 2018. Thus, the Coast Guard will adjust the compensation benchmark following the procedures for an interim ratemaking year in § 404.100(b), rather than the full ratemaking year procedures in § 404.100(a).

This section discusses the rate changes using the ratemaking steps provided in 46 CFR part 404, incorporating the changes discussed in section V of this preamble. We will detail all 10 steps of the ratemaking procedure for each of the 3 districts to show how we arrived at the new rates.

### District One

*A. Step 1: Recognize Previous Operating Expenses*

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2019 expenses and revenues, which are available in the docket for this rulemaking. For accounting purposes, the financial reports divide expenses into designated and undesignated areas. For costs accrued by the pilot associations generally, such as employee benefits, for example, the cost is divided between the designated and undesignated areas on a *pro rata* basis. The recognized operating expenses for District One are shown in table 3.

Adjustments have been made by the auditors and are explained in the auditor's reports, which are available in the docket for this rulemaking.

In the 2019 expenses used as the basis for this rulemaking, districts used the term ''applicant'' to describe applicant trainees and persons who are called apprentices (applicant pilots) under the new definition in this rulemaking. Therefore, when describing past expenses, we use the term ''applicant'' to match what was reported from 2019, which includes both applicant trainees and apprentice pilots. We use ''apprentice'' to distinguish the apprentice pilot wage benchmark and describe the impacts of the ratemaking going forward.

There was one Director's adjustment for District One, a deduction for $282,015, the amount of surcharge collected in 2019. As this amount exceeds the reported 2019 applicant salaries of $227,893, there is no further Director's adjustment. We continue to include applicant salaries as an allowable expense in the 2022 ratemaking, as it is based on 2019 operating expenses, when salaries were still an allowable expense. The apprentice salaries paid in the years 2019, 2020, and 2021 have not been reimbursed in the ratemaking as of publication of this rule. Applicant salaries (including applicant trainees and apprentice pilots) will continue to be an allowable operating expense through the 2024 ratemaking, which will use operating expenses from 2021, when the salaries for apprentice pilots were still authorized as operating expenses. Starting in the 2025 ratemaking, apprentice pilot salaries will no longer be included as a 2022 operating expense, because the apprentice pilot wage benchmark will have already been factored into the ratemaking Steps 3 and 4 in calculation of the 2022 rates. Starting in 2025, the applicant salaries' operating expenses for 2022 will consist of only applicant trainees (those who are not yet apprentice pilots).

TABLE 3—2019 RECOGNIZED EXPENSES FOR DISTRICT ONE

| Reported Operating Expenses for 2019 | Designated | Undesignated | Total |
|---|---|---|---|
| | St. Lawrence River | Lake Ontario | |
| *Applicant Pilot Salaries*: | | | |
| Salaries | $136,736 | $91,157 | $227,893 |
| Employee Benefits | 12,506 | 8,337 | 20,843 |
| Applicant Subsistence/Travel | 30,685 | 20,567 | 51,252 |
| Applicant Payroll Tax | 7,943 | 5,295 | 13,238 |
| Total Applicant Pilot Salaries | 187,870 | 125,356 | 313,226 |
| *Other Pilot Costs*: | | | |
| Subsistence/Travel—Pilots | 667,071 | 444,714 | 1,111,785 |
| License Insurance—Pilots | 43,162 | 28,774 | 71,936 |
| Payroll Taxes—Pilots | 184,884 | 123,256 | 308,140 |
| Other | 136,178 | 90,784 | 226,962 |
| Total other pilotage costs | 1,031,295 | 687,528 | 1,718,823 |
| *Pilot Boat and Dispatch Costs*: | | | |
| Pilot Boat Expense (Operating) | 360,276 | 240,184 | 600,460 |
| Certified Public Accountant (CPA) Deduction (D1–19–01), (D1–19–02) | 138,093 | 92,062 | 230,155 |
| Dispatch Expense | 82,722 | 55,148 | 137,870 |
| Payroll Taxes | 22,412 | 14,941 | 37,353 |
| Total Pilot and Dispatch Costs | 603,503 | 402,335 | 1,005,838 |
| *Administrative Expenses*: | | | |
| Legal—General Counsel | 34,558 | 23,038 | 57,596 |
| Legal—Shared Counsel (K&L Gates) | 55,318 | 36,879 | 92,197 |
| Legal—USCG Intervener Litigation | 28,765 | 19,177 | 47,942 |
| Office Rent | | | 0 |
| Insurance | 27,753 | 18,502 | 46,255 |
| Employee Benefits | 7,056 | 4,704 | 11,760 |
| Payroll Taxes | 5,236 | 3,491 | 8,727 |
| Other Taxes | 61,822 | 41,215 | 103,037 |
| Real Estate Taxes | 22,787 | 15,191 | 37,978 |
| Travel | 34,617 | 23,078 | 57,695 |
| Depreciation/Auto Leasing/Other | 107,584 | 71,723 | 179,307 |
| CPA Deduction (D1–19–01) | (52,291) | (34,861) | (87,152) |
| Interest | 24,339 | 16,226 | 40,565 |
| CPA Deduction (D1–19–01) | (24,339) | (16,226) | (40,565) |
| APA Dues | 25,838 | 17,225 | 43,063 |
| Dues and Subscriptions | 4,080 | 2,720 | 6,800 |
| Utilities | 19,221 | 12,814 | 32,035 |
| Salaries | 164,453 | 109,636 | 274,089 |
| Accounting/Professional Fees | 7,980 | 5,320 | 13,300 |
| Other | 21,908 | 14,605 | 36,513 |
| Total Administrative Expenses | 576,685 | 384,457 | 961,142 |
| Total Expenses (OpEx + Applicant + Pilot Boats + Admin + Capital) | 2,399,353 | 1,599,676 | 3,999,029 |
| Surcharge Collected | (169,209) | (112,806) | (282,015) |
| Total Directors Adjustments | (169,209) | (112,806) | (282,015) |
| Total Operating Expenses (OpEx + Adjustments) | 2,230,144 | 1,486,870 | 3,717,014 |

* All figures are rounded to the nearest dollar and may not sum.

*B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation*

Having identified the recognized 2019 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period. We calculate inflation using the Bureau of Labor Statistics (BLS) data from the Consumer Price Index (CPI) for the Midwest Region of the United States for the 2020 and 2021 inflation rates.[16] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2022 inflation modification.[17] Based on that information, the calculations for Step 2 are as shown in table 4.

[16] The 2020 and 2021 inflation rates are available at *https://beta.bls.gov/dataViewer/view/timeseries/CUUR0200SA0*. Specifically, the CPI is defined as ''All items in Midwest urban, all urban consumers, not seasonally adjusted (Series ID CUUR0200SA0) (CPI–U), All Items, 1982–4=100'' (downloaded March 2022). In the NPRM we used the PCE estimate of 4.3 percent for 2021, but now use the available interim CPI figure of 5.1 percent.

[17] For the 2022 inflation rate, we used the PCE median inflation value found in table 1 at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20211215.pdf* (Federal Reserve Board, Summary of Economic Projections, dated December 15, 2021, downloaded March 2022). This figure is updated to 2.2 percent from 2 percent in the NPRM.

TABLE 4—ADJUSTED OPERATING EXPENSES FOR DISTRICT ONE

| | District one | | |
|---|---|---|---|
| | Designated | Undesignated | Total |
| Total Operating Expenses (Step 1) | $2,230,144 | $1,486,870 | $3,717,014 |
| 2020 Inflation Modification (@1%) | 22,301 | 14,869 | 37,170 |
| 2021 Inflation Modification (@5.1%) | 114,875 | 76,589 | 191,464 |
| 2022 Inflation Modification (@2.2%) | 52,081 | 34,723 | 86,804 |
| Adjusted 2022 Operating Expenses | 2,419,401 | 1,613,051 | 4,032,452 |

* All figures are rounded to the nearest dollar and may not sum.

*C. Step 3: Estimate Number of Registered Pilots and Apprentice Pilots*

In accordance with the text in § 404.103, we estimate the number of fully registered pilots in each district. With rounding, the maximum number of pilots increases to 18 (17.25 rounding up to 18), with the additional pilot allocated to the maximum for the undesignated area of District One, for a maximum of 8 pilots in the undesignated area and a maximum of 10 pilots in the designated area. We determine the number of fully registered pilots based on data provided by the SLSPA. Using these numbers, we estimate that there will be 18 registered pilots in 2022 in District One, meeting the increased maximum proposed in the NPRM. We determine the number of apprentice pilots based on input from the district on anticipated retirements and staffing needs. Using these numbers, we estimate that there will be two apprentice pilots in 2022 in District One. Based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), and our changes to that staffing model, we assign a certain number of pilots to designated waters and a certain number to undesignated waters, as shown in table 5. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 5—AUTHORIZED PILOTS

| Item | District One |
|---|---|
| Maximum Number of Pilots (per § 401.220(a)) * | 18 |
| 2022 Authorized Pilots (total) | 18 |
| Pilots Assigned to Designated Areas | 10 |
| Pilots Assigned to Undesignated Areas | 8 |
| 2022 Apprentice Pilots | 2 |

* For a detailed calculation, refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

*D. Step 4: Determine Target Pilot Compensation Benchmark and Apprentice Pilot Wage Benchmark*

In this step, we determine the total target pilot compensation for each area. As we are issuing an ''interim'' ratemaking this year, we follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark for inflation. As stated in section V.A of the preamble, we are using a two-step process to adjust target pilot compensation for inflation. First, we adjust the 2021 target compensation benchmark of $378,925 by 3.1 percent for an adjusted value of $390,672. The adjustment accounts for the difference in actual fourth quarter (Q4) 2021 ECI inflation, which is 4.8 percent, and the 2021 PCE estimate of 1.7 percent.[18] [19] The second step accounts for projected inflation from 2021 to 2022, 2.2 percent.[20] Based on the projected 2022 inflation estimate, the target compensation benchmark for 2022 is $399,266 per pilot. The apprentice pilot wage benchmark is 36 percent of the target pilot compensation, or $143,736 ($399,266× 0.36).

TABLE 6—TARGET PILOT COMPENSATION

| | |
|---|---|
| 2021 Target Compensation from Final Rule | $378,925 |
| Difference between Actual 2021 ECI inflation (4.8%) and 2021 PCE Estimate (1.7%) | 3.10% |
| Adjusted 2021 Compensation | $390,672 |
| 2021 to 2022 Inflation Factor | 2.20% |
| 2022 Target Compensation | $399,266 |
| 2022 Apprentice Pilot Wage Benchmark | $143,736 |

* All figures are rounded to the nearest dollar and may not sum.

Next, we certify that the number of pilots estimated for 2022 is less than or equal to the number permitted under the changes to the staffing model in § 401.220(a). The changes to the staffing model suggest that the number of pilots needed is 18 pilots for District One, which is less than or equal to 18, the number of registered pilots provided by

[18] In the NPRM we used a figure of 3.5 percent, the most recently available at the time. Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Series ID: CIU201000520000A.

[19] CPI for All Urban Consumers, Series ID CUUR0200SA0.

[20] Table 1, 2022 PCE Inflation, *https://www.federalreserve.gov/monetarypolicy/fomcprojtabl20210922.htm.*

the pilot associations.[21] In accordance with the changes to § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of registered pilots for District One, as shown in table 7. We estimate that two apprentice pilots will be needed for District One in the 2022 season. The apprentice pilots will work under a fully registered pilot and receive training in both the designated and undesignated waters, but their target compensation will not differ depending on which area they are training in. The total wages of $287,472 for two apprentice pilots are allocated as 60 percent for the designated area ($172,483) and 40 percent for the undesignated area ($114,989), in accordance with the way operating expenses are allocated in Step 1, and later in Step 6.

TABLE 7—TARGET COMPENSATION FOR DISTRICT ONE

| | District One | | |
|---|---|---|---|
| | Designated | Undesignated | Total |
| Target Pilot Compensation | $399,266 | $399,266 | $399,266 |
| Number of Pilots | 10 | 8 | 18 |
| Total Target Pilot Compensation | $3,992,660 | $3,194,128 | $7,186,788 |
| Apprentice Pilot Wage Benchmark | $143,736 | $143,736 | $143,736 |
| Number of Apprentice Pilots | ..... | ..... | 2 |
| Total Apprentice Pilot Wages | $172,483 | $114,989 | $287,472 |

* All figures are rounded to the nearest dollar and may not sum.

*E. Step 5: Project Working Capital Fund*

Next, we calculate the working capital fund revenues needed for each area. First, we add the figures for projected operating expenses, total pilot compensation, and total apprentice pilot wage benchmark for each area. Next, we find the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 2.4767 percent.[22] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in table 8.

TABLE 8—WORKING CAPITAL FUND CALCULATION FOR DISTRICT ONE

| | District One | | |
|---|---|---|---|
| | Designated | Undesignated | Total |
| Adjusted Operating Expenses (Step 2) | $2,419,401 | $1,613,051 | $4,032,452 |
| Total Target Pilot Compensation (Step 4) | 3,992,660 | 3,194,128 | 7,186,788 |
| Total Apprentice Pilot Wage Benchmark (Step 4) | 172,483 | 114,989 | 287,472 |
| Total 2022 Expenses | 6,584,544 | 4,922,168 | 11,506,712 |
| Working Capital Fund (2.48%) | 163,077 | 121,906 | 284,983 |

* All figures are rounded to the nearest dollar and may not sum.

*F. Step 6: Project Needed Revenue*

In this step, we add all the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), total apprentice pilot wage benchmark (from Step 4), and the working capital fund contribution (from Step 5). We show these calculations in table 9.

TABLE 9—REVENUE NEEDED FOR DISTRICT ONE

| | District One | | |
|---|---|---|---|
| | Designated | Undesignated | Total |
| Adjusted Operating Expenses (Step 2) | $2,419,401 | $1,613,051 | $4,032,452 |
| Total Target Pilot Compensation (Step 4) | 3,992,660 | 3,194,128 | 7,186,788 |
| Total Apprentice Pilot Wage Benchmark (Step 4) | 172,483 | 114,989 | 287,472 |
| Working Capital Fund (Step 5) | 163,077 | 121,906 | 284,983 |
| Total Revenue Needed | 6,747,621 | 5,044,074 | 11,791,695 |

* All figures are rounded to the nearest dollar and may not sum.

[21] See table 6 of the Great Lakes Pilotage Rates—2017 Annual Review final rule, 82 FR 41466 at 41480 (August 31, 2017). The methodology of the staffing model is discussed at length in the final rule (see pages 41476–41480 for a detailed analysis of the calculations).

[22] Moody's Seasoned Aaa Corporate Bond Yield, average of 2020 monthly data. The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of ''Aaa'' is the highest bond rating assigned with the lowest credit risk. See *https://fred.stlouisfed.org/series/AAA*. (Downloaded March 26, 2021.)

*G. Step 7: Calculate Initial Base Rates*

Having determined the revenue needed for each area in the previous six steps, to develop an hourly rate we divide that number by the expected number of hours of traffic. Step 7 is a two-part process. In the first part, we calculate the 10-year average of traffic in District One, using the total time on task or pilot bridge hours. To calculate the time on task for each district, the Coast Guard uses billing data from the Great Lakes Pilotage Management System (GLPMS) and SeaPro.[23] We pull data from the system, filtering by district, year, job status (we only include closed jobs), and flagging code (we only include U.S. jobs). After downloading the data, we remove any overland transfers from the dataset, if necessary, and sum the total bridge hours, by area. We then subtract any non-billable delay hours from the total. Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in table 10.

TABLE 10—TIME ON TASK FOR DISTRICT ONE

[Hours]

| Year | District One | |
|---|---|---|
| | Designated | Undesignated |
| 2020 | 6265 | 7560 |
| 2019 | 8232 | 8405 |
| 2018 | 6943 | 8445 |
| 2017 | 7605 | 8679 |
| 2016 | 5434 | 6217 |
| 2015 | 5743 | 6667 |
| 2014 | 6810 | 6853 |
| 2013 | 5864 | 5529 |

TABLE 10—TIME ON TASK FOR DISTRICT ONE—Continued

[Hours]

| Year | District One | |
|---|---|---|
| | Designated | Undesignated |
| 2012 | 4771 | 5121 |
| 2011 | 5045 | 5377 |
| Average | 6271 | 6885 |

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. We present the calculations for each area in table 11.

TABLE 11—INITIAL RATE CALCULATIONS FOR DISTRICT ONE

| | Designated | Undesignated |
|---|---|---|
| Revenue Needed (Step 6) | $6,747,621 | $5,044,074 |
| Average Time on Task (Hours) | 6,271 | 6,885 |
| Initial Rate | $1,076 | $733 |

* All figures are rounded to the nearest dollar and may not sum.

*H. Step 8: Calculate Average Weighting Factors by Area*

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this database, we calculate the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in tables 12 and 13.

TABLE 12—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, DESIGNATED AREAS

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| Class 1 (2014) | 31 | 1 | 31 |
| Class 1 (2015) | 41 | 1 | 41 |
| Class 1 (2016) | 31 | 1 | 31 |
| Class 1 (2017) | 28 | 1 | 28 |
| Class 1 (2018) | 54 | 1 | 54 |
| Class 1 (2019) | 72 | 1 | 72 |
| Class 1 (2020) | 8 | 1 | 8 |
| Class 2 (2014) | 285 | 1.15 | 327.75 |
| Class 2 (2015) | 295 | 1.15 | 339.25 |
| Class 2 (2016) | 185 | 1.15 | 212.75 |
| Class 2 (2017) | 352 | 1.15 | 404.8 |
| Class 2 (2018) | 559 | 1.15 | 642.85 |
| Class 2 (2019) | 378 | 1.15 | 434.7 |
| Class 2 (2020) | 560 | 1.15 | 644 |
| Class 3 (2014) | 50 | 1.3 | 65 |
| Class 3 (2015) | 28 | 1.3 | 36.4 |
| Class 3 (2016) | 50 | 1.3 | 65 |
| Class 3 (2017) | 67 | 1.3 | 87.1 |
| Class 3 (2018) | 86 | 1.3 | 111.8 |
| Class 3 (2019) | 122 | 1.3 | 158.6 |
| Class 3 (2020) | 67 | 1.3 | 87.1 |
| Class 4 (2014) | 271 | 1.45 | 392.95 |
| Class 4 (2015) | 251 | 1.45 | 363.95 |
| Class 4 (2016) | 214 | 1.45 | 310.3 |
| Class 4 (2017) | 285 | 1.45 | 413.25 |
| Class 4 (2018) | 393 | 1.45 | 569.85 |

[23] SeaPro, used by all three pilot districts, is the approved dispatch and invoicing system that tracks pilot and vessel transits in place of the GLPMS.

TABLE 12—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, DESIGNATED AREAS—Continued

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| Class 4 (2019) | 730 | 1.45 | 1058.5 |
| Class 4 (2020) | 427 | 1.45 | 619.15 |
| Total | 5,920 | | 7,610 |
| Average weighting factor (weighted transits/number of transits) | | 1.29 | |

TABLE 13—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, UNDESIGNATED AREAS

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| Class 1 (2014) | 25 | 1 | 25 |
| Class 1 (2015) | 28 | 1 | 28 |
| Class 1 (2016) | 18 | 1 | 18 |
| Class 1 (2017) | 19 | 1 | 19 |
| Class 1 (2018) | 22 | 1 | 22 |
| Class 1 (2019) | 30 | 1 | 30 |
| Class 1 (2020) | 3 | 1 | 3 |
| Class 2 (2014) | 238 | 1.15 | 273.7 |
| Class 2 (2015) | 263 | 1.15 | 302.45 |
| Class 2 (2016) | 169 | 1.15 | 194.35 |
| Class 2 (2017) | 290 | 1.15 | 333.5 |
| Class 2 (2018) | 352 | 1.15 | 404.8 |
| Class 2 (2019) | 366 | 1.15 | 420.9 |
| Class 2 (2020) | 358 | 1.15 | 411.7 |
| Class 3 (2014) | 60 | 1.3 | 78 |
| Class 3 (2015) | 42 | 1.3 | 54.6 |
| Class 3 (2016) | 28 | 1.3 | 36.4 |
| Class 3 (2017) | 45 | 1.3 | 58.5 |
| Class 3 (2018) | 63 | 1.3 | 81.9 |
| Class 3 (2019) | 58 | 1.3 | 75.4 |
| Class 3 (2020) | 35 | 1.3 | 45.5 |
| Class 4 (2014) | 289 | 1.45 | 419.05 |
| Class 4 (2015) | 269 | 1.45 | 390.05 |
| Class 4 (2016) | 222 | 1.45 | 321.9 |
| Class 4 (2017) | 285 | 1.45 | 413.25 |
| Class 4 (2018) | 382 | 1.45 | 553.9 |
| Class 4 (2019) | 326 | 1.45 | 472.7 |
| Class 4 (2020) | 334 | 1.45 | 484.3 |
| Total | 4,619 | | 5,972 |
| Average weighting factor (weighted transits/number of transits) | | 1.29 | |

*I. Step 9: Calculate Revised Base Rates*

In this step, we revise the base rates so that, once the impact of the weighting factors is considered, the total cost of pilotage will be equal to the revenue needed. To do this, we divide the initial base rates calculated in Step 7 by the average weighting factors calculated in Step 8, as shown in table 14.

TABLE 14—REVISED BASE RATES FOR DISTRICT ONE

| Area | Initial rate (step 7) | Average weighting factor (step 8) | Revised rate (initial rate ÷ average weighting factor) |
|---|---|---|---|
| District One: Designated | $1,076 | 1.29 | $834 |
| District One: Undesignated | 733 | 1.29 | 568 |

* All figures are rounded to the nearest dollar.

*J. Step 10: Review and Finalize Rates*

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the rates incorporate appropriate compensation for pilots to handle heavy traffic periods, and whether there is a sufficient number of pilots to handle those heavy traffic periods. The Director also considers whether the rates will cover operating expenses and infrastructure costs,

including average traffic and weighting factions. Based on the financial information submitted by the pilots, the Director is not making any alterations to the rates in this step. We will modify § 401.405(a)(1) and (2) to reflect the final rates shown in table 15.

TABLE 15—FINAL RATES FOR DISTRICT ONE

| Area | Name | Final 2021 pilotage rate | 2022 Pilotage rate |
|---|---|---|---|
| District One: Designated | St. Lawrence River | $800 | $834 |
| District One: Undesignated | Lake Ontario | $498 | $568 |

* All figures are rounded to the nearest dollar.

**District Two**

*A. Step 1: Recognize Previous Operating Expenses*

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2019 expenses and revenues, which are available in the docket for this rulemaking. For accounting purposes, the financial reports divide expenses into designated (60 percent) and undesignated areas (40 percent). For costs accrued by the pilot associations generally, such as employee benefits, for example, the cost is divided between the designated and undesignated areas on a *pro rata* basis. The recognized operating expenses for District Two are shown in table 16.

Adjustments made by the auditors are explained in the auditors' reports, which are available in the docket for this rulemaking.

In the 2019 expenses used as the basis for this rulemaking, districts used the term ''applicant'' to describe applicant trainees and persons who are called apprentices (applicant pilots) under the new definition in this rulemaking. Therefore, when describing past expenses, we use the term ''applicant'' to match what was reported from 2019, which includes both applicant trainees and apprentice pilots. We use ''apprentice'' to distinguish the apprentice pilot wage benchmark and describe the impacts of the ratemaking going forward.

There are two Director's adjustments for District Two. The first deduction is $173,818, the amount of surcharge collected in 2019 to recoup expenses of one applicant pilot, which is greater than the allowable surcharge of $150,000 per applicant pilot. The second deduction of $287,836 reduces the allowable expenses for applicant pilot salaries to 36 percent of target pilot compensation. District Two reported $417,395 in expenses for the salary of a single applicant pilot, more than the salary of a fully registered pilot. Using the 36-percent target, the allowable applicant salary would have been $129,559, meaning the district paid an excess of $287,836 in applicant salaries ($417,395 − $129,559 = $287,836). We continue to include applicant salaries as an allowable expense in the 2022 ratemaking, as it is based on 2019 operating expenses, when salaries for both apprentices and applicant trainees were still an allowable expense. The apprentice salaries paid in the years 2019, 2020, and 2021 have not been reimbursed in the ratemaking as of publication of this rule. Applicant salaries (including applicant trainees and apprentice pilots) will continue to be an allowable operating expense through the 2024 ratemaking, which will use operating expenses from 2021, when the salaries for apprentice pilots were still authorized as operating expenses. Starting in the 2025 ratemaking, apprentice pilot salaries will no longer be included as a 2022 operating expense, because apprentice pilot wages will have already been factored into the ratemaking Steps 3 and 4 in calculation of the 2022 rates. Starting in 2025, the applicant salaries' operating expenses for 2022 will consist of only applicant trainees (those who are not yet apprentice pilots).

As discussed above, in a public comment on the NPRM for this rulemaking, the LPA commented that the expenses listed in the NPRM for license insurance and applicant health insurance were incorrect. An independent accounting firm reviewed the expenses LPA claimed as the correct figures and determined that the license insurance expense figure of $1,825 originally proposed in the NPRM was correct, and that the amount the LPA claimed was missing was accounted for in another line item. The independent accountant further determined that the applicant health insurance expense of $200 originally proposed was incorrect. In this final rule, Coast Guard corrects the applicant health insurance to a total of $31,764, with $12,706 allocated to the undesignated area and $19,058 allocated to the designated area.

TABLE 16—2019 RECOGNIZED EXPENSES FOR DISTRICT TWO

| Reported operating expenses for 2019 | District Two | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| | Lake Erie | Southeast Shoal to Port Huron | |
| *Total Other Pilotage Costs*: | | | |
| Subsistence/Travel—Pilots | $140,909 | $211,363 | $352,272 |
| Hotel/Lodging Cost | 49,800 | 74,700 | 124,500 |
| License Insurance | 730 | 1,095 | 1,825 |
| Payroll Taxes | 90,091 | 135,137 | 225,228 |
| Insurance | 95,470 | 143,206 | 238,676 |
| Training | 6,428 | 9,642 | 16,070 |
| Other | 221 | 331 | 552 |

TABLE 16—2019 RECOGNIZED EXPENSES FOR DISTRICT TWO—Continued

| Reported operating expenses for 2019 | District Two | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| | Lake Erie | Southeast Shoal to Port Huron | |
| Total Other Pilotage Costs | 383,649 | 575,474 | 959,123 |
| *Total Applicant Pilotage Costs*: | | | |
| Applicant Salaries | 166,958 | 250,437 | 417,395 |
| Applicant Health Insurance | 12,706 | 19,058 | 31,764 |
| Applicant Subsistence/Travel | 5,729 | 8,593 | 14,322 |
| Applicant Hotel/Lodging Cost | 3,984 | 5,976 | 9,960 |
| Applicant Payroll Tax | 5,717 | 8,576 | 14,293 |
| Total Applicant Costs | 195,094 | 292,640 | 487,734 |
| *Pilot Boat and Dispatch Costs*: | | | |
| Pilot Boat Cost | 210,948 | 316,422 | 527,370 |
| Employee Benefits | 96,959 | 145,438 | 242,397 |
| Payroll Taxes | 13,178 | 19,767 | 32,945 |
| Total Pilot Boat and Dispatch Costs | 321,085 | 481,627 | 802,712 |
| *Administrative Expense*: | | | |
| Legal—General Counsel | 4,430 | 6,645 | 11,075 |
| Legal—Shared Counsel (K&L Gates) | 22,696 | 34,045 | 56,741 |
| Office Rent | 27,627 | 41,440 | 69,067 |
| Insurance | 11,085 | 16,627 | 27,712 |
| Employee Benefits | 34,093 | 51,139 | 85,232 |
| Payroll Taxes | 5,259 | 7,888 | 13,147 |
| Other Taxes | 36,484 | 54,726 | 91,210 |
| Real Estate Taxes | 7,905 | 11,858 | 19,763 |
| Depreciation/Auto Lease/Other | 12,248 | 18,371 | 30,619 |
| Interest | 320 | 481 | 801 |
| APA Dues | 14,698 | 22,048 | 36,746 |
| Dues and Subscriptions | 1,912 | 2,868 | 4,780 |
| Utilities | 18,910 | 28,366 | 47,276 |
| Salaries—Admin Employees | 49,924 | 74,885 | 124,809 |
| Accounting | 13,452 | 20,178 | 33,630 |
| Other | 18,322 | 27,483 | 45,805 |
| Total Administrative Expenses | 279,365 | 419,048 | 698,413 |
| Total OpEx (Pilot Costs + Applicant Cost + Pilot Boats + Admin) | 1,179,193 | 1,768,789 | 2,947,982 |
| *Directors Adjustments – Applicant Surcharge Collected* | (69,527) | (104,291) | (173,818) |
| *Directors Adjustments – Excess Applicant Salary Paid* | (115,134) | (172,701) | (287,836) |
| Total Director's Adjustments | (184,661) | (276,992) | (461,654) |
| Total Operating Expenses (OpEx + Adjustments) | 994,531 | 1,491,797 | 2,486,328 |

* All figures are rounded to the nearest dollar and may not sum.

*B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation*

Having identified the recognized 2019 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period.

We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2020 and 2021 inflation rates.[24] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2022 inflation modification.[25] Based on that information, the calculations for Step 2 are as shown in table 17.

[24] The 2020 and 2021 inflation rates are available at *https://beta.bls.gov/dataViewer/view/timeseries/CUUR0200SA0*. Specifically, the CPI is defined as ''All items in Midwest urban, all urban consumers, not seasonally adjusted (Series ID CUUR0200SA0)(CPI–U), All Items, 1982–4=100'' (downloaded March 2022). In the NPRM we used the PCE estimate of 4.3 percent for 2021, but now use the available interim CPI figure of 5.1 percent.

[25] For the 2022 inflation rates, we used the PCE median inflation value found in table 1 at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20211215.pdf* (Federal Reserve Board, Summary of Economic Projections, dated December 15, 2021, downloaded March 2022). This figure is updated to 2.2 percent from 2 percent in the NPRM.

TABLE 17—ADJUSTED OPERATING EXPENSES FOR DISTRICT TWO

| | District Two | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| Total Operating Expenses (Step 1) | $994,531 | $1,491,797 | $2,486,328 |
| 2020 Inflation Modification (@1%) | 9,945 | 14,918 | 24,863 |
| 2021 Inflation Modification (@5.1%) | 51,228 | 76,842 | 128,070 |
| 2022 Inflation Modification (@2.2%) | 23,225 | 34,838 | 58,063 |
| Adjusted 2022 Operating Expenses | $1,078,929 | $1,618,395 | $2,697,324 |

* All figures are rounded to the nearest dollar and may not sum.

*C. Step 3: Estimate Number of Registered Pilots and Apprentice Pilots*

In accordance with the text in § 404.103, we estimate the number of registered pilots in each district. We determine the number of registered pilots based on data provided by the LPA. With rounding, the maximum number of pilots for District Two increases to 16 pilots (15.41 rounding up to 16), with the additional pilot allocated to the maximum for the undesignated area of District Two, resulting in a maximum of 7 pilots for the designated area and a maximum of 9 pilots for the undesignated area. In the NPRM, the Coast Guard estimated that District Two would fill the new maximum of 16 registered pilots, but has since been made aware that a temporary pilot performed substantially fewer trips than the average number of assignments per pilot projected in the staffing model, and that an apprentice pilot previously projected to join as a registered pilot will not do so, as noted in section IV. F. of the discussion of public comments and changes. Therefore, in this final rule, we estimate that there will be 14 registered pilots in 2022 in District Two. We determine the number of apprentice pilots based on input from the district on anticipated retirements and staffing needs. Using these numbers, we estimate that there will be two apprentice pilots in 2022 in District Two. Furthermore, based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), and our changes to that staffing model, we assign a certain number of pilots to designated waters and a certain number to undesignated waters, as shown in table 18. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 18—AUTHORIZED PILOTS

| Item | District Two |
|---|---|
| Maximum Number of Pilots (per § 401.220(a)) * | 16 |
| 2022 Authorized Pilots (total) | 14 |
| Pilots Assigned to Designated Areas | 6 |
| Pilots Assigned to Undesignated Areas | 8 |
| 2022 Apprentice Pilots | 2 |

* For a detailed calculation refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

*D. Step 4: Determine Target Pilot Compensation Benchmark and Apprentice Pilot Wage Benchmark*

In this step, we determine the total pilot compensation for each area. As we are issuing an ''interim'' ratemaking this year, we follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. As stated in section V.A of the preamble, we using a two-step process to adjust target pilot compensation for inflation. First, we adjust the 2021 target compensation benchmark of $378,925 by multiplying by 3.1 percent for an adjusted value of $390,672. The adjustment accounts for the difference in actual Q4 2021 ECI inflation, 4.8 percent, and the 2020 PCE estimate of 1.7 percent.[26] [27] The second step accounts for projected inflation from 2021 to 2022, which is 2.2 percent.[28] The compensation benchmark for 2022 is $399,266 per pilot, as calculated in table 6. The apprentice pilot wage benchmark is 36 percent of the target pilot compensation, or $143,736 ($399,266 × 0.36).

Next, we certify that the number of pilots estimated for 2022 is less than or equal to the number permitted under the changes to the staffing model in § 401.220(a). The changes to the staffing model suggest that the number of pilots needed is 14 pilots for District Two, which is less than or equal to 16, the maximum number of registered pilots provided by staffing model.[29] We estimate that two apprentice pilots will be needed for District Two in the 2022 season. The apprentice pilots will work under a fully registered pilot and receive training in both the designated and undesignated waters, but their target compensation will not differ depending on which area they are training in. The $287,472 in total wages for two apprentice pilots is allocated 60 percent for the designated area ($172,483) and 40 percent for the undesignated area ($114,989), in accordance with the way operating expenses are allocated in Step 1 and later in Step 6.

Thus, in accordance with § 404.104(c), we use the revised target

[26] Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Series ID: CIU2010000520000A.

[27] CPI for All Urban Consumers, Series ID CUUR0200SA0.

[28] For the 2022 inflation rates, we used the PCE median inflation value found in table 1 at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20211215.pdf* (Federal Reserve Bank, Summary of Economic Projections, dated December 15, 2021, downloaded March 2022). This figure is updated to 2.2 percent from 2 percent in the NPRM.

[29] See table 6 of the Great Lakes Pilotage Rates—2017 Annual Review final rule, 82 FR 41466 at 41480 (August 31, 2017). The methodology of the staffing model is discussed at length in the final rule (see pages 41476–41480 for a detailed analysis of the calculations).

individual compensation level to derive the total pilot compensation, by multiplying the individual target compensation by the estimated number of registered pilots for District Two, as shown in table 19.

TABLE 19—TARGET COMPENSATION FOR DISTRICT TWO

| | District Two | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| Target Pilot Compensation | $399,266 | $399,266 | $399,266 |
| Number of Pilots | 8 | 6 | 14 |
| Total Target Pilot Compensation | $3,194,128 | $2,395,596 | $5,589,724 |
| Apprentice Pilot Wage Benchmark | $143,736 | $143,736 | $143,736 |
| Number of Apprentice Pilots | ..... | ..... | 2 |
| Total Apprentice Pilot Wage Benchmark | $172,483 | $114,989 | $287,472 |

* All figures are rounded to the nearest dollar and may not sum.

*E. Step 5: Project Working Capital Fund*

Next, we calculate the working capital fund revenues needed for each area. First, we add the figures for projected operating expenses, total pilot compensation, and total apprentice pilot wage benchmarks for each area. Next, we find the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 2.4767 percent.[30] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in table 20.

TABLE 20—WORKING CAPITAL FUND CALCULATION FOR DISTRICT TWO

| | District Two | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| Adjusted Operating Expenses (Step 2) | $1,078,929 | $1,618,395 | $2,697,324 |
| Total Target Pilot Compensation (Step 4) | 3,194,128 | 2,395,596 | 5,589,724 |
| Total Apprentice Pilot Wage Benchmark (Step 4) | 172,483 | 114,989 | 287,472 |
| Total 2022 Expenses | 4,445,540 | 4,128,980 | 8,574,520 |
| Working Capital Fund (2.48%) | 110,101 | 102,261 | 212,362 |

* All figures are rounded to the nearest dollar and may not sum.

*F. Step 6: Project Needed Revenue*

In this step, we add all the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), total apprentice pilot wage benchmarks, and the working capital fund contribution (from Step 5). We show these calculations in table 21.

TABLE 21—REVENUE NEEDED FOR DISTRICT TWO

| | District Two | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| Adjusted Operating Expenses (Step 2) | $1,078,929 | $1,618,395 | $2,697,324 |
| Total Target Pilot Compensation (Step 4) | 3,194,128 | 2,395,596 | 5,589,724 |
| Total Apprentice Pilot Wage Benchmark (Step 4) | 172,483 | 114,989 | 287,472 |
| Working Capital Fund (Step 5) | 110,101 | 102,261 | 212,362 |
| Total Revenue Needed | 4,555,641 | 4,231,241 | 8,786,882 |

* All figures are rounded to the nearest dollar and may not sum.

*G. Step 7: Calculate Initial Base Rates*

Having determined the revenue needed for each area in the previous six steps, to develop an hourly rate we divide that number by the expected number of hours of traffic. Step 7 is a two-part process. In the first part, we calculate the 10-year average of traffic in District Two, using the total time on task or pilot bridge hours. To calculate the time on task for each district, the Coast Guard uses billing data from the GLPMS and SeaPro. We pull the data from the system, filtering by district, year, job status (we only include closed jobs), and flagging code (we only include U.S. jobs). After downloading the data, we remove any overland

[30] Moody's Seasoned Aaa Corporate Bond Yield, average of 2020 monthly data. The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of ''Aaa'' is the highest bond rating assigned with the lowest credit risk. See *https://fred.stlouisfed.org/series/AAA.* (March 26, 2021)

transfers from the dataset, if necessary, and sum the total bridge hours, by area. We then subtract any non-billable delay hours from the total. Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in table 22.

TABLE 22—TIME ON TASK FOR DISTRICT TWO

[Hours]

| Year | District Two | |
|---|---|---|
| | Undesignated | Designated |
| 2020 | 6232 | 8401 |
| 2019 | 6512 | 7715 |
| 2018 | 6150 | 6655 |
| 2017 | 5139 | 6074 |
| 2016 | 6425 | 5615 |
| 2015 | 6535 | 5967 |
| 2014 | 7856 | 7001 |
| 2013 | 4603 | 4750 |
| 2012 | 3848 | 3922 |
| 2011 | 3708 | 3680 |
| Average | 5701 | 5978 |

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. The calculations for each area are set forth in table 23.

TABLE 23—INITIAL RATE CALCULATIONS FOR DISTRICT TWO

| Item | Undesignated | Designated |
|---|---|---|
| Revenue Needed (Step 6) | $4,555,641 | $4,231,241 |
| Average Time on Task (Hours) | 5,701 | 5,978 |
| Initial Rate | $799 | $708 |

* All figures are rounded to the nearest dollar and may not sum.

*H. Step 8: Calculate Average Weighting Factors by Area*

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this database, we calculate the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in tables 24 and 25.

TABLE 24—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, UNDESIGNATED AREAS

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| Class 1 (2014) | 31 | 1 | 31 |
| Class 1 (2015) | 35 | 1 | 35 |
| Class 1 (2016) | 32 | 1 | 32 |
| Class 1 (2017) | 21 | 1 | 21 |
| Class 1 (2018) | 37 | 1 | 37 |
| Class 1 (2019) | 54 | 1 | 54 |
| Class 1 (2020) | 1 | 1 | 1 |
| Class 2 (2014) | 356 | 1.15 | 409.4 |
| Class 2 (2015) | 354 | 1.15 | 407.1 |
| Class 2 (2016) | 380 | 1.15 | 437 |
| Class 2 (2017) | 222 | 1.15 | 255.3 |
| Class 2 (2018) | 123 | 1.15 | 141.45 |
| Class 2 (2019) | 127 | 1.15 | 146.05 |
| Class 2 (2020) | 165 | 1.15 | 189.75 |
| Class 3 (2014) | 20 | 1.3 | 26 |
| Class 3 (2015) | 0 | 1.3 | 0 |
| Class 3 (2016) | 9 | 1.3 | 11.7 |
| Class 3 (2017) | 12 | 1.3 | 15.6 |
| Class 3 (2018) | 3 | 1.3 | 3.9 |
| Class 3 (2019) | 1 | 1.3 | 1.3 |
| Class 3 (2020) | 1 | 1.3 | 1.3 |
| Class 4 (2014) | 636 | 1.45 | 922.2 |
| Class 4 (2015) | 560 | 1.45 | 812 |
| Class 4 (2016) | 468 | 1.45 | 678.6 |

TABLE 24—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, UNDESIGNATED AREAS—Continued

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| Class 4 (2017) | 319 | 1.45 | 462.55 |
| Class 4 (2018) | 196 | 1.45 | 284.20 |
| Class 4 (2019) | 210 | 1.45 | 304.50 |
| Class 4 (2020) | 201 | 1.45 | 291.45 |
| Total | 4,574 | | 6,012 |
| Average weighting factor (weighted transits/number of transits) | | 1.31 | |

TABLE 25—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, DESIGNATED AREAS

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| Class 1 (2014) | 20 | 1 | 20 |
| Class 1 (2015) | 15 | 1 | 15 |
| Class 1 (2016) | 28 | 1 | 28 |
| Class 1 (2017) | 15 | 1 | 15 |
| Class 1 (2018) | 42 | 1 | 42 |
| Class 1 (2019) | 48 | 1 | 48 |
| Class 1 (2020) | 7 | 1 | 7 |
| Class 2 (2014) | 237 | 1.15 | 272.55 |
| Class 2 (2015) | 217 | 1.15 | 249.55 |
| Class 2 (2016) | 224 | 1.15 | 257.6 |
| Class 2 (2017) | 127 | 1.15 | 146.05 |
| Class 2 (2018) | 153 | 1.15 | 175.95 |
| Class 2 (2019) | 281 | 1.15 | 323.15 |
| Class 2 (2020) | 342 | 1.15 | 393.3 |
| Class 3 (2014) | 8 | 1.3 | 10.4 |
| Class 3 (2015) | 8 | 1.3 | 10.4 |
| Class 3 (2016) | 4 | 1.3 | 5.2 |
| Class 3 (2017) | 4 | 1.3 | 5.2 |
| Class 3 (2018) | 14 | 1.3 | 18.2 |
| Class 3 (2019) | 1 | 1.3 | 1.3 |
| Class 3 (2020) | 5 | 1.3 | 6.5 |
| Class 4 (2014) | 359 | 1.45 | 520.55 |
| Class 4 (2015) | 340 | 1.45 | 493 |
| Class 4 (2016) | 281 | 1.45 | 407.45 |
| Class 4 (2017) | 185 | 1.45 | 268.25 |
| Class 4 (2018) | 379 | 1.45 | 549.55 |
| Class 4 (2019) | 403 | 1.45 | 584.35 |
| Class 4 (2020) | 405 | 1.45 | 587.25 |
| Total | 4,152 | | 5,461 |
| Average weighting factor (weighted transits/number of transits) | | 1.32 | |

*I. Step 9: Calculate Revised Base Rates*

In this step, we revise the base rates so that, once the impact of the weighting factors is considered, the total cost of pilotage will be equal to the revenue needed. To do this, we divide the initial base rates calculated in Step 7 by the average weighting factors calculated in Step 8, as shown in table 26.

TABLE 26—REVISED BASE RATES FOR DISTRICT TWO

| Area | Initial rate (Step 7) | Average weighting factor (Step 8) | Revised rate (initial rate ÷ average weighting factor) |
|---|---|---|---|
| District Two: Designated | $708 | 1.32 | $536 |
| District Two: Undesignated | 799 | 1.31 | 610 |

* All figures are rounded to the nearest dollar.

*J. Step 10: Review and Finalize Rates*

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the rates incorporate appropriate compensation for pilots to handle heavy traffic periods, and whether there is a sufficient number of pilots to handle those heavy traffic periods. The Director also considers whether the rates will cover operating expenses and infrastructure costs, and takes average traffic and weighting factors into consideration. Based on this information, the Director is not making any alterations to the rates in this step. The 2022 rate for the designated area of District Two is higher than the 2021 final rate, despite the increased traffic shown in Step 7, because of increased inflation. We modify § 401.405(a)(3) and (4) to reflect the final rates shown in table 27.

TABLE 27—FINAL RATES FOR DISTRICT TWO

| Area | Name | Final 2021 pilotage rate | 2022 Pilotage rate |
|---|---|---|---|
| District Two: Designated | Navigable waters from Southeast Shoal to Port Huron, MI | $580 | $536 |
| District Two: Undesignated | Lake Erie | 566 | 610 |

* All figures are rounded to the nearest dollar.

**District Three**

*A. Step 1: Recognize Previous Operating Expenses*

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2019 expenses and revenues, which are available in the docket for this rulemaking. For accounting purposes, the financial reports divide expenses into a designated area (21 percent) and two undesignated areas (52 and 27 percent). For costs accrued by the pilot associations generally, such as employee benefits, for example, the cost is divided between the designated and undesignated areas on a *pro rata* basis. The recognized operating expenses for District Three are shown in table 28.

Adjustments made by the auditors are explained in the auditors' reports, which are available in the docket for this rulemaking.

In the 2019 expenses used as the basis for this rulemaking, districts used the term ''applicant'' to describe applicant trainees and persons who are called apprentices (applicant pilots) under the new definition in this rulemaking. Therefore, when describing past expenses, we use the term ''applicant'' to match what was reported from 2019, which includes both applicant trainees and apprentice pilots. We use ''apprentice'' to distinguish the apprentice pilot wage benchmark and describe the impacts of the ratemaking going forward.

There are two Director's adjustments for District Three. The first deduction is $746,802, the amount of surcharge collected in 2019 to recoup expenses of five applicant pilots. In the NPRM, the Coast Guard proposed a second deduction of $1,921 to reduce the allowable expenses for applicant pilots to 36 percent of target pilot compensation. In this final rule, Coast Guard removes this deduction because we confirmed that the fifth apprentice reported was approved by the Director, meaning that the average per-apprentice compensation was below the 36-percent benchmark. District Three reported $520,158 in expenses for the salary of five applicant pilots. Using the 36-percent target, the allowable applicant salary would have been $129,559 per applicant, for a total of $647,797 for five applicant pilots, meaning the district paid an average of $104,032 per applicant, which is below the $129,559 target. Applicant salaries (including applicant trainees and apprentice pilots) will continue to be an allowable operating expense through the 2024 ratemaking, which will use operating expenses from 2021, when the wages for apprentice pilots were still authorized as operating expenses. Starting in the 2025 ratemaking, apprentice pilot salaries will no longer be included as a 2022 operating expense, because apprentice pilot wage benchmark will have already been factored into the ratemaking Steps 3 and 4 in calculation of the 2022 rates. Starting in 2025, the applicant salaries operating expenses for 2022 will consist of only applicant trainees (those who are not apprentice pilots).

TABLE 28—2019 RECOGNIZED EXPENSES FOR DISTRICT THREE

| Reported Operating Expenses for 2019 | District Three | | | |
|---|---|---|---|---|
| | Undesignated | Designated | Undesignated | Total |
| | Lakes Huron and Michigan | St. Marys River | Lake Superior | |
| *Other Pilotage Costs:* | | | | |
| Pilot Subsistence/Travel | $274,911 | $114,586 | $144,207 | $533,704 |
| Hotel/Lodging Cost | 118,533 | 49,406 | 62,178 | 230,117 |
| License Insurance—Pilots | 16,171 | 6,740 | 8,483 | 31,394 |
| Payroll Tax (D3–19–01) | 146,545 | 61,082 | 76,871 | 284,498 |
| Pilot Training | 40,017 | 16,680 | 20,991 | 77,688 |
| Other | 12,551 | 5,232 | 6,584 | 24,367 |
| Total Other Pilotage Costs | 608,728 | 253,726 | 319,314 | 1,181,768 |
| *Applicant Costs:* | | | | |
| Applicant Salaries | 267,933 | 111,678 | 140,547 | 520,158 |
| Applicant Benefits | 77,627 | 32,356 | 40,720 | 150,703 |

TABLE 28—2019 RECOGNIZED EXPENSES FOR DISTRICT THREE—Continued

| Reported Operating Expenses for 2019 | District Three | | | |
|---|---|---|---|---|
| | Undesignated | Designated | Undesignated | Total |
| | Lakes Huron and Michigan | St. Marys River | Lake Superior | |
| Applicant Payroll Tax | 21,713 | 9,050 | 11,390 | 42,153 |
| Total Applicant Costs | 367,273 | 153,084 | 192,657 | 713,014 |
| *Pilot Boat and Dispatch Costs:* | | | | |
| Pilot Boat Costs | 415,908 | 173,356 | 218,168 | 807,432 |
| Dispatch Costs | 126,807 | 52,855 | 66,518 | 246,180 |
| Employee Benefits | 7,550 | 3,147 | 3,960 | 14,657 |
| Payroll Taxes | 10,534 | 4,391 | 5,526 | 20,451 |
| Total Pilot Boat and Dispatch Costs | 560,799 | 233,749 | 294,172 | 1,088,720 |
| *Administrative Costs:* | | | | |
| Legal—General Counsel | 9,453 | 3,940 | 4,958 | 18,351 |
| Legal—Shared Counsel (K&L Gates) | 26,858 | 11,195 | 14,089 | 52,142 |
| Legal—USCG Intervener Litigation | 19,050 | 7,940 | 9,993 | 36,983 |
| Office Rent | 3,369 | 1,404 | 1,767 | 6,540 |
| Insurance | 27,622 | 11,513 | 14,489 | 53,624 |
| Employee Benefits | 77,435 | 32,276 | 40,619 | 150,330 |
| Payroll Tax | 18,984 | 7,913 | 9,958 | 36,855 |
| Other Taxes | 480 | 200 | 252 | 932 |
| Depreciation/Auto Leasing/Other | 51,287 | 21,377 | 26,903 | 99,567 |
| Interest | 5,754 | 2,398 | 3,018 | 11,170 |
| APA Dues | 24,311 | 10,133 | 12,752 | 47,196 |
| Dues and Subscriptions | 4,198 | 1,750 | 2,202 | 8,150 |
| Utilities | 38,585 | 16,083 | 20,240 | 74,908 |
| Salaries | 75,200 | 31,344 | 39,447 | 145,991 |
| Accounting/Professional Fees | 19,865 | 8,280 | 10,420 | 38,565 |
| Other Expenses | 23,945 | 9,981 | 12,561 | 46,487 |
| CPA Deduction (D3–18–01) | (4,117) | (1,716) | (2,160) | (7,993) |
| Total Administrative Expenses | 422,279 | 176,011 | 221,508 | 819,798 |
| Total Operating Expenses (Other Costs + Applicant Cost + Pilot Boats + Admin) | 1,959,079 | 816,570 | 1,027,651 | 3,803,300 |
| *Directors Adjustments – Applicant Surcharge Collected* | (384,678) | (160,339) | (201,786) | (746,802) |
| Total Directors Adjustments | (384,678) | (160,339) | (201,786) | (746,802) |
| Total Operating Expenses (OpEx + Adjustments) | 1,574,401 | 656,231 | 825,865 | 3,056,498 |

* All figures are rounded to the nearest dollar and may not sum.

*B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation*

Having identified the recognized 2019 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period.

We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2020 and 2021 inflation rates.[31] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2022 inflation modification.[32] Based on that information, the calculations for Step 2 are as shown in table 29.

TABLE 29—ADJUSTED OPERATING EXPENSES FOR DISTRICT THREE

| | District Three | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| Total Operating Expenses (Step 1) | $2,400,266 | $656,231 | $3,056,498 |
| 2020 Inflation Modification (@1%) | 24,003 | 6,562 | 30,565 |
| 2021 Inflation Modification (@5.1%) | 123,638 | 33,802 | 157,440 |
| 2022 Inflation Modification (@2.2%) | 56,054 | 15,325 | 71,379 |
| Adjusted 2022 Operating Expenses | 2,603,961 | 711,920 | 3,315,882 |

* All figures are rounded to the nearest dollar and may not sum.

[31] The 2020 and 2021 inflation rates are available at *https://beta.bls.gov/dataViewer/view/timeseries/CUUR0200SA0*. Specifically, the CPI is defined as ''All items in Midwest urban, all urban consumers, not seasonally adjusted (Series ID CUUR0200SA0)(CPI–U), All Items, 1982–4=100'' (downloaded March 2022). In the NPRM we used the PCE estimate of 4.3 percent for 2021, but now use the available interim CPI figure of 5.1 percent.

[32] For the 2022 inflation rates, we used the PCE median inflation value found in table 1 at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20211215.pdf* (Federal Reserve Bank, Summary of Economic Projections, dated December 16, 2021, downloaded March 2022). This figure is updated to 2.2 percent from 2 percent in the NPRM.

*C. Step 3: Estimate Number of Registered Pilots and Apprentice Pilots*

In accordance with the text in § 404.104(c), we estimate the number of registered pilots in each district. Rounding in the staffing model does not increase the maximum number of pilots for District Three because the total pilots needed, 21.55, already rounds up to 22. We determine the number of registered pilots based on data provided by the WGLPA. In the NPRM, we estimated that there would be 22 registered pilots in 2022 in District Three. However, during the GLPAC meeting on September 1, 2021, WGLPA reported that they would have three retirements before the 2022 season. Therefore, we now estimate that there will be 19 registered pilots in 2022 in District Three, with 4 pilots assigned to designated areas and 15 pilots assigned to undesignated areas. We determine the number of apprentice pilots based on input from the district on anticipated retirements and staffing needs. Using these numbers, we estimate that there will be five apprentice pilots in 2022 in District Three. Furthermore, based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), and our changes to that staffing model, we assign a certain number of pilots to designated waters and a certain number to undesignated waters, as shown in table 30. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 30—AUTHORIZED PILOTS

| Item | District three |
|---|---|
| Maximum Number of Pilots (per § 401.220(a)) * | 22 |
| 2022 Authorized Pilots (total) | 19 |
| Pilots Assigned to Designated Areas | 4 |
| Pilots Assigned to Undesignated Areas | 15 |
| 2022 Apprentice Pilots | 5 |

* For a detailed calculation, refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

*D. Step 4: Determine Target Pilot Compensation Benchmark and Apprentice Pilot Wage Benchmark*

In this step, we determine the total pilot compensation for each area. As we are issuing an ''interim'' ratemaking this year, we follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. First, we adjust the 2021 target compensation benchmark of $378,925 by 3.1 percent for an adjusted value of $390,672. The adjustment accounts for the difference in actual Q4 2021 ECI inflation, 4.8 percent, and the 2020 PCE estimate of 1.7 percent.[33] [34] The second step accounts for projected inflation from 2021 to 2022, 2.2 percent.[35] Based on the projected 2022 inflation estimate, the compensation benchmark for 2022 is $399,266 per pilot as shown in table 6. The apprentice pilot wage benchmark is 36 percent of the target pilot compensation, or $143,736 ($399,266 × 0.36).

Next, we certify that the number of pilots estimated for 2022 is less than or equal to the number permitted under the changes to the staffing model in § 401.220(a). The changes to the staffing model suggest that the number of pilots needed is 19 pilots for District Three, which is less than or equal to 22, the number of registered pilots provided by the pilot associations.[36] We estimate that five apprentice pilots will be needed for District Three in the 2022 season. The apprentice pilots will work under a fully registered pilot and receive training in both the designated and undesignated waters, but their target compensation will not differ depending on which area they are training in. The total wages of $718,680 for five apprentice pilots are allocated at 21 percent for the designated area ($150,923) and 79 percent (52 percent + 27 percent) for the undesignated area ($567,756), in accordance with the way operating expenses are allocated in Step 1 and later in Step 6.

Thus, in accordance with § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of registered pilots for District Three, as shown in table 31.

TABLE 31—TARGET COMPENSATION FOR DISTRICT THREE

| | District Three | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| Target Pilot Compensation | $399,266 | $399,266 | $399,266 |
| Number of Pilots | 15 | 4 | 19 |
| Total Target Pilot Compensation | $5,988,990 | $1,597,064 | $7,586,054 |
| Apprentice Pilot Wage Benchmark | $143,736 | $143,736 | $143,736 |
| Number of Apprentice Pilots | ..... | ..... | 5 |
| Total Apprentice Pilot Wage Benchmark | $567,756 | $150,923 | $718,678.80 |

* All figures are rounded to the nearest dollar and may not sum.

[33] Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Series ID: CIU2010000520000A

[34] CPI for All Urban Consumers, Series ID CUUR0200SA0.

[35] For the 2022 inflation rates, we used the PCE median inflation value found in table 1 at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20211215.pdf* (Federal Reserve Bank, Summary of Economic Projections, dated December 16, 2021, downloaded March 2022). This figure is updated to 2.2 percent from 2 percent in the NPRM.

[36] See Table 6 of the Great Lakes Pilotage Rates—2017 Annual Review final rule, 82 FR 41466 at 41480 (August 31, 2017). The methodology of the staffing model is discussed at length in the final rule (see pages 41476–41480 for a detailed analysis of the calculations).

*E. Step 5: Project Working Capital Fund*

Next, we calculate the working capital fund revenues needed for each area. First, we add the figures for projected operating expenses, total pilot compensation, and total apprentice pilot wage benchmarks for each area. Next, we find the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 2.4767 percent.[37] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in table 32.

TABLE 32—WORKING CAPITAL FUND CALCULATION FOR DISTRICT THREE

| | District Three | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| Adjusted Operating Expenses (Step 2) | $2,603,961 | $711,920 | $3,315,882 |
| Total Target Pilot Compensation (Step 4) | 5,988,990 | 1,597,064 | 7,586,054 |
| Total Apprentice Pilot Wage Benchmark (Step 4) | 567,756 | 150,923 | 718,679 |
| Total 2022 Expenses | 9,160,708 | 2,459,907 | 11,620,614 |
| Working Capital Fund (2.48%) | 226,880 | 60,924 | 287,804 |

* All figures are rounded to the nearest dollar and may not sum.

*F. Step 6: Project Needed Revenue*

In this step, we add all the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), and the working capital fund contribution (from Step 5). The calculations are shown in table 33.

TABLE 33—REVENUE NEEDED FOR DISTRICT THREE

| | District Three | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| Adjusted Operating Expenses (Step 2) | $2,603,961 | $711,920 | $3,315,882 |
| Total Target Pilot Compensation (Step 4) | 5,988,990 | 1,597,064 | 7,586,054 |
| Total Apprentice Pilot Wage Benchmark (Step 4) | 567,756 | 150,923 | 718,679 |
| Working Capital Fund (Step 5) | 226,880 | 60,924 | 287,804 |
| Total Revenue Needed | 9,387,588 | 2,520,831 | 11,908,418 |

* All figures are rounded to the nearest dollar and may not sum.

*G. Step 7: Calculate Initial Base Rates*

Having determined the revenue needed for each area in the previous six steps, to develop an hourly rate we divide that number by the expected number of hours of traffic. Step 7 is a two-part process. In the first part, we calculate the 10-year average of traffic in District Three, using the total time on task or pilot bridge hours. To calculate the time on task for each district, the Coast Guard uses billing data from the GLPMS and SeaPro. We pull the data from the system, filtering by district, year, job status (we only include closed jobs), and flagging code (we only include U.S. jobs). After downloading the data, we remove any overland transfers from the dataset, if necessary, and sum the total bridge hours, by area. We then subtract any non-billable delay hours from the total. Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in table 34.

TABLE 34—TIME ON TASK FOR DISTRICT THREE

[Hours]

| Year | District Three | |
|---|---|---|
| | Undesignated | Designated |
| 2020 | 24,178 | 3,682 |
| 2019 | 24,851 | 3,395 |
| 2018 | 19,967 | 3,455 |
| 2017 | 20,955 | 2,997 |
| 2016 | 23,421 | 2,769 |
| 2015 | 22,824 | 2,696 |
| 2014 | 25,833 | 3,835 |
| 2013 | 17,115 | 2,631 |
| 2012 | 15,906 | 2,163 |
| 2011 | 16,012 | 1,678 |

[37] Moody's Seasoned Aaa Corporate Bond Yield, average of 2020 monthly data. The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of ''Aaa'' is the highest bond rating assigned with the lowest credit risk. See *https://fred.stlouisfed.org/series/AAA* (March 26, 2021).

TABLE 34—TIME ON TASK FOR DISTRICT THREE—Continued

[Hours]

| Year | District Three | |
|---|---|---|
| | Undesignated | Designated |
| Average | 21,106 | 2,930 |

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. The calculations for each area are set forth in table 35.

TABLE 35—INITIAL RATE CALCULATIONS FOR DISTRICT THREE

| | Undesignated | Designated |
|---|---|---|
| Revenue Needed (Step 6) | $9,387,588 | $2,520,831 |
| Average Time on Task (Hours) | 21,106 | 2,930 |
| Initial Rate | $445 | $860 |

* All figures are rounded to the nearest dollar and may not sum.

*H. Step 8: Calculate Average Weighting Factors by Area*

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this database, we calculate the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in tables 36 and 37.

TABLE 36—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, UNDESIGNATED AREAS

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| Class 1 (2014) | 45 | 1 | 45 |
| Class 1 (2015) | 56 | 1 | 56 |
| Class 1 (2016) | 136 | 1 | 136 |
| Class 1 (2017) | 148 | 1 | 148 |
| Class 1 (2018) | 103 | 1 | 103 |
| Class 1 (2019) | 173 | 1 | 173 |
| Class 1 (2020) | 4 | 1 | 4 |
| Class 2 (2014) | 274 | 1.15 | 315.1 |
| Class 2 (2015) | 207 | 1.15 | 238.05 |
| Class 2 (2016) | 236 | 1.15 | 271.4 |
| Class 2 (2017) | 264 | 1.15 | 303.6 |
| Class 2 (2018) | 169 | 1.15 | 194.35 |
| Class 2 (2019) | 279 | 1.15 | 320.85 |
| Class 2 (2020) | 395 | 1.15 | 454.25 |
| Class 3 (2014) | 15 | 1.3 | 19.5 |
| Class 3 (2015) | 8 | 1.3 | 10.4 |
| Class 3 (2016) | 10 | 1.3 | 13 |
| Class 3 (2017) | 19 | 1.3 | 24.7 |
| Class 3 (2018) | 9 | 1.3 | 11.7 |
| Class 3 (2019) | 9 | 1.3 | 11.7 |
| Class 3 (2020) | 4 | 1.3 | 5.2 |
| Class 4 (2014) | 394 | 1.45 | 571.3 |
| Class 4 (2015) | 375 | 1.45 | 543.75 |
| Class 4 (2016) | 332 | 1.45 | 481.4 |
| Class 4 (2017) | 367 | 1.45 | 532.15 |
| Class 4 (2018) | 337 | 1.45 | 488.65 |
| Class 4 (2019) | 334 | 1.45 | 484.3 |
| Class 4 (2020) | 413 | 1.45 | 598.85 |
| Total for Area 6 | 5,115 | ..... | 6,559 |
| Area 8: | | | |
| Class 1 (2014) | 3 | 1 | 3 |
| Class 1 (2015) | 0 | 1 | 0 |
| Class 1 (2016) | 4 | 1 | 4 |
| Class 1 (2017) | 4 | 1 | 4 |
| Class 1 (2018) | 0 | 1 | 0 |
| Class 1 (2019) | 0 | 1 | 0 |
| Class 1 (2020) | 1 | 1 | 1 |
| Class 2 (2014) | 177 | 1.15 | 203.55 |

TABLE 36—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, UNDESIGNATED AREAS—Continued

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| Class 2 (2015) | 169 | 1.15 | 194.35 |
| Class 2 (2016) | 174 | 1.15 | 200.1 |
| Class 2 (2017) | 151 | 1.15 | 173.65 |
| Class 2 (2018) | 102 | 1.15 | 117.3 |
| Class 2 (2019) | 120 | 1.15 | 138 |
| Class 2 (2020) | 239 | 1.15 | 274.85 |
| Class 3 (2014) | 3 | 1.3 | 3.9 |
| Class 3 (2015) | 0 | 1.3 | 0 |
| Class 3 (2016) | 7 | 1.3 | 9.1 |
| Class 3 (2017) | 18 | 1.3 | 23.4 |
| Class 3 (2018) | 7 | 1.3 | 9.1 |
| Class 3 (2019) | 6 | 1.3 | 7.8 |
| Class 3 (2020) | 2 | 1.3 | 2.6 |
| Class 4 (2014) | 243 | 1.45 | 352.35 |
| Class 4 (2015) | 253 | 1.45 | 366.85 |
| Class 4 (2016) | 204 | 1.45 | 295.8 |
| Class 4 (2017) | 269 | 1.45 | 390.05 |
| Class 4 (2018) | 188 | 1.45 | 272.6 |
| Class 4 (2019) | 254 | 1.45 | 368.3 |
| Class 4 (2020) | 456 | 1.45 | 661.2 |
| Total for Area 8 | 3,054 | | 4,077 |
| Combined total | 8,169 | | 10,636.05 |
| Average weighting factor (weighted transits/number of transits) | | 1.30 | |

TABLE 37—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, DESIGNATED AREAS

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| Class 1 (2014) | 27 | 1 | 27 |
| Class 1 (2015) | 23 | 1 | 23 |
| Class 1 (2016) | 55 | 1 | 55 |
| Class 1 (2017) | 62 | 1 | 62 |
| Class 1 (2018) | 47 | 1 | 47 |
| Class 1 (2019) | 45 | 1 | 45 |
| Class 1 (2020) | 16 | 1 | 16 |
| Class 2 (2014) | 221 | 1.15 | 254.15 |
| Class 2 (2015) | 145 | 1.15 | 166.75 |
| Class 2 (2016) | 174 | 1.15 | 200.1 |
| Class 2 (2017) | 170 | 1.15 | 195.5 |
| Class 2 (2018) | 126 | 1.15 | 144.9 |
| Class 2 (2019) | 162 | 1.15 | 186.3 |
| Class 2 (2020) | 250 | 1.15 | 287.5 |
| Class 3 (2014) | 4 | 1.3 | 5.2 |
| Class 3 (2015) | 0 | 1.3 | 0 |
| Class 3 (2016) | 6 | 1.3 | 7.8 |
| Class 3 (2017) | 14 | 1.3 | 18.2 |
| Class 3 (2018) | 6 | 1.3 | 7.8 |
| Class 3 (2019) | 3 | 1.3 | 3.9 |
| Class 3 (2020) | 4 | 1.3 | 5.2 |
| Class 4 (2014) | 321 | 1.45 | 465.45 |
| Class 4 (2015) | 245 | 1.45 | 355.25 |
| Class 4 (2016) | 191 | 1.45 | 276.95 |
| Class 4 (2017) | 234 | 1.45 | 339.3 |
| Class 4 (2018) | 225 | 1.45 | 326.25 |
| Class 4 (2019) | 308 | 1.45 | 446.6 |
| Class 4 (2020) | 385 | 1.45 | 558.25 |
| Total | 3,469 | | 4,526 |
| Average weighting factor (weighted transits/number of transits) | | 1.30 | |

*I. Step 9: Calculate Revised Base Rates*

In this step, we revise the base rates so that once the impact of the weighting factors is considered, the total cost of pilotage will be equal to the revenue needed. To do this, we divide the initial base rates calculated in Step 7 by the average weighting factors calculated in Step 8, as shown in table 38.

TABLE 38—REVISED BASE RATES FOR DISTRICT THREE

| Area | Initial rate (Step 7) | Average weighting factor (Step 8) | Revised rate (initial rate ÷ average weighting factor) |
|---|---|---|---|
| District Three: Designated | $860 | 1.30 | $662 |
| District Three: Unddesignated | 445 | 1.30 | 342 |

* All figures are rounded to the nearest dollar.

*J. Step 10: Review and Finalize Rates*

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the rates incorporate appropriate compensation for pilots to handle heavy traffic periods, and whether there is a sufficient number of pilots to handle those heavy traffic periods. The Director also considers whether the rates will cover operating expenses and infrastructure costs, and takes average traffic and weighting factors into consideration. Based on this information, the Director is not making any alterations to the rates in this step. We will modify § 401.405(a)(5) and (6) to reflect the final rates shown in table 39.

TABLE 39—FINAL RATES FOR DISTRICT THREE

| Area | Name | Final 2021 pilotage rate | 2022 pilotage rate |
|---|---|---|---|
| District Three: Designated | St. Marys River | $586 | $662 |
| District Three: Undesignated | Lakes Huron, Michigan, and Superior | 337 | 342 |

* All figures are rounded to the nearest dollar.

## VII. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes or Executive orders follows.

*A. Regulatory Planning and Review*

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. A regulatory analysis follows.

The purpose of this rule is to establish new base pilotage rates, as 46 U.S.C. 9303(f) requires that rates be established or reviewed and adjusted each year. The statute also requires that base rates be established by a full ratemaking at least once every 5 years, and, in years when base rates are not established, they must be reviewed and, if necessary, adjusted. The last full ratemaking was concluded in June of 2018.[38] For this ratemaking, the Coast Guard estimates an increase in cost of approximately $2.15 million to industry. This is approximately a 7-percent increase because of the change in revenue needed in 2022 compared to the revenue needed in 2021.

Table 40 summarizes changes with no cost impacts or where the cost impacts are captured in the rate change. Table 41 summarizes the affected population, costs, and benefits of the rate change.

[38] Great Lakes Pilotage Rates—2018 Annual Review and Revisions to Methodology (83 FR 26162), published June 5, 2018.

TABLE 40—CHANGES WITH NO COSTS OR COSTS CAPTURED IN THE RATE CHANGE

| Change | Description | Affected population | Basis for no cost or cost captured in the rate | Benefits |
|---|---|---|---|---|
| Add a definition of apprentice pilot. | Distinguishes between applicants who have not yet entered training and apprentices, persons approved and certified by the Director, who are participating in an approved United States Great Lakes pilot training and qualification program and meet all the minimum requirements listed in 46 CFR 401.211. | Owners and operators of 293 vessels transiting the Great Lakes system annually, 51 United States Great Lakes pilots, 9 apprentice pilots, and 3 pilotage associations. | No cost, strictly a definitional change. | Provides clarity by distinguishing apprentice pilots from applicant trainees when calculating the apprentice pilot operating expenses, estimates and wage benchmark. |
| Add a definition of limited registration. | An authorization given by the Director, upon the request of the respective pilots association, to an apprentice pilot to provide pilotage service without direct supervision from a fully registered pilot in a specific area or waterway. | Owners and operators of 293 vessels transiting the Great Lakes system annually, 51 United States Great Lakes pilots, 9 apprentice pilots, and 3 pilotage associations. | No cost, strictly a definitional change. | Provides clarity by distinguishing when apprentice pilots can operate as the pilot of record without being a fully registered pilot. |
| Adding number of apprentice pilots to Step 3 and setting apprentice pilot wage benchmark in Step 4. | The Coast Guard will modify the staffing model at 46 CFR 404.103 to predict the number of apprentice pilots each district will need for the next season. 46 CFR 404.103 will establish the apprentice pilot wage benchmark at 36% of registered pilot compensation for that year. | Owners and operators of 293 vessels transiting the Great Lakes system annually, 51 United States Great Lakes pilots, 9 apprentice pilots, and 3 pilotage associations. | Total cost of $1,293,622 for the wages of 9 apprentice pilots for the 2022 season. This amount is incorporated into the rate increase. | Setting a target wage of 36% of registered pilot compensation better matches changes in registered pilot compensation and inflation and more evenly distributes the additional cost of apprentice pilots compared to the surcharge method. |

TABLE 41—ECONOMIC IMPACTS DUE TO CHANGES

| Change | Description | Affected population | Costs | Benefits |
|---|---|---|---|---|
| Rate changes | In accordance with 46 U.S.C. Chapter 93, the Coast Guard is required to review and adjust base pilotage rates annually. | Owners and operators of 293 vessels transiting the Great Lakes system annually, 51 United States Great Lakes pilots, 9 apprentice pilots, and 3 pilotage associations. | Increase of $2,154,343 due to change in revenue needed for 2022 ($32,486,995) from revenue needed for 2021 ($30,332,652), as shown in table 42. | New rates cover an association's necessary and reasonable operating expenses. Promotes safe, efficient, and reliable pilotage service on the Great Lakes. Provides fair compensation, adequate training, and sufficient rest periods for pilots. Ensures the association receives sufficient revenues to fund future improvements. |
| Changes to staffing model | The Coast Guard will modify the staffing model at 46 CFR 401.220(a)(3) to round up to the nearest integer, as opposed to the existing method, which rounds to the nearest integer. In total, this will increase the maximum number of allowable pilots by two, adding one pilot to each of the undesignated areas of District One and District Two. | Owners and operators of 293 vessels transiting the Great Lakes system annually, 51 United States Great Lakes pilots, 9 apprentice pilots, and 3 pilotage associations. | The total potential impact of two additional positions is $775,039. Only one district has hired up to the new maximum so the realized impact is only $387,519. | Rounding up in the staffing model accounts for extra staff or extra time spent by the pilot associations' presidents not performing pilotage service. Rounding up allows us to account for this time and promote safety and restorative rest, while minimizing delays in providing pilotage services. |

The Coast Guard is required to review and adjust pilotage rates on the Great Lakes annually. See section III of this preamble for detailed discussions of the legal basis and purpose for this rulemaking. Based on our annual review for this rulemaking, we are adjusting the pilotage rates for the 2022 shipping season to generate sufficient revenues for each district to reimburse its necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and provide an appropriate working capital fund to use for improvements. The result will be an increase in rates for all areas in District One and District Two, and in the designated area of District Three. The rate for the undesignated area of District Three will decrease. These changes will lead to a net increase in the cost of service to shippers. However, because the rates will increase for some areas and decrease for others, the change in per unit cost to each individual shipper will be dependent on their area of operation, and if they previously paid a surcharge.

A detailed discussion of our economic impact analysis follows.

## Affected Population

This rule affects United States Great Lakes pilots, the 3 pilot associations, and the owners and operators of 293 oceangoing vessels that transit the Great Lakes annually. We estimate that there

will be 51 registered pilots and 9 apprentice pilots during the 2022 shipping season. The shippers affected by these rate changes are those owners and operators of domestic vessels operating ''on register'' (engaged in foreign trade) and owners and operators of non-Canadian foreign vessels on routes within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. The statute applies only to commercial vessels and not to recreational vessels. United States-flagged vessels not operating on register, and Canadian ''lakers,'' which account for most commercial shipping on the Great Lakes, are not required by 46 U.S.C. 9302 to have pilots. However, these United States- and Canadian-flagged lakers may voluntarily choose to engage a Great Lakes registered pilot. Vessels that are U.S.-flagged may opt to have a pilot for varying reasons, such as unfamiliarity with designated waters and ports, or for insurance purposes.

The Coast Guard used billing information from the years 2018 through 2020 from the GLPMS to estimate the average annual number of vessels affected by the rate adjustment. The GLPMS tracks data related to managing and coordinating the dispatch of pilots on the Great Lakes, and billing in accordance with the services. As described in Step 7 of the ratemaking methodology, we use a 10-year average to estimate the traffic. We used 3 years of the most recent billing data to estimate the affected population. When we reviewed 10 years of the most recent billing data, we found the data included vessels that have not used pilotage services in recent years. We believe using 3 years of billing data is a better representation of the vessel population that is currently using pilotage services and will be impacted by this rulemaking. We found that 514 unique vessels used pilotage services during the years 2018 through 2020. That is, these vessels had a pilot dispatched to the vessel, and billing information was recorded in the GLPMS or SeaPro.[39] Of these vessels, 465 were foreign-flagged vessels and 49 were U.S.-flagged vessels. As stated previously, U.S.-flagged vessels not operating on register are not required to have a registered pilot per 46 U.S.C. 9302, but they can voluntarily choose to have one.

Numerous factors affect vessel traffic, which varies from year to year. Therefore, rather than using the total number of vessels over the time period, we took an average of the unique vessels using pilotage services from the years 2018 through 2020 as the best representation of vessels estimated to be affected by the rates in this rulemaking. From 2018 through 2020, an average of 293 vessels used pilotage services annually.[40] On average, 275 of these vessels were foreign-flagged vessels and 19 were U.S.-flagged vessels that voluntarily opted into the pilotage service (these figures are rounded averages).

Total Cost to Shippers

The rate changes resulting from this adjustment to the rates will result in a net increase in the cost of service to shippers. However, the change in per unit cost to each individual shipper will be dependent on their area of operation.

The Coast Guard estimates the effect of the rate changes on shippers by comparing the total projected revenues needed to cover costs in 2021 with the total projected revenues to cover costs in 2022, including any temporary surcharges we have authorized.[41] We set pilotage rates so pilot associations receive enough revenue to cover their necessary and reasonable expenses. Shippers pay these rates when they have a pilot as required by 46 U.S.C. 9302. Therefore, the aggregate payments of shippers to pilot associations are equal to the projected necessary revenues for pilot associations. The revenues each year represent the total costs that shippers must pay for pilotage services. The change in revenue from the previous year is the additional cost to shippers discussed in this rule.

The impacts of the rate changes on shippers are estimated from the district pilotage projected revenues (shown in tables 9, 21, and 33 of this preamble). The Coast Guard estimates that for the 2022 shipping season, the projected revenue needed for all three districts is $32,486,994.

To estimate the change in cost to shippers from this rule, the Coast Guard compared the 2022 total projected revenues to the 2021 projected revenues. Because we review and prescribe rates for the Great Lakes Pilotage annually, the effects are estimated as a single-year cost rather than annualized over a 10-year period. In the 2021 rulemaking, we estimated the total projected revenue needed for 2021 as $30,332,652.[42] This is the best approximation of 2021 revenues, as, at the time of this publication of this final rule, the Coast Guard does not have enough audited data available for the 2021 shipping season to revise these projections.[43] Table 42 shows the revenue projections for 2021 and 2022 and details the additional cost increases to shippers by area and district as a result of the rate changes on traffic in Districts One, Two, and Three.

TABLE 42—EFFECT OF THE RULE BY AREA AND DISTRICT

[$U.S.; Non-discounted]

| Area | Revenue needed in 2021 | Revenue needed in 2022 | Change in costs of this rule |
|---|---|---|---|
| Total, District One | $10,620,941 | $11,791,695 | $1,170,754 |
| Total, District Two | 8,506,705 | 8,786,882 | 280,177 |
| Total, District Three | 11,205,006 | 11,908,418 | 703,412 |
| System Total | 30,332,652 | 32,486,995 | 2,154,343 |

* All figures are rounded to the nearest dollar and may not sum.

[39] SeaPro is a data management system developed by District One as an alternative to GLPMS. It tracks the same traffic and invoice data as the GLPMS. Going into the 2022 season, all districts will employ SeaPro.

[40] Some vessels entered the Great Lakes multiple times in a single year, affecting the average number of unique vessels utilizing pilotage services in any given year.

[41] While the Coast Guard implemented a surcharge in 2019, we are not implementing any surcharges for 2022.

[42] 85 FR 20088, see table 41. *https://www.regulations.gov/document/USCG-2020-0457-0013.*

[43] The rates for 2021 do not account for the impacts COVID–19 may have had on shipping traffic and, subsequently, pilotage revenue, as we do not have complete data for 2020. The rates for 2022 will take into account for all and any pertinent impacts of COVID–19 on shipping traffic, because that future ratemaking will include 2020 traffic data. However, the Coast Guard uses a 10-year average when calculating traffic in order to smooth out variations in traffic caused by global economic conditions, such as those caused by the COVID–19 pandemic.

The resulting difference between the projected revenue in 2021 and the projected revenue in 2022 is the annual change in payments from shippers to pilots as a result of the rate change imposed by this rule. The effect of the rate change to shippers varies by area and district. After taking into account the change in pilotage rates, the rate changes will lead to affected shippers operating in District One experiencing an increase in payments of $1,170,754 over the previous year. District Two and District Three will experience an increase in payments of $280,177 and $703,412, respectively, when compared with 2021. The overall adjustment in payments will be an increase in payments by shippers of $2,154,343 across all three districts (a 7-percent increase when compared with 2021). Again, because the Coast Guard reviews and sets rates for Great Lakes pilotage annually, we estimate the impacts as single-year costs rather than annualizing them over a 10-year period.

Table 43 shows the difference in revenue by revenue-component from 2021 to 2022, and presents each revenue-component as a percentage of the total revenue needed. In both 2021 and 2022, the largest revenue-component was pilotage compensation (67 percent of total revenue needed in 2021, and 63 percent of total revenue needed in 2022), followed by operating expenses (29 percent of total revenue needed in 2021, and 31 percent of total revenue needed in 2022).

TABLE 43—DIFFERENCE IN REVENUE BY COMPONENT

| Revenue-component | Revenue needed in 2021 | Percentage of total revenue needed in 2021 | Revenue needed in 2022 | Percentage of total revenue needed in 2022 | Difference (2022 revenue – 2021 revenue) | Percentage change from previous year |
|---|---|---|---|---|---|---|
| Adjusted Operating Expenses | $8,876,850 | 29 | $10,045,658 | 31 | $1,168,808 | 13 |
| Total Target Pilot Compensation | 20,461,950 | 67 | 20,362,566 | 63 | (99,384) | (0.5) |
| Total Apprentice Pilot Wage Benchmark | | | 1,293,622 | 4 | 1,293,622 | |
| Working Capital Fund | 993,852 | 3 | 785,149 | 2 | (208,703) | (21) |
| Total Revenue Needed | 30,332,652 | 100 | 32,486,995 | 100 | 2,154,343 | 7 |

* All figures are rounded to the nearest dollar and may not sum.

As stated above, we estimate that there will be a total increase in revenue needed by the pilot associations of $2,154,343. This represents a decrease in revenue needed for target pilot compensation of ($99,384), the now-codified revenue needed for total apprentice pilot wage benchmark of $1,293,622, an increase in the revenue needed for adjusted operating expenses of $1,168,808, and a decrease in the revenue needed for the working capital fund of ($208,703).

The change in revenue needed for pilot compensation, ($99,384), is due to four factors: (1) The changes to adjust 2021 pilotage compensation to account for the difference between actual ECI inflation (5.1 percent) [44] and predicted PCE inflation (1.7 percent) [45] for 2021; (2) the increase in the maximum number of pilots by two pilots because of rounding; (3) an increase of one pilot in District One compared to 2021, a decrease of one pilot in District Two compared to 2021, and a decrease of three pilots in District Three compared to 2021; and (4) projected inflation of pilotage compensation in Step 2 of the methodology, using predicted inflation through 2023.

The target compensation is $399,266 per pilot in 2022, compared to $378,925 in 2021. The changes to modify the 2021 pilot compensation to account for the difference between predicted and actual inflation will increase the 2021 target compensation value by 3.1 percent. As shown in table 44, this inflation adjustment increases total compensation by $11,747 per pilot, and the total revenue needed by $599,080 when accounting for all 51 pilots.

TABLE 44—CHANGE IN REVENUE RESULTING FROM THE CHANGE TO INFLATION OF PILOT COMPENSATION CALCULATION IN STEP 4

| | |
|---|---|
| 2021 Target Compensation | $378,925 |
| Adjusted 2021 Compensation ($378,925 × 1.031%) | 390,672 |
| Difference between Adjusted Target 2021 Compensation and Target 2021 Compensation ( $390,672 – $378,925) | 11,747 |
| Increase in total Revenue for 51 Pilots ($11,747 × 51) | 599,080 |

* All figures are rounded to the nearest dollar and may not sum.

Adjusting rounding in the staffing model to always round up, rather than round to the nearest integer, increases the maximum number of pilots in District One and District Two. The potential impact of this change is equivalent to an increase in revenue needed for two fully registered pilots because the districts would have the ability to hire two more pilots than they would have without rounding. The cost of $775,039 is based on target compensation for 2022. However, only District One will utilize the increased maximum number of pilots in the 2022 season, while District Two will have fewer than the maximum number of pilots in the 2022 season. For this reason, the potential impact of rounding in the staffing model is not fully realized in the 2022 season. Further, the increase in revenue needed from rounding is offset by the net decrease in pilots needed, such that the cost is not represented in the rate for this year. For that reason, the Coast Guard breaks out the potential and realized costs separately and does not show the percentage in relation to the increase in total revenue needed, as shown in table 45. To avoid double counting, the Coast Guard excludes the change in revenue resulting from adjustments for inflation to account for the difference between actual and predicted inflation.

[44] In the NPRM we used a figure of 3.5 percent, the most recently available at the time. Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Series ID: CIU2010000520000A.

[45] *https://www.federalreserve.gov/monetarypolicy/fomcprojtabl20201216.htm.*

TABLE 45—POTENTIAL AND REALIZED IMPACTS OF ROUNDING IN THE STAFFING MODEL

| Potential impact | | Realized impact | |
|---|---|---|---|
| 2022 Target Compensation | $399,266 | 2022 Target Compensation | $399,266 |
| Total Number of New Pilots | 2 | Total Number of New Pilot | 1 |
| Total Cost of New Pilots ($399,266 × 2) | $798,532 | Total Cost of New Pilot ($399,266 × 1) | $399,266 |
| Difference between Adjusted Target 2021 Compensation and Target 2021 Compensation ($390,672 − $378,925). | $11,747 | Difference between Adjusted Target 2021 Compensation and Target 2021 Compensation ($390,672 − $378,925). | $11,747 |
| Increase in total Revenue for 2 Pilots ($11,747 × 2) | $23,493 | Increase in total Revenue for 1 Pilot ($11,747 × 1) | $11,747 |
| Net Increase in total Revenue for 2 Pilots ($798,532 − $23,493). | $775,039 | Net Increase in total Revenue for 1 Pilot ($399,266 − $11,747). | $387,519 |

* All figures are rounded to the nearest dollar and may not sum.

As noted earlier, the Coast Guard revised the total number of pilots needed from 56 pilots in the NPRM to 51 pilots in this final rule because of the attrition of one apprentice pilot, the removal of one temporary pilot in District Two, and three retirements in District Three going into the 2022 season. This change is discussed in detail in section IV. F. of the discussion of comments and changes. The result is a net decrease of three pilots needed compared to the 2021 season, which projected 54 pilots needed. The difference reflects an increase of one pilot in District One, a decrease of one pilot in District Two, and a decrease of three pilots in District Three ($1 - 1 - 3 = -3$). Table 46 shows the decrease of $1,162,558 in revenue needed solely for pilot compensation. As above, to avoid double counting, this value excludes the change in revenue resulting from the change to adjust 2021 pilotage compensation to account for the difference between actual and predicted inflation.

TABLE 46—CHANGE IN REVENUE RESULTING FROM NET DECREASE OF THREE PILOTS

| | |
|---|---|
| 2022 Target Compensation | $399,266 |
| Net Number of New Pilots | (3) |
| Total Cost of new Pilots ($399,266 × −3) | ($1,197,798) |
| Difference between Adjusted Target 2021 Compensation and Target 2021 Compensation ($390,672 − $378,925) | $11,747 |
| Increase in total Revenue for −3 Pilots ($11,747 × −3) | ($35,240) |
| Net Increase in total Revenue for −3 Pilots (−$1,197,798 − −$35,240) | ($1,162,558) |

* All figures are rounded to the nearest dollar and may not sum.

Another increase, $438,311, is the result of increasing compensation for the 51 pilots to account for future inflation of 2.2 percent in 2022. This will increase total compensation by $8,594 per pilot, as shown in table 47.

TABLE 47—CHANGE IN REVENUE RESULTING FROM INFLATING 2021 COMPENSATION TO 2022

| | |
|---|---|
| Adjusted 2021 Compensation | $390,672 |
| 2022 Target Compensation ($390,672 × 1.022%) | 399,266 |
| Difference between Adjusted 2021 Compensation and Target 2022 Compensation ($399,266 − $390,672) | 8,594 |
| Increase in total Revenue for 51 Pilots ($8,594 × 51) | 438,311 |

* All figures are rounded to the nearest dollar and may not sum.

Finally, the largest part of the increase in revenue needed is to account for the apprentice pilot wage benchmark, now incorporated into the rate. First, in Step 3, we estimate the need for nine apprentice pilots for the 2022 shipping season. Based on the 2022 target pilot compensation of $399,266, the apprentice pilot wage benchmark will be $143,736 ($399,266 × 0.36 = $143,736). Setting the wage benchmark in this manner, rather than through a surcharge, better allows apprentice pilot wage benchmark to match fluctuations in the pilot compensation, which follows changes in traffic and better accounts for changes in inflation than the surcharge. Additionally, unlike a surcharge, this method will not need to be ''turned off'' once the target amount of surcharge is collected, which makes rates throughout the season more predictable for shippers. The total cost of the wage benchmark for the 9 apprentice pilots will be $1,293,622, as shown in table 48.

TABLE 48—CHANGE IN REVENUE RESULTING FROM APPRENTICE PILOT WAGES

| | |
|---|---|
| 2022 Apprentice Pilot Wage Benchmark | $143,736 |
| Total Number of Apprentice Pilots | 9 |
| Total Cost of Apprentice Pilots ($143,736 × 9) | $1,293,622 |

* All figures are rounded to the nearest dollar and may not sum.

Table 49 presents the percentage change in revenue by area and revenue-component, excluding surcharges, as they are applied at the district level.[46]

TABLE 49—DIFFERENCE IN REVENUE BY COMPONENT AND AREA

| | Adjusted operating expenses | | | Total target pilot compensation | | | Total apprentice pilot wage benchmark | Working capital fund | | | Total revenue needed | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2021 | 2022 | % change | 2021 | 2022 | % change | | 2021 | 2022 | % change | 2021 | 2022 | % change |
| District One: Designated | $2,328,981 | $2,419,401 | 4 | $3,789,250 | $4,165,143 | 10 | $172,483 | $207,255 | $163,077 | (21) | $6,325,486 | $6,747,621 | 6.7 |
| District One: Undesignated | 1,502,239 | 1,613,051 | 7 | 2,652,475 | 3,309,117 | 25 | 114,989 | 140,741 | 121,906 | (13) | 4,295,455 | 5,044,074 | 17.4 |
| District Two: Undesignated | 1,003,961 | 1,078,929 | 7 | 3,031,400 | 3,366,611 | 11 | 172,483 | 136,698 | 110,101 | (19) | 4,172,059 | 4,555,641 | 9.2 |
| District Two: Designated | 1,540,146 | 1,618,395 | 5 | 2,652,475 | 2,510,585 | (5) | 114,989 | 142,025 | 102,261 | (28) | 4,334,646 | 4,231,241 | (2.4) |
| District Three: Undesignated | 1,947,484 | 2,603,961 | 34 | 6,820,650 | 6,556,746 | (4) | 567,756 | 297,021 | 226,880 | (24) | 9,065,155 | 9,387,588 | 3.6 |
| District Three: Designated | 554,039 | 711,920 | 28 | 1,515,700 | 1,747,987 | 15 | 150,923 | 70,112 | 60,924 | (13) | 2,139,851 | 2,520,831 | 17.8 |

* All figures are rounded to the nearest dollar and may not sum.

Benefits

This rule allows the Coast Guard to meet the requirements in 46 U.S.C. 9303 to review the rates for pilotage services on the Great Lakes. The rate changes promote safe, efficient, and reliable pilotage service on the Great Lakes by (1) ensuring that rates cover an association's operating expenses, (2) providing fair pilot compensation, adequate training, and sufficient rest periods for pilots, and (3) ensuring pilot associations produce enough revenue to fund future improvements. The rate changes also help recruit and retain pilots, which ensure a sufficient number of pilots to meet peak shipping demand, helping to reduce delays caused by pilot shortages.

*B. Small Entities*

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the rule, the Coast Guard reviewed recent company size and ownership data for the vessels identified in the GLPMS, and we reviewed business revenue and size data provided by publicly available sources such as Manta[47] and ReferenceUSA.[48] As described in section VII.A of this preamble, Regulatory Planning and Review, we found that 513 unique vessels used pilotage services during the years 2018 through 2020. These vessels are owned by 58 entities, of which 44 are foreign entities that operate primarily outside the United States, and the remaining 14 entities are U.S. entities. We compared the revenue and employee data found in the company search to the Small Business Administration's (SBA) small business threshold as defined in the SBA's ''Table of Size Standards'' for small businesses to determine how many of these companies are considered small entities.[49] Table 50 shows the North American Industry Classification System (NAICS) codes of the U.S. entities and the small entity standard size established by the SBA.

TABLE 50—NAICS CODES AND SMALL ENTITIES SIZE STANDARDS

| NAICS | Description | Small entity size standard |
|---|---|---|
| 211120 | Crude Petroleum Extraction | 1,250 employees. |
| 237990 | Other Heavy and Civil Engineering Construction | $39.5 million. |
| 238910 | Site Preparation Contractors | $16.5 million. |
| 483212 | Inland Water Passenger Transportation | 500 employees. |
| 487210 | Scenic and Sightseeing Transportation, Water | $8.0 million. |
| 488330 | Navigational Services to Shipping | $41.5 million. |
| 523910 | Miscellaneous Intermediation | $41.5 million. |
| 561599 | All Other Travel Arrangement and Reservation Services | $22.0 million. |
| 982100 | National Security | Population of 50,000 People. |

Of the 14 U.S. entities, 7 exceed the SBA's small business standards for small entities. To estimate the potential impact on the seven small entities, the Coast Guard used their 2020 invoice data to estimate their pilotage costs in 2022. Of the seven entities, from 2018 to 2020, only three used pilotage services in 2020. We increased their 2020 costs to account for the changes in pilotage rates resulting from this rule and the Great Lakes Pilotage Rates—2021 Annual Review and Revisions to Methodology final rule (86 FR 14184). We estimated the change in cost to these entities resulting from this rule by subtracting their estimated 2021 pilotage costs from their estimated 2022 pilotage costs and found the average costs to small firms will be approximately $9,375, with a range of $354 to $41,331.[50] We then compared the estimated change in pilotage costs between 2021 and 2022 with each firm's annual revenue. In all cases, their estimated pilotage expenses were below 0.35 percent of their annual revenue.

[46] The 2021 projected revenues are from the Great Lakes Pilotage Rate-2021 Annual Review and Revisions to Methodology final rule (86 FR 14184), tables 9, 21, and 33. The 2022 projected revenues are from tables 9, 21, and 33 of this final rule.

[47] See *https://www.manta.com/*.

[48] See *https://resource.referenceusa.com/*.

[49] See *https://www.sba.gov/document/support--table-size-standards*. SBA has established a ''Table of Size Standards'' for small businesses that sets small business size standards by NAICS code. A size standard, which is usually stated in number of employees or average annual receipts (''revenues''), represents the largest size that a business (including its subsidiaries and affiliates) may be in order to remain classified as a small business for SBA and Federal contracting programs. Accessed April 2021.

[50] One company had a particularly disproportionate impact because its vessel operated in all three districts. The impact for that company was more than 15 times greater than the next smallest company.

In addition to the owners and operators discussed above, three U.S. entities that receive revenue from pilotage services will be affected by this rule. These are the three pilot associations that provide and manage pilotage services within the Great Lakes districts. Two of the associations operate as partnerships, and one operates as a corporation. These associations are designated with the same NAICS code and small-entity size standards described above, but have fewer than 500 employees. Combined, they have approximately 65 employees in total and, therefore, are designated as small entities. The Coast Guard expects no adverse effect on these entities from this rule, because the three pilot associations will receive enough revenue to balance the projected expenses associated with the projected number of bridge hours (time on task) and pilots.

Finally, the Coast Guard did not find any small not-for-profit organizations that are independently owned and operated and are not dominant in their fields that will be impacted by this rule. We also did not find any small governmental jurisdictions with populations of fewer than 50,000 people that will be impacted by this rule. Based on this analysis, we conclude this rulemaking will not affect a substantial number of small entities, nor have a significant economic impact on any of the affected entities.

Based on our analysis, this rule will have a less than 1 percent annual impact on small entities; therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

*C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this rule. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

*D. Collection of Information*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

*E. Federalism*

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

Congress directed the Coast Guard to establish ''rates and charges for pilotage services''. See 46 U.S.C. 9303(f). This regulation is issued pursuant to that statute and is preemptive of State law as specified in 46 U.S.C. 9306. Under 46 U.S.C. 9306, a ''State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes.'' As a result, States or local governments are expressly prohibited from regulating within this category. Therefore, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under Executive Order 13132, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

*F. Unfunded Mandates*

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, 46 U.S.C. Chapter 93 addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100 million (adjusted for inflation) or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*G. Taking of Private Property*

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

*H. 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.

*I. Protection of Children*

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

*J. Indian Tribal Governments*

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

*K. Energy Effects*

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*L. Technical Standards*

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*M. Environment*

We have analyzed this rule under DHS Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A final Record of Environmental Consideration supporting this determination is available in the docket for this rulemaking. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

This rule meets the criteria for categorical exclusion (CATEX) under paragraphs A3 and L54 of Appendix A, Table 1 of DHS Instruction Manual 023–001–01, Rev. 1.[51] Paragraph A3 pertains to the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents of the following nature: (a) Those of a strictly administrative or procedural nature; (b) those that implement, without substantive change, statutory or regulatory requirements; (c) those that implement, without substantive change, procedures, manuals, and other guidance documents; (d) those that interpret or amend an existing regulation without changing its environmental effect; (e) Technical guidance on safety and security matters; or (f) guidance for the preparation of security plans. Paragraph L54 pertains to regulations which are editorial or procedural.

This rule involves setting or adjusting the pilotage rates for the upcoming shipping season to account for changes in district operating expenses, changes in the number of pilots, and anticipated inflation. In addition, the Coast Guard is (1) changing the way we determine the number or pilots that are needed for the upcoming season in the staffing model, and (2) including in our methodology a calculation for a wage benchmark for apprentice pilots. All of these changes are consistent with the Coast Guard's maritime safety missions.

**List of Subjects**

*46 CFR Part 401*

Administrative practice and procedure, Great Lakes; Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 404*

Great Lakes, Navigation (water), Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 401 and 404 as follows:

## PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. The authority citation for part 401 is revised to read as follows:

**Authority:** 46 U.S.C. 2103, 2104(a), 6101, 7701, 8105, 9303, 9304; DHS Delegation 00170.1, Revision No. 01.2, paragraphs (II)(92)(a), (d), (e), (f).

■ 2. Amend § 401.110 by adding paragraphs (a)(18), (19) and (b) to read as follows:

**§ 401.110 Definitions.**

(a) * * *

(18) *Apprentice Pilot* means a person approved and certified by the Director who is participating in an approved U.S. Great Lakes pilot training and qualification program. This individual meets all the minimum requirements listed in 46 CFR 401.211. This definition is only applicable to determining which pilots may be included in the operating expenses, estimates, and wage benchmark in §§ 404.2(b)(7), 404.103(b), and 404.104(d) and (e).

(19) *Limited Registration* is an authorization issued by the Director, upon the request of the respective pilots association, to an Apprentice Pilot to provide pilotage service without direct supervision from a fully registered pilot in a specific area or waterway.

(b) [Reserved]

■ 3. Amend § 401.220 by revising the first sentence of paragraph (a)(3) to read as follows:

**§ 401.220 Registration of pilots.**

(a) * * *

(3) The number of pilots needed in each district is calculated by totaling the area results by district and rounding them up to a whole integer. * * *

* * * * *

■ 4. Amend § 401.405 by revising paragraphs (a)(1) through (6) to read as follows:

**§ 401.405 Pilotage rates and charges.**

(a) * * *

(1) The St. Lawrence River is $834;

(2) Lake Ontario is $568;

(3) Lake Erie is $610;

(4) The navigable waters from Southeast Shoal to Port Huron, MI is $536;

(5) Lakes Huron, Michigan, and Superior is $342; and

(6) The St. Marys River is $662.

* * * * *

## PART 404—GREAT LAKES PILOTAGE RATEMAKING

■ 5. The authority citation for part 404 is revised to read as follows:

**Authority:** 46 U.S.C. 2103, 2104(a), 9303, 9304; DHS Delegation 00170.1, Revision No. 01.2, paragraphs (II)(92)(a), (f).

■ 6. Amend § 404.2 by adding paragraph (b)(7) to read as follows:

**§ 404.2 Procedure and criteria for recognizing association expenses.**

* * * * *

(b) * * *

(7) *Apprentice Pilot Expenses.* The association's expenses for Apprentice Pilots and Apprentice Pilots with Limited Registrations, such as health care, travel expenses, training, and other expenses are recognizable when determined to be necessary and reasonable.

* * * * *

■ 7. Amend § 404.103 by:

■ a. Revising the section heading;

■ b. Redesignating the introductory text as paragraph (a); and

■ c. Adding paragraph (b).

The revisions and additions read as follows:

**§ 404.103 Ratemaking step 3: Estimate number of registered pilots and apprentice pilots.**

* * * * *

(b) The Director projects, based on the number of persons applying under 46

[51] *https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf.*

CFR part 401 to become Apprentice Pilots, traffic projections, information provided by the pilotage association regarding upcoming retirements, and any other relevant data, the number of Apprentice Pilots and Apprentice Pilots with Limited Registrations expected to be in training and compensated.

■ 8. Amend § 404.104 by:

■ a. Revising the section heading; and

■ b. Adding paragraphs (d) and (e).

The revision and additions read as follows:

**§ 404.104 Ratemaking step 4: Determine target pilot compensation benchmark and apprentice pilot wage benchmark.**

* * * * *

(d) The Director determines the individual Apprentice Pilot wage benchmark at the rate of 36 percent of the individual target pilot compensation, as calculated according to paragraphs (a) or (b) of this section.

(e) The Director determines each pilot association's total Apprentice Pilot wage benchmark by multiplying the Apprentice Pilot compensation computed in paragraph (d) of this section by the number of Apprentice Pilots and Apprentice Pilots with Limited Registrations projected under § 404.103(b).

Dated: March 23, 2022.

**J.W. Mauger,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.*

[FR Doc. 2022–06394 Filed 3–29–22; 8:45 am]

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Part III

## Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1904

Improve Tracking of Workplace Injuries and Illnesses; Proposed Rule

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1904**

**[Docket No. OSHA–2021–0006]**

**RIN 1218–AD40**

# Improve Tracking of Workplace Injuries and Illnesses

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** OSHA is proposing to amend its occupational injury and illness recordkeeping regulation to require certain employers to electronically submit injury and illness information to OSHA that employers are already required to keep under the recordkeeping regulation. Specifically, OSHA proposes to amend its regulation to require establishments with 100 or more employees in certain designated industries to electronically submit information from their OSHA Forms 300, 301, and 300A to OSHA once a year. Establishments with 20 or more employees in certain industries would continue to be required to electronically submit information from their OSHA Form 300A annual summary to OSHA once a year. OSHA also proposes to update the classification system used to determine the list of industries covered by the electronic submission requirement. In addition, the proposed rule would remove the current requirement for establishments with 250 or more employees, not in a designated industry, to electronically submit information from their Form 300A to OSHA on an annual basis. OSHA intends to post the data from the proposed annual electronic submission requirement on a public website after identifying and removing information that reasonably identifies individuals directly, such as individuals' names and contact information. Finally, OSHA is proposing to require establishments to include their company name when making electronic submissions to OSHA.

**DATES:** Comments must be submitted by May 31, 2022.

**ADDRESSES:**

*Comments:* Comments, along with any submissions and attachments, should be submitted electronically at *https://www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the instructions online for making electronic submissions. After accessing ''all documents and comments'' in the docket (Docket No. OSHA–2021–0006), check the ''proposed rule'' box in the column headed ''Document Type,'' find the document posted on the date of publication of this document, and click the ''Comment Now'' link. When uploading multiple attachments to *www.regulations.gov,* please number all of your attachments, because *www.regulations.gov* will not automatically number the attachments. This will be very useful in identifying all attachments in the preamble. For example, Attachment 1—title of your document, Attachment 2—title of your document, Attachment 3—title of your document. For assistance with commenting and uploading documents, please see the Frequently Asked Questions on *regulations.gov*.

*Instructions:* All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2021–0006). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

*Docket:* To read or download comments and other materials submitted in the docket, go to Docket No. OSHA–2021–0006 at *https://www.regulations.gov.* All comments and submissions are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that website. All comments and submissions, including copyrighted material, are available for inspection through the OSHA Docket Office.[1] Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *https://www.regulations.gov.* This document, as well as news releases and other relevant information, is available at OSHA's website at *https://www.osha.gov.*

[1] Documents submitted to the docket by OSHA or stakeholders are assigned document identification numbers (Document ID) for easy identification and retrieval. The full Document ID is the docket number plus a unique four-digit code. OSHA is identifying supporting information in this document by author name, publication year, and the last four digits of the Document ID.

**FOR FURTHER INFORMATION CONTACT:**

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

*For general information and technical inquiries:* Contact Lee Anne Jillings, Director, Directorate of Technical Support and Emergency Management, U.S. Department of Labor; telephone (202) 693–2300; email: *Jillings.LeeAnne@dol.gov.*

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## I. Background

### *A. Introduction*

OSHA's regulation at 29 CFR part 1904 requires employers with more than 10 employees in most industries to keep records of occupational injuries and illnesses at their establishments. Employers covered by the regulation must record each recordable employee injury and illness on an OSHA Form 300, which is the ''Log of Work-Related Injuries and Illnesses,'' or equivalent. The OSHA Form 300 includes information about the employee's name, job title, date of the injury or illness, where the injury or illness occurred, description of the injury or illness (*e.g.,* body part affected), and the outcome of the injury or illness (*e.g.,* death, days away from work, restricted work activity). Employers must also prepare a supplementary OSHA Form 301 ''Injury and Illness Incident Report'' or equivalent that provides additional details about each case recorded on the OSHA Form 300. The OSHA Form 301 includes information about the employee's name and address, date of birth, date hired, gender, the name and address of the health care professional that treated the employee, as well as more detailed information about where and how the injury or illness occurred. At the end of each year, employers are required to prepare a summary report of all injuries and illnesses on the OSHA Form 300A, which is the ''Summary of Work-Related Injuries and Illnesses,'' and post the form in a visible location in the workplace. The OSHA Form 300A does not contain information about individual employees, but does include general information about an employer's workplace, such as the average number of employees and total number of hours worked by all employees during the calendar year.

Section 1904.41 of the current recordkeeping regulation also requires certain employers to electronically submit injury and illness data to OSHA. Section 1904.41(a)(1) requires establishments with 250 or more employees in industries that are required to routinely keep OSHA injury and illness records to electronically submit information from the Form 300A summary to OSHA once a year. Section 1904.41(a)(2) requires establishments with 20–249 employees in certain designated industries to electronically submit information from their Form 300A summary to OSHA once a year. Also, § 1904.41(a)(3) provides that, upon notification, employers must electronically submit requested information from their part 1904 records to OSHA. Lastly, § 1904.41(a)(4) requires each establishment that must electronically submit injury and illness information to OSHA to also provide their Employer Identification Number (EIN) in their submittal.

Under this proposed rule, establishments with 20 or more employees in certain designated industries (listed in appendix A to subpart E) would continue to electronically submit information from their Form 300A annual summary to OSHA once a year. However, the proposed rule would eliminate the requirement for all establishments with 250 or more employees in industries that are required to routinely keep OSHA injury and illness records to electronically submit information from the Form 300A to OSHA. Instead, establishments with 100 or more employees in certain designated industries (listed in appendix B to subpart E) would be required to electronically submit information from their OSHA Forms 300, 301, and 300A to OSHA once a year. OSHA also proposes to update the industry classification system used for the proposed list of designated industries in appendix A and B to subpart E. In addition, OSHA is proposing to require establishments to include their company name when making electronic submissions to OSHA.

The proposed requirement for establishments with 20 or more employees in certain designated industries to electronically submit information from their Form 300A to OSHA once a year is essentially the same as the current regulation. For establishments with 100 or more employees in certain designated industries, the proposed requirement to electronically submit information from their Forms 300 and 301 to OSHA on an annual basis represents a change from the current regulation. The proposed requirement would provide systematic access for OSHA to the establishment-specific, case-specific injury and illness information that these establishments are already required to collect.

Additionally, OSHA intends to post the collected establishment-specific, case-specific injury and illness information online. As discussed in more detail below, the agency will seek to minimize the possibility that worker information, such as name and contact information, will be released, through multiple efforts, including limiting the worker information collected, designing the collection system to provide extra protections for some of the information that employers would be required to submit under the proposal, withholding certain fields from public disclosure, and using automated software to identify and remove information that reasonably identifies individuals directly. OSHA does not intend to include information that reasonably identifies individuals directly, such as employee name, contact information, and name of physician or health care professional, in the published information. The expanded public access to establishment-specific, case-specific injury and illness data would allow employers, employees, potential employees, employee representatives, customers, potential customers, researchers, and the general public to make informed decisions about the workplace safety and health at a given establishment, and this accessibility will ultimately result in the reduction of occupational injuries and illnesses.

OSHA estimates that this proposed rule would have economic costs of $4.3 million per year, including $3.9 million per year to the private sector, with costs of $81 per year for affected establishments with 100 or more employees in designated industries. The agency believes that the annual benefits, while unquantified, would significantly exceed the annual costs.

OSHA seeks comment on this proposal.

### *B. Regulatory History*

OSHA's regulations on recording and reporting occupational injuries and illnesses (29 CFR part 1904) were first issued in 1971 (36 FR 12612 (July 2, 1971)). These regulations require the recording of work-related injuries and illnesses that involve death, loss of consciousness, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or diagnosis of a significant injury or illness by a physician or other licensed

health care professional (29 CFR 1904.7).

On July 29, 1977, OSHA amended these regulations to partially exempt businesses having ten or fewer employees during the previous calendar year from the requirement to record occupational injuries and illnesses (42 FR 38568). Then, on December 28, 1982, OSHA amended the regulations again to partially exempt establishments in certain lower-hazard industries from the requirement to record occupational injuries and illnesses (47 FR 57699).[2] OSHA also amended the recordkeeping regulations in 1994 (Reporting of Fatality or Multiple Hospitalization Incidents, 59 FR 15594) and 1997 (Reporting Occupational Injury and Illness Data to OSHA, 62 FR 6434). Under the version of § 1904.41 added by the 1997 final rule, OSHA began requiring certain employers to submit their 300A data to OSHA annually through the OSHA Data Initiative (ODI). Through the ODI, OSHA collected data on injuries and acute illnesses attributable to work-related activities in the private sector from approximately 80,000 establishments in selected high-hazard industries. The agency used these data to calculate establishment-specific injury and illness rates, and, in combination with other data sources, to target enforcement and compliance assistance activities.

On January 19, 2001, OSHA issued a final rule amending its requirements for the recording and reporting of occupational injuries and illnesses (29 CFR parts 1904 and 1952), along with the forms employers use to record those injuries and illnesses (66 FR 5916). The final rule also updated the list of industries that are partially exempt from recording occupational injuries and illnesses.

On September 18, 2014, OSHA again amended the regulations to require employers to report work-related fatalities and severe injuries—in-patient hospitalizations, amputations, and losses of an eye—to OSHA and to allow electronic reporting of these events (79 FR 56130). The final rule also revised the list of industries that are partially exempt from recording occupational injuries and illnesses.

On May 12, 2016, OSHA amended the regulations on recording and reporting occupational injuries and illnesses to require employers, on an annual basis, to submit electronically to OSHA injury and illness information that employers are already required to keep under part 1904 (81 FR 29624). Under the 2016 revisions, establishments with 250 or more employees that are routinely required to keep records were required to electronically submit information from their OSHA Forms 300, 300A, and 301 to OSHA or OSHA's designee once a year, and establishments with 20 to 249 employees in certain designated industries were required to electronically submit information from their OSHA annual summary (Form 300A) to OSHA or OSHA's designee once a year. In addition, that final rule required employers, upon notification, to electronically submit information from part 1904 recordkeeping forms to OSHA or OSHA's designee. These provisions became effective on January 1, 2017, with an initial submission deadline of July 1, 2017, for 2016 Form 300A data. That submission deadline was subsequently extended to December 15, 2017 (82 FR 55761). The deadline for electronic submission of information from OSHA Forms 300 and 301 was July 1, 2018. Because of a subsequent rulemaking, OSHA never received the data submissions from Forms 300 and 301 that the 2016 final rule anticipated.

On January 25, 2019, OSHA issued a final rule that amended the recordkeeping regulations to remove the requirement for establishments with 250 or more employees that are routinely required to keep records to electronically submit information from their OSHA Forms 300 and 301 to OSHA or OSHA's designee once a year. These establishments are currently required to electronically submit only information from the OSHA 300A annual summary. The final rule also added a requirement for covered employers to submit their Employer Identification Number (EIN) electronically along with their injury and illness data submission (83 FR 36494, 84 FR 380–406).

### *C. Litigation Resulting From Previous Rulemakings*

Both the 2016 and 2019 OSHA final rules that addressed the electronic submission of injury and illness data were challenged in court. In *Texo ABC/ABG et al.* v. *Acosta* (N.D. Tex.), and *NAHB et al.* v. *Acosta* (W.D. Okla.), industry groups challenged OSHA's 2016 final rule that required establishments with 250 or more employees to electronically submit data from their OSHA Forms 300 and 301 to OSHA (as well as other requirements not relevant to this rulemaking). The complaints alleged that the publication of establishment-specific injury and illness data would lead to misuse of confidential and proprietary information by the public and special interest groups. The complaints also alleged that publication of the data exceeds OSHA's authority under the Occupational Safety and Health Act (the ''OSH Act'' or ''Act'') and is unconstitutional under the First Amendment to the U.S. Constitution. After OSHA published a notice of proposed rulemaking on July 30, 2018 (83 FR 36494), proposing to rescind the 300 and 301 data submission requirement, the *Texo* case was administratively closed, and the plaintiffs in the *NAHB* case dropped their claims relating to the 300 and 301 data submission requirement after the 2019 final rule was published (and moved forward with their other claims, which are still pending in the Western District of Oklahoma).

In *Public Citizen Health Research Group et al.* v. *Pizella* (No. 1:19–cv–00166) and *State of New Jersey et al.* v. *Pizella* (No. 1:19–cv–00621), a group of public health organizations and a group of states filed separate lawsuits challenging OSHA's 2019 final rule rescinding the requirement for certain employers to submit the data from OSHA Forms 300 and 301 to OSHA electronically each year. The District Court for the District of Columbia resolved the two cases in a consolidated opinion and held that rescinding the provision was within the agency's discretion. The court concluded the record supported OSHA's determination that costly manual review of collected 300 and 301 data would be needed to avoid a meaningful risk of exposing sensitive worker information to public disclosure. The court also determined that OSHA provided adequate notice of the estimated costs of manually reviewing the data for sensitive information, and that the final rule was a logical outgrowth of the rulemaking. Finally, the court upheld OSHA's conclusion that the uncertain benefits of collecting the 300 and 301 data did not justify diverting OSHA's resources from other efforts, and the court rejected the plaintiffs' assertion that OSHA's reasons for the 2019 final rule were internally inconsistent.

Additionally, since 2020, the Department of Labor (DOL) has received

[2] All employers covered by the Occupational Safety and Health Act (the ''OSH Act'' or ''Act'') are covered by OSHA's recordkeeping regulation. However, most employers do not have to keep OSHA injury and illness records unless OSHA or the Bureau of Labor Statistics (BLS) informs them in writing that they must keep records. For example, employers with ten or fewer employees, as well as businesses with establishments in certain industries, are partially exempt from keeping OSHA injury and illness records. In addition, all employers covered by the OSH Act, including those that are partially exempt from keeping injury and illness records, are still required to report work-related fatalities, in-patient hospitalizations, amputations, and losses of an eye to OSHA within specified timeframes under 29 CFR 1904.39.

several adverse decisions regarding the release of electronically submitted 300A data under the Freedom of Information Act (FOIA). In each of the cases, OSHA argued that electronically submitted 300A injury and illness data was covered under the confidentiality exemption in FOIA Exemption 4. Two courts, one in the U.S. District Court for the Northern District of California and another in the U.S. District Court for the District of Columbia, disagreed with OSHA's position. See, *Center for Investigative Reporting, et al.,* v. *Department of Labor,* No. 4:18–cv–02414–DMR, 2020 WL 2995209 (N.D. Cal. June 4, 2020); *Public Citizen Foundation* v. *United States Department of Labor, et al.,* No. 1:18–cv–00117 (D.D.C. June 23, 2020). In addition, on July 6, 2020, the Department received an adverse ruling from a magistrate judge in the Northern District of California in a FOIA case involving Amazon fulfillment centers. In that case, plaintiffs sought the release of individual 300A forms, which consisted of summaries of Amazon's work-related injuries and illnesses and which were provided to OSHA compliance officers during specific OSHA inspections of Amazon fulfillment centers in Ohio and Illinois. See, *Center for Investigative Reporting, et al.,* v. *Department of Labor,* No. 3:19–cv–05603–SK, 2020 WL 3639646 (N.D. Cal. July 6, 2020).

In holding that FOIA Exemption 4 was inapplicable, the courts rejected OSHA's position that electronically submitted 300A injury and illness data is covered under the confidentiality exemption in FOIA Exemption 4. The decisions noted that the 300A form is posted in the workplace for three months and that there is no expectation that the employer must keep these data confidential or private. As a result, OSHA provided the requested 300A data to the plaintiffs, and initiated a policy to post collected 300A data on its public website. The data are available at *https://www.osha.gov/Establishment-Specific-Injury-and-Illness-Data* and include the submissions for calendar years 2016, 2017, 2018, 2019, and 2020.

*D. Injury and Illness Data Collection*

Currently, two U.S. Department of Labor data collections request and compile information from the OSHA injury and illness records certain employers are required to keep under 29 CFR part 1904: The annual collection conducted by OSHA under 29 CFR 1904.41 (Electronic Submission of Employer Identification Number (EIN) and Injury and Illness Records), and the annual Survey of Occupational Injuries and Illnesses (SOII) conducted by BLS under 29 CFR 1904.42. This proposed rule would amend the current regulation at § 1904.41. It would not change the SOII or the authority for the SOII set forth in § 1904.42.

The primary purpose of the SOII is to provide nationally-representative annual estimates of the rates and numbers of work-related non-fatal injuries and illnesses in the United States, and on how these statistics vary by incident, industry, geography, occupation, and other characteristics. Title 44 U.S.C. 3572 prohibits BLS from releasing establishment-specific and case-specific data to the general public or to OSHA. OSHA only has access to the publicly-available aggregate information from the injury and illness records collected through the BLS SOII.

The BLS has modified their collection to allow respondents that have already provided their Form 300A data to OSHA to provide their OSHA identification number (OSHA ID) to import to BLS the data that they have submitted to the OSHA ITA in that same year. Under this data-sharing feature, if BLS can successfully match establishment information with information reported to OSHA, data reported by the respondent to the OSHA ITA are automatically imported into the BLS SOII internet Data Collection Facility (IDCF). Imported data are taken from the OSHA 300A annual summary. Additional information may need to be entered manually to complete the SOII submission. In the 2021 collection for the BLS SOII, roughly 31,000 establishments had an opportunity to use this data-sharing feature for their OSHA Form 300A data, *i.e.,* they were submitting to both the OSHA ITA and the BLS SOII. Of these roughly 31,000 establishments, 9,479 establishments provided their OSHA ID to the BLS SOII collection for BLS to try to match for the data-sharing feature. Of these 9,479 establishments, 4,716 establishments that passed BLS's data quality checks had their OSHA-submitted data automatically imported into the BLS SOII IDCF via the data-sharing feature. The Department is continuing to evaluate opportunities to further reduce duplicative reporting. To this end, BLS will evaluate the feasibility of using this same model for the additional information that would be required by this proposed rule.

Authority for the SOII comes from 29 CFR 1904.42, Requests from the Bureau of Labor Statistics for data. Each year, BLS collects data from Forms 300, 301, and 300A from a scientifically-selected probability sample of about 230,000 establishments, covering nearly all private-sector industries, as well as state and local government. Employers may submit their data on paper forms or electronically. BLS releases the aggregated data in November of the year following the data year (*e.g.,* November 2020 for 2019 data).

As discussed above, the OSHA recordkeeping regulation has required certain employers to submit injury and illness information to OSHA since 1997. Currently, § 1904.41, Electronic submission of Employer Identification Number (EIN) and injury and illness records to OSHA, requires two groups of establishments to annually submit information from the OSHA Form 300A Annual Summary: Establishments with 20–249 employees in industries included in appendix A to subpart E of part 1904, and establishments with 250 or more employees in industries that are routinely required to keep part 1904 injury and illness records. For purposes of § 1904.41, the number of employees at a given establishment is based on the number of individuals employed at the establishment at any time during the previous calendar year, including full-time, part-time, seasonal, and temporary workers. In addition, data submissions under § 1904.41 are typically limited to establishments in industries with high injury and illness rates. For example, while current § 1904.41(a)(1) covers establishments with 20–249 employees, only establishments in certain designated industries are required to electronically submit information from their Form 300A under this provision.

The primary purpose of the electronic submission requirements in § 1904.41 is to enable OSHA to focus its enforcement and compliance assistance efforts on individual workplaces with ongoing serious safety and health problems, as identified by the occupational injury and illness rates at those workplaces. An establishment's submission of information from its OSHA Form 300A Annual Summary provides summary information about injuries and illnesses at that specific establishment, but not about specific cases of injury or illness at that establishment. In contrast, the OSHA Form 300 Log of Work-Related Injuries and Illnesses and Form 301 Injury and Illness Incident Report provide information about specific cases of injury or illness.

*E. Publication of Electronic Data*

OSHA intends to make much of the data it collects public. As discussed below, the publication of specific data elements will in part be restricted by applicable federal law, including provisions under the Freedom of Information Act (FOIA), as well as specific provisions within part 1904.

OSHA will make the following data from the OSHA Form 300 and 301 available in a searchable online database:

Form 300 (the Log)—All collected data fields on the 300 Log will generally be made available on OSHA's website. OSHA is proposing to collect all of the fields *except* employee name (column B). OSHA currently collects these data during inspections and maintains them as part of the enforcement case file. However, the agency does not currently conduct a systematic collection of the information on the 300 Log. OSHA generally releases copies of the 300 Logs maintained in inspection files in response to FOIA requests after redacting employee names (column B).

OSHA's regulations require employers to provide employees, former employees, their representatives, and their authorized employee representatives with access to the 300 Log (29 CFR 1904.32(b)(2)). Specifically, when an employee, former employee, personal representative, or authorized employee representative asks an employer for copies of that employer's current or stored OSHA 300 Log(s) for an establishment the employee or former employee has worked in, the employer must give the requester a copy of the relevant OSHA 300 Log(s) by the end of the next business day (29 CFR 1904.32(b)(2)(ii)). Once the copy is accessed, OSHA's recordkeeping regulation does not place any limitations on the use or release of the information by employees and employee representatives. Moreover, as explained in OSHA's 2001 final rule amending its requirements for the recording and reporting of occupational injuries and illnesses, while agency policy is that employees and their representatives with access to records should treat the information contained therein as confidential except as necessary to further the purposes of the Act, the Secretary lacks statutory authority to enforce such a policy against employees and representatives (see 66 FR 6056–57 (citing *e.g.,* 29 U.S.C. 658, 659) (Act's enforcement mechanisms directed solely at employers)). In other words, as OSHA explained in its 2016 recordkeeping final rule, employees and their representatives can make the data they have accessed public if they wish to do so (see 81 FR 29684). However, there are some restrictions on what employers may do with these data. Under § 1904.29(b)(10), if employers choose to voluntarily disclose the Forms to persons other than government representatives, employees, former employees, or authorized representatives (as required by §§ 1904.35 and 1904.40), the employer must remove or hide the employees' names and other personally identifying information, with certain exceptions as spelled out in OSHA's regulations.

Form 301 (Incident Report)—All collected data fields on the right-hand side of the form (Fields 10 through 18) will generally be made available. The agency currently occasionally collects the form for enforcement case files. Section 1904.35(b)(2)(v)(B) prohibits employers from releasing the information in Fields 1 through 9 (the left-hand side of the form) to individuals other than the employee or former employee who suffered the injury or illness and his or her personal representatives. Similarly, OSHA will not publish establishment-specific data from the left side of Form 301. OSHA does not release data from Fields 1 through 9 in response to FOIA requests. The agency does not currently conduct a systematic collection of the information on the Form 301. However, the agency does review the entire Form 301 during some workplace inspections and occasionally collects the form for inclusion in the enforcement case file. Note that OSHA is proposing not to collect (and therefore could not publish) Field 1 (employee name), Field 2 (employee address), Field 6 (name of treating physician or health care provider), or Field 7 (name and address of non-workplace treating facility). As above, under § 1904.35(a)(3), employers must provide access to injury and illness records for their employees and employees' representatives, as described in § 1904.35(b)(2). Also, as above, the OSHA recordkeeping regulation does not place limitations on the use or release of the information obtained by employees and employee representatives.

### *F. Differences Between the BLS SOII and Proposed OSHA Data Collections*

The BLS SOII is an establishment-based survey used to estimate nationally-representative incidence rates and counts of workplace injuries and illnesses. It also provides detailed case and demographic data for cases that involve one or more days away from work (DAFW) and for days of job transfer and restriction (DJTR).

SOII estimates the number and frequency (incidence rates) of workplace injuries and illnesses based on recordkeeping logs kept by employers during the year. These records reflect not only the year's injury and illness experience, but also the employer's understanding of which cases are work-related under recordkeeping rules promulgated by OSHA. Although SOII uses OSHA's recordkeeping rules to facilitate convenient collection of data, it is not administered by OSHA. In addition, the scope of SOII encompasses industries not required by OSHA to routinely keep injury and illness records (*i.e.,* industries listed in appendix A to subpart B of part 1904). Information collected through the program is used for purely statistical purposes, cannot be viewed by OSHA, and cannot be used for any regulatory purpose. Besides injury and illness counts, survey respondents also are asked to provide additional information for the subset of nonfatal cases that involved at least 1 day away from work or job transfer or restriction. Employers answer several questions about these cases, including the demographics of the worker, the nature of the disabling condition, the event and source producing that condition, and the part of body affected. A few of the data elements are optional for employers, most notably race and ethnicity; this resulted in 40 percent of the cases involving days away from work for which race and ethnicity were not reported in the 2016 SOII.[3]

The presentation of SOII data is released in the fall and contains two data components. One, sometimes referred to as the summary, provides estimates of numbers and incidence rates of employer-reported nonfatal injuries and illnesses at the industry level for all types of cases. A second, sometimes referred to as the case and demographics data, details case circumstances and worker characteristics for the subset of the cases that involved days away from work.[4] Prepared tables containing the data can be found for industry data at *https://www.bls.gov/iif/oshsum.htm* and for case and demographics at *https://www.bls.gov/iif/oshcdnew.htm.* A schedule of releases from the Injuries, Illnesses, and Fatalities program, which includes SOII, can be found at *https://www.bls.gov/iif/osh_nwrl.htm.*

In contrast, under the current data collection, OSHA annually collects information from the OSHA Form 300A Annual Summary from two groups of establishments:

1. Under § 1904.41(a)(1), from establishments with 20 or more

[3] U.S. Bureau of Labor Statistics, Handbook of Methods, Survey of Occupational Injuries and Illnesses, p. 12 (last modified date October 30, 2020); *https://www.bls.gov/opub/hom/soii/pdf/soii.pdf.*

[4] BLS started collecting nationally representative job transfer and restriction cases in January 2022. BLS will begin publishing biennial case and demographic estimates using these data in November 2023. BLS will continue to publish summary industry estimates annually.

employees in industries included in appendix A to subpart E of part 1904, and

2. under § 1904.41(a)2), from establishments with 250 or more employees in all industries that are routinely required to keep OSHA injury and illness records.

OSHA publishes this information on its website at *https://www.osha.gov/Establishment-Specific-Injury-and-Illness-Data.* OSHA is proposing to revise this data collection to include information from the OSHA Form 300 Log and Form 301 Incident Report from establishments with 100 or more employees in certain industries.

*G. Benefits of Establishment-Specific, Case-Specific Data Collection and Publication*

As discussed in more detail below, the proposed rule would amend § 1904.41 to require establishments with 100 or more employees in certain designated industries to electronically submit injury and illness information from all three recordkeeping forms to OSHA once a year (see proposed § 1904.41(a)(2)). All of the establishments that would be subject to this proposed section are already required to annually submit information from their Form 300A, but these establishments would be newly required to also annually submit certain information from their Forms 300 and 301.

The proposed requirement for the electronic submission of establishment-specific, case-specific information from the Forms 300 and 301, and the subsequent publication of certain establishment-specific, case-specific data elements would have numerous benefits.

The main purpose of the proposed rule is to prevent worker injuries and illnesses through the collection and use of timely, establishment-specific injury and illness data. With the information obtained through this proposed rule, employers, employees, employee representatives, the government, and researchers would be better able to identify and mitigate workplace hazards and thereby prevent worker injuries and illnesses.

The proposed rule would support OSHA's statutory directive to ''assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources'' (29 U.S.C. 651(b)) ''by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem'' (29 U.S.C. 651(b)(12)).

The importance of this rule in preventing worker injuries and illnesses can be understood in the context of workplace safety and health in the United States today. The number of workers injured or made ill on the job remains unacceptably high. According to the SOII, each year employees experience 3 million serious (requiring more than first aid) injuries and illnesses at work, and this number is widely recognized to be an undercount of the actual number of occupational injuries and illnesses that occur annually. OSHA currently has limited information about the injury/illness risks facing workers in specific establishments, and the proposed rule would increase the agency's ability to focus resources on those workplaces where workers are at high risk.

However, even with improved targeting, OSHA Compliance Safety and Health Officers can inspect only a small proportion of the nation's workplaces each year, and it would take many decades to inspect each covered workplace in the nation even once. As a result, to reduce worker injuries and illnesses, it is of great importance for OSHA to increase its impact on the many thousands of establishments where workers are being injured or made ill but which OSHA does not have the resources to inspect. Public access to the collected establishment-specific, case-specific information may encourage employers to abate hazards and thereby prevent injuries and illnesses, so that the employer's establishment can be seen by members of the public, including investors and job seekers, as one in which the risk to workers' safety and health is low.

A requirement for the electronic submission of establishment-specific, case-specific recordkeeping data would help OSHA encourage employers to prevent worker injuries and illnesses by greatly expanding OSHA's access to the establishment-specific, case-specific information employers are already required to record under part 1904. As described in the previous section, OSHA currently does not have systematic access to this information. OSHA has limited access to case-specific, establishment-specific injury and illness information in a particular year. Typically, OSHA only has access if the establishment was inspected.

The proposed rule's provisions requiring regular electronic submission of case-specific injury and illness data would allow OSHA to obtain a much larger data set of establishment-specific, case-specific information about injuries and illnesses in the workplace. This information would help OSHA use its enforcement and compliance assistance resources more effectively by enabling OSHA to identify the workplaces where workers are at high risk.

For example, OSHA could send hazard-specific educational materials to employers who report high rates of injuries or illnesses related to those hazards. In addition, OSHA would be able to use the information to identify emerging hazards, support an agency response, and reach out to employers whose workplaces might include those hazards. The data collection would also enable the agency to focus its Emphasis Program inspections on establishments with specific hazards, such as trench and excavation collapses (see CPL 02–00–161, October 1, 2018). OSHA would be better able to refer employers who report certain types of injuries/illnesses to OSHA's free on-site consultation program. OSHA would also be able to add specific hazards or types of injury or illness to the Site Specific Targeting (SST) program, which currently is based on establishments' overall injury/illness rates.

The new collection would provide establishment-specific, case-specific injury and illness data for analyses that are not currently possible. For example, OSHA could analyze the data collected under this system to assess changes in types and rates of particular injuries or illnesses in a particular industry over time. It would also enable OSHA to conduct rigorous evaluations of different types of programs, initiatives, and interventions in different industries and geographic areas, enabling the agency to become more effective and efficient.

In addition, publication of establishment-specific, case-specific injury and illness data would benefit the majority of employers who want to prevent injuries and illnesses among their employees, through several mechanisms. First, the information would enable interested parties to gauge the full range of injury and illness case types at the establishment. Second, employers could compare case-specific injury and illness information at their establishments to those at comparable establishments, and set workplace safety/health goals benchmarked to the establishments they consider most comparable. Third, online availability of case-specific, establishment-specific injury and illness information would allow employees to compare their own workplaces to the safest workplaces in their industries. In addition, if employees were able to preferentially choose employment at the safest

workplaces in their industries, then employers might take steps to improve workplace safety and health (preventing injuries and illnesses from occurring) in order to attract and retain employees.

Fourth, access to these data could improve the workings of the labor market by providing more complete information to job seekers, and, as a result, encourage employers to abate hazards in order to attract more in-demand employees. Using data newly accessible under this proposed rule, potential employees could examine the case-specific information at establishments where they are interested in working, to help them make a more informed decision about a future place of employment. This could also encourage employers with more hazardous workplaces in a given industry to make improvements in workplace safety and health, because potential employees, especially the ones whose skills are most in demand, might be reluctant to work at more hazardous establishments. In addition, this would help address a problem of information asymmetry in the labor market, where the businesses with the greatest problems have the lowest incentive to self-disclose.

Disclosure of and access to case-specific injury and illness data have the potential to improve research on the distribution and determinants of workplace injuries and illnesses, and therefore to prevent workplace injuries and illnesses from occurring. Using data collected under the proposed rule, researchers might identify previously unrecognized patterns of injuries and illnesses across establishments where workers are exposed to similar hazards. Such research would be especially useful in identifying hazards that result in a small number of injuries or illnesses in each establishment but a large number overall, due to a wide distribution of those hazards in a particular area, industry, or establishment type. Case-specific data made available under this proposed rule could also allow researchers to identify patterns of injuries or illnesses that are masked by the aggregated, establishment-level data currently available.

The availability of establishment-specific injury and illness data would also be of great use to county, state and territorial Departments of Health and other public institutions charged with injury and illness surveillance. In particular, aggregation of case-specific injury and illness data from similar establishments could facilitate identification of newly-emerging hazards. Public health surveillance programs must currently primarily rely on reporting of cases seen by medical practitioners, any one of whom would rarely see enough cases to identify an occupational etiology.

Workplace safety and health professionals might use the case-specific data to identify establishments whose injury/illness records suggest that the establishments would benefit from their services. In general, online access to this large database of case-specific injury and illness information could support the development of innovative ideas for improving workplace safety and health, and would allow everyone with a stake in workplace safety and health to participate in improving occupational safety and health.

Furthermore, because the case-specific data would be publicly available, industries, trade associations, unions, and other groups representing employers and workers would be able to evaluate the effectiveness of privately-initiated injury and illness prevention initiatives that affect groups of establishments. In addition, linking these data with data residing in other administrative data sets would enable researchers to conduct rigorous studies that would increase our understanding of injury causation, prevention, and consequences. For example, by combining these data with data collected in the Annual Survey of Manufactures (conducted by the United States Census Bureau), it would be possible to examine the impact of a range of management practices on specific injury and illness types, and in turn the impact of those injury and illness types on the financial status of employers.

And finally, public access to these data would also enable software developers to develop tools that facilitate use of these data by employers, workers, researchers, consumers and others.

## II. Legal Authority

OSHA is issuing this proposed rule pursuant to authority expressly granted by several provisions of the OSH Act that address the recording and reporting of occupational injuries and illnesses. Section 2(b)(12) of the OSH Act states that one of the purposes of the OSH Act is to ''assure so far as possible . . . safe and healthful working conditions . . . by providing for appropriate reporting procedures . . . which will help achieve the objective of th[e] Act and accurately describe the nature of the occupational safety and health problem.'' 29 U.S.C. 651(b)(12). Section 8(c)(1) requires each employer to ''make, keep and preserve, and make available to the Secretary [of Labor] or the Secretary of Health and Human Services, such records regarding his activities relating to this Act as the Secretary . . . may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses'' (29 U.S.C. 657(c)(1)). Section 8(c)(2) directs the Secretary to prescribe regulations ''requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job'' (29 U.S.C. 657(c)(2)).

Section 8(g)(1) authorizes the Secretary ''to compile, analyze, and publish, whether in summary or detailed form, all reports or information obtained under this section.'' Section 8(g)(2) of the Act broadly empowers the Secretary ''to prescribe such rules and regulations as he may deem necessary to carry out his responsibilities under th[e] Act.'' 29 U.S.C. 657(g)(2).

Section 24 of the OSH Act (29 U.S.C. 673) contains a similar grant of authority. This section requires the Secretary to ''develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics'' and ''compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses . . .'' (29 U.S.C. 673(a)). Section 24 also requires employers to ''file such reports with the Secretary as he shall prescribe by regulation'' (29 U.S.C. 673(e)). These reports are to be based on ''the records made and kept pursuant to § 8(c) of this Act'' (29 U.S.C. 673(e)).

Section 20 of the Act, 29 U.S.C. 669, contains additional implicit authority for collecting and disseminating data on occupational injuries and illnesses. Section 20(a) empowers the Secretaries of Labor and Health and Human Services to consult on research concerning occupational safety and health problems, and provides for the use of such research, ''and other information available,'' in developing criteria on toxic materials and harmful physical agents. Section 20(d) states that ''[i]nformation obtained by the Secretary . . . under this section shall be disseminated by the Secretary to employers and employees and organizations thereof.''

Further support for the Secretary's authority to require employers to keep and submit records of work-related illnesses and injuries can be found in the Congressional Findings and Purpose at the beginning of the OSH Act (29 U.S.C. 651). In this section, Congress declares the overarching purpose of the Act to be ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions'' (29 U.S.C. 651(b)). One of the ways in which the Act is meant to achieve this goal is ''by providing for appropriate reporting procedures. . .[that] will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem'' (29 U.S.C. 651(b)(12)).

The OSH Act authorizes the Secretary of Labor to issue two types of occupational safety and health rules: Standards and regulations. Standards, which are authorized by section 6 of the Act, aim to correct particular identified workplace hazards, while regulations further the general enforcement and detection purposes of the OSH Act (see *Workplace Health & Safety Council* v. *Reich,* 56 F.3d 1465, 1468 (D.C. Cir. 1995) (citing *La. Chem. Ass'n* v. *Bingham,* 657 F.2d 777, 781–82 (5th Cir. 1981)); *United Steelworkers of Am.* v. *Auchter,* 763 F.2d 728, 735 (3d Cir. 1985)). Recordkeeping requirements promulgated under the Act are characterized as regulations (see 29 U.S.C. 657 (using the term ''regulations'' to describe recordkeeping requirements); see also *Workplace Health & Safety Council* v. *Reich,* 56 F.3d 1465, 1468 (D.C. Cir. 1995) (citing *La. Chem. Ass'n.* v. *Bingham,* 657 F.2d 777, 781–82 (5th Cir. 1981); *United Steelworkers of Am.* v. *Auchter,* 763 F.2d 728, 735 (3d Cir. 1985)).

This proposed rule does not infringe on employers' Fourth Amendment rights. The Fourth Amendment protects against searches and seizures of private property by the government, but only when a person has a ''legitimate expectation of privacy'' in the object of the search or seizure (*Rakas* v. *Illinois,* 439 U.S. 128, 143–47 (1978)). There is little or no expectation of privacy in records that are required by the government to be kept and made available (*Free Speech Coalition* v. *Holder,* 729 F. Supp. 2d 691, 747, 750–51 (E.D. Pa. 2010) (citing cases); *United States* v. *Miller,* 425 U.S. 435, 442–43 (1976); cf. *Shapiro* v. *United States,* 335 U.S. 1, 33 (1948) (no Fifth Amendment interest in required records)). Accordingly, the Fourth Circuit held, in *McLaughlin* v. *A.B. Chance,* that an employer has little expectation of privacy in the records of occupational injuries and illnesses kept pursuant to OSHA regulations, and must disclose them to the agency on request (842 F.2d 724, 727–28 (4th Cir. 1988)).

Even if there were an expectation of privacy, the Fourth Amendment prohibits only unreasonable intrusions by the government (*Kentucky* v. *King,* 131 S. Ct. 1849, 1856 (2011)). The information submission requirement in this proposed rule is reasonable. The proposed requirement serves a substantial government interest in the health and safety of workers, has a strong statutory basis, and rests on reasonable, objective criteria for determining which employers must report information to OSHA (see *New York* v. *Burger,* 482 U.S. 691, 702–703 (1987)).

OSHA notes that two courts have held, contrary to *A.B. Chance,* that the Fourth Amendment requires prior judicial review of the reasonableness of an OSHA field inspector's demand for access to injury and illness logs before the agency could issue a citation for denial of access (*McLaughlin* v. *Kings Island,* 849 F.2d 990 (6th Cir. 1988)*; Brock* v. *Emerson Electric Co.,* 834 F.2d 994 (11th Cir. 1987)). Those decisions are inapposite here. The courts based their rulings on a concern that field enforcement staff had unbridled discretion to choose the employers they would inspect and the circumstances in which they would demand access to employer records. The *Emerson Electric* court specifically noted that in situations where ''businesses or individuals are required to report particular information to the government on a regular basis[,] a uniform statutory or regulatory reporting requirement [would] satisf[y] the Fourth Amendment concern regarding the potential for arbitrary invasions of privacy'' (834 F.2d at 997, n.2). This proposed rule, like that hypothetical, establishes general reporting requirements based on objective criteria and does not vest field staff with any discretion. The employers that are required to report data, the information they must report, and the time when they must report it are clearly identified in the text of the rule and in supplemental notices that will be published pursuant to the Paperwork Reduction Act.

Additionally, with regard to publication of collected data, FOIA generally supports OSHA's intention to publish information on a publicly available website. FOIA provides that certain Federal agency records must be routinely made ''available for public inspection and copying'' in agency reading rooms. See, 5 U.S.C. 552(a)(2) (2000). These reading rooms contain basic agency materials such as agency manuals, specific agency policy statements, and opinions developed in the adjudication of cases. Subsection (a)(2) provides that agencies must include any records processed and disclosed in response to a FOIA request that ''the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.''

Based on its experience, OSHA believes that the recordkeeping information from the Forms 300, 301, and 300A required to be submitted under this proposed rule will likely be the subject of multiple FOIA requests in the future. As such, the agency plans to place the recordkeeping information that will be posted on the public OSHA website in its Electronic FOIA Library. Since agencies may ''withhold'' (*i.e.,* not make available) a record (or portion of such a record) if it falls within a FOIA exemption, just as they can do in response to FOIA requests, OSHA will place the published information in its FOIA Library consistent with all FOIA exemptions.

## III. Summary and Explanation of the Proposed Rule

### *A. Description of Proposed Revisions*

#### 1. Section 1904.41(a)(1)—Annual Electronic Submission of Information From OSHA Form 300A Summary of Work-Related Injuries and Illnesses by Establishments With 20 or More Employees in Designated Industries

Under proposed § 1904.41(a)(1), establishments that had 20 or more employees at any time during the previous calendar year, and are classified in an industry listed in appendix A to subpart E, would be required to electronically submit information from their OSHA Form 300A to OSHA or OSHA's designee once a year. The current recordkeeping regulation requires two categories of establishments to electronically submit information from their Form 300A to OSHA on an annual basis. First, current § 1904.41(a)(1) requires establishments with 250 or more employees at any time during the previous calendar year, in all industries that are routinely required to keep OSHA injury and illness records, to electronically submit information from their 300A to OSHA once a year. Second, current § 1904.41(a)(2) requires establishments with 20–249 employees at any time during the previous calendar year, in industries listed in appendix A to subpart E of part 1904, to electronically submit information from

their OSHA 300A to OSHA or OSHA's designee once a year.

The proposed rule would not impose any new requirements on establishments to electronically submit information from their Form 300A to OSHA. All establishments that would be required to electronically submit Form 300A information to OSHA on an annual basis under the proposed rule are already subject to that requirement under the current regulation. This includes all of the establishments with 250 or more employees that would be required to electronically submit information to OSHA under proposed § 1904.41(a)(2), which are already required to submit this information under the current regulation at § 1904.41(a)(1).

As discussed in more detail below, proposed § 1904.41(a) would remove the electronic submission requirement for certain establishments with 250 or more employees. Currently, all establishments of this size in industries routinely required to keep injury and illness records are required to electronically submit information from their Form 300A to OSHA once a year. The proposal requires this submission only for the establishments in industries listed in appendix A. OSHA believes that only a small number of establishments would be excluded by the proposal. In calendar year 2020, 2,665 establishments with 250 or more employees, in an industry not in current appendix A to subpart E, submitted information from their 2019 Form 300A to OSHA. Under proposed § 1904.41(a), these establishments would no longer be required to electronically submit Form 300A data to OSHA.[5] The agency has preliminarily determined that collecting Form 300A data from this relatively small number of large establishments in lower-hazard industries is not a priority for OSHA inspection targeting or compliance assistance activities.[6]

Additionally, OSHA proposes to revise appendix A to subpart E to update the list of designated industries to conform with the 2017 version of the North American Industry Classification System (NAICS). The Office of Management and Budget, through its Economic Classification Policy Committee (ECPC), reviews and considers revisions for NAICS, a statistical classification system, every five years. In 2016, when OSHA revised § 1904.41, the agency used the 2012 version of NAICS to designate the industries in which establishments with 20–249 employees were required to electronically submit Form 300A data to OSHA. (See current appendix A to subpart E of part 1904). The Office of Management and Budget has since issued two updates to the NAICS codes: 2017 NAICS codes and 2022 NAICS codes. The update from 2012 NAICS to 2017 NAICS would have the benefit of using more current NAICS codes, as well as ensuring that both proposed appendix A and proposed appendix B (referenced in proposed § 1904.41) use the same version of NAICS. As explained below, the industries in proposed appendix B are a subset of the industries in appendix A. Also, the 2017 version of NAICS is the version currently used by BLS for the SOII data that OSHA is using for this rulemaking, and employers are likely more familiar with the 2017 industry codes.

This proposed revision would not impact which industries are covered and therefore required to provide their data.[7] It would merely reflect the updated 2017 NAICS codes. For appendix A, OSHA is limiting the scope of this rulemaking to the proposed update from the 2012 version of NAICS to the 2017 version of NAICS. Other changes to appendix A are not within the scope of this rulemaking.

For proposed (*i.e.,* updated) appendix A, the change from the 2012 NAICS to the 2017 NAICS would affect only a few industry groups at the 4-digit NAICS level. Specifically, the 2012 NAICS industry group 4521 (Department Stores) is split between the 2017 NAICS industry groups 4522 (Department Stores) and 4523 (General Merchandise Stores, including Warehouse Clubs and Supercenters). Also, the 2012 NAICS industry group 4529 (Other General Merchandise Stores) is included in 2017 NAICS industry group 4523 (General Merchandise Stores, including Warehouse Clubs and Supercenters).

The proposed revised appendix A is as follows:

PROPOSED APPENDIX A

| 2017 NAICS code | 2017 NAICS title |
|---|---|
| 11 | Agriculture, forestry, fishing and hunting. |
| 22 | Utilities. |
| 23 | Construction. |
| 31–33 | Manufacturing. |
| 42 | Wholesale trade. |
| 4413 | Automotive Parts, Accessories, and Tire Stores. |
| 4421 | Furniture Stores. |
| 4422 | Home Furnishings Stores. |
| 4441 | Building Material and Supplies Dealers. |
| 4442 | Lawn and Garden Equipment and Supplies Stores. |
| 4451 | Grocery Stores. |
| 4452 | Specialty Food Stores. |
| 4522 | Department Stores. |
| 4523 | General Merchandise Stores, including Warehouse Clubs and Supercenters. |
| 4533 | Used Merchandise Stores. |
| 4542 | Vending Machine Operators. |
| 4543 | Direct Selling Establishments. |
| 4811 | Scheduled Air Transportation. |
| 4841 | General Freight Trucking. |

[5] See docket exhibit OSHA–2021–006–0003 for the list of industries in which establishments with 250 or more employees would no longer be required to electronically submit Form 300A data to OSHA.

[6] In 2016, OSHA established the list of industries in current appendix A to subpart E based on a 2011–2013 three-year-average Days Away, Restriction, and Job Transfer (DART) rate greater than 2.0 in the BLS Survey of Occupational Injuries and Illnesses.

[7] Note that the proposed rule would remove NAICS 7213, Rooming and Boarding Houses, from proposed appendix A to subpart E. That specific NAICS industry group, which is listed in the part 1904 Non-Mandatory appendix A to subpart B—Partially Exempt Industries, is not routinely required to keep OSHA injury and illness records. However, that NAICS industry group was mistakenly included in appendix A to subpart E when OSHA published the 2016 final rule.

PROPOSED APPENDIX A—Continued

| 2017 NAICS code | 2017 NAICS title |
|---|---|
| 4842 | Specialized Freight Trucking. |
| 4851 | Urban Transit Systems. |
| 4852 | Interurban and Rural Bus Transportation. |
| 4853 | Taxi and Limousine Service. |
| 4854 | School and Employee Bus Transportation. |
| 4855 | Charter Bus Industry. |
| 4859 | Other Transit and Ground Passenger Transportation. |
| 4871 | Scenic and Sightseeing Transportation, Land. |
| 4881 | Support Activities for Air Transportation. |
| 4882 | Support Activities for Rail Transportation. |
| 4883 | Support Activities for Water Transportation. |
| 4884 | Support Activities for Road Transportation. |
| 4889 | Other Support Activities for Transportation. |
| 4911 | Postal Service. |
| 4921 | Couriers and Express Delivery Services. |
| 4922 | Local Messengers and Local Delivery. |
| 4931 | Warehousing and Storage. |
| 5152 | Cable and Other Subscription Programming. |
| 5311 | Lessors of Real Estate. |
| 5321 | Automotive Equipment Rental and Leasing. |
| 5322 | Consumer Goods Rental. |
| 5323 | General Rental Centers. |
| 5617 | Services to Buildings and Dwellings. |
| 5621 | Waste Collection. |
| 5622 | Waste Treatment and Disposal. |
| 5629 | Remediation and Other Waste Management Services. |
| 6219 | Other Ambulatory Health Care Services. |
| 6221 | General Medical and Surgical Hospitals. |
| 6222 | Psychiatric and Substance Abuse Hospitals. |
| 6223 | Specialty (except Psychiatric and Substance Abuse) Hospitals. |
| 6231 | Nursing Care Facilities (Skilled Nursing Facilities). |
| 6232 | Residential Intellectual and Developmental Disability, Mental Health, and Substance Abuse Facilities. |
| 6233 | Continuing Care Retirement Communities and Assisted Living Facilities for the Elderly. |
| 6239 | Other Residential Care Facilities. |
| 6242 | Community Food and Housing, and Emergency and Other Relief Services. |
| 6243 | Vocational Rehabilitation Services. |
| 7111 | Performing Arts Companies. |
| 7112 | Spectator Sports. |
| 7121 | Museums, Historical Sites, and Similar Institutions. |
| 7131 | Amusement Parks and Arcades. |
| 7132 | Gambling Industries. |
| 7211 | Traveler Accommodation. |
| 7212 | RV (Recreational Vehicle) Parks and Recreational Camps. |
| 7223 | Special Food Services. |
| 8113 | Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance. |
| 8123 | Drycleaning and Laundry Services. |

OSHA welcomes public comment on the proposed changes to § 1904.41(a)(1).

2. Section 1904.41(a)(2)—Annual Electronic Submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses, OSHA Form 300 Log of Work-Related Injuries and Illnesses, and OSHA Form 301 Injury and Illness Incident Report by Establishments With 100 or More Employees in Designated Industries

Section 1904.41(a)(2) of the proposed rule would add a requirement for establishments that had 100 or more employees at any time during the previous calendar year, and that are in an industry listed in proposed appendix B to subpart E, to electronically submit to OSHA or OSHA's designee once a year, certain information from the OSHA Forms 300, 301, and 300A.

The requirement in proposed § 1904.41(a)(2) for the submission of 300A data by establishments with 100 or more employees in industries listed in proposed appendix B to subpart E would not be new. All of the establishments with 100 or more employees in industries listed in proposed appendix B to subpart E are already required to electronically submit 300A data to OSHA once a year under current 29 CFR 1904.41. However, the proposed requirement for the electronic submission of data from the 300 and 301 forms would be new.

As discussed above in the Regulatory History section of this preamble, in 2016, OSHA issued a final rule that revised the recordkeeping regulation at 29 CFR 1904.41 to require establishments with 250 or more employees that are routinely required to keep injury and illness records to electronically submit information from their 300 and 301 forms to OSHA once a year. The 300 and 301 data submission requirement from the 2016 rulemaking was never fully implemented, and OSHA never collected 300 and 301 data electronically from employers covered by the requirements in the 2016 final rule.

In 2019, OSHA issued a final rule that removed the requirement for the annual electronic submission of 300 and 301 data to OSHA. In the preamble to the 2019 final rule, OSHA explained that the 300/301 submission requirement

was being removed because the collection of such data would expose sensitive worker information to a meaningful risk of disclosure, and that ''OSHA cannot justify that risk given its resource allocation concerns and the uncertain incremental benefits to OSHA of collecting the data'' (84 FR 387). In addition, ''OSHA . . . determined that the best use of its resources [was] to focus on data it already receives—including a large set of data from Form 300A, as well as discrete data about urgent issues from severe injury reports—and has found useful in its past experience'' (84 FR 387).

OSHA has preliminarily determined that the reasons given in the preamble to the 2019 final rule for the removal of the 300 and 301 data submission requirement are no longer compelling. As discussed in more detail below, recent advancements in technology have reduced the risk that information that reasonably identifies individuals directly, such as name and contact information, will be disclosed to the public. The improved technology used to protect sensitive employee data will reduce costs and resource-allocation issues for OSHA by eliminating the need to manually identify and remove information that reasonably identifies individuals directly from submitted data. In addition, the improved technology has decreased the resources required to analyze the data. Moreover, because of these improvements, OSHA is now better able to collect, analyze, and publish data from the 300 and 301 forms, so the anticipated benefits of collecting the data are more certain. The collection of case-specific data will allow the agency to focus its enforcement and compliance assistance resources based on hazard-specific information and trends, and to increase its ability to identify emerging hazards, at the establishment level. Accordingly, at this point, the significant benefits of collecting establishment-specific, case-specific data from the 300 and 301 forms outweigh the slight risk to employee privacy.

To this point in time, OSHA has successfully collected reference year 2016 through 2020 Form 300A data through the OSHA Injury Tracking Application. Approximately 300,000 records have been submitted to the agency each year. OSHA has successfully analyzed these data to identify establishments with elevated injury and illness rates and has focused both its enforcement and outreach resources towards these establishments. This experience demonstrates OSHA's ability to collect, analyze, and use large volumes of data to interact with establishments where workers are being injured or becoming ill. However, this same experience has demonstrated the limits of the data currently collected. For example, OSHA is currently developing a National Emphasis Program to address the hazards associated with environmental heat. Without case-specific injury and illness data, the agency is unable to identify specific establishments where workers are suffering work-related heat disorders. The Summary data from Form 300A do not provide the level of detail required to address specific occupational hazards.

Based on the agency's experience with collecting and using the Form 300A data and the development of a system to auto-code case-specific data, OSHA is now better able to collect, analyze, and publish data from the 300 and 301 forms, so the anticipated benefits of collecting the data are more certain.

a. The Data Collection Will Adequately Protect Information That Reasonably Identifies Individuals Directly

As explained in the 2019 final rule, OSHA Forms 300 and 301 contain information that reasonably identifies individuals directly, such as name, contact information, date of birth, and physician name, for the workers who experienced a recordable injury or illness. The OSHA Forms 300 and 301 also contain fields that are not direct identifiers but that could act as indirect identifiers if released and combined with other information, such as job title on the Form 300, time employee began work on the Form 301, and date of death on the Form 301.

In this rulemaking, OSHA has preliminarily determined that the proposed data collection would adequately protect information that reasonably identifies individuals directly, such as name and address, with multiple layers of protection, including by limiting the amount of information submitted by employers; reminding employers not to submit information that reasonably identifies individuals directly; withholding certain fields from disclosure; and using automated information technology to detect and remove information that reasonably identifies individuals directly. In particular, advances in neural networks and machine learning have strengthened OSHA's ability to protect information that reasonably identifies individuals directly.

First, the proposed rule would protect information that reasonably identifies individuals directly by limiting the amount of information submitted by employers. Under proposed § 1904.41(b)(9), for the 300 Log, OSHA does not intend to collect employees' names (column B). For the 301 Incident Report, OSHA will not collect the following information: Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), and facility name and address if treatment was given away from the worksite (field 7). Since these fields would not be collected, there would be no risk of public disclosure of the data in these fields.

In addition, OSHA plans to limit the information that reasonably identifies individuals directly collected in the system by posting reminders to employers to omit information that reasonably identifies individuals directly, such as names, addresses, or Social Security numbers, from the text fields they submit. OSHA routinely uses these types of instructions, such as when it requests comments from stakeholders in rulemakings such as this one (see ''*Instructions*'' on submitting comments above), and has found these reminders to be an effective manner of preventing the unintentional submission and collection of personal information that reasonably identifies individuals directly. Again, if this information is not submitted in the first place, there will be no risk of its disclosure to the public.

Second, OSHA plans to design the collection system to provide extra protections for some of the personal information that employers would be required to submit under the proposal. Specifically, the proposal would require employers to submit the employee's date of birth from OSHA Form 301 (Field 3 on OSHA Form 301). However, the agency plans to design the collection system so that it will immediately calculate the employee's age based on the date of birth entered and then store only the employee's age, not their date of birth.

Third, as described in more detail below, OSHA would seek to protect information that reasonably identifies individuals directly and certain other elements of personal information submitted under the proposed rule by withholding certain fields from public disclosure. The OSHA Form 301, Fields 1 through 9 (the left side of the 301), includes personal information about the injured or ill employee as well as the physician or other health care professional. Under the provisions about access to employees and employee representatives in OSHA's recordkeeping regulation, § 1904.35(b)(2)(v)(A) and (B) prohibit the release of information in fields 1

through 9 to individuals other than the employee or former employee who suffered the injury or illness and his or her personal representatives. As noted above, OSHA's proposal would not require employers to submit some of those items (fields 1, employee full name; 2, employee address; 6, name of physician or other health care professional; and 7, treatment location). In addition, consistent with § 1904.35(b)(2)(v)(A) and (B), OSHA proposes to collect but would not release the information from the remaining fields that are likely to contain private worker information: Age (calculated from date of birth in field 3), date hired (field 4), gender (field 5), whether the employee was treated in the emergency room (field 8), and whether the employee was hospitalized overnight as an in-patient (field 9). Thus, there would be little risk of public disclosure of this information.

Fourth, as explained above, consistent with FOIA, OSHA does not intend to release or post information that reasonably identifies individuals directly collected through proposed § 1904.41(a)(2) and, via the use of the protective measures described above and the scrubbing technology described below, the agency preliminarily finds that it can effectively remove such information that reasonably identifies individuals directly before releasing or posting the data. Moreover, OSHA notes that the 2019 rulemaking took an expansive view of the term ''PII.'' For example, in that rule, OSHA regarded information such as descriptions of workers' injuries and the body parts affected (Field F on Form 300, Field 16 on Form 301), as ''quite sensitive,'' and stated that public disclosure of this information under FOIA or through the OSHA Injury Tracking Application (ITA) would pose a risk to worker privacy. As further justification for deciding to rescind the requirement to submit information from Forms 300 and 301, the agency stated that ''although OSHA believes data from Forms 300 and 301 would be exempt from disclosure under FOIA exemptions, OSHA is concerned that it still could be required by a court to release the data'' (84 FR 383).

After further consideration, OSHA has preliminarily determined that the 2019 rule's position on such information is at odds with the agency's usual practice of releasing such data. OSHA currently collects these forms from employers during inspections and, when the agency receives a FOIA request to which these records are responsive, the only field on OSHA Form 300 that is always withheld from disclosure under the FOIA is employee name (column B). Similarly, OSHA has often released the fields on the right-hand side of the OSHA Form 301 (fields 10 through 18) in response to FOIA requests. And the agency has regularly released similar information contained in the OSHA Information System (OIS) database in response to FOIA requests. For example, OSHA regularly releases data in the Hazard Description and Location field in closed cases in OIS, which often contains specific information about injuries. This practice of producing such case-specific information is long-standing, and the agency has not been notified of issues regarding employee identification or re-identification, despite that some of the released fields could act as indirect identifiers if combined with additional information or data external to the agency release or already in the requestor's possession.

In addition, OSHA uses FOIA Exemption 7(c) to withhold from disclosure information that reasonably identifies individuals directly, such as Social Security numbers or telephone numbers, included anywhere on the three OSHA recordkeeping forms. In addition, FOIA Exemption 6 protects information about individuals in ''personnel and medical and similar files'' when the disclosure of such information ''would constitute a clearly unwarranted invasion of personal privacy.'' [5 U.S.C. 552(b)(6)]. Thus, for example, although OSHA sometimes releases information in Field 15 of the 301 incident report (''Tell us how the injury occurred'') in response to a FOIA request, it redacts information that reasonably identifies individuals directly, such as a name or Social Security number, by applying either Exemption 6, which permits the withholding of information contained in personnel and medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, or Exemption 7(C), which protects information found in law enforcement files where disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Finally, OSHA preliminarily finds that existing privacy scrubbing technology is capable of de-identifying certain information that reasonably identifies individuals directly (such as name, phone number, email address, etc.) that may be submitted by employers to the system. As explained in the 2019 rulemaking, in order for OSHA to avoid publishing information that reasonably identifies individuals directly that may be contained within text fields in the employer-submitted 300 and 301 data, information that reasonably identifies individuals directly that has been submitted must be identified and removed. The large volume of information from text fields submitted under the proposed requirement would preclude human review and redaction of information that reasonably identifies individuals directly without great expenditure of resources. However, there are recent advances in automated computer programs that can detect information that reasonably identifies individuals directly, and which can be customized to also replace submitted text strings with placeholder characters or anonymized descriptive phrasing that indicate what type of information was replaced. This replacement process anonymizes and improves readability of the text entry. For example, a telephone number would be replaced with the word ''[number]'' or ''[telephone number],'' formatted to indicate a replacement has occurred.

In general, the tasks of detecting and categorizing information that reasonably identifies individuals directly can be accomplished either by automated systems using rules-based methods, machine-learning methods, deep learning, or hybrid approaches using Natural Language Processing (NLP). NLP refers to computer algorithms that both recognize and categorize text strings according to tested business rules. Machine learning methods typically refer to trained automated de-identification using labeled test datasets to develop relationships within the wording of, in this case, text fields in the Forms 300 and 301. With this approach, the statistical likelihood of phrases and wording being information that reasonably identifies individuals directly can be calculated based on evaluating the word or phrase as well as wording around a phrase and throughout the passage. Detection and anonymization rules developed with test datasets can be examined for accuracy, and revised as needed, by applying de-identification protocols to a separate set of test records or review by an independent expert prior to use.

Deep learning systems apply detection algorithms in a fashion that mimics the non-linear processing of human neural networks. ''Deep'' refers to the number of layers through which the data are examined to extract higher level relationships in the input data. The statistical methods used for this approach are specific to the type of domain and type of information being processed (*e.g.,* text or photographic images). Deep learning solutions to

classification of text, and the subcategory of de-identification, can yield results superior to classical machine-based learning in that they can capture contextual information in the passage. OSHA is committed to protecting information that reasonably identifies individuals directly such as name and address in published data, and the agency intends to test multiple applications for identifying and removing this information using a test database of the four free text fields, and then analyzing the results (including manual review) to identify the best product.

AI or machine learning—the technology used to detect, redact, and remove information that reasonably identifies individuals directly from structured and unstructured data fields—has advanced rapidly in recent years. Many vendors, including large commercial vendors, provide solutions for securing information that reasonably identifies individuals directly, including Cloud-based solutions and packages for detecting and redacting or removing information that reasonably identifies individuals directly from unstructured text like the OSHA 300 and 301 data fields. For example, Vendor A has a natural-language processing (NLP) service that uses machine learning to identify key words and phrases in unstructured text to detect and redact information that reasonably identifies individuals directly by replacing the term of interest with a character. Vendor A's service automatically identifies personal (*e.g.,* name, address, and age), financial (*e.g.,* bank account and routing numbers and PINs), technical security (*e.g.,* passwords, usernames, and IP addresses), and national (*e.g.,* SSN and driver's license numbers) identifying information. Vendor A also has a HIPAA-eligible NLP for extracting health data from unstructured text/data fields, thus protecting patient information. The initial release date for Vendor A's product was November 29, 2017. Similarly, Vendor B offers a service to detect, categorize, and remove personal identifying information (PII) and personal health information (PHI) in unstructured text across several pre-defined categories (*e.g.,* name, job types, email, address, phone); the initial release date for Vendor B's product was March 1, 2018. Vendor C provides an open-source package for identification, anonymization, and redaction of certain PII in structured and unstructured text; the initial release date for Vendor C's product was March 21, 2018. Vendor D provides a similar product that de-identifies sensitive data in text by replacing it with a token, symbol, or key thereby hiding the sensitive data. The hidden data can only be restored with a specific key or token that was used to de-identify the data. The initial release date for Vendor D's product was March 2, 2021. Each of these commercially available services is customizable and could be modified to identify and remove information that reasonably identifies individuals directly such as name and address from the 300 and 301 data collected.

OSHA intends to test multiple AI or machine learning methods, including commercial services, and analyze the results carefully to select the best option to secure and protect information that reasonably identifies individuals directly, such as name and address. No option, including a manual review, is 100% effective. Therefore, OSHA could consider a combination of the selected scrubbing application supplemented by some manual review of the data to protect information that reasonably identifies individuals directly.

In summary, OSHA preliminarily finds that the agency would be able to adequately protect workers' information that reasonably identifies individuals directly (such as name and address) using the safeguards in the proposed rule and OSHA's planned data collection system, in combination with warnings to employers and available automated information technology. In addition, the use of the automated informational technology would significantly decrease the need for the type of resource-intensive manual reviews that OSHA was concerned about in the 2019 rulemaking. Moreover, even if some of these data were ultimately used to identify employees, OSHA preliminarily finds that the benefits of collecting and publishing the data for improving safety and health outweigh potential privacy problems. As discussed below, the proposed data collection will further OSHA's statutory mission to assure safe and healthful working conditions for working people by providing data information for OSHA's targeting and compliance assistance efforts.

OSHA expects a Privacy Impact Assessment to be completed before issuing the final rule. OSHA welcomes public comment on the issue of collecting data that includes PII and protecting information that reasonably identifies individuals directly such as name and address from disclosure.

b. Recent Technological Developments Have Significantly Decreased the Resources Needed for OSHA To Collect, Analyze, Use, and Publish Establishment-Specific, Case-Specific Data

In addition to the worker privacy concerns, OSHA's decisions in the 2019 final rule relied in part on resource concerns. The agency preliminarily finds that these concerns are no longer compelling, in part, because recent technological developments in automated data coding for text-based fields have made it easier and more cost effective for OSHA to efficiently use electronically-submitted, establishment-specific, case-specific injury and illness data to improve OSHA's ability to identify, target, and remove workplace safety and health hazards, resulting in the prevention of work-related fatalities, injuries, and illnesses. The specific estimated cost burden on OSHA and employers for data collection is discussed in the Preliminary Economic Analysis section, below.

The primary information technology improvement relates to the coding of data. Specifically, in order to enable OSHA and stakeholders to undertake statistical analyses of information in text fields in the Forms 300 and 301, which include details regarding the circumstances and causes of workplace injuries and illnesses, OSHA intends to use automated systems to assign standardized codes based on the information contained in the text fields (*e.g.,* type of accident is ''fall''). Automated, standardized coding of information in text fields would allow OSHA to easily identify individual establishments that have experienced injuries and illnesses of a focused interest (such as falls from heights), assess the effectiveness of employers' health and safety programs, and evaluate OSHA's assistance programs.

Standardized coding of information from text fields in Forms 300 and 301 is already being done by BLS. Each year, BLS collects SOII data from sampled OSHA Forms 300 and 301, with approximately 300,000 written descriptions of work-related injuries and illnesses collected by the survey. BLS uses the information provided on these OSHA forms to generate detailed statistics on the case characteristics of work-related injuries or illnesses. In order to generate statistics, the text entries in the OSHA forms must be converted to standard BLS codes.

SOII data are coded according to the BLS Occupational Injury and Illness Classification System (OIICS) (Version 2.01). Specific codes are assigned to the

narrative to classify case characteristics such as the nature of the injury/illness, the part of the body affected, the event or exposure, and the source of the injury or illness. Prior to 2014, BLS assigned OIICS codes to the case narratives manually, which was both time consuming and subject to error. In 2014, BLS began using machine learning to code a subset of cases, first by selecting a learning algorithm, then by training it on large quantities of previously coded SOII narratives. During this training process, the algorithm calculated how strongly various features, such as words, pairs of words, and other items, were associated with the codes that could be assigned. After the training process, the algorithm was used to estimate the best codes for each uncoded narrative and assigned the codes if the model's confidence exceeded a predetermined threshold.

When codes were assigned manually, overall accuracy was around 71%. Accuracy with neural network autocoding was around 82%. Autocoding could be used for all the information collected but performance was worse on rarer codes. BLS decided to use a combination of autocoding and manual coding. From 2014 to 2017, the percent of codes automatically assigned rose to around 67%, but autocoding had reached a point of diminishing returns.

With the old autocoder previously coded narratives were broken up into smaller pieces, typically individual words and short word sequences, and used to estimate how strongly each piece was associated with each possible code. New narratives were then coded by identifying their individual pieces and aggregating the previously learned associations to choose the most closely associated code. Some of the problems with the old autocoder included only identifying words in a phrase without thought to context, *i.e.,* ''worker fell on car'' was the same as ''car fell on worker''; too many two- and three-word sequences; and separate autocoder models for each type of information, *i.e.,* separate models for occupation, nature, part, event, and source.

However, in 2018, BLS switched to deep neural networks. Like the older autocoder, neural networks rely on training data to learn and improve their accuracy over time. 2017 research found that the neural network autocoder outperformed the alternatives across all coding tasks and made an average of 24% fewer errors than the logistic regression autocoders, and an estimated 39% fewer errors than the manual coding process. On each task the neural network's accuracy was statistically greater than the next best alternative at a p-value of 0.001 or less.[8] By 2019, automatic coding had been expanded to include all six primary coding tasks (occupation, nature, part, source, secondary source, and event) with the model assigning approximately 85% of these codes.[9]

The BLS system is already collecting data using OSHA Forms 300 and 301, so OSHA should be able to mirror the BLS system to code the OSHA data fairly easily. OSHA could use the BLS source code to create a pilot system where the autocoding of realistic OSHA data could be tested and compared to manual coding of the same data. Upon successful testing and adoption of the BLS system, OSHA plans to consult and work with BLS for the long-term system maintenance to continuously update the neural network code and refine automation of the data.

Once the data were coded, OSHA would be able to use the data similarly to how the agency currently uses coded data from the Severe Injury Reporting (SIR) program. The SIR Program collects data on all severe work-related injuries and illnesses, defined as an amputation, in-patient hospitalization, or loss of an eye. Under OSHA's recordkeeping regulation at 29 CFR 1904.39, employers must report certain information about these severe injuries/illnesses to OSHA within 24 hours of occurrence. On a monthly basis, OSHA reviews the SIR data and trained analysts assign OIICS codes (nature, part, event, and source) for each SIR narrative, thus making the data searchable/query-able and more useful for agency programs. See Docket exhibit OSHA–2021–006–0005 for an example of a search interface for the data that would be collected under this proposal. OSHA could also combine the coded data with other data sources (*e.g.,* inspection data or ITA data) to increase the utility of the data.

In making these preliminary findings for this rulemaking, OSHA notes that some autocoding information technology was available during the 2019 rulemaking. In fact, in the 2018 NPRM, OSHA specifically requested comment on other agencies or organizations that use automated coding systems for text data in data collections (83 FR 36494, 36500). Commenters on this issue urged OSHA to consult with other agencies that collect this type of data, including the National Institute for Occupational Safety & Health (NIOSH), the Mine Safety and Health Administration (MSHA), BLS, the Federal Railroad Administration (FRA), and the Federal Aviation Administration (FAA), to learn about database design and best practices for collecting this kind of data (84 FR 389). In its own comments, NIOSH noted that it had already developed autocoding methods for categorizing occupation and industry based on free text data and had successfully utilized similar free text data collected from workers' compensation claims (84 FR 389). NIOSH also generously offered to help OSHA with data analysis (84 FR 389).

After reviewing these comments to the 2018 NPRM, OSHA determined that ''NIOSH's ability to analyze data collected from Forms 300 and 301 does not reduce the burden on OSHA to collect the data. Even if NIOSH could make the data useful for OSHA's enforcement targeting and outreach efforts, which NIOSH itself has suggested would present analytical challenges due to the volume of the data, OSHA and employers would be left covering the expense of collection, not to mention additional expense associated with the need to process and otherwise manually review data from the forms—costs that would detract from OSHA's priorities of enforcement and compliance assistance to reduce workforce hazards'' (84 FR 389). Ultimately, OSHA determined that any benefits of electronically collecting the Form 300 and 301 data were outweighed by the cost of developing a system to manage that volume of data, particularly when making use of the data would divert resources away from OSHA's then-current priority of fully utilizing Form 300A and severe injury data for targeting and outreach (84 FR 389).

In this proposal, OSHA has specific information from BLS regarding its technology. Following conversations with BLS since the 2019 rulemaking, OSHA is confident that it would be able to utilize similar technology in a cost-effective manner to code the data from OSHA Forms 300 and 301, avoiding many of the resource concerns specified in the 2019 rulemaking. Moreover, as discussed in more detail below, OSHA has preliminarily determined that benefits to worker safety and health far outweigh the potential costs of the systems necessary to collect these data, make them useful for analysis, analyze them, and publish them for stakeholder use.

In summary, available technology, including recent improvements in autocoding information technology, would enable OSHA to efficiently autocode the data from electronically-

[8] See ''Deep neural networks for worker injury autocoding'', Alexander Measure, U.S. Bureau of Labor Statistics, draft as of 9/18/2017: *https://www.bls.gov/iif/deep-neural-networks.pdf.*

[9] See *https://www.bls.gov/iif/autocoding.htm.*

submitted OSHA Forms 300 and 301. The agency would not need to rely primarily on manual review or analysis. Consequently, OSHA has preliminarily determined that the agency's 2019 resource-related concerns are no longer compelling. The agency welcomes public comment on the issue of automated coding of text-field data and other available technology that would enable OSHA to automatically code these data.

c. The Collection, Analysis, and Publishing of These Data Would Improve Worker Safety and Health

The value of the new de-identification and autocoding information technology discussed is significant. Most importantly, the new autocoding technology will allow OSHA to more effectively focus its enforcement and compliance assistance resources on specific establishments experiencing safety and health problems. Access to case-specific injury and illness data will also allow OSHA to better identify safety and health hazards. For example, unlike 300A data, which include heat illnesses in the category ''all other illnesses'' (Field M6), 300 and 301 data would allow OSHA to identify establishments with heat illnesses and allow the agency to focus its enforcement and compliance assistance resources on specific industries or types of workplaces with that specific hazard. Similarly, 300A data group all injuries into the single category ''injuries'' (Field M1), but 300 and 301 data would allow OSHA to identify establishments whose delivery workers experience different types of injuries, such as traffic violence injuries or lifting injuries.

In addition, reliance on only 300A data limits OSHA's ability to analyze and address existing workplace hazards. For example, the collection of 300A data provides OSHA with access to general information about certain illnesses, such as recorded cases involving work-related respiratory illness. However, the collection of 300A data does not provide OSHA with information about specific respiratory illnesses, such as cases involving work-related COVID–19. On the other hand, the collection and analysis of case-specific data would allow OSHA to identify specific establishments that have experienced recorded cases of work-related COVID–19, which could result in OSHA enforcement efforts and compliance assistance at that facility.

Similarly, together with the other protections proposed for the data collection, the new de-identification technology will allow OSHA to make the establishment-specific, case-specific, data publicly available in both coded and uncoded form, increasing workplace safety and health while providing protection against release of PII. Employers, employees, employee representatives, potential employees, customers and potential customers, workplace safety consultants, and members of the general public will all benefit from access to this information in a timely manner. For example, potential employees and potential customers will be able to review case-specific injury and illness data to make informed decisions on whether to seek employment at, or whether to do business with, a specific establishment. In turn, with heightened public awareness of injuries and illnesses at a given establishment, individual employers will be encouraged to increase their focus on enhancing workplace safety and health at their facility.

In addition, researchers will have access to a detailed, case-specific, establishment-specific dataset of work-related recordable injuries and illnesses, improving their ability to conduct occupational-health studies, as well as identify increasing or emerging hazards. For example, access to case-specific information could be extremely useful to individuals and public health agencies conducting research on the causes and prevention of work-related COVID–19.

In summary, OSHA preliminarily finds that the benefits for worker safety and health of collecting, analyzing, and publishing data from Forms 300 and 301 outweigh the cost of the actual collection, analysis, and publication of those data, which have been reduced since the 2019 rule. The agency invites comment on this preliminary determination.

d. Data Tools Will Enable Stakeholders To Efficiently Use OSHA-Published Establishment-Specific, Case-Specific Data

Once OSHA has removed PII and coded the case-specific injury and illness data submitted by employers, the agency plans to make the data available and able to be queried via a web-based tool. Stakeholders (including employers, employees, job-seekers, customers, researchers, workplace safety consultants, and the general public) who are interested in learning about occupational injuries and illnesses will have access to information on when injuries and illnesses occur, where they occur, and how they occur. Stakeholders could also use such a tool to analyze injury and illness data and identify patterns that are masked by the aggregation of injury/illness data in existing data sources.

Tool functionality could include:

- The ability to compare rates with other establishments by industry sector, occupation, size, region, and other variables.
- The ability to track trends and emerging hazards over time.
- Easy searches by common variables such as OIICS category (*e.g.,* event), industry sector, occupation, geography, etc.
- Provision of related data including workplace-specific violations, and demographic and economic data for reporting industries, to help contextualize the injury and illness data.
- Links to resources useful in increasing workplace safety such as best practices for the industry, injury reduction interventions, and other current health and safety information.
- Options for data visualization of the submitted data (*e.g.,* data visualizations of trends, data table displays, reports with summary counts and statistics).
- Flexibility for accommodating the different needs of different types of users (for example, an employee might only want to access information on one establishment, while a researcher may want to analyze data across an entire industry sector).
- Application programming interfaces (APIs) that allow other web-based tools to retrieve, process, and publish publicly-accessible OSHA data.

In developing a publicly-accessible tool for injury and illness data, OSHA would review how other federal agencies, such as the Environmental Protection Agency (EPA), have made their data publicly available via online tools that support some analyses. Examples of EPA tools include:

- Toxics Release Inventory Program Pollution Prevention (P2) Tool (*https://enviro.epa.gov/facts/tri/p2.html*) provides information that allows users to explore and compare facility and parent company environmental performance with respect to the management of toxic chemical waste, including facilities' waste management practices and trends.
- Enforcement and Compliance History Online (ECHO, *https://echo.epa.gov/*) contains enforcement and compliance information for EPA-regulated facilities and allows for analysis in trends of compliance and enforcement and creation of enforcement-related maps.
- Envirofacts (*https://enviro.epa.gov/*) provides access to several EPA databases containing information about environmental activities that affect air,

water, and land resources in the United States. The data are in a searchable, downloadable format.

• Enviromapper (*https://enviro.epa.gov/enviro/em4ef.home*) allows Envirofacts users to generate maps that contain the environmental information contained in Envirofacts.

• Discharge Monitoring Report (DMR) Pollutant Loading Tool (*https://echo.epa.gov/trends/loading-tool/water-pollution-search/*) allows users to determine what pollutants are being discharged into waterways and by which companies. The output from this tool is in the form of interactive charts and graphs.

• Facility Level Information on Greenhouse Gases Tool (FLIGHT, *https://ghgdata.epa.gov/ghgp/main.do*) provides information about greenhouse gas (GHG) emissions from large facilities in the U.S. and offers mapping, charting, comparing, and other analysis of facility-reported data.

Thus, OSHA preliminarily finds that available tools could enable stakeholders to use OSHA-published data from Forms 300 and 301 to improve worker safety and health. OSHA welcomes public comment on the utility of these data for researchers, employers, and other stakeholders, as well as on available data tools that would enable these stakeholders to efficiently use OSHA-published establishment-specific, case-specific data to improve worker safety and health.

e. The Covered Industries

In proposed § 1904.41(a)(2), for establishments with 100 or more employees, OSHA is seeking to balance the utility of the information collection for enforcement, outreach, and research, on the one hand, and the burden on employers to provide the information to OSHA, on the other hand. The 2016 final rule, which was subsequently rescinded, required submission of information from the OSHA Form 300, 301, and 300A from all establishments with 250 or more employees in industries routinely required to keep part 1904 injury and illness records. In the 2016 final rule, OSHA estimated that establishments with 250 or more employees covered by that section of the submission requirement would report 713,397 injury and illness cases per year.

For this rulemaking, to identify the appropriate balance of utility versus burden, OSHA analyzed five years of injury and illness summary data collected through OSHA's Injury Tracking Application (ITA). OSHA examined combinations of establishment size and industry hazardousness that, like the 2016 final rule, would provide the agency with information on roughly 750,000 cases of injuries and illnesses per year. Based on this analysis, OSHA is proposing a reporting requirement for establishments with 100 or more employees in 4-digit NAICS (2017) industries that:

1. Had a 3-year-average rate of total recordable cases (Total Case Rate, or TCR) in the BLS SOII for 2017, 2018, and 2019, of at least 3.5 cases per 100 full-time-equivalent employees, and

2. are included in proposed appendix A to subpart E. (All of the industries in proposed appendix B are also in appendix A.)

OSHA proposes to list the designated industries required to submit data from all three recordkeeping forms under proposed § 1904.41(a)(2) in proposed appendix B to subpart E.

OSHA is proposing one exception to these criteria, for the United States Postal Service (USPS), which is the only employer in NAICS 4911 Postal Service. BLS does not include USPS in the SOII. However, under the Postal Employees Safety Enhancement Act (Pub. L. 105–241), OSHA treats the USPS as a private sector employer for purposes of occupational safety and health, and establishments in NAICS 4911 (*i.e.,* USPS establishments) with 20 or more employees are currently required to electronically submit Form 300A information to OSHA. Using the 2017, 2018, and 2019 data submitted by USPS, OSHA calculated a TCR of 7.5 for NAICS 4911. Because this TCR is greater than the proposed 3.5 criterion for designated industries in proposed appendix B, OSHA is including NAICS 4911 in proposed appendix B to subpart E. OSHA notes that NAICS 4911 is also included in both current and proposed appendix A to subpart E.

In the 2016 final rule that revised § 1904.41, OSHA used the rate of cases with days away from work, job restriction, or transfer (DART) from the BLS SOII to determine the industries included in appendix A to subpart E of part 1904. However, proposed appendix B to subpart E is based on the TCR, which includes both cases resulting in days away from work, job restriction, or transfer, as well as other recordable cases such as those resulting in medical treatment beyond first aid. OSHA believes that TCR is the appropriate rate to use for determining the list of industries in proposed appendix B to subpart E because covered establishments will be required to electronically submit information to OSHA on all of their recordable cases, not just cases that resulted in days away from work, job restriction, or transfer. In 2020, OSHA received submissions of 2019 Form 300A data from 46,911 establishments that had 100 or more employees and were in one of the industries listed in proposed appendix B to subpart E, accounting for 680,930 total recordable cases and a TCR of 3.6. OSHA requests comment on whether TCR is the appropriate method for determining the list of industries in proposed appendix B to subpart E.

Additionally, OSHA anticipates that, by the time that the department expects to issue the final rule in this rulemaking, more current industry-level injury and illness data from BLS, as well as more establishment-specific injury and illness information from the ITA, will be available. When developing the final rule, OSHA may rely on the most current data available, as appropriate, for determining the list of industries in appendix B to subpart E. OSHA seeks comment from the public on whether the agency should use the most current data when developing the final rule.

The designated industries, which would be published as appendix B to subpart E of part 1904, are proposed to be as follows:

PROPOSED APPENDIX B

| 2017 NAICS code | 2017 NAICS title |
|---|---|
| 1111 | Oilseed and grain farming. |
| 1112 | Vegetable and melon farming. |
| 1113 | Fruit and tree nut farming. |
| 1114 | Greenhouse, nursery, and floriculture production. |
| 1119 | Other crop farming. |
| 1121 | Cattle ranching and farming. |
| 1122 | Hog and pig farming. |

PROPOSED APPENDIX B—Continued

| 2017 NAICS code | 2017 NAICS title |
|---|---|
| 1123 | Poultry and egg production. |
| 1129 | Other animal production. |
| 1141 | Fishing. |
| 1151 | Support activities for crop production. |
| 1152 | Support activities for animal production. |
| 1153 | Support activities for forestry. |
| 2213 | Water, sewage and other systems. |
| 2381 | Foundation, structure, and building exterior contractors. |
| 3111 | Animal food manufacturing. |
| 3113 | Sugar and confectionery product manufacturing. |
| 3114 | Fruit and vegetable preserving and specialty food manufacturing. |
| 3115 | Dairy product manufacturing. |
| 3116 | Animal slaughtering and processing. |
| 3117 | Seafood product preparation and packaging. |
| 3118 | Bakeries and tortilla manufacturing. |
| 3119 | Other food manufacturing. |
| 3121 | Beverage manufacturing. |
| 3161 | Leather and hide tanning and finishing. |
| 3162 | Footwear manufacturing. |
| 3211 | Sawmills and wood preservation. |
| 3212 | Veneer, plywood, and engineered wood product manufacturing. |
| 3219 | Other wood product manufacturing. |
| 3261 | Plastics product manufacturing. |
| 3262 | Rubber product manufacturing. |
| 3271 | Clay product and refractory manufacturing. |
| 3272 | Glass and glass product manufacturing. |
| 3273 | Cement and concrete product manufacturing. |
| 3279 | Other nonmetallic mineral product manufacturing. |
| 3312 | Steel product manufacturing from purchased steel. |
| 3314 | Nonferrous metal production and processing. |
| 3315 | Foundries. |
| 3321 | Forging and stamping. |
| 3323 | Architectural and structural metals manufacturing. |
| 3324 | Boiler, tank, and shipping container manufacturing. |
| 3325 | Hardware manufacturing. |
| 3326 | Spring and wire product manufacturing. |
| 3327 | Machine shops; turned product; and screw, nut, and bolt manufacturing. |
| 3328 | Coating, engraving, heat treating, and allied activities. |
| 3331 | Agriculture, construction, and mining machinery manufacturing. |
| 3335 | Metalworking machinery manufacturing. |
| 3361 | Motor vehicle manufacturing. |
| 3362 | Motor vehicle body and trailer manufacturing. |
| 3363 | Motor vehicle parts manufacturing. |
| 3366 | Ship and boat building. |
| 3371 | Household and institutional furniture and kitchen cabinet manufacturing. |
| 3372 | Office furniture manufacturing. |
| 4231 | Motor vehicle and motor vehicle parts and supplies merchant wholesalers. |
| 4233 | Lumber and other construction materials merchant wholesalers. |
| 4235 | Metal and mineral merchant wholesalers. |
| 4244 | Grocery and related product merchant wholesalers. |
| 4248 | Beer, wine, and distilled alcoholic beverage merchant wholesalers. |
| 4413 | Automotive parts, accessories, and tire stores. |
| 4422 | Home furnishings stores. |
| 4441 | Building material and supplies dealers. |
| 4442 | Lawn and garden equipment and supplies stores. |
| 4451 | Grocery stores. |
| 4522 | Department stores. |
| 4523 | General merchandise stores, including warehouse clubs and supercenters. |
| 4533 | Used merchandise stores. |
| 4543 | Direct selling establishments. |
| 4811 | Scheduled air transportation. |
| 4841 | General freight trucking. |
| 4842 | Specialized freight trucking. |
| 4851 | Urban transit systems. |
| 4852 | Interurban and rural bus transportation. |
| 4854 | School and employee bus transportation. |
| 4859 | Other transit and ground passenger transportation. |
| 4871 | Scenic and sightseeing transportation, land. |
| 4881 | Support activities for air transportation. |
| 4883 | Support activities for water transportation. |
| 4911 | Postal Service. |

PROPOSED APPENDIX B—Continued

| 2017 NAICS code | 2017 NAICS title |
|---|---|
| 4921 | Couriers and express delivery services. |
| 4931 | Warehousing and storage. |
| 5322 | Consumer goods rental. |
| 5621 | Waste collection. |
| 5622 | Waste treatment and disposal. |
| 6219 | Other ambulatory health care services. |
| 6221 | General medical and surgical hospitals. |
| 6222 | Psychiatric and substance abuse hospitals. |
| 6223 | Specialty hospitals. |
| 6231 | Nursing care facilities. |
| 6232 | Residential intellectual and developmental disability, mental health, and substance abuse facilities. |
| 6233 | Continuing care retirement communities and assisted living facilities for the elderly. |
| 6239 | Other residential care facilities. |
| 6243 | Vocational rehabilitation services. |
| 7111 | Performing arts companies. |
| 7112 | Spectator sports. |
| 7131 | Amusement parks and arcades. |
| 7211 | Traveler accommodation. |
| 7212 | RV parks and recreational camps. |
| 7223 | Special food services. |
| 6239 | Other residential care facilities. |
| 6243 | Vocational rehabilitation services. |
| 7111 | Performing arts companies. |
| 7112 | Spectator sports. |
| 7131 | Amusement parks and arcades. |
| 7211 | Traveler accommodation. |
| 7212 | RV parks and recreational camps. |
| 7223 | Special food services. |

OSHA welcomes public comment on all aspects of proposed appendix B, including the specific issues noted above.

3. Section 1904.41(b)(1)(i) and (ii)

Proposed § 1904.41(b)(1) would provide employers with further clarity on which employers and establishments need to submit data under proposed § 1904.41(a)(1) and (2) and how the requirements of those provisions interact with each other. These proposed provisions, like many of the provisions within part 1904 are written in question-and-answer format to help employers easily identify the information they seek.

Proposed § 1904.41(b)(1)(i) focuses on the issue of who must submit their information to OSHA. Specifically, it would reiterate the question posed in current § 1904.41(b) (which asks whether every employer has to routinely make an annual electronic submission of information from part 1904 injury and illness recordkeeping forms to OSHA), but update the answer to be consistent with proposed § 1904.41(a)(1) and (2).

Proposed § 1904.41(b)(1)(ii) would similarly clarify that an establishment that has 100 or more employees, and is in an industry included in both appendix A and appendix B, need only make one submission of the OSHA Form 300A in order to fulfill the requirements of both proposed § 1904.41(a)(1) and (2). Proposed appendix B is a subset of appendix A; *i.e.,* all industries included in proposed appendix B are also included in proposed appendix A, but there are some industries included in proposed appendix A that are not included in proposed appendix B.[10]

OSHA welcomes public comment on proposed § 1904.41(b)(1)(i) and (ii), including whether these proposed provisions appropriately clarify the proposed requirements for employers.

4. Section 1904.41(b)(9)

Proposed § 1904.41(b)(9) would pose and answer a question regarding which information would be required to be submitted under proposed § 1904.41(a). Specifically, proposed § 1904.41(b)(9) would ask the following question: If I have to submit information under paragraph (a)(2) of this section, do I have to submit all of the information from the recordkeeping forms?

The proposed answer would clarify that OSHA will not require employers to submit the following case-specific information from the OSHA Form 300 and Form 301:

- Log of Work-Related Injuries and Illnesses (OSHA Form 300): Employee name (column B).
- Injury and Illness Incident Report (OSHA Form 301): Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).

Collecting data from these fields would not add to OSHA's ability to identify establishments with specific hazards or elevated injury and illness rates. Therefore, OSHA proposes to exclude these fields from the submittal requirements to minimize any potential release or unauthorized access to any PII contained in the fields. Because the data collection will not collect the information from these fields, there will be no risk of public disclosure of the information from these fields through the data collection.

[10] The differences between current appendix A and proposed appendix A are (1) current appendix A has 2012 NAICS industry group 4521 (Department Stores), whereas proposed appendix A has 2017 NAICS industry groups 4522 (Department Stores) and 4523 (General Merchandise Stores, including Warehouse Clubs and Supercenters); (2) current appendix A has 2012 NAICS industry group 4529 (Other General Merchandise Stores), whereas in proposed appendix A, that industry group is included in 2017 NAICS industry group 4523 (General Merchandise Stores, including Warehouse Clubs and Supercenters); (3) proposed appendix A does not include NAICS 7213, Rooming and Boarding Houses, which is exempt from the requirement to routinely keep injury and illness records and was included in current appendix A in error.

OSHA welcomes public comment on § 1904.41(b)(9), including whether the specified fields should be excluded from data that would be collected, and whether other data should be similarly excluded to protect employee privacy or for other reasons. Any comments suggesting exclusion of other fields or data from the proposed submission requirements should also address whether the exclusion of that particular field or data from collection would hinder OSHA's ability to use the collection to protect employee safety and health.

5. Section 1904.41(b)(10)

Proposed § 1904.41(b)(10) would address an issue related to how establishments identify themselves in their electronic recordkeeping submissions. As noted above, OSHA's recordkeeping regulation requires employers to maintain and report their injury and illness data at the establishment level. An establishment is defined as a single physical location where business is conducted or where services or industrial operations are performed (see 29 CFR 1904.46). Part 1904 injury and illness records must be specific for each individual establishment.

Under the current requirements at 29 CFR 1904.41, a firm with more than one establishment must submit establishment-specific 300A data for each establishment that meets the size and industry reporting criteria. OSHA's current data submission portal, the Injury Tracking Application (ITA), contains two text fields used to identify an establishment, Company Name and Establishment Name. The Establishment Name field is a mandatory field; the user must make an entry in that field. In addition, a user submitting information for more than one establishment must provide a unique Establishment Name for each establishment. In contrast, the Company Name field is an optional field; the user is not required to make an entry in that field.

OSHA's review of five years of data electronically submitted under part 1904.41 shows that many large firms with multiple establishments use codes for the Establishment Name field in their submission. A subset of these firms use codes for the Establishment Name field and do not provide a company name in the Company Name field. For example, in the 2020 submissions of 2019 Form 300A data, users submitted data for more than 18,000 establishments with a code in the Establishment Name field and no information in the Company Name field.

Unfortunately, the data are considerably less useful and more difficult to work with when establishments have a code in the Establishment Name field and no information in the Company Name field. For example, it is not possible for a data user to search for data from that company. In addition, OSHA is unable to determine whether or not a particular establishment in that company met the reporting requirements. Further, since OSHA now makes these data publicly available, the use of codes and the lack of information in the Company Name field may hamper stakeholders' and researchers' ability to use the information.

To date, OSHA has made an effort to identify and assign company names to these establishments. For example, sometimes OSHA is able to use the EIN or the user's email address to identify the company associated with the establishment. However, OSHA is not always able to identify the company. In addition, the effort requires substantial review for verification.

To address this problem, OSHA proposes to require employers who use codes for the Establishment Name to include a legal name in the Company Name field. This requirement would be spelled out in question-and-answer format in proposed § 1904.41(b)(10). The proposed provision would provide: My company uses numbers or codes to identify our establishments. May I use numbers or codes as the establishment name in my submission? Yes, you may use numbers or codes as the establishment name. However, the submission must include the legal company name, either as part of the establishment name or separately as the company name.

OSHA welcomes public comment on the proposed requirement to submit the company name, including any comments on the utility of such a requirement and how the company name should be included in an establishment's submission.

6. Section 1904.41(c) Reporting Dates

Proposed § 1904.41(c) would simplify the regulatory language in current § 1904.41(c)(1)–(2) concerning the dates by which establishments must make their annual submissions. Current § 1904.41(c)(1) included information for establishments on what to submit to OSHA during the phase-in period of the 2016 final rule and the deadline for submission. That information is no longer relevant and, thus, OSHA proposes to remove it to streamline the section.

The substantive information already contained in current § 1904.41(c)(1) would then be consolidated into proposed § 1904.41(c). Like current § 1904.41(c)(1), proposed § 1904.41(c) would require all covered establishments to make their electronic submissions by March 2 of the year after the calendar year covered by the form(s). Proposed § 1904.41(c) would also provide an updated example of that requirement, *i.e.,* it explains that the forms covering calendar year 2021 would be due by March 2, 2022.

OSHA welcomes public comment on these proposed revisions to § 1904.41(c).

*B. Questions*

OSHA welcomes comments and data from the public regarding any aspect of the proposed amendments to § 1904.41 Electronic Submission of Employer Identification Number (EIN) and Injury and Illness Records to OSHA. OSHA is particularly interested in any comments on these specific questions:

1. Is Total Case Rate (TCR) the most appropriate incidence rate to use for proposed appendix B to subpart E, or would the Days Away Restricted or Transferred (DART) rate be more appropriate?

2. Is 100 or more employees the appropriate size criterion for the proposed requirement to electronically submit data from the OSHA Form 300, 301, and 300A? Would a different size criterion be more appropriate?

3. Is it appropriate for OSHA to remove the requirement for establishments with 250 or more employees, in industries not included in appendix A, to submit the information from their OSHA Form 300A?

4. Are there electronic interface features that would help users electronically submit part 1904 data, particularly for case data from the OSHA Form 300 and Form 301 and for establishments that submit using batch files? For example, would it be helpful for OSHA to provide a forms package or software application that exports the required files into a submission-ready format?

5. What features could OSHA provide to help establishments determine which submission requirements apply to their establishment?

6. What additional guidance could OSHA add to the instructions for electronic submission to remind employers not to include information that reasonably identifies individuals directly in the information they submit from the text-based fields on the OSHA Form 300 or Form 301?

7. What other agencies and organizations use automated de-

identification systems to remove information that reasonably identifies individuals directly from text data before making the data available to the general public? What levels of sensitivity for the automated system for the identification and removal of information that reasonably identifies individuals directly from text data do these agencies use?

8. What other open-source and/or proprietary software is available to remove information that reasonably identifies individuals directly from text data?

9. What methods or systems exist to identify and remove information that reasonably identifies individuals directly from text data before the data are submitted?

10. What criteria should OSHA use to determine whether the sensitivity of automated systems to identify and remove information that reasonably identifies individuals directly is sufficient for OSHA to make the data available to the general public?

11. What processes could OSHA establish to remove inadvertently-published information that reasonably identifies individuals directly as soon as OSHA became aware of the information that reasonably identifies individuals directly?

12. OSHA is proposing not to collect employee names under proposed § 1904.41(a)(2) and (b)(9), consistent with worker privacy concerns expressed in public comments during previous rulemakings. However, BLS uses the ''employee name'' field on the Form 300 and Form 301 in their data collection for the SOII. Beginning in 2021, a data-sharing feature has allowed some establishments that are required to submit Form 300A information to both OSHA and BLS, under the current regulation, to use their data submission to the OSHA ITA in their submission to the BLS SOII. BLS anticipates an inability to use this data-sharing feature for establishments required to submit under proposed § 1904.41(a)(2), unless OSHA requires these establishments to submit the ''employee name'' field on the Form 300 and 301. Without the data-sharing feature, establishments that submit data to OSHA under proposed § 1904.41(a)(2), and that also submit data to the BLS SOII, would not be able to use their OSHA data submission of case-specific data to prefill their BLS SOII submission. What would be the advantages and disadvantages, in terms of employer burden and worker privacy concerns or otherwise, of requiring all establishments subject to proposed § 1904.41(a)(2) to submit employee names, to support this data-sharing feature for Form 300 and 301 submissions? (Please note that OSHA would not intend to publish employee names.)

13. NAICS codes are reviewed and revised every five years to keep the classification system current with changes in economic activities. The 2022 NAICS became effective on January 1, 2022. Going forward, OSHA intends to use the 2022 NAICS in the ITA for establishments that are newly creating accounts. However, for establishments that already have accounts in the ITA, the version of NAICS used is the 2012 NAICS. BLS anticipates that establishments that already have accounts in the ITA, are also subject to the SOII, and have 2022 NAICS codes that are different from their 2012 NAICS codes, would be unable to use the data-sharing feature (also discussed in question 13) to prefill their BLS SOII submission with data already submitted through the OSHA ITA, unless these establishments updated their accounts to revise their industry classification from the 2012 NAICS to the 2022 NAICS. What are the advantages and disadvantages of requiring establishments that already have accounts in the ITA to update their accounts to the 2022 NAICS? How much time would an establishment require to determine whether their 2022 NAICS is different from their 2012 NAICS? How much time would an establishment require to edit their NAICS code in the ITA to reflect any changes?

14. In addition to the automated methods for coding text-based data discussed above, what additional automated methods exist to code text-based data?

15. What are some ways that employers could use the collected data to improve the safety and health of their workplaces?

16. What are some ways that employees could use the collected data to improve the safety and health of their workplaces?

17. What are some ways that federal and state agencies could use the collected data to improve workplace safety and health?

18. What are some ways that researchers could use the collected data to improve workplace safety and health?

19. What are some ways that workplace safety consultants could use the collected data to improve workplace safety and health?

20. What are some ways that members of the public and other stakeholders, such as job-seekers, could use the collected data to improve workplace safety and health?

21. Are there potential negative consequences to the collection of this data that OSHA has not considered here?

22. The proposed regulatory text is structured as follows: § 1904.41(a)(1) Annual electronic submission of information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees in designated industries; § 1904.41(a)(2) Annual electronic submission of information from OSHA Form 300 Log of Work-Related Injuries and Illnesses, OSHA Form 301 Injury and Illness Incident Report, and OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 100 or more employees in designated industries. This is the structure used by the 2016 and 2019 rulemakings. An alternative structure would be as follows: § 1904.41(a)(1) Annual electronic submission of information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees in designated industries; § 1904.41(a)(2) Annual electronic submission of information from OSHA Form 300 Log of Work-Related Injuries and Illnesses and OSHA Form 301 Injury and Illness Incident Report by establishments with 100 or more employees in designated industries. Which structure would result in better understanding of the requirements by employers?

## IV. Preliminary Economic Analysis and Regulatory Flexibility Certification

### *A. Introduction*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of the intended regulation and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not an economically significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Information and Regulatory Affairs in the Office of Management and Budget, as required by executive order.

OSHA estimates that this rule will have economic costs of $4.3 million per year, including $3.9 million per year to the private sector, with average costs of $81 per year for affected establishments

with 100 or more employees, annualized over 10 years with a discount rate of seven percent. The agency believes that the annual benefits, while unquantified, significantly exceed the annual costs.

The proposed rule is not an economically significant regulatory action under Executive Order 12866 or the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532(a)), and it is not a ''major rule'' under the Congressional Review Act (5 U.S.C. 801 *et seq.*). The agency estimates that the rulemaking imposes far less than $100 million in annual economic costs. In addition, it does not meet any of the other criteria specified by UMRA or the Congressional Review Act for an economically significant regulatory action or major rule. This Preliminary Economic Analysis (PEA) addresses the costs, benefits, and economic impacts of the proposed rule.

OSHA is proposing to amend its recordkeeping regulations to revise the requirements for the electronic submission of information from part 1904 injury and illness recordkeeping forms *(§ 1904.41—Electronic submission of injury and illness records to OSHA).*

First, OSHA will require all establishments that have 20 or more employees and are in certain designated industries to electronically submit information from the OSHA Form 300A Annual Summary to OSHA or OSHA's designee once a year (*proposed § 1904.41(a)(1) Annual electronic submission of information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees in designated industries*).

The current requirement (*§ 1904.41(a)(2) Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees but fewer than 250 employees in designated industries.*) applies only to establishments with fewer than 250 employees in industries designated by appendix A to subpart E of part 1904. However, establishments with 250 or more employees in these industries are also currently required to submit this information under current § 1904.41(a)(1) Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 250 or more employees. Note that OSHA is proposing to revise appendix A to update the list of industries from the 2012 to the 2017 NAICS.

Second, OSHA will require all establishments that have 100 or more employees and are in certain designated industries to electronically submit information from the OSHA Forms 300, 301, and 300A to OSHA or OSHA's designee (*proposed § 1904.41(a)(2) Annual electronic submission of information from OSHA Form 300 Log of Work-Related Injuries and Illnesses, OSHA Form 301 Injury and Illness Incident Report, and OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 100 or more employees in designated industries*). The industries are designated by proposed appendix B to subpart E of part 1904.

As discussed above, the current § 1904.41(a)(1) Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 250 or more employees requires submission of the Form 300A from all establishments that have 250 or more employees and that are in industries routinely required to keep part 1904 records. Under the proposed revisions, establishments that have 250 or more employees would only have to routinely make electronic submissions of part 1904 information if they are in an industry in appendix A to subpart E (proposed § 1904.41(a)(1)) or in appendix B to subpart E (proposed § 1904.41(a)(2)), which is a subset of appendix A. The proposed rule will remove the requirement for routine electronic submission of Form 300A information from establishments with 250 or more employees in all other industries (*i.e.,* industries that are not included in appendix A or proposed appendix B).

Under proposed § 1904.41(b)(9), OSHA will not collect the following case-specific information from the Form 300 and Form 301 submitted by establishments with 100 or more employees in designated industries under proposed § 1904.41(a)(2):

(i) Log of Work-Related Injuries and Illnesses (OSHA Form 300): Employee name (column B).

(ii) Injury and Illness Incident Report (OSHA Form 301): Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).

The OSHA Form 300A does not have any case-specific information.

In addition, under proposed § 1904.41(b)(10), OSHA will require establishments that are required to electronically report information from their injury and illness records to OSHA under part 1904, to include their company name as part of the submission.

Finally, OSHA proposes language in proposed § 1904.41(b)(1)(i) and (ii) to further clarify the requirements spelled out in proposed § 1904.41(a)(1) and (2) and current § 1904.41(a)(3), and, in proposed § 1904.41(c), OSHA proposes updates to the reporting deadlines.

*B. Costs*

1. Section 1904.41(a)(1) Annual Electronic Submission of Information From OSHA Form 300A Summary of Work-Related Injuries and Illnesses by Establishments With 20 or More Employees in Designated Industries

Currently, two groups of establishments are required to submit information from the Form 300A annual summary, under two separate requirements: § 1904.41(a)(1) For all establishments with 250 or more employees in all industries where establishments must routinely keep part 1904 injury and illness records, and § 1904.41(a)(2) for establishments with 20 or more employees in the industries designated in appendix A to subpart E.

In contrast, under the proposed revisions, only establishments with 20 or more employees in the industries designated in appendix A to subpart E would be required to submit information from the Form 300A annual summary. (As noted above, although proposed § 1904.41(a)(2) also requires employers in the industries designated in appendix B to submit information from their Form 300A annual summary, those industries are a subset of the industries listed in appendix A, so no new submission would be required (see proposed § 1904.41(b)(1)). Thus, the net effect of this section is to reduce the number of establishments that are required to submit information from the Form 300A annual summary. This section calculates the cost savings resulting from the reduction in number of establishments that are required to submit information from the Form 300A annual summary.

For this part of the proposed rule, OSHA obtained the estimated cost of electronic hour (in dollars) of the person expected to perform the task of electronic submission by multiplying the estimated total compensation per hour (in dollars) of the person expected to perform the task of electronic submission by the time required for the electronic data submission. OSHA estimated occupation-specific wage rates from BLS 2020 Occupational Employment and Wage Statistics data (BLS, May 2020), reporting a mean hourly wage of $37.55 for Occupational Health and Safety Specialists (19–5011 in the 2018 Standard Occupational

Classification System (SOC); formerly 29–9011 in the 2010 SOC System).[11] Note that this is the same occupational classification that OSHA used in the Final Economic Analysis (FEA) in the 2016 final rule, based on public comments, as well as in the 2018 notice of proposed rulemaking and 2019 final rule.

Next, OSHA used June 2021 data from the BLS National Compensation Survey, reporting a mean fringe benefit factor of 1.45 for civilian workers in general.[12] OSHA then multiplied the mean hourly wage ($37.55) by the mean fringe benefit factor (1.45) to obtain an estimated total compensation (wages and benefits) for Occupational Health and Safety Specialists of $54.58 per hour ([$37.55 per hour] × 1.45). OSHA next applied a 17% overhead rate to the base wage ([$37.55 per hour] × [0.17]), totaling $6.38.[13] The $6.38 was added to the total compensation ($54.58) yielding a fully loaded wage rate of $60.96 [$54.58 + $6.38].[14]

TABLE X.Y—LOADED WAGE USED IN ANALYSIS, INCLUDING OVERHEAD COST [1]

| Occupation description | Occupational code | Loaded wage rate |
|---|---|---|
| Occupational Health and Safety Specialists | [2] 19–5011 | $60.96 |

[1] Source: OSHA, based on BLS (May 2020) and BLS (June 17, 2021).
[2] OMB issued revised SOC codes in 2017, changing SOC 29–9011 to SOC 19–5011. The 2010 SOC to the 2018 SOC crosswalk can be downloaded here (accessed July 2021): *https://www.bls.gov/soc/2018/crosswalks_used_by_agencies.htm.*

For time required for the data submission, OSHA used the time estimate of 10 minutes per establishment for the OSHA Form 300A from the current information collection for Recordkeeping and Reporting Occupational Injuries and Illnesses (29 CFR part 1904) (OMB Control Number 1218–0176). OSHA then multiplied this time by the total compensation of $60.96 per hour to obtain an estimated submission cost per establishment of $10.16 [($60.96/hour) × (1 hour/60 minutes) × (10 minutes)].

Then OSHA multiplied this submission cost per establishment by the estimated number of establishments that would no longer be required to submit data, to obtain the total estimated cost savings of this part of the proposed rule. In the 2020 data collection, there were 2,665 establishments with 250 or more employees, in an industry not in appendix A, which submitted information from the 2019 OSHA Form 300A to OSHA.

Thus, OSHA estimates the total annual cost savings of this part of the proposed rule as $27,077 [(2,665 establishments no longer required to electronically submit Form 300A information) × ($10.16 per establishment for electronic submission of Form 300A information per year)].

OSHA welcomes public comment on this estimate.

2. Section 1904.41(a)(2)—Annual Electronic Submission of Information From OSHA Form 300 Log of Work-Related Injuries and Illnesses, OSHA Form 301 Injury and Illness Incident Report, and OSHA Form 300A Summary of Work-Related Injuries and Illnesses by Establishments With 100 or More Employees in Designated Industries

This proposed section would require establishments that have 100 or more employees and that are in the industries included in proposed appendix B to submit the information from the OSHA Form 300 Log, OSHA Form 301 incident report, and OSHA Form 300A annual summary. Note that all of the establishments affected by this requirement are already currently required to submit the information from their OSHA Form 300A. Consequently, this section calculates only the additional costs for these establishments of submitting the information from the OSHA Form 300 and 301.

Based in part on OSHA's previous experience, the agency estimates that establishments will first need to take 10 minutes, on average, to familiarize themselves with changes to the existing recordkeeping requirements within this proposed rule.[15] Thus, the agency calculates a one-time cost for familiarization of $497,033 [(48,919 establishments) times (ten minutes/establishment) times (1 hour/60 minutes) times ($60.96/hour)]. Annualizing this rate over 10 years with a seven percent discount rate produces an annual cost of $70,782 to the private sector.

In the 2020 data collection of 2019 OSHA Form 300A data, establishments with 100 or more employees, in appendix B industries, reported 718,316 cases to OSHA. For time required for data submission of the OSHA Form 300 and 301, OSHA estimates 10 minutes per case, based on the current Information Collection Request (ICR). Note that this may overestimate costs, because while OSHA's estimates reflect manual entry of the data for each case, in the agency's experience, roughly half of the covered establishments submit data to the ITA by uploading a batch file. In general, OSHA expects companies with many establishments/many cases to have computer systems that can export their part 1904 injury and illness recordkeeping data into an easily-uploaded file format. OSHA seeks comment on this point.

OSHA estimates that half of the establishments submitting reports (24,460) will submit 359,193 cases total (half of the overall total number of 718,386 cases) via batch file—one batch file per establishment.[16] This yields an estimated cost of $248,517 [(24,460 establishments) times (10 minutes/establishment) times (1 hour/60 minutes) times ($60.96/hour)]. The average cost per establishment would be $10.16 per establishment.

[11] OMB issued revised SOC codes in 2017, changing SOC 29–9011 to SOC 19–5011. The 2010 SOC to the 2018 SOC crosswalk can be downloaded here (accessed July 2021): *https://www.bls.gov/soc/2018/crosswalks_used_by_agencies.htm.*

[12] Fringe benefit factor calculated as [1/(1–0.312)], where 0.312 is the percent of the average total benefits of civilian workers in all industries, as reported on Table 2 of the BLS's ECEC report, June 2021: *https://www.bls.gov/news.release/ecec.t02.htm.*

[13] 17 percent is OSHA's standard estimate for the overhead cost incurred by the average employer.

[14] See docket exhibit OSHA–2021–006–0002 for a spreadsheet with the full calculations.

[15] For example, OSHA added an estimate of 10 minutes of familiarization time to its 2016 Recordkeeping regulation (81 FR 29680), in response to public comments.

[16] Review of the 2019 Form 300A data submitted through the ITA in 2020 shows that 44% of establishments with 100 or more employees in proposed appendix B submitted their data by uploading a batch file. OSHA expects that this percentage would increase to 50% or more for two reasons. First, the increase in the amount of data required from these establishments would make the batch-file upload a more efficient method of submission for more establishments. Second, OSHA plans to make it easier for users to submit a batch file by providing a set of forms that allow users to create the export file for batch-file submission.

OSHA estimates that the other half of the establishments (24,460) will manually submit each case individually. The mean number of cases per establishment is 14.7 (718,386 total cases divided by 48,919 total establishments). For manual submission, OSHA estimates a time of 10 minutes per case, or 147 minutes per establishment for the mean number of cases. This produces a total cost for manual submission of $3,649,520 [(48,919 establishments) times (10 minutes/case) times (14.7 cases) times (1 hour/60 minutes) times ($60.96/hour)], or $149 per establishment [(14.7 cases) times (1 hour/60 minutes) times ($60.96/hour)].

Summing the estimated batch-file ($248,517) and manual submission ($3,649,520) costs results in an estimated total cost of $3,898,037 to submit the 718,316 records. Combined with the annualized cost of $70,782 per year for familiarization estimated above (at seven percent), the estimated total annual private-sector cost of this part of the proposed rule is $3,968,819. To obtain the estimated average cost of submission per establishment of $81.13, OSHA divided the total estimated cost of submission ($3,968,819) by the estimated number of establishments that would be required to submit data (48,919 establishments).

For reference, as explained above, 48,919 establishments with 100 or more employees, in proposed appendix B, submitted CY 2019 Form 300A information about 718,386 cases to OSHA in 2020. The mean number of cases per establishment is 14.7, and the median number of cases per establishment is seven. However, some establishments will have no recordable injuries in a given year, and their time burden will be zero minutes. In contrast, establishments with many recordable injuries and illnesses could have a time burden of multiple hours if they enter the data manually. OSHA preliminarily believes that the establishments that submit a single batch file are more likely to be among the establishments with many cases, while the establishments that submit cases manually are more likely to be among the establishments with only a few cases. Thus, OSHA's estimate of half of establishments submitting half of cases manually may result in an overestimate of the total and per-establishment costs of this part of the proposed rule.

OSHA welcomes public comment on these estimates, including on time necessary to prepare and submit a batch file and on establishments' considerations for deciding to submit via batch file versus manual submission.

3. Section 1904.41(b)(10)

This proposed section would require establishments to provide their company name as part of their submission, either included in the establishment name or separately as the company. For this part of the proposed rule, based on submissions of information from the 2019 Form 300A to the ITA in 2020, OSHA estimates that 18,182 establishments do not include the company name. The time necessary to include the company name is included in the PEA estimate of 10 minutes per submission per establishment. OSHA has also preliminarily determined that this requirement will result in a small, unquantified benefit/cost-savings for the government, due to no longer needing to spend time trying to assign company names to establishments with coded names.

OSHA welcomes public comment on these preliminary determinations.[17]

4. Budget Costs to the Government for the Creation of the Reporting System, Helpdesk Assistance, and Administration of the Electronic Submission Program

In this preliminary economic analysis, OSHA is including an estimate of the costs of the proposed new requirement, because these costs represent a significant fraction of the total costs of the new requirement. OSHA received estimates for the costs from the US Department of Labor Office of the Chief Information Officer (DOL OCIO).

Based on the DOL OCIO estimates shown in the table below, OSHA is estimating that modification of the reporting system hardware and software infrastructure to accept submissions of Form 300 and 301 data will have an initial one-time cost of $1.2 million.

TABLE V–1—ESTIMATES OF THE COST OF SOFTWARE DESIGN AND DEVELOPMENT

| | Lower cost range | Upper cost range |
|---|---|---|
| Development | $516,417.00 | $866,250.00 |
| Cyber/ATO | 150,000.00 | 200,000.00 |
| Cloud | 20,000.00 | 20,000.00 |
| Migration | 100,000.00 | 150,000.00 |
| Total | 786,417.00 | 1,236,250.00 |

Annualized over 10 years at a seven percent discount rate, $1.2 million is $170,853 per year, or $140,677 annualized over 10 years at three percent. OSHA also estimates $201,128 as the annual cost of additional transactions ($0.28 per case times 718,316 cases). Finally, OSHA estimates that annual help desk support costs will increase by $25,000. This estimate is based on the annual help desk support costs under the current provisions.

5. Total Costs of the Rule

As shown in the table below, the total costs of the proposed rule would be an estimated $4.3 million per year.

TABLE V–2—TOTAL COSTS OF THE PROPOSED RULE[18]

| Cost element | Annual costs | One-time costs[1] |
|---|---|---|
| Annual electronic submission of OSHA Form 300A annual summary by establishments with 20 or more employees in designated industries | ($27,077) | |
| Annual electronic submission of OSHA Form 300 Log and OSHA Form 301 Incident Report by establishments with 100 or more employees in designated industries | 3,968,819 | |
| Submission cost | 3,898,037 | |
| Cost of rule familiarization | [2] 70,782 | $497,033 |
| Total Private Sector Costs | 3,941,741 | |
| Total Government Costs | 397,001 | |

[17] OSHA does not anticipate that the proposed revisions to § 1904.41(b)(1)(i), (b)(1)(ii), or (c) would have any substantial costs associated with them.

[18] See docket exhibit OSHA–2021–006–0002 for the full calculations.

TABLE V–2—TOTAL COSTS OF THE PROPOSED RULE [18]—Continued

| Cost element | Annual costs | One-time costs [1] |
|---|---|---|
| Processing of annual submission of cases | 201,148 | |
| Increased help desk support | 25,000 | |
| Software design/development | [3] 170,853 | 1,200,000 |
| Total | [4] 4,338,742 | 1,697,033 |

[1] The annualized one-time costs appear in the Annual Costs column. The one-time costs are not additional costs.
[2] If annualized over 10 years at 7%. $58,313 if annualized at 3%.
[3] If annualized over 10 years at 7%. $140,677 if annualized at 3%.
[4] Includes the one-time costs for rule familiarization and software design and development, annualized over 10 years at 7%.

OSHA welcomes public comment on this analysis.

*C. Benefits*

The main purpose of the proposed rule is to prevent worker injuries and illnesses through the collection and use of timely, establishment-specific and case-specific injury and illness data. With the information obtained through this proposed rule, employers, employees, employee representatives, the government, and researchers will be better able to identify and mitigate workplace hazards and thereby prevent worker injuries and illnesses.

The proposed rule would support OSHA's statutory directive to ''assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources'' (29 U.S.C. 651(b)) ''by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem'' (29 U.S.C. 651(b)(12)).

The importance of the proposed rule in preventing worker injuries and illnesses can be understood in the context of workplace safety and health in the United States today. The number of workers injured or made ill on the job remains unacceptably high. According to the SOII, each year employees experience 2.7 million recordable non-fatal injuries and illnesses at work,[19] and this number is widely recognized to be an undercount of the actual number of occupational injuries and illnesses that occur annually.[20] As described above, the proposed rule would increase the agency's ability to focus resources on those workplaces where workers are at greatest risk. However, even with improved targeting, OSHA Compliance Safety and Health Officers can inspect only a small proportion of the nation's workplaces each year, and it would take many decades to inspect each covered workplace in the nation even once. As a result, to reduce worker injuries and illnesses, it is of great importance for OSHA to leverage its resources for workplace safety at the many thousands of establishments in which workers are being injured or made ill but which OSHA does not have the resources to inspect.

The proposed requirement would help OSHA encourage employers to prevent worker injuries and illnesses by greatly expanding OSHA's access to the establishment-specific, case-specific information employers are already required to record under part 1904. The proposed provisions requiring regular electronic submission of case-specific injury and illness data would allow OSHA to obtain a much larger data set of more timely, establishment-specific information about injuries and illnesses in the workplace. This information would help OSHA use its enforcement and compliance assistance resources more effectively by enabling OSHA to identify the workplaces where workers are at greatest risk. For example, OSHA could send hazard-specific educational materials to employers who reported cases related to those hazards. In addition, as discussed above, OSHA would be able to use the information to identify emerging hazards, support an agency response, and reach out to employers whose workplaces might include those hazards.

The proposed collection would provide establishment-specific, case-specific injury and illness data for analyses that are not currently possible. For example, OSHA could analyze the case-specific data collected under this system to answer the following questions:

1. Within a given industry, what are the characteristics of recorded injuries or illnesses related to specific hazards (for example, fall from ladder or heat)?
2. Within a given industry, what are the relationships between an establishment's hazard-specific/case-specific injury and illness data and data from other agencies or departments, such as the Wage and Hour Division, the Environmental Protection Agency, or the Equal Employment Opportunities Commission?
3. What are the changes in hazard-specific injuries or illnesses in a particular industry over time?

Furthermore, access to establishment-specific, case-specific injury and illness data will enable OSHA to improve its evaluations of the effectiveness of its enforcement and compliance assistance activities. Having these data will enable OSHA to conduct rigorous evaluations of different types of programs, initiatives, and interventions in different industries and geographic areas, enabling the agency to become more effective and efficient. For example, OSHA would be able to compare the incidence and characteristics of heat-related illnesses before and after promulgation of a regulation on heat injury and illness prevention in outdoor and indoor work settings, thereby allowing the agency to evaluate the implementation and effectiveness of the regulation.

OSHA's collection and publication of establishment-specific, case-specific injury and illness data would also encourage employers with 100 or more employees to prevent injuries and illnesses among their employees, because

- Employers would prefer to support their reputations as good places to work at or do business with;
- Employers in a given high-hazard industry would be able to compare their

[19] See ''EMPLOYER-REPORTED WORKPLACE INJURIES AND ILLNESSES—2020'', news release from the Bureau of Labor Statistics/U.S. Department of Labor, 10:00 a.m. (ET) Wednesday, November 3, 2021.

[20] See *e.g.,* Leigh JP, Du J, McCurdy SA. An estimate of the U.S. government's undercount of nonfatal occupational injuries and illnesses in agriculture. Ann Epidemiol. 2014 Apr;24(4):254–9. doi: 10.1016/j.annepidem.2014.01.006. Epub 2014 Jan 22. PMID: 24507952; PMCID: PMC6597012; Spieler EA, Wagner GR. Counting matters: Implications of undercounting in the BLS survey of occupational injuries and illnesses. Am J Ind Med. 2014 Oct;57(10):1077–84. doi: 10.1002/ajim.22382. PMID: 25223513.

workplace's experience with a particular hazard with the experiences at other workplaces, allowing them to set hazard-abatement goals benchmarked to comparable establishments in their industry.

- Employees in establishments with 100 or more employees would be able to access the case-specific injury and illness information without having to request the information from their employers; this, in turn, would allow the employees in these establishments to better identify hazards within their own workplace and to take actions to have the hazards abated.
- Prospective employees would have access to data about specific hazards of particular concern, such as lead or trench collapses, allowing them to make a more informed decision about a future place of employment; this, in turn, would encourage employers to abate these hazards because potential employees, especially the ones whose skills are most in demand, might be reluctant to work at establishments that did not abate these hazards.
- Potential investors and the public would also have access to information about an establishment's experience with specific hazards, allowing them to preferentially invest in or patronize businesses that have successfully abated the hazards common in a given industry; this, in turn, would encourage employers to abate the hazards in order to attract investors and/or customers.

Finally, disclosure of and access to establishment-specific, case-specific injury and illness data have the potential to improve research on the distribution and determinants of workplace hazards, and therefore to prevent workplace injuries and illnesses from occurring by abating those hazards. Using data collected under the proposed rule, researchers might identify previously unrecognized patterns of injuries and illnesses across establishments where workers are exposed to similar hazards. Such research would be especially useful in identifying hazards that result in a small number of injuries or illnesses in each establishment but a large number overall, due to a wide distribution of those hazards in a particular area, industry, or establishment type. Data made available under this proposed rule could also allow researchers to identify patterns of hazard-specific injuries or illnesses that are masked by the aggregation of injury/illness data in the SOII.

The availability of case-specific, establishment-specific injury and illness data would also be of great use to county, state and territorial health departments and other public institutions charged with injury and illness surveillance. In particular, aggregation of case-specific, establishment-specific injury and illness reports and rates from similar establishments would facilitate identification of newly-emerging hazards that would not easily be identified without linkage to specific industries or occupations. There are currently no comparable data sets available, and these public health surveillance programs must primarily rely on reporting of cases seen by medical practitioners, any one of whom would rarely see enough cases to identify an occupational etiology.

Workplace safety and health professionals might use data published under this proposed rule to identify establishments whose injury/illness records suggest that the establishments would benefit from their services to abate particular hazards or sets of hazards. In general, online access to this large database of establishment-specific, case-specific injury and illness information would support the development of innovative ideas for improving workplace safety and health, and would better the ability of everyone with a stake in workplace safety and health to participate in improving occupational safety and health.

Furthermore, because the data would be publicly available, industries, trade associations, unions, and other groups representing employers and workers would be able to evaluate the effectiveness of privately-initiated hazard-abatement initiatives that affect groups of establishments. In addition, linking these data with data residing in other administrative data sets would enable researchers to conduct rigorous studies that will increase our understanding of injury/illness causation, prevention, and consequences.

Public access to these data would enable developers of software applications to develop tools that facilitate use of these data by employers, workers, researchers, consumers and others. Examples of this in other areas include apps for finding and comparing nursing homes, creating thematic maps of data from the American Community Survey, and obtaining real-time information on stream levels or bus/subway arrivals.

The database resulting from this proposed rule would enable the collection and publication of case-specific, establishment-specific data without having to work under the restrictions imposed by the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) to protect information acquired for statistical purposes under a pledge of confidentiality. It would also provide data on injuries and illnesses that are not currently available from any source, including the BLS SOII. Specifically, under this collection, there would be case-specific data for injuries and illnesses that do not involve days away from work. The BLS case and demographic data is limited to cases involving days away from work or cases involving job transfer or restricted work activity.

*D. Economic Feasibility*

OSHA preliminarily concludes that the proposed rule will be economically feasible. For establishments with 100 or more employees in the industries designated in proposed appendix B, the average additional cost of submitting information from the OSHA Form 300 and 301 will be $81 per year. These costs will not affect the economic viability of these establishments.

*E. Alternatives*

1. Appendix A (industries where establishments with 20 or more employees are required to submit information from the OSHA Form 300A) is based on 2011–2013 injury rates from the SOII. OSHA could update appendix A to reflect the 2017–2019 injury rates from the SOII. This would result in the addition of one industry (NAICS 4831 (Deep sea, coastal, and great lakes water transportation)) and the removal of 13 industries, as follows:

- 4421 Furniture Stores
- 4452 Specialty Food Stores
- 4853 Taxi and Limousine Service
- 4855 Charter Bus Industry
- 5152 Cable and Other Subscription Programming
- 5311 Lessors of Real Estate
- 5321 Automotive Equipment Rental and Leasing
- 5323 General Rental Centers
- 6242 Community Food and Housing, and Emergency and Other Relief Services
- 7132 Gambling Industries
- 7212 RV (Recreational Vehicle) Parks and Recreational Camps
- 7223 Special Food Services
- 8113 Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.

OSHA is proposing not to modify appendix A because it took several years for the regulated community to understand which industries were and were not required to submit information. Misunderstandings result

in both underreporting and overreporting. OSHA preliminarily believes that changing the requirements now would result in confusion for the regulated community. However, OSHA welcomes public comment on this alternative.

2. OSHA could regularly update the list of designated industries in proposed appendix B (industries where establishments with 100 or more employees must submit information from the Form 300 and 301 as well as the 300A)—for example, every 6 years, to align with the PRA approval periods. In the 2016 final rule, OSHA agreed with the commenters who stated that the list of designated industries [appendix A, in this case] should not be updated each year. OSHA believed that moving industries in and out of the appendix each year would be confusing. OSHA also believed that keeping the same industries in the appendix each year would increase the stability of the system and reduce uncertainty for employers. Accordingly, OSHA did not, as part of that rulemaking, include a requirement to annually or periodically adjust the list of designated industries to reflect more recent BLS injury and illness data. OSHA committed that any such revision to the list of industries in the future would require additional notice and comment rulemaking. However, OSHA again welcomes public comment on this alternative for this rulemaking.

*F. Regulatory Flexibility Certification*

The part of the proposed rule requiring submission of Form 300 and 301 information from establishments with 100 or more employees in designated industries will affect some small entities, according to the definition of small entity used by the Small Business Administration (SBA). In some sectors, such as construction, where SBA's definition only allows relatively smaller firms, there are unlikely to be many firms with 100 or more employees that meet SBA small-business definitions. In other sectors, such as manufacturing, many SBA-defined small businesses will be subject to this rule. Thus, this part of the proposed rule will affect a small percentage of all small entities.

However, because some small firms will be affected, especially in manufacturing, OSHA has examined the impacts on small businesses of the costs of this rule. OSHA's procedures for assessing the significance of proposed rules on small businesses suggest that if costs are greater than 1 percent of revenues or 5 percent of profits for the average firm, then OSHA conducts an additional assessment. To meet this level of significance at an estimated annual average cost of $81.13 per affected establishment per year, annual revenues for an establishment with 100 or more employees would have to be less than $8,113, and annual profits would have to be less than $1,623. According to the 2017 Economic Census,[21] there are no impacted industries that have revenues less than $8,113. Furthermore, based on the 2013 Corporation Source Book,[22] there are no impacted industries earning less than $1,623.

As a result of these considerations, per section 605 of the Regulatory Flexibility Act, OSHA certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Thus, OSHA has not prepared an initial regulatory flexibility analysis. OSHA is interested in comments on this certification.

## V. OMB Review Under the Paperwork Reduction Act of 1995

*A. Overview*

OSHA is proposing to amend its occupational injury and illness recordkeeping regulation, 29 CFR 1904.41, which contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and OMB regulations at 5 CFR part 1320. The agency is not revising the existing ICR, 1218–0176, but rather requesting a new number for provisions being added or modified. The PRA defines ''collection of information'' to mean ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format.'' 44 U.S.C. 3502(3)(A). Under the PRA, a Federal agency cannot conduct or sponsor a collection of information unless OMB approves it and the agency displays a currently valid OMB control number. 44 U.S.C. 3507. Also, notwithstanding any other provision of law, no employer shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. 44 U.S.C. 3512.

*B. Solicitation of Comments*

OSHA prepared and submitted an ICR to OMB proposing to revise certain information collection requirements currently contained in the paperwork package in accordance with 44 U.S.C. 3507(d). The agency solicits comments on the revision to the information collection requirements and the reduction in estimated burden hours associated with these requirements, including comments on the following items:

- Whether the collection of information are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the collection of information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the compliance burden on employers, for example, by using automated or other technological techniques for collecting and transmitting information.

*C. Proposed Information Collection Requirements*

As required by 5 CFR 1320.5(a)(1)(iv) and 1320.8(d)(2), the following paragraphs provide information about this ICR.

*1. Title:* Improve Tracking Workplace Injury and Illness.

*2. Description of the ICR:* This proposed rule would revise the currently approved Recordkeeping and Reporting Occupational Injuries and Illnesses Information Collection and change the existing information collection requirements currently approved by OMB.

3. *Brief Summary of the Information Collection Requirements.* Under ''Information Requirements on Recordkeeping and Reporting Occupational Injuries and Illnesses,'' OMB Control Number 1218–0176, OSHA currently has OMB approval to conduct an information collection that requires employers to maintain information on work-related fatalities, injuries, and illnesses, and to report this

[21] The revenue numbers used to determine cost-to-revenue ratios were obtained from the 2017 Economic Census. This is the most current information available from this source, which OSHA considers to be the best available source of revenue data for U.S. businesses. OSHA adjusted these figures to 2019 dollars using the Bureau of Economic Analysis's GDP deflator, which is OSHA's standard source for inflation and deflation analysis.

[22] The profit screening test for feasibility (*i.e.,* the cost-to-profit ratio) was calculated as ETS costs divided by profits. Profits were calculated as profit rates multiplied by revenues. The before-tax profit rates that OSHA used were estimated using corporate balance sheet data from the 2013 Corporation Source Book (Internal Revenue Service, 2013). The IRS discontinued the publication of these data after 2013, and therefore the most current years available are 2000–2013. The most recent version of the Source Book represents the best available evidence for these data on profit rates.

information to OSHA. The proposed rule would make three changes to § 1904.41.

First, OSHA will no longer require electronic submission of Form 300A information from establishments with 250 or more employees in industries that are routinely required to keep part 1904 injury and illness records but are not in appendix A.

Second, OSHA will newly require all establishments that have 100 or more employees and are in certain designated industries to electronically submit information from the OSHA Form 300 and 301 to OSHA or OSHA's designee. This is in addition to the current requirement for these establishments to electronically submit information from the OSHA Form 300A. Each establishment subject to this provision will require time to familiarize themselves with the reporting website.

Third, OSHA will require establishments that are required to electronically report information from their injury and illness records to OSHA under part 1904, to include their company name as part of the submission. No additional paperwork burden is associated with the provision.

In addition, Docket exhibit OSHA–2021–006–0004 shows an example of an expanded interface to collect case-specific data. Screen shots of this interface can also be viewed on OSHA's website at *http://www.osha.gov/recordkeeping/proposed_data_form.html.* OSHA invites public comment on these user interfaces, including suggestions on any interface features that would minimize the burden of reporting the required data.

4. *OMB Control Number:* 1218–0NEW.

5. *Affected Public:* Business or other for-profit.

6. *Number of Respondents:* 48,919.

7. *Frequency of Responses:* Annually.

8. *Number of Responses:* 429,876.

9. *Average Time per Response:* Time per response varies.

10. *Estimated total burden hours:* 71,646.

11. *Estimated costs (capital-operation and maintenance):* $0.

*D. Submitting Comments*

Members of the public may comment on the paperwork requirements in this proposed regulation by sending their comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, OSHA Regulation Identifier Number (RIN) (1218–AD40), by email: *OIRA_submission@omb.eop.gov.* Please limit the comments to only the proposed changed provisions of the recordkeeping rule (*i.e.,* proposed § 1904.41).

OSHA encourages commenters also to submit their comments on these paperwork requirements to the rulemaking docket (OSHA–2021–0006), along with their comments on other parts of the proposed regulation. For instructions on submitting these comments to the docket, see the sections of this **Federal Register** document titled **DATES** and **ADDRESSES**. Comments submitted in response to this document are public records; therefore, OSHA cautions commenters about submitting personal information, such as Social Security numbers and dates of birth.

*E. Docket and Inquiries*

To access the docket to read or download comments and other materials related to this paperwork determination, including the complete Information Collection Request (ICR), use the procedures described under the section of this document titled **ADDRESSES**. You may obtain an electronic copy of the complete ICR by going to the website at *https://www.reginfo.gov/public/do/PRAMain,* then select ''Department of Labor'' under ''Currently Under Review'', then click on ''submit''. This will show all of the Department's ICRs currently under review, including the ICRs submitted for proposed rulemakings. To make inquiries, or to request other information, contact Ms. Seleda Perryman, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor; telephone (202) 693–4131; email *perryman.seleda.m@dol.gov.*

## VI. Unfunded Mandates

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*), as well as Executive Order 13132 (64 FR 43255 (Aug. 4, 1999)), this proposed rule does not include any Federal mandate that may result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector of more than $100 million.

## VII. Federalism

OSHA reviewed this proposed rule in accordance with Executive Order 13132 (64 FR 43255 (Aug. 4, 1999)), regarding federalism. Because this rulemaking involves a ''regulation'' issued under sections 8 and 24 of the OSH Act (29 U.S.C. 657, 673), and not an ''occupational safety and health standard'' issued under section 6 of the OSH Act (29 U.S.C. 655), the rule will not preempt state law (see 29 U.S.C. 667(a)). The effect of the proposed rule on states is discussed in section VIII. State Plans.

## VIII. State Plans

For the purposes of section 18 of the OSH Act (29 U.S.C. 667) and the requirements of 29 CFR 1904.37, 1902.3(j), 1902.7, and 1956.10(i), within 6 months after publication of the final OSHA rule, State Plans must promulgate occupational injury and illness recording and reporting requirements that are substantially identical to those in 29 CFR part 1904 ''Recording and Reporting Occupational Injuries and Illnesses.'' State Plans must have the same requirements as Federal OSHA for determining which injuries and illnesses are recordable and how they are recorded (29 CFR 1904.37(b)(1)). All other part 1904 injury and illness recording and reporting requirements (for example, industry exemptions, reporting of fatalities and hospitalizations, record retention, or employee involvement) that are promulgated by State Plans may be more stringent than, or supplemental to, the Federal requirements, but, because of the unique nature of the national recordkeeping program, states must consult with OSHA and obtain approval of such additional or more stringent reporting and recording requirements to ensure that they will not interfere with uniform reporting objectives (29 CFR 1904.37(b)(2)).

There are 28 State Plans. The states and territories that cover private sector employers are Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Connecticut, Illinois, Maine, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to state and local government employees only.

## IX. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this proposed rule in accordance with Executive Order 13175 (65 FR 67249) and determined that it would not have ''tribal implications'' as defined in that order. The proposed rule would 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.

## X. Public Participation

Because this rulemaking involves a regulation rather than a standard, it is governed by the notice and comment requirements in the Administrative Procedure Act (APA) (5 U.S.C. 553) rather than section 6 of the OSH Act (29 U.S.C. 655) and 29 CFR part 1911 (both of which only apply to ''promulgating, modifying or revoking occupational safety or health standards'' (29 CFR 1911.1)). Therefore, the OSH Act requirement to hold an informal public hearing (29 U.S.C. 655(b)(3)) on a proposed rule, when requested, does not apply to this rulemaking.

Section 553(b)(1) of the APA requires the agency to issue a ''statement of the time, place, and nature of public rulemaking proceedings'' (5 U.S.C. 553(b)(1)). The APA does not specify a minimum period for submitting comments.

OSHA invites comment on all aspects of the proposed rule. OSHA specifically encourages comment on the questions raised in the issues and questions subsection. Interested persons must submit comments by May 31, 2022. The agency will carefully review and evaluate all comments, information, and data, as well as all other information in the rulemaking record, to determine how to proceed. When submitting comments, persons must follow the procedures specified above in the sections titled **DATES** and **ADDRESSES**.

## Authority and Signature

This document was prepared under the direction of Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. It is issued under sections 8 and 24 of the Occupational Safety and Health Act (29 U.S.C. 657, 673), section 553 of the Administrative Procedure Act (5 U.S.C. 553), and Secretary of Labor's Order No. 08–2020 (85 FR 58393, Sept. 18, 2020).

## List of Subjects in 29 CFR Part 1904

Health statistics, Occupational safety and health, Reporting and recordkeeping requirements.

Signed at Washington, DC, on March 23, 2022.

**Douglas L. Parker,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

## Amendments to Standards

For the reasons stated in the preamble, OSHA proposes to amend part 1904 of chapter XVII of title 29 as follows:

## PART 1904—[AMENDED]

## Subpart E—Reporting Fatality, Injury and Illness Information to the Government

■ 1. Revise the authority citation for part 1904, subpart E, to read as follows:

**Authority:** 29 U.S.C. 657, 673, 5 U.S.C. 553, and Secretary of Labor's Order No. 08–2020 (85 FR 58393, Sept. 18, 2020) or 1–2012 (77 FR 3912, Jan. 25, 2012), as applicable.

■ 2. Amend § 1904.41 as follows:
■ a. Revise paragraphs (a)(1) and (2) and (b)(1);
■ b. Add paragraphs (b)(9) and (10); and
■ c. Revise paragraph (c).

The revisions and additions read as follows:

### § 1904.41 Electronic submission of Employer Identification Number (EIN) and injury and illness records to OSHA.

* * * * *

(a) * * *

(1) *Annual electronic submission of information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees in designated industries.* If your establishment had 20 or more employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to subpart E of this part, then you must electronically submit information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the form.

(2) *Annual electronic submission of information from OSHA Form 300 Log of Work-Related Injuries and Illnesses, OSHA Form 301 Injury and Illness Incident Report, and OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 100 or more employees in designated industries.* If your establishment had 100 or more employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix B to subpart E of this part, then you must electronically submit information from OSHA Forms 300, 301, and 300A to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the forms.

* * * * *

(b) * * *

(1) *Annual electronic submission of information from part 1904 injury and illness recordkeeping forms to OSHA—*

(i) *Does every employer have to routinely make an annual electronic submission of information from part 1904 injury and illness recordkeeping forms to OSHA?* No, only two categories of employers must routinely submit this information. The first category is establishments that had 20 or more employees at any time during the previous calendar year, and are classified in an industry listed in appendix A to this subpart; establishments in this category must submit the required information from Form 300A to OSHA once a year. The second category is establishments that had 100 or more employees at any time during the previous calendar year, and are classified in an industry listed in appendix B to this subpart; establishments in this category must submit the required information from Forms 300, 301, and 300A to OSHA once a year. Employers in these two categories must submit the required information by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form (for example, 2022 for the 2021 form(s)). If your establishment is not in either of these two categories, then you must submit the information to OSHA only if OSHA notifies you to do so for an individual data collection.

(ii) *My establishment had 100 or more employees last year and is in an industry that is listed in both appendix A and appendix B. Do I have to submit the information from the Form 300A twice?* No, you only have to submit the information from the Form 300A once.

* * * * *

(9) *If I have to submit information under paragraph (a)(2) of this section, do I have to submit all of the information from the recordkeeping forms?* No, you are required to submit all of the information from the forms *except* the following:

(i) Log of Work-Related Injuries and Illnesses (OSHA Form 300): Employee name (column B).

(ii) Injury and Illness Incident Report (OSHA Form 301): Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).

(10) *My company uses numbers or codes to identify our establishments. May I use numbers or codes as the establishment name in my submission?* Yes, you may use numbers or codes as the establishment name. However, the submission must include the company name, either as part of the establishment

name or separately as the company name.

(c) *Reporting dates.* Establishments that are required to submit under paragraph (a)(1) or (2) of this section must submit all of the required information by March 2 of the year after the calendar year covered by the form(s) (for example, by March 2, 2022, for the forms covering 2021).

■ 3. Revise appendix A to subpart E to read as follows:

**Appendix A to Subpart E of Part 1904—Designated Industries for § 1904.41(a)(1) Annual Electronic Submission of Information From OSHA Form 300A Summary of Work-Related Injuries and Illnesses by Establishments With 20 or More Employees in Designated Industries**

| NAICS | Industry |
|---|---|
| 11 | Agriculture, forestry, fishing and hunting. |
| 22 | Utilities. |
| 23 | Construction. |
| 31–33 | Manufacturing. |
| 42 | Wholesale trade. |
| 4413 | Automotive Parts, Accessories, and Tire Stores. |
| 4421 | Furniture Stores. |
| 4422 | Home Furnishings Stores. |
| 4441 | Building Material and Supplies Dealers. |
| 4442 | Lawn and Garden Equipment and Supplies Stores. |
| 4451 | Grocery Stores. |
| 4452 | Specialty Food Stores. |
| 4522 | Department Stores. |
| 4523 | General Merchandise Stores, including Warehouse Clubs and Supercenters. |
| 4533 | Used Merchandise Stores. |
| 4542 | Vending Machine Operators. |
| 4543 | Direct Selling Establishments. |
| 4811 | Scheduled Air Transportation. |
| 4841 | General Freight Trucking. |
| 4842 | Specialized Freight Trucking. |
| 4851 | Urban Transit Systems. |
| 4852 | Interurban and Rural Bus Transportation. |
| 4853 | Taxi and Limousine Service. |
| 4854 | School and Employee Bus Transportation. |
| 4855 | Charter Bus Industry. |
| 4859 | Other Transit and Ground Passenger Transportation. |
| 4871 | Scenic and Sightseeing Transportation, Land. |
| 4881 | Support Activities for Air Transportation. |
| 4882 | Support Activities for Rail Transportation. |
| 4883 | Support Activities for Water Transportation. |
| 4884 | Support Activities for Road Transportation. |
| 4889 | Other Support Activities for Transportation. |
| 4911 | Postal Service. |
| 4921 | Couriers and Express Delivery Services. |
| 4922 | Local Messengers and Local Delivery. |
| 4931 | Warehousing and Storage. |
| 5152 | Cable and Other Subscription Programming. |
| 5311 | Lessors of Real Estate. |
| 5321 | Automotive Equipment Rental and Leasing. |
| 5322 | Consumer Goods Rental. |
| 5323 | General Rental Centers. |
| 5617 | Services to Buildings and Dwellings. |
| 5621 | Waste Collection. |
| 5622 | Waste Treatment and Disposal. |
| 5629 | Remediation and Other Waste Management Services. |
| 6219 | Other Ambulatory Health Care Services. |
| 6221 | General Medical and Surgical Hospitals. |
| 6222 | Psychiatric and Substance Abuse Hospitals. |
| 6223 | Specialty (except Psychiatric and Substance Abuse) Hospitals. |
| 6231 | Nursing Care Facilities (Skilled Nursing Facilities). |
| 6232 | Residential Intellectual and Developmental Disability, Mental Health, and Substance Abuse Facilities. |
| 6233 | Continuing Care Retirement Communities and Assisted Living Facilities for the Elderly. |
| 6239 | Other Residential Care Facilities. |
| 6242 | Community Food and Housing, and Emergency and Other Relief Services. |
| 6243 | Vocational Rehabilitation Services. |
| 7111 | Performing Arts Companies. |
| 7112 | Spectator Sports. |
| 7121 | Museums, Historical Sites, and Similar Institutions. |
| 7131 | Amusement Parks and Arcades. |
| 7132 | Gambling Industries. |
| 7211 | Traveler Accommodation. |
| 7212 | RV (Recreational Vehicle) Parks and Recreational Camps. |
| 7223 | Special Food Services. |
| 8113 | Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance. |

| NAICS | Industry |
|---|---|
| 8123 | Drycleaning and Laundry Services. |

■ 4. Add appendix B to subpart E to read as follows:

**Appendix B to Subpart E of Part 1904—Designated Industries for § 1904.41(a)(2) Annual Electronic Submission of Information From OSHA Form 300 Log of Work-Related Injuries and Illnesses, OSHA Form 301 Injury and Illness Incident Report, and OSHA Form 300A Summary of Work-Related Injuries and Illnesses by Establishments With 100 or More Employees in Designated Industries**

| NAICS | Industry |
|---|---|
| 1111 | Oilseed and grain farming. |
| 1112 | Vegetable and melon farming. |
| 1113 | Fruit and tree nut farming. |
| 1114 | Greenhouse, nursery, and floriculture production. |
| 1119 | Other crop farming. |
| 1121 | Cattle ranching and farming. |
| 1122 | Hog and pig farming. |
| 1123 | Poultry and egg production. |
| 1129 | Other animal production. |
| 1141 | Fishing. |
| 1151 | Support activities for crop production. |
| 1152 | Support activities for animal production. |
| 1153 | Support activities for forestry. |
| 2213 | Water, sewage and other systems. |
| 2381 | Foundation, structure, and building exterior contractors. |
| 3111 | Animal food manufacturing. |
| 3113 | Sugar and confectionery product manufacturing. |
| 3114 | Fruit and vegetable preserving and specialty food manufacturing. |
| 3115 | Dairy product manufacturing. |
| 3116 | Animal slaughtering and processing. |
| 3117 | Seafood product preparation and packaging. |
| 3118 | Bakeries and tortilla manufacturing. |
| 3119 | Other food manufacturing. |
| 3121 | Beverage manufacturing. |
| 3161 | Leather and hide tanning and finishing. |
| 3162 | Footwear manufacturing. |
| 3211 | Sawmills and wood preservation. |
| 3212 | Veneer, plywood, and engineered wood product manufacturing. |
| 3219 | Other wood product manufacturing. |
| 3261 | Plastics product manufacturing. |
| 3262 | Rubber product manufacturing. |
| 3271 | Clay product and refractory manufacturing. |
| 3272 | Glass and glass product manufacturing. |
| 3273 | Cement and concrete product manufacturing. |
| 3279 | Other nonmetallic mineral product manufacturing. |
| 3312 | Steel product manufacturing from purchased steel. |
| 3314 | Nonferrous metal production and processing. |
| 3315 | Foundries. |
| 3321 | Forging and stamping. |
| 3323 | Architectural and structural metals manufacturing. |
| 3324 | Boiler, tank, and shipping container manufacturing. |
| 3325 | Hardware manufacturing. |
| 3326 | Spring and wire product manufacturing. |
| 3327 | Machine shops; turned product; and screw, nut, and bolt manufacturing. |
| 3328 | Coating, engraving, heat treating, and allied activities. |
| 3331 | Agriculture, construction, and mining machinery manufacturing. |
| 3335 | Metalworking machinery manufacturing. |
| 3361 | Motor vehicle manufacturing. |
| 3362 | Motor vehicle body and trailer manufacturing. |
| 3363 | Motor vehicle parts manufacturing. |
| 3366 | Ship and boat building. |
| 3371 | Household and institutional furniture and kitchen cabinet manufacturing. |
| 3372 | Office furniture manufacturing. |
| 4231 | Motor vehicle and motor vehicle parts and supplies merchant wholesalers. |
| 4233 | Lumber and other construction materials merchant wholesalers. |

| NAICS | Industry |
|---|---|
| 4235 | Metal and mineral merchant wholesalers. |
| 4244 | Grocery and related product merchant wholesalers. |
| 4248 | Beer, wine, and distilled alcoholic beverage merchant wholesalers. |
| 4413 | Automotive parts, accessories, and tire stores. |
| 4422 | Home furnishings stores. |
| 4441 | Building material and supplies dealers. |
| 4442 | Lawn and garden equipment and supplies stores. |
| 4451 | Grocery stores. |
| 4522 | Department stores. |
| 4523 | General merchandise stores, including warehouse clubs and supercenters. |
| 4533 | Used merchandise stores. |
| 4543 | Direct selling establishments. |
| 4811 | Scheduled air transportation. |
| 4841 | General freight trucking. |
| 4842 | Specialized freight trucking. |
| 4851 | Urban transit systems. |
| 4852 | Interurban and rural bus transportation. |
| 4854 | School and employee bus transportation. |
| 4859 | Other transit and ground passenger transportation. |
| 4871 | Scenic and sightseeing transportation, land. |
| 4881 | Support activities for air transportation. |
| 4883 | Support activities for water transportation. |
| 4911 | Postal Service. |
| 4921 | Couriers and express delivery services. |
| 4931 | Warehousing and storage. |
| 5322 | Consumer goods rental. |
| 5621 | Waste collection. |
| 5622 | Waste treatment and disposal. |
| 6219 | Other ambulatory health care services. |
| 6221 | General medical and surgical hospitals. |
| 6222 | Psychiatric and substance abuse hospitals. |
| 6223 | Specialty hospitals. |
| 6231 | Nursing care facilities. |
| 6232 | Residential intellectual and developmental disability, mental health, and substance abuse facilities. |
| 6233 | Continuing care retirement communities and assisted living facilities for the elderly. |
| 6239 | Other residential care facilities. |
| 6243 | Vocational rehabilitation services. |
| 7111 | Performing arts companies. |
| 7112 | Spectator sports. |
| 7131 | Amusement parks and arcades. |
| 7211 | Traveler accommodation. |
| 7212 | RV parks and recreational camps. |
| 7223 | Special food services. |

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Part IV

## Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Occupant Protection for Vehicles With Automated Driving Systems; Final Rule

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

**[Docket No. NHTSA–2021–0003]**

**RIN 2127–AM06**

## Occupant Protection for Vehicles With Automated Driving Systems

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the occupant protection Federal motor vehicle safety standards (FMVSSs) to account for future vehicles that do not have the traditional manual controls associated with a human driver because they are equipped with Automated Driving Systems (ADS). This final rule makes clear that, despite their innovative designs, vehicles with ADS technology must continue to provide the same high levels of occupant protection that current passenger vehicles provide. The occupant protection standards are currently written for traditionally designed vehicles and use terms such as ''driver's seat'' and ''steering wheel,'' that are not meaningful to vehicle designs that, for example, lack a steering wheel or other driver controls. This final rule updates the standards in a manner that clarifies existing terminology while avoiding unnecessary terminology, and, in doing so, resolves ambiguities in applying the standards to ADS-equipped vehicles without traditional manual controls. In addition, this final rule amends the standards in a manner that maintains the existing regulatory text whenever possible, to make clear that this rule maintains the level of crash protection currently provided occupants in more traditionally designed vehicles. This final rule is limited to the crashworthiness standards to provide a unified set of regulatory text applicable to vehicles with and without ADS functionality.

**DATES:** *Effective date:* September 26, 2022. Optional early compliance (*i.e.,* prior to the effective date) is permitted. Petitions for reconsideration must be received on or before May 16, 2022. The incorporation by reference of certain publications listed in the rule was approved by the Director as of February 6, 2012.

**ADDRESSES:** If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

*Privacy Act.* The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

*Confidential Business Information:* If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. To facilitate social distancing due to COVID–19, NHTSA is treating electronic submission as an acceptable method for submitting confidential business information (CBI) to the Agency under 49 CFR part 512. *https://www.nhtsa.gov/coronavirus.*

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may contact Mr. Louis Molino, Office of Crashworthiness Standards, Telephone: 202–366–1740, Facsimile: 202–493–2739. For legal issues, you may contact Ms. Sara R. Bennett, Telephone: 202–366–7304 or Mr. Daniel Koblenz, Telephone: 202–366–5329, Office of Chief Counsel. Address: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

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### I. Executive Summary

NHTSA has been evaluating its Federal Motor Vehicle Safety Standards (FMVSSs) to identify where concepts or terminology used in the standards do not account for the designs that the agency expects, and industry confirms, could accompany certain vehicles equipped with Automated Driving Systems (ADSs).[1] NHTSA has detailed in previous rulemaking notices the activities it has undertaken in its evaluation. These activities include initial evaluation of the FMVSSs,[2] issuing **Federal Register** notices soliciting input from stakeholders,[3] research on possible options available to

[1] An ADS is defined as the ''hardware and software that are collectively capable of performing the entire [dynamic driving task] on a sustained basis, regardless of whether it is limited to a specific operational design domain (ODD); this term is used specifically to describe a Level 3, 4, or 5 driving automation system.'' SAE International J3016_201806 Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles. While this notice uses the term ''ADS-equipped vehicle'' it focuses on SAE Level 4 and Level 5 vehicles that lack traditional manual controls.

[2] *https://rosap.ntl.bts.gov/view/dot/12260.*

[3] Removing Regulatory Barriers for Vehicles with Automated Driving Systems Request for Comment, 83 FR 6148 (Feb. 13, 2018); Removing Regulatory Barriers for Vehicles with Automated Driving Systems Advance Notice of Proposed Rulemaking, 84 FR 24433 (May 28, 2019).

the agency to amend the FMVSSs,[4] and public discussions with stakeholders.[5]

This prior work resulted in the agency's March 30, 2020, notice of proposed rulemaking (NPRM) underlying this final rule.[6] The NPRM proposed to revise its current crashworthiness[7] (200-Series) FMVSSs to amend terms or other text to account for the unconventional interior designs that are expected to be present in certain ADS-equipped vehicles. An example of such an unconventional interior design would be those that lack driving controls.

In the proposal, NHTSA proposed to amend the existing FMVSSs in a way that maintains the occupant protection performance currently required by the 200-Series FMVSSs while amending the wording that has or will become obsolete as applied to new designs, and to clarify for manufacturers developing ADS-equipped vehicles the application of a particular FMVSS to their vehicle. The NPRM also ensured these revisions accounted for dual-mode ADS-equipped vehicles (ADS-equipped vehicles that also have a conventional driving mode), as defined by SAE International (SAE).[8] NHTSA also sought to remove requirements for which a safety need does not exist.

NHTSA received 45 comments on the NPRM.[9] The proposal garnered comments from vehicle and equipment manufacturers, ADS developers, industry associations, consumer advocates, advocates for persons with disabilities, States, insurance organizations, a university, an oil independence advocacy group, and members of the general public. Many commenters supported the proposal and the use of definitional and textual changes to achieve the goals of the NPRM, though numerous other commenters argued that the agency's focus on this issue was premature. Regardless of their general position on the rule, most commenters did support NHTSA's suggestion that, to the extent any changes were finalized, they should be done in way that minimized the complexity of the changes to the FMVSSs.

The agency acknowledges that uncertainty continues to exist around the development and potential deployment of ADS-equipped vehicles. Nevertheless, NHTSA believes it is appropriate to finalize this action at this time in anticipation of emerging ADS vehicle designs that NHTSA has seen in prototype form. The current designs generally involve forward-facing row seating[10] and vehicles without manual driving controls. NHTSA has designed this final rule to minimize the changes to the FMVSSs and to maintain the level of occupant protection currently provided in all FMVSS compliant vehicles. This final rule provides regulatory certainty that, despite their innovative designs, vehicles with ADS technology must continue to provide the same high levels of occupant protection that current passenger vehicles provide. This final rule adopts most of the provisions included in the NPRM, with some exceptions summarized in the next section.

*Differences Between the NPRM and Final Rule*

The differences between the NPRM and the final rule are generally minor and are fully explained in the relevant sections in this document. Some of the more substantive changes in this final rule are as follows.

- NHTSA believes that children should not occupy the ''driver's'' position when the vehicle is operating in ADS mode and steering controls are present, given that the driver's seating position has not been designed to protect children in a crash. For example, the required limit on the rearward displacement of the steering column and forcefulness with which the air bag deploys have been optimized for adults and could pose a safety risk to children. The NPRM proposed that ADS vehicles must *suppress vehicle motion* when: (1) The vehicle contains a driver's seat (*i.e.,* manually operated driving controls are available, but not necessarily functional during ADS operation); (2) the occupant of the driver's seat is classified by the air bag system as a child; and (3) the vehicle is in an operational state that does not require a driver (*i.e.,* where the ADS is in control of the driving task). After review of the comments, for now, NHTSA has decided against adopting a vehicle motion suppression requirement in these circumstances. The agency would like to know more about the relative risk of a child seated in the ''driver's'' position as compared to the passenger position and whether there are other ways of addressing this safety concern than a requirement to suppress vehicle motion completely. The agency would also like to explore any necessary refinements to occupant detection and low risk deployment requirements and test procedures for the driver's seat.
- Proposed regulatory text would have changed the front row seat compartmentalization occupant protection requirements for large school buses (gross vehicle weight rating over 4,536 kg (10,000 lb.)) in ways not intended by NHTSA. Such text is not adopted by this final rule.
- NHTSA has modified FMVSS No. 208, *Occupant crash protection,* to be clearer in the protections that are required for inboard seating positions in the front row of ADS-equipped vehicles.
- This final rule modifies the application section of FMVSS Nos. 212, *Windshield mounting,* and 219, *Windshield zone intrusion,* to make clear these standards exclude occupant-less vehicles, since these standards meet no safety need when there are no occupants to protect.
- NHTSA has decided not to move forward at this time with changing the FMVSS No. 226, *Ejection mitigation,* requirements for the ejection mitigation countermeasure readiness indicator. The agency will consider amendments to controls and displays in a separate rulemaking.

Minor differences between the NPRM and this final rule are discussed in the appropriate sections in this preamble. Some of these differences include:

- Moving the definition of ''seat outline'' from FMVSS No. 226 to § 571.3, *Definitions* (see Section IV.a.7 of this preamble);
- Slightly revising the term used to describe occupant-less vehicles, to refer to at least ''one person'' rather than referring to ''a designated seating position,'' (see Section V.a of this preamble); and
- In FMVSS No. 208, correcting a missed revision indicating there can be multiple front seat passengers (S19.2.2(e)) (see Section VI.f of this preamble), and adopting a wording change to clarify the air bag suppression

[4] *https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/ads-dv_fmvss_vol1-042320-v8-tag.pdf.*

[5] FMVSS Considerations for Automated Driving Systems Stakeholder Meeting, information available at *https://www.vtti.vt.edu/fmvss/.*

[6] 85 FR 17624.

[7] Throughout this notice, NHTSA uses ''crashworthiness'' and ''occupant protection'' interchangeably because the agency considers the 200-Series FMVSSs to be focused on both.

[8] An [ADS-Equipped] Dual-Mode Vehicle is defined as ''[a] type of ADS-equipped vehicle designed for both driverless operation and operation by a conventional driver for complete trips.'' SAE J3016_201806 Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles.

[9] Docket No. NHTSA–2020–0014. NHTSA received an additional 5 comments that were determined to be completely unrelated to this notice (#4, #5, #6, #18, #52), and 1 duplicate submission (#42).

[10] Applying the occupant protection standards to forward-facing seating is straightforward since the standards are generally designed with forward-facing seating in mind. In contrast, applying the standards to side-facing, campfire or other seating configurations is more complex and will involve more research, which is currently underway, and standard development.

test procedure (S20.2, S22.2, S24.2) (see Section VI.a of this preamble).

As was the case for the NPRM, to illustrate the precise changes that are being made within the context of the full regulatory text, we are providing in the docket for this rulemaking a document that contains the full regulatory text of each modified standard included in this final rule. The text is color coded in the following manner; blue bold underline (text added by the NPRM), red strikeout (text deleted by the NPRM), green bold underline (text added by the final rule), orange strikeout (text deleted by the final rule). (The information is provided for illustration purposes for the convenience of readers and does not change the amendments provided in the amendatory text of this final rule.)

*Guiding Principles*

In the NPRM, NHTSA expressed certain ''guiding principles'' for this rulemaking, which continue to be relevant in this final rule. First, the amended FMVSS requirements in this final rule are intended to maintain the level of crashworthiness performance in vehicles with and without ADS functionality, including ADS-equipped vehicles that also have a conventional driving mode (dual-mode ADS vehicles). The level of performance required by the amended FMVSSs is just as appropriate for ADS-vehicles as it is for non-ADS vehicles in protecting the public against unreasonable risk of death or injury in a crash.[11] More specifically, NHTSA sought to maintain the level of safety currently provided to occupants by applying the crash test performance requirements for the right front outboard occupant to the left front outboard occupant of ADS-vehicles, wherever possible. Similarly, occupants seated behind driving controls in ADS-vehicles (dual-mode ADS vehicles) will be protected just as drivers are today. Second, NHTSA sought to amend its standards to account for new designs, and to clarify for manufacturers developing ADS-equipped vehicles, particularly those that lack manual controls, that the standards apply to their vehicles. In short, NHTSA sought to clarify that a manufacturer of ADS-equipped vehicles must continue to apply occupant protection standards to its vehicles even if manual steering controls are not installed in the vehicle. Finally, for the convenience of readers and those familiar with the standards, NHTSA sought to amend the requirements in a manner that minimized the changes to the regulatory text of the standards.

This final rule is purposefully limited in scope based on the bounds listed below.

1. This final rule only applies to ADS-equipped vehicles that have seating configurations similar to non-ADS vehicles, *i.e.,* forward-facing front seating positions (conventional seating). Thus, NHTSA focused on conventional seating in this rulemaking, noting that additional research is necessary to understand and address different safety risks posed by vehicles with unconventional seating arrangements (*e.g.,* rear-facing seats or campfire seating).

2. This final rule addresses ADS-equipped vehicles designed exclusively to carry property (''occupant-less vehicles'') by amending the application of existing crashworthiness requirements for these vehicles, as appropriate. This final rule does not address potential vehicle-to-vehicle compatibility issues related to occupant-less vehicles, as the existing standards do not test for this issue.[12]

3. With one exception, this final rule refrains from amending requirements relating to telltales and warnings, as that area has implications beyond the 200-Series standards and is a subject of continuing NHTSA research. The exception to this is the air bag suppression telltale, which we believe is reasonable to address now. This is described further in section VI.b of this preamble.

*Tables of Costs and Benefits*

This rule will eliminate the need for ADS-equipped -vehicle manufacturers to equip vehicles with redundant manual driving controls in vehicles that do not have manual driving capabilities, to comply with FMVSS. In turn, the cost impacts of this rule will be driven predominantly by the per-vehicle costs savings to each vehicle that would no longer need certain manual controls and the number of vehicles produced each year that will be produced without those controls. The Agency has reliable information on the former category, given that we generally know the current costs of this equipment, but can only estimate the broader effects. Thus, NHTSA calculated ranges of estimates of cost impacts using a variety of logical assumptions. NHTSA calculated the impact of the final rule on costs by analyzing production cost savings arising from forgoing the installation of manual steering controls. These cost savings are partially offset by incremental costs associated with augmenting safety equipment in the left front seating position to make that position equivalent to the right front seating position.

NHTSA estimates that this rule would save approximately $995 per vehicle, as explained in greater detail in the RIA. NHTSA has conducted an analysis that shows how these cost savings would look if these types of vehicles entered the fleet to at least some degree. The results of this estimate show the present value of the final rule's estimated year-2050 savings to ADS–DV manufacturers and consumers, based on the assumption that there will be approximately 5.8 million affected vehicles, at a three-percent discount rate equal to $2.5 billion. At a seven-percent discount rate, the estimated year-2050 savings has a present value equal to approximately $0.9 billion, as presented in Table 1:

TABLE 1—ESTIMATED TOTAL MONETIZED ANNUAL COST IMPACTS

[ADS–DV cost impacts in 2050, billions of 2018 dollars, 31% ADS–DV sales share]

| Dual-mode sales share offset | Discount rate | Mean cost impact |
|---|---|---|
| 0% | 3% (Discounted back to 2022). | −$2.5 |
| 0% | 7% (Discounted back to 2022). | −0.9 |
| 30% | 3% (Discounted back to 2022). | −1.7 |
| 30% | 7% (Discounted back to 2022). | −0.6 |

These estimates represent an upper bound, in which ADS–DVs do not compete with dual-mode ADS-equipped vehicles (*i.e.,* 5.8 million ADS–DVs are sold in 2050, with each including a measure of production cost savings associated with forgoing manual steering controls). Under the alternative EIA scenario in which one percent of new vehicle sales in 2050 are comprised of ADS–DVs, the corresponding estimates are: A present value in 2022 of approximately $60 million at a three-percent discount rate; and approximately $20 million at a seven-percent discount rate.

As a sensitivity analysis, NHTSA also considered an alternative case, in which ADS–DV sales in 2050 are reduced by 30 percent relative to the baseline, with the change in sales representing sales of

[11] 49 U.S.C. 30102(a)(10) (from definition of ''motor vehicle safety'').

[12] Vehicle-to-vehicle compatibility refers to how well two vehicles match up in a two-vehicle crash. Vehicles that are heavier, with higher ground clearance, and with stiffer front ends can pose a higher injury risk to occupants in smaller cars. Currently NHTSA has no evidence of compatibility issues with occupant-less vehicles, but NHTSA is researching this area.

dual-mode ADS-equipped vehicles. This represents a case in which: (1) ADS–DV sales are split between approximately one-sixth fleet sales and five-sixths private ownership, per the EIA scenario; (2) one-seventh of fleet ADS–DV purchases in the baseline analysis are allocated to dual-mode vehicle sales (*i.e.,* approximately $1/7 \times 1/6$ of all ADS–DV sales); and (3) one-third of private ADS–DV purchases in the baseline analysis are allocated to dual-mode vehicle sales (*i.e.,* approximately $1/3 \times 5/6$ of all ADS–DV sales). Under this alternative scenario, savings to ADS–DV manufacturers and consumers under the final rule would be approximately $1.7 billion at a three-percent discount rate, and approximately $0.6 billion at a seven-percent discount rate.

There are no other quantified benefits associated with this final rule. NHTSA acknowledges that this final rule may impact safety and fuel consumption and would likely generate benefits associated with incremental producer and consumer surplus beyond the production cost savings quantified above. This final rule may also generate benefits that could lead to increased safety, reductions in administrative burden, and reductions in manufacturer uncertainty, though these benefits are also unquantified.

The final rule is assumed to have no effect on the per-mile risk of travel in ADS–DVs, as it does not revise, remove, or establish anything associated with their safety performance. That is, the removal of manual steering controls is not assumed to offer any direct safety benefit or detriment for travel in ADS–DVs. However, it is feasible that changes in ADS–DV demand associated with the final rule (*e.g.,* due to changes in vehicle design or decreases in cost) could increase the use of ADS–DVs. In turn, safety outcomes associated with the final rule would be equal to the net effects of: (1) Changes in per-mile fatality and injury risk for travel that is shifted from conventional vehicles to ADS–DVs; and (2) incremental fatalities and injuries for travel in ADS–DVs that would not have taken place in any vehicle otherwise. It is difficult to project net safety impacts associated with the final rule without information on: (1) Per-mile fatality and injury risk for ADS–DVs and conventional vehicles over time; and (2) demand for travel in ADS–DVs and conventional vehicles as a function of ADS–DV price and design attributes. NHTSA continues to engage in various research, regulatory, and enforcement efforts associated with the safety of the automated driving system itself, but those activities are outside the scope of this rulemaking.

The final rule could affect per-vehicle fuel consumption by changing the mass of ADS–DVs. NHTSA expects ADS–DV mass to either decrease (due to the removal of currently required equipment) slightly or remain essentially unchanged (due to the addition of automated steering components that offset the mass savings of the removed equipment) under the final rule. NHTSA acknowledges that, in principle, ADS–DV mass could increase (if vehicle seating configurations and amenities are changed sufficiently when exploiting the reduction in design constraints when removing manual steering controls) under the final rule. In any event, current corporate average fuel economy (CAFE) requirements are based on a vehicle's ''footprint,'' and thus any change in a vehicles mass will not affect a manufacturer's obligations under that program. Finally, as stated in the NPRM, NHTSA has not attempted to address the revisions that may be necessary to provide regulatory certainty for manufacturers that wish to self-certify ADS-equipped vehicles with unconventional seating arrangements.

The final rule would lead to a reduction in the number of standards from which manufacturers of ADS–DVs would have to seek exemptions. The reduction in exemption requests would be associated with a reduction in administrative costs for both manufacturers and NHTSA. NHTSA does not have sufficient information to establish a specific estimate of administrative cost savings. However, the cost savings would be expected to be small relative to the production cost savings associated with the rule.

A less tangible, but still important, expected impact of the final rule would be a reduction in uncertainty for manufacturers of ADS-equipped vehicles. The final rule provides clarity to manufacturers on constraints to developing FMVSS-compliant ADS-equipped vehicles. In turn, developmental paths for ADS-equipped vehicles could be implemented with greater precision and efficiency. The reduction in uncertainty could reduce not only the costs associated with manufacturing ADS-equipped vehicles, but also the time it would take to bring these vehicles to the market. An accelerated development timeline would be a benefit both to manufacturers and consumers.

## II. NPRM

On March 30, 2020, NHTSA issued an NPRM that proposed modifications to certain terms and other regulatory text in the 200-Series FMVSSs to account for ADS-equipped vehicles and certain interior designs that are expected to be present in these vehicles, including the lack of driving controls.[13] The NPRM also included modifications to the regulatory text to take into account some dual-mode ADS-equipped vehicles.[14] The NPRM sought to resolve whether occupant protection requirements ought to apply to occupant-less vehicles.

NHTSA's proposal sought to account for certain vehicle designs expected to accompany ADS-equipped vehicles in a manner that minimized textual additions and modifications to the 200-Series FMVSSs. The proposal discussed existing terms used in the standards that, through their use, made uncertain how regulatory text applies to vehicle designs that did not incorporate such terms. The proposal discussed existing terms that, by virtue of new vehicle designs, could be misunderstood, and defined them to clarify their meaning for ADS-equipped vehicles. The NPRM proposed a few new terms and definitions and proposed relocating other terms and definitions. The NPRM proposed to modify regulatory text to address situations where there may be no driver seat, but multiple outboard passenger seats. The agency proposed to consider any left outboard seat that does not have immediate access to traditional manual controls (''manually operated driving controls'') as a ''passenger seat'' and mirror the test procedures and requirements from the right side.

FMVSS No. 208, *Occupant crash protection,* is a primary focus of this rulemaking, as it is one of NHTSA's most complex standards, and many of this standard's performance requirements and test procedures were written with references to the ''driver's'' seating position. This emphasis on the driver's position in the standard reflected the fact that, with conventional (*i.e.,* non-ADS) vehicles, the driver's seat should always be occupied by an individual of legal driving age during operation. For our discussions in this document we will typically refer to these individuals as adults, although they may in some cases be legally minors. The NPRM discussed the treatment of advanced air bags and

[13] 85 FR 17624. As discussed below, however, the NPRM assumed the vehicles will have conventional forward-facing seating.

[14] An [ADS-Equipped] Dual-Mode Vehicle is defined as ''[a] type of ADS-equipped vehicle designed for both driverless operation and operation by a conventional driver for complete trips.'' SAE J3016_201806 Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles.

advanced air bag suppression telltales [15] in ADS-equipped vehicles with two front outboard passenger seats. The NPRM proposed to require a separate telltale for each front outboard passenger seat, which must be visible from each front outboard seat. The NPRM addressed FMVSS No. 208's seat belt requirements for ''medium-sized'' buses (with a gross vehicle weight rating (GVWR) between 4,536 kilograms (kg) (10,000 pounds (lb.)) and 11,793 kg (26,000 lb.)) and school buses (GVWR greater than 4,536 kg (10,000 lb.)). For such buses equipped with ADS without a driver's seat, NHTSA proposed that all front seats meet the protection requirements that must currently be met by the driver's seat.

The NPRM proposed to streamline the 200-Series FMVSSs so that requirements would not apply when the ADS-configured vehicle posed no safety need for the requirement. For example, the proposal took the position that, when there is not a steering wheel or steering column in a motor vehicle, FMVSS Nos. 203, *Impact protection for the driver from the steering control system,* and 204, *Steering control rearward displacement,* would not apply. Similarly, the NPRM proposed not to apply occupant protection standards to vehicles designed solely to carry cargo, rather than occupants (''occupant-less'' vehicles).[16] This was accomplished by proposing to alter the ''application'' section of various FMVSSs to indicate that the standards only applied to a ''truck'' with at least one designated seating position (DSP).[17] The NPRM analysis concluded that this change was only required for FMVSS Nos. 201, *Occupant protection in interior impact,* 205, *Glazing material,* 206, *Door locks and door retention components,* 207, *Seating systems,* 208, *Occupant crash protection,* 214, *Side Impact protection,* 216a, *Roof crush resistance; Upgraded standard,* and 226, *Ejection mitigation.*

*High-Level Summary of Comments on Overall Approach and Need for Rulemaking*

In response to the NPRM, NHTSA received 45 comments from vehicle and equipment manufacturers and ADS developers, industry associations, consumer advocates, advocates for persons with disabilities, States, insurance organizations, a university, an oil independence advocacy group, and members of the general public. Generally, most commenters supported the proposal, the revision of terms and use of definitional and textual changes to achieve the goals of the NPRM, and the agency's approach to minimize the complexity of the changes to the FMVSSs.[18] However, various other commenters, particularly certain non-governmental organizations, raised concerns about the agency's general approach to ADS regulation and the prioritization of this and similar rules, though many of these commenters had only minor comments concerning specific proposed technical changes.

Approximately 25 commenters across all commenter types agreed that there is a need for the proposal, and, of these, approximately 17 commenters stated they agreed with the general approach. For example, General Motors (GM) commented that it supports the approach used in the NPRM and that ''when finalized into a final rule, [it] will provide needed regulatory certainty for certification, reduce certification costs and minimize (but not completely eliminate) the need for future NHTSA interpretation or exemption requests related to ADS-equipped vehicles.'' Waymo stated that the proposal would not reduce any protections for automated vehicles without manual controls and strongly supported the limitations in scope of the NPRM ''to crashworthiness standards to conventional occupant seating arrangements.'' The Alliance for Automotive Innovation (Alliance) stated that the rulemaking will work towards ''maintaining motor vehicle safety'' and ''reduce the need to rely on the administratively complex and time-consuming FMVSS exemption process.''

Several commenters, though, questioned the need for the rulemaking action. The Center for Auto Safety (CAS) argued that a better allocation of limited government resources would be to focus on the ''nearer-term technology improvements with immediate impact on the safety of occupants of conventional vehicles, pedestrians, and other vulnerable road users.'' CAS stated that such an approach was more appropriate because ''fully autonomous driving system-equipped vehicles [. . .] do not exist at this time.'' CAS also asserted that NHTSA should not permit traditional manual controls to be removed from vehicles ''until at least equivalent safety [of ADS-equipped vehicles] is proven.'' CAS stated that such controls ''might be deployable only as needed but are an absolute necessity for the many conceivable foreseen and unforeseen safety-critical situations that ADS-equipped vehicles will encounter.'' The National Safety Council (NSC) stated that ''shifting focus from tried-and-true vehicle standards is the wrong approach and evaluating the removal of those standards is premature at this time. As most ADS vehicle designs that might benefit from a revision of FMVSS standards are still on the drawing boards and unforeseen issues are certain to arise, eliminating current standards at this point is hasty.'' NSC argued that NHTSA should redirect resources and prioritize requiring advanced driver assistance systems (ADAS) and other technologies in vehicles. Consumer Reports (CR) also ''question[ed] the present focus of the agency on 'removal of regulatory barriers' rather than on developing and implementing standards for proven safety technologies,'' though CR also stated that it ''appreciate[s] the Agency's targeted approach on this topic'' and that the narrow scope of the NPRM ''is appropriate.'' The Insurance Institute for Highway Safety (IIHS) expressed concern that ''the current Notice of Proposed Rulemaking (NPRM) creates a path for deploying into the market ADS-controlled vehicles without regulations that establish the ground rules for the safe behavior of ADS,'' Though it also stated that ''modifications proposed by NHTSA likely will be helpful to the entities developing automated driving systems (ADS) and the vehicles that will be controlled by ADS'' and that the ''changes answer some questions about how the occupants of ADS-controlled vehicles should be protected in the event of a crash.''

*Agency Response*

NHTSA is sensitive to concerns raised regarding prioritizing rulemakings and other activities that emphasize other technologies, such as advanced driver assistance systems (ADAS), instead of focusing on vehicles that remain in development. However, in the case of this rulemaking, the agency focused appropriate resources to address a narrow question. Further, NHTSA has

[15] The term ''telltale'' is defined in FMVSS No. 101; Controls and displays, as ''an optical signal that, when illuminated, shows the actuation of a device, a correct or improper functioning or condition, or a vehicle system's failure to function.'' The term is used in many other FMVSSs and is used in FMVSS No. 208 for an indicator of air bag operational status as a function of the occupant detection system of the seat.

[16] We note that a vehicle designed to carry standee passengers (*e.g.,* a transit shuttle) would fall under one of NHTSA's other vehicle classifications.

[17] ''Designated seating position'' is defined in 49 CFR 571.3. Generally described, a DSP is a seat location that has a seating surface width of at least 330 millimeters (13 inches) as measured in the manner described in the definition.

[18] An additional 5 comments were received that were determined to be completely unrelated to this notice (#4, #5, #6, #18, #52), and 1 duplicate submission (#42).

determined it is appropriate to proceed with this final rule at this time, as it will provide ADS manufacturers with certainty on how to comply with these FMVSSs and reaffirm the application of occupant protections standards to vehicles equipped with ADS. Thus, this final rule will have the limited effect of providing clarity on the specific issues addressed here, which will, at the very least, ensure that vehicles with ADS technology provide the same high levels of occupant protection that current passenger vehicles provide. Taking this action now will make clear that the crashworthiness standards apply to vehicles with ADS technologies.

We also note that, in addition to this action, we have commenced rulemaking and other action on ADAS technologies. In the Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions, NHTSA announced two rulemakings to require emergency braking performance for heavy and light vehicles and to require pedestrian automatic emergency braking performance in light vehicles.[19] Furthermore, the agency is working on updates to its New Car Assessment Program (NCAP 5-star safety ratings program) to include additional modern vehicle safety technologies that can address crashes and promote safer behaviors. Thus, the agency is actively engaged in actions related to ADAS.

The purpose of the National Traffic and Motor Vehicle Safety Act (Safety Act), which NHTSA, by delegation, is tasked with administering, is to reduce traffic crashes and their resulting deaths and injuries, through carrying out research and establishing FMVSS.[20] In establishing FMVSSs, NHTSA sets minimum performance standards that are objective and practicable, and that protect the public against an unreasonable risk of crashes occurring, and death or injury in the event a crash does occur.[21] This final rule is consistent with the goals of the Safety Act by modifying the FMVSSs to account for vehicle designs that NHTSA anticipates will arise with deployment of ADS-equipped vehicles, in a manner that provides occupants with at least the same protections afforded by existing standards that the agency has already found meet the need for motor vehicle safety.

Although NHTSA understands concerns that this final rule is premature given the current state of ADS-equipped vehicle development, the agency has received many requests from industry for information to assist them in determining how existing FMVSSs apply to ADS-equipped vehicles developed without traditional manual controls (*e.g.,* steering wheels) and other unconventional vehicle designs. In response to these requests, NHTSA conducted a preliminary analysis of the potential unintended barriers to these vehicle designs,[22] issued requests for comment, held public meetings, and initiated rulemaking proceedings on the topic—including this rulemaking—to gather as much information as possible on how best to approach modernizing the FMVSS to account for these vehicles.

There also continues to be progress toward development of ADS-equipped vehicles. NHTSA knows of dozens of testing and development activities taking place in more than 40 States and the District of Columbia, many of which involve ADS-equipped vehicles that lack manually operated driving controls.[23] In addition, one manufacturer of small, low speed, occupant-less ADS delivery vehicles received a temporary exemption from NHTSA to deploy up to 2,500 vehicles per year for two years.[24] These activities, and the advancements toward development of ADS-equipped vehicles, have created an opportunity for new vehicle designs that warrants evaluation of current FMVSSs.

When NHTSA promulgated most of the current FMVSSs, the agency did not consider the sorts of vehicle designs that would be possible if a vehicle could operate without human intervention. Today, an increasing number of companies are developing technologies to make that idea a reality. NHTSA is issuing this final rule to amend terminology, definitions, and other nomenclature found in the relevant FMVSS that inadvertently and unnecessarily impede the unconventional vehicle designs described by manufacturers.

NHTSA identified the narrow scope of the NPRM clearly and has retained that scope for this final rule. Although the agency is sympathetic to many of the suggestions from CAS, CR, NSC and IIHS that NHTSA should focus on other vehicle safety issues and technologies, the agency believes it remains appropriate to finalize today's action on the narrow grounds identified in the NPRM, while continuing its other research and ongoing rulemaking actions on the issues identified by those commenters, including those related to ADS performance and ADAS technologies. Issues related to agency allocation of resources are also outside the scope of this final rule.

NHTSA also disagrees with the IIHS assertion that this final rule alone creates a path for ADS deployment. NHTSA's existing FMVSSs do not prevent the deployment of ADS in vehicles configured like traditional vehicles (*i.e.,* equipped with manually operated driving controls), when the vehicles meet all applicable FMVSSs. If the vehicle can be certified as meeting the FMVSSs, it can be deployed with ADS regardless of issuance of this final rule. This final rule simply makes targeted changes to the FMVSSs to account for certain vehicle designs that NHTSA has seen from some manufacturers or has otherwise been made aware. In addition, this final rule only addresses the crashworthiness standards. As the agency continues to assess how and whether to change other relevant FMVSSs in response to these types of vehicles, at this stage, an ADS-equipped vehicle may still be required to petition for and receive an exemption from NHTSA to be manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States.[25]

This final rule is substantially similar to the NPRM, with some alterations resulting from consideration of the comments. A summary of the substantive differences between the NPRM and final rule was provided in Section I of this preamble.

## III. Introduction to This Final Rule

This final rule preamble is organized by critical subject matter. First, the rule addresses subjects that affect all 200-Series FMVSSs, such as changes to the

[19] Heavy Vehicle Automatic Emergency Braking, *http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=2127-AM36* and Light Vehicle Automatic Emergency Braking (AEB) with Pedestrian AEB, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=2127-AM37.*

[20] 49 U.S.C. 30101.

[21] 49 U.S.C. 30111.

[22] Kim, Perlman, Bogard, and Harrington (2016, March) Review of Federal Motor Vehicle Safety Standards (FMVSS) for Automated Vehicles, Preliminary Report. US DOT Volpe Center, Cambridge, MA. Available at: *https://rosap.ntl.bts.gov/view/dot/12260/dot_12260_DS1.pdf.*

[23] *https://www.nhtsa.gov/automated-vehicles-safety/av-test-initiative-tracking-tool.*

[24] 85 FR 7826 (Feb. 11, 2020). NHTSA has also received two other petitions for exemption for ADS-equipped vehicles that would lack manually operated driving controls. However, the agency has only requested comment on one of these petitions, which was later withdrawn. The agency is currently developing notices of receipt for the two other petitions it received, including GM's updated petition. *See https://www.reuters.com/article/us-autonomous-cruise-nhtsa-idUSKBN2762SP.*

[25] 49 U.S.C. 30112(a).

terminology used in the standards. For example, the agency is defining some terms already used in many of the 200-Series FMVSSs to account for ADS-equipped vehicles (*e.g.,* ''driver's designated seating position,'' ''passenger seating position''), or is adopting new definitions as appropriate (''manually operated driving controls,'' ''steering control''). These changes to nomenclature provide clarity about how the crashworthiness FMVSSs apply to ADS-equipped vehicles and seek to amend the FMVSSs to include these new vehicle designs. Another issue that affects all 200-Series FMVSSs is the way in which the standards use features such as the ''driver's seat,'' ''passenger seat,'' and ''steering controls'' as spatial references to describe where things are located within the vehicle. This final rule amends the terms so that the spatial references make sense as applied to the interior designs of ADS-equipped vehicles, which may, for example, lack a driver's seat and have an additional passenger seat instead. Other issues of general significance include clarifications regarding how the 200-Series FMVSSs apply to vehicles that can be operated by both ADS and by a steering control (dual-mode vehicles), and how some test procedures pertain to vehicles that do not have components referenced therein (*e.g.,* a manual parking brake mechanism).

Second, this final rule achieves an objective of the agency with regards to ''occupant-less vehicles,'' by tailoring the 200-Series FMVSSs to exclude vehicles that are intended not to have human occupants. Occupant-less vehicles are designed for the transportation of property, not people, and have no DSPs. The agency has determined that the original safety need of the 200-Series FMVSSs no longer exists when there are no occupants to protect. A more fulsome discussion of this topic is provided in section V of this preamble.

Third, this final rule preamble discusses amendments to terminology used in certain FMVSSs, and focuses on FMVSS No. 208 as a critical subject, as many of the performance requirements of this standard were written with reference to the driver's and passenger's seating positions. This final rule discusses changes to substantive requirements of the standard resulting from those revisions to terminology, such as the treatment of advanced air bags and advanced air bag suppression telltales in ADS-equipped vehicles, lockability requirements, and changes to FMVSS No. 208's seat belt requirements for medium-sized buses and large school buses following the removal of the term ''driver.''

Fourth, after the FMVSS No. 208 discussion, this final rule discusses amendments to other FMVSSs.

Lastly, the final rule discusses the effective date and cost impacts of the rule.

## IV. Implications

### *a. New and Current Terms and Definitions*

#### 1. NPRM's Approach to Driver Definition

In the NPRM, NHTSA proposed to define, modify, or relocate existing terms and proposed new terms both to clarify application of the 200-Series FMVSSs to ADS-equipped vehicles and to facilitate the implementation of other proposed regulatory changes. However, NHTSA did not propose to amend the definition of ''driver'' in 49 CFR 571.3 to include ADS, and it did so intentionally. NHTSA cited four primary reasons for this decision. First, NHTSA believed it would not be appropriate to consider changes to such a fundamental and ubiquitous concept (''driver'') in a rulemaking that focused solely on the 200-Series without completing the additional research necessary to address implications for those other FMVSSs. Second, the regulatory changes NHTSA proposed in the NPRM did not necessitate examination of the issue of ''what is a driver.'' Third, NHTSA determined that revisiting the definition of driver would best be done in a different context, perhaps if the agency undertakes defining the ADS itself. Finally, keeping the current definition of driver was consistent with the input NHTSA received through the initial phase of a research project under which the FMVSSs were reviewed to identify potential approaches for addressing barriers.[26]

Notwithstanding NHTSA's statements above, NHTSA received several comments suggesting amendments to the driver definition.[27] However, none of these comments addressed NHTSA's four areas of concern. Accordingly, NHTSA does not amend the definition of driver in this final rule. However, the agency will consider the input received from comments on this rulemaking in proposing future regulatory actions.

#### 2. Newly Defined, New, Modified, and Relocated Terms

The agency proposed several changes to terms and definitions to implement the goals of the rulemaking. These definitions were proposed to be located or were already located in part 571.3, ''Definitions.'' Table 2, below, summarizes the NPRM's proposal for the reader.

TABLE 2—PROPOSED CHANGES TO TERMS AND DEFINITIONS

| Proposed term or definition | Type | Justification |
|---|---|---|
| *Driver air bag* means the air bag installed for the protection of the occupant of the driver's designated seating position. | New definition of existing term .... | Clarify the application of occupant protection requirements. |
| *Driver dummy* means the test dummy positioned in the driver's designated seating position. | New definition of existing term .... | Clarify the application of occupant protection requirements. |
| *Driver's designated seating position* means a designated seating position providing immediate access to manually operated driving controls. As used in this part, the terms ''driver's seating position'' and ''driver's seat'' shall have the same meaning as ''driver's designated seating position''. | New definition of existing term .... | Clarify the application of occupant protection requirements. |

[26] DOT HS 812 796, April 2020.

[27] For example, some commenters suggested adding ''human'' or ''conventional'' in front of driver. As the agency noted in the preamble to the NPRM, since the ''driver'' definition clearly indicates an ''occupant,'' specifying ''human'' is superfluous.

TABLE 2—PROPOSED CHANGES TO TERMS AND DEFINITIONS—Continued

| Proposed term or definition | Type | Justification |
|---|---|---|
| *Manually operated driving controls* means a system of controls:<br>(1) That are used by an occupant for real-time, sustained, manual manipulation of the motor vehicle's heading (steering) and/or speed (accelerator and brake); and.<br>(2) That are positioned such that they can be used by an occupant, regardless of whether the occupant is actively using the system to manipulate the vehicle's motion. | New | Clarify the application of occupant protection requirements. |
| *Outboard designated seating position* means a designated seating position where a longitudinal vertical plane tangent to the outboard side of the seat cushion is less than 12 inches from the innermost point on the inside surface of the vehicle at a height between the design H-point and the shoulder reference point (as shown in fig. 1 of Federal Motor Vehicle Safety Standard No. 210) and longitudinally between the front and rear edges of the seat cushion. As used in this part, the terms ''outboard seating position'' and ''outboard seat'' shall have the same meaning as ''outboard designated seating position''. | Modification | Clarify that the undefined terms ''*outboard seating position*'' and ''*outboard seat*'' have the same meaning as ''*outboard designated seating position*.'' |
| *Passenger seating position means* any designated seating position other than the driver's designated seating position, except as noted below. As used in this part, the term ''passenger seat'' shall have the same meaning as ''passenger seating position.'' As used in this part, ''passenger seating position'' means a driver's designated seating position with stowed manual controls. | New definition of existing term | Clarify the application of occupant protection requirements. |
| *Row* means a set of one or more seats whose seat outlines do not overlap with the seat outline of any other seats, when all seats are adjusted to their rearmost normal riding or driving position, when viewed from the side. | Relocation | Eliminate the necessity to cross-reference FMVSS No. 226. |
| *Steering control system* means the manually operated driving control(s) used to control the vehicle heading and its associated trim hardware, including any portion of a steering column assembly that provides energy absorption upon impact. As used in this part, the term ''steering wheel'' and ''steering control'' shall have the same meaning as ''steering control system''. | Relocation; Modification | To incorporate new definition for ''manually operated driving controls,'' and to clarify that the definition applies to the undefined terms ''steering wheel'' and ''steering control.'' |

In proposing these definitions, NHTSA acknowledged that vehicle designs are changing in response to technological innovation. Given that the agency is already seeing ADS-equipped vehicles being designed to operate in a ''driverless'' mode at all times,[28] and understanding that more vehicles may be designed as such in the future, the underlying assumption behind many of the current FMVSSs that manually operated driving controls will be present in all vehicles at all times is no longer controlling. For vehicles designed to be solely operated by an ADS, manually operated driving controls are logically unnecessary.[29] To account for this, the NPRM proposed a regulatory scheme in which the affected standards would not assume that a vehicle will always have a driver's seat, a steering wheel and accompanying steering column, or just one front outboard passenger seating position. The definition modifications proposed allows the regulatory text, to be unambiguous related to, for example, which front seating positions are driver or passenger designated seating positions (DSPs). Taking the left front outboard seat as an example, this seating position may be a *passenger seating position* (modified definition) because it is not a *driver's designation seating position* (modified definition). It is not a driver's (DSP) because by virtue of the definition of *driver* (unmodified definition), it does not have access to a *steering control system* (modified definition), which is a type of *manually-operated driving control* (new definition).

The NPRM proposed to accomplish this regulatory scheme by modifying the text of the affected standards so that the front outboard passenger seat performance requirements and test procedures would apply to all front outboard seating positions for these vehicles. For most standards, the NPRM proposed to accomplish this by slight textual changes that would enable the performance requirements and test procedures that currently apply to the right front passenger seat to be ''mirrored'' for the left side of the vehicle. If the ADS-equipped vehicle retained a driver's seat, the NPRM proposed keeping performance requirements and test procedures for the driver's seat, when it exists, effectively unchanged. These proposed changes effectively turn occupant protection requirements for the driver's seat into ''if-equipped'' requirement, meaning that when a vehicle does not have a driver's seat, all front outboard seating positions must meet the current front outboard *passenger* seat requirements. The standards to which NHTSA proposed making this type of change were FMVSS Nos. 201, 208, 214, and 226.

Commenters generally supported NHTSA's proposed changes to the terms and definitions. Some commenters provided suggestions and minor modifications to the proposals. This final rule maintains the proposed definitions and changes to terminology,

[28] *See, e.g.,* Nuro R2X, discussed further below.

[29] Note that other regulatory changes to the FMVSS not impacted by this rulemaking (*e.g.,* with regard to the 100-Series FMVSSs) would likely be necessary to permit such a vehicle to be manufactured for sale, even with the changes made by this rule (absent an exemption to the FMVSS under 49 CFR part 555). Note also that the Safety Act's defect provisions apply to an ADS and ADS-equipped vehicle.

except for ''passenger seating position.'' We address specific comments below.

3. Driver's Designated Seating Position, Manually Operated Driving Controls

The NPRM proposed to define *driver's designated seating position* as ''a designated seating position providing immediate access to manually operated driving controls. As used in this part [571], the terms 'driver's seating position' and 'driver's seat' shall have the same meaning as 'driver's designated seating position.' ''

This definition incorporated another proposed term, *manually operated driving controls,* which was defined in the NPRM as ''a system of controls: (1) That are used by an occupant for real-time, sustained, manual manipulation of the motor vehicle's heading (steering) and/or speed (accelerator and brake); and (2) That are positioned such that they can be used by an occupant, regardless of whether the occupant is actively using the system to manipulate the vehicle's motion. The definition of *steering control system* was clarified to state that it is a type of *manually operated driving control.*

Comments

Many of the comments related to these definitions focused on ''unconventional'' driving controls. The Center for Auto Safety (CAS) argued that the definition of ''driver's designated seating position'' should be written to exclude non-conventional controls such as joysticks, computers, tablet computers or wireless remote controls, and that reference should be made to controls that are ''permanently attached to the vehicle in a fixed location.'' In contrast, Tesla argued that the definition should consider situations where, for example, ''the manual controls may be removable, or where they may still be present, but are 'locked' or rendered inoperative when the ADS is in control of the driving task, or where the vehicle may be operated remotely by portable steering controls within the vehicle (*e.g.,* by cell phones or tablets).'' Tesla stated that the definitions may not fully consider the ''range of possibilities'' of types of controls, such as ''buttons, joysticks, screens'' and ''should not necessarily be determinative of whether the designated seating position should be considered a driver's rather than a passenger's seat for purposes of occupant protection.'' The Alliance and Toyota commented that there may be a lack of clarity with respect to joystick type controls as to how they would fit into the proposed definitional structure.

Agency Response

NHTSA has considered the comments but is not revising the two proposed definitions. The agency concludes that CAS's suggested changes would add ambiguity to the definition of the driver designated seating position. The commenter's suggestion to add ''conventional'' to the definition raises a question about the meaning of this term. Similarly, we believe that making the recommended change to refer to permanently attached controls in a fixed location may cause confusion with respect to stowable controls that may be installed in ''dual-mode'' vehicles.

NHTSA does not agree with Tesla that it is necessary at this time that the definition for manually operated driving controls account for the use of tablets or cell phones to control the vehicle. The new definition is meant to encompass traditional driving controls, not future controls that have not yet been developed. We also note that this rulemaking does not address joystick-type designs that are intended to be the only manual driving control or driving controls that have no fixed position at a particular seating location. Since this issue raises crash avoidance and crashworthiness safety concerns that are beyond the scope of this rulemaking action, we will not address the matter in this final rule.[30]

Tesla argued that only one of the terms ''steering control system'' and ''manually operated driving controls'' may be necessary, not both. NHTSA disagrees and believes having both terms allows for a more consistent regulatory text and less disruption from the existing text structure. Tesla claimed that the NPRM did not address the situation where the driving controls may still be present but are ''locked'' or ''inoperative.'' The NPRM explicitly considered inoperative controls that remain in position.[31] Tesla sought clarity on whether remote operation fell into the definition of ''manually operated driving controls.'' In response, under the definition of ''manually operated driving controls,'' it specifies that such controls are positioned such that they can be ''used by an *occupant*'' (emphasis added). Accordingly, the definition of ''manually operated driving controls'' excludes remote operation controls.

The Alliance stated there is a lack of clarity with respect to stowed manual controls. The commenter suggests the term ''stowed'' could mean a range of positions. The commenter points to the preamble statement that research may be needed into the ''transition of traditional manual controls in dual-mode ADS equipped vehicles.''

To be clear, issues arising from the physical act of stowing manual controls is beyond the scope of this rulemaking. We believe the existing standards clearly provide for occupant protection when the controls are stowed, creating a passenger DSP. As for the meaning of the term ''stowed,'' it is the past tense of ''stow,'' which has the plain language meaning of ''pack or store away.'' In the 200-Series standards, it is a term that is already used in relation to air bags, seat belts, and sun visors. We believe that a stowed manually operated driving control will be self-evident. Stowed controls could have multiple potential stowed positions and configurations, but not positioned such that they can be used by the driver.

4. Passenger Seating Position

The NPRM proposed to define ''*passenger seating position*'' as—any designated seating position other than the driver's designated seating position, except as noted below. As used in this part, the term ''passenger seat'' shall have the same meaning as ''passenger seating position.'' As used in this part, ''passenger seating position'' means a driver's designated seating position with stowed manual controls.

GM suggested slightly revising the last sentence in a manner that clarifies the provision about stowed controls. NHTSA agrees in part with GM's suggestion, and has decided in this final rule to change the last sentence to state:

As used in this part, ''passenger seating position'' includes what was a driver's designated seating position prior to stowing of the manually operated driving controls.''

5. Steering Wheel to Steering Control

The NPRM proposed to change the term ''steering wheel'' to ''steering control'' in consideration of steering controls that may not be circular, such as those shaped more like an airplane yoke control. At every occurrence of the term ''steering wheel,'' the NPRM substituted the term ''steering control.'' These terms were meant to be synonymous as is evident by the use of

[30] GM focused on the plural nature of the proposed definition to suggest that an unconventional control, such as a joystick, could in fact be a single manually operated *control* (not a system of *controls*) for use by a technician or for fleet management to move the vehicle across a lot, for example. GM believed that this single control would not be intended for use by a motorist for real-time, sustained manual manipulation of steering or acceleration or braking. Instead, GM envisioned this single control to be used for the short-term, temporary activation of the vehicle for fleet management purposes.

[31] 85 FR at 17637, VI.a.vi.6.

the terms in the proposed definition of ''steering control system.''

Comments

Comments were generally supportive, although some commenters raised concerns about issues tangential to the proposal. The California State Transportation Agency [32] (State of California, or CalSTA) and Securing American's Future Energy (SAFE) expressed support for the proposal. Safe Ride News (SRN) expressed concerns related to potential dangers for non-circular steering controls. Tesla did not comment on the change from ''wheel'' to ''control,'' but rather was concerned that the term ''steering control rim'' in FMVSS No. 208 implied a circular control.

The final rule will adopt the proposed change. With respect to SRN's concerns, the change in terminology does not newly enable manufacturers to equip vehicles with non-circular steering controls, since such controls were never prohibited. All of the standards that address the impact protection of steering controls remain in place. We also disagree with Tesla's contention that the use of the term ''rim'' limits the shape of the steering control to a round object. We believe ''rim'' can reasonably be interpreted as ''outer edge.'' Thus, various shapes are possible. We decline to make any change to the term ''steering control rim'' in this final rule.

6. Outboard Designated Seating Position

NHTSA proposed to clarify that the terms ''outboard seating position'' and ''outboard seat'' have the same meaning as used in the existing definition of ''outboard designated seating position.'' Our analysis of the regulatory text of the crashworthiness FMVSSs, determined these three terms have the same meaning. Therefore, to clarify this point, we proposed added language specifying that ''outboard seating position'' and ''outboard seat'' have the same meaning as ''outboard designated seating position.''

Comments

There were no adverse comments made to this proposal and the final rule will adopt the proposed change.

7. Row and Seat Outline

The NPRM proposed to relocate the definition of ''row,'' which is currently located in FMVSS No. 226, to Part 571.3. The term was proposed to be used in multiple standards (FMVSS Nos. 201, 206 and 208). Moving it to part 571.3 would eliminate the need to insert a reference to its current location.

Comments

There were no adverse comments related to moving the definition of ''row.'' However, Alliance, Zoox and GM recommended that the definition of ''outline'' similarly be moved to part 571.3 because the definition of ''row'' uses this term. The final rule will make this change.

8. Driver Air Bag and Driver Dummy

The NPRM proposed to define ''driver air bag,'' ''driver dummy.'' These are new definitions, but the terms already appear many times in the FMVSSs. This is also the case for ''passenger seating position'' and ''driver's designate seating position,'' which we discussed extensively above. However, there was previously no strong need to define these terms. NHTSA proposed to define them now because they help to clarify the application of the FMVSSs to ADS-equipped vehicles while maintaining their application to traditional vehicles and minimizing textual disruption.

Comments

There were no adverse comments made to this proposal and the final rule will adopt the proposed change.

*b. Modifying Spatial References in Test Procedures and Definitions That Rely on the Presence of a Driver's Seat and/or Manual-Operated Driving Controls*

FMVSS Nos. 201, 206, 208, 214, 216a, 225 and 226 contain terms or definitions that reference the driver's seat or steering controls to provide a spatial reference for where equipment in the vehicle must be installed, or test equipment (such as test dummies) placed in a compliance test. The NPRM proposed various changes addressing the situation where there is no driver's seat, a lone passenger seat, or no steering control to provide a spatial reference frame. In some instances, the agency proposed using the front row or the front outboard seating position as a reference rather than the driver's seat. In some cases, the ''left'' or ''right'' side of the vehicle was proposed to be used rather than ''driver's side'' or ''passenger side.''

1. Driver's Seat

The NPRM proposed using the front row, or the seating reference point of a seat in the front row, as a spatial reference rather than the driver's seat. Such changes were proposed for FMVSS Nos. 201, 206, 208 and 225, for buses.[33] Most commenters were supportive of the proposed changes.

FMVSS No. 225, ''Child restraint anchorage systems,'' currently defines ''shuttle bus'' as ''a bus with only one row of forward-facing seating positions rearward of the *driver's* seat'' (emphasis added). The NPRM proposed modifying the definition to state that if the bus does not have a driver's seat, it would meet the definition of a shuttle bus if it has only one row of forward- facing seating positions rearward of the front row. The NPRM made no alteration for non-ADS vehicles.

Comments

The Alliance supported the change to the definition of ''shuttle bus,'' but requested that this change be made for all vehicles, not just vehicles without driving controls, using the same language. In contrast, the State of California (CalSTA) commented that the ''proposed change may result in practical design and configuration changes to shuttle buses. Further research into how these changes will impact occupant safety on shuttle buses, if at all, is needed and suggests that it may be premature to address at this time.'' The Alliance further addressed provisions for rear-facing front row seating.

NHTSA is not implementing the Alliance's suggestion to apply the definitional change to non-ADS-equipped vehicles and is not accounting for rear-facing front row seating. This decision is in line with the agency's intent to focus this rulemaking narrowly to address unique designs that might be implicated by ADSs. This rulemaking is NHTSA's first step toward modernizing the FMVSSs to account for these new vehicle designs. No doubt there will be other steps, as the technologies mature, and suggestions for further amendments will be considered at those appropriate times.

NHTSA disagrees with CalSTA since the changes will have no effect on vehicles with driver's seats. Further, it is our expectation that using a front row seat as a reference rather than a driver's seat will have little to no effect on the reference point location.

For the reasons above and explained in the NPRM, this final rule adopts the changes that refer to the front row instead of to the driver's seat.

2. Dummy Placement in Bench Seats

Currently FMVSS Nos. 208 and 214 refer to the driver's DSP when

[32] Comments submitted in coordination with the California Highway Patrol and the California Department of Motor Vehicles.

[33] The Center for Auto Safety did not comment on the specifics of the change, but as with other bus-related issues, stated that ''it is inappropriate to consider ADS for buses within the stated NPRM scope.'' NHTSA has responded to this issue earlier in this preamble.

specifying where to place and position test dummies in bench seats of vehicles in the respective compliance tests. The NPRM proposed to use the seating reference point of outboard seats as the spatial reference for the lateral placement of test dummies when there is no driver's DSP.

Comments

All comments were generally in favor of using the seating reference point of outboard seats as the spatial reference for the lateral placement of test dummies when there is no driver's DSP.

The Center for Auto Safety (CAS) agreed with the proposed change to FMVSS No. 208 on the use of the seating reference point as the spatial reference for bench seats when there is no driver's seat. However, CAS stated: ''[T]his proposal should not pertain to vehicles that include fixed or deployable human-accessible primary or backup (potentially deployable on demand or need) controls.'' NHTSA understands this comment as conveying CAS's belief there should not be any reduction in the safety of the driver as a result of this final rule—a belief with which the agency agrees. The agency notes that the proposed regulatory text was purposefully drafted in a manner that would not affect the protection currently provided by vehicles with manually operated driving controls, *i.e.,* those with a driver's seat.

IIHS stated that the proposed method to position passenger side dummies in the absence of a ''driver's'' seat ''seems sensible.'' However, the commenter requested that the agency ''ensure that this change will not result in unrealistic dummy positioning for all relevant dummy sizes before making its proposed change.'' NHTSA has assessed how this final rule would impact dummy placement during compliance testing and concluded that the dummy positioning procedures are feasible for all the test dummies used in the standards, and dummy positioning would remain realistic for all tests. The Alliance supported the proposed language and suggested that such a method should be used with vehicles with unconventional steering controls. This suggestion is beyond the scope of this rulemaking but will be considered for future actions.

3. Driver's Side and Passenger Side

FMVSS Nos. 206, 208, 216a and 226 refer to ''driver's side'' and ''passenger side'' in describing substantive requirements and compliance test procedures. The NPRM proposed to substitute ''left side'' for driver's side and ''right side'' for passenger side.

Comments

Some commenters were in favor of the approach NHTSA took in the NPRM. The Alliance supported the proposed language substituting ''left side'' for ''driver's side.'' CAS indicated that this approach is sufficient to provide for testing under FMVSS No. 208. CalSTA supported the proposal, stating that this approach does not result in any ''loss in meaning.'' The commenter also agreed with similar proposed changes in FMVSS Nos. 206, 214 and 216a.

A few commenters did not support this change. In contrast to its comment about FMVSS No. 208, CAS stated that for FMVSS No. 214, optional manual controls normally associated with the driver's position could be located on the right side of the vehicle. CAS also contended that, for FMVSS No. 226, the proposed changes to ''left front door sill'' from ''driver's door sill'' could have implications for vehicles that may only have doors or seating on the right side of the vehicle. ZF stated that the question of whether this option would result in the same performance outcome is one that needs additional study because it is unclear to them that ''the occupant will be in the exact same position.''

The agency is adopting its proposal to change references to the driver's and passenger side of the vehicle to the left and right side of the vehicle. With respect to CAS's concern about FMVSS No. 214, whether manual controls associated with a defined driver position are on the left or right side of the vehicle has no bearing on the application of the standard's requirements and test procedures to a vehicle. The standard's side impact protection requirements currently and will continue to apply equally to the left and right sides of the vehicle. Further, the spatial reference changes proposed for FMVSS No. 214, S10.2 were nearly identical to the changes CAS supported in FMVSS No. 208. Regarding FMVSS No. 226, the agency is not aware of any vehicles under 10,000 lb. GVWR without a door on the left side of the vehicle. Regardless, placement of doors and seating on the right side of the vehicle does not affect the application of the requirements and test procedures of FMVSS No. 226. Finally, in response to ZF, we believe that it is reasonable to assume at this time that occupants would remain in the same position as currently contemplated by the standard, and thus, the same performance outcome could be expected by modifying the current language to ''left side'' and ''right side.'' NHTSA does not believe that additional research is necessary at this time since this rule only changes the term used to describe the seating position (''driver's'' seat) and not the performance requirements or placement of the seat itself. Finally, as mentioned previously, the scope of this rule includes conventional seating, not unconventional seating arrangements.

4. Steering Controls as a Spatial Reference

FMVSS No. 201 S5.1.1(d) excludes from S5.1 ''areas outboard of any point of tangency on the instrument panel of a 165 mm diameter head form tangent to and inboard of a vertical longitudinal plane tangent to the inboard edge of the steering wheel.'' The NPRM proposed to amend S5.1.1(d) so that an area of the instrument panel excluded from S5.1 (the impact procedure) would no longer be excluded if the steering control were not present, *i.e.,* the exclusion only applies to situations where the steering control is present.

CAS argued that the standard should apply to ADS-equipped vehicles that include optional manual controls that are either fixed or deployable if they are associated with a defined position. The Alliance believed additional clarity for S5.1.1(d) is needed for dual-mode vehicles with stowed controls, suggesting that NHTSA add the phrase ''if the steering control is present or, in the case of dual-mode vehicles, fully deployed in manual driving mode'' to the beginning of S5.1.1(d).

In response to CAS, the proposed amendment was intended to address vehicles without ''steering wheels'' and where the steering control is not present. The rule change was to ensure the protection provided by the current passenger side of the instrument panel (right side) is provided to the left side (former driver's side). The revised standard will provide the same level of protection as the current standard when a steering control system is present.

Relatedly, NHTSA declines to make the Alliance's suggested clarification because it is unnecessary. Steering controls are defined as a type of ''manually operated driving control.'' Manually operated driving controls are ''positioned such that they can be used by an occupant.'' Thus, by definition, these controls are not stowed controls. The suggestion also raises additional questions related to how ''dual-mode vehicles,'' ''fully deployed,'' and ''manual driving mode'' should be defined.

*c. Dual-Mode Certification*

The NPRM stated that for dual-mode vehicles with the capability of stowing driving controls, NHTSA would require

manufacturers to certify compliance with all applicable FMVSSs in both modes (*i.e.,* with the manually operated driving controls available and with the controls stowed).[34] When the manually operated driving controls are available, the vehicle would be subject to the FMVSS requirements at that DSP as applied to a driver's DSP. When they were stowed, the vehicle would be subject to the FMVSS requirements at the DSP as applied to a passenger seat.

Comments

Many commenters supported NHTSA's approach to dual-mode vehicles. IIHS noted that the agency's statement in the preamble[35] that ''NHTSA *expects* that manufacturers will need to certify compliance in both states (*e.g.,* manually operated driving controls available and stowed)'' [emphasis added] was unclear and urged NHTSA to modify the regulatory text to ensure its expectation is met. The Automotive Safety Council (ASC), Securing America's Future Energy (SAFE), and Uber agreed with NHTSA's proposal to require that manufacturers certify compliance to, and conduct validation testing in, both modes. Tesla suggested that NHTSA add ''even more clarity regarding the applicability of the FMVSS to such [dual-mode] vehicles. Dual-mode vehicles are likely to be some of the first ADS-equipped vehicles on the road.'' In addition, Tesla believes it sees a conflict in the agency statements that a seating position is not a driver's DSP, *i.e.,* it is a passenger DSP, if that position is not equipped with a manually operated driving control and the statement that a DSP remains a driver's DSP when driving controls are in place and the ADS is engaged.

Agency Response

Among commenters addressing the issue of certification of dual-mode vehicles, there was agreement on the need to certify in both modes. In response to IIHS, we have reviewed the regulatory text to assure the text is not worded in terms of ''expectations'' but is clear in terms of requirements.[36]

With respect to the Tesla comment about seeing a conflict in the agency statements that a seating position is not a driver's DSP, NHTSA believes these statements are not in conflict and clearly proceed from the terms used in the regulatory text (driver, steering control system, manually operated driving controls, driver's DSP, and passenger seating position). For example, the definition of ''manually operated driving controls'' makes no statement about the state of any ADS system. It simply states, among other things, that the controls are ''positioned such that they can be used by an occupant.'' While the steering controls might not be used, as would be the case of a dual-mode vehicle with the ADS engaged, the seating position where they are located and positioned for potential use, by definition, remains the driver's DSP.

NHTSA believes that no additional regulatory text changes are needed beyond that proposed in the NPRM to assure clarity with respect to certification of dual-mode vehicles. NHTSA notes that if a left front seat has both a driver configuration and a passenger configuration, the agency may choose either configuration for compliance testing, or test both configurations.

*d. Parking Brake and Transmission Position*

Many of the 200-Series FMVSSs incorporate a full vehicle crash test or other kind of dynamic vehicle test in the standard's compliance test. For some of these dynamic tests, a test condition applies such that the vehicle transmission is in neutral, and/or the parking brake applied. For vehicles without driver-accessible transmission shift selectors or parking brake mechanisms, NHTSA may not have readily available means to set the vehicle in neutral, activate a parking brake, or achieve other test conditions described in the compliance test.

NHTSA did not propose any regulatory text changes related to interfacing with ADS-equipped vehicles on pre-test transmission and brake status. The agency believed such changes were unnecessary for the purposes of this notice, as the important factor for the 200-Series FMVSSs was whether the transmission was in the proper gear and the pre-test brake activated; the way that pre-test state was achieved was of no consequence to performance of the crash test. It was envisioned that manufacturers would provide the know-how for the agency to achieve the necessary transmission and brake status when NHTSA conducts its compliance tests. However, comments were requested on this issue.

Comments

Commenters were generally in agreement with the agency's approach. The Center for Auto Safety (CAS) supported the agency's views on this matter. The Alliance agreed that manufacturers could and would work with the agency to achieve the necessary transmission and parking brake status. Waymo stated that it ''agree[s] with the line of thinking that the important element is whether the transmission is in the proper gear and whether the pre-test brake is activated—not the manner in which that state is achieved.''[37] GM stated it would work with NHTSA and the agency's test labs should the need for such consultation arise. Alternatively, Tesla believed NHTSA should ''consider updates to the parking brake status in compliance testing where it may not reflect real-world scenarios.''

Agency Response

NHTSA's view of how compliance tests would be conducted on vehicles without traditional transmission shift levers or parking brake mechanisms was supported by the commenters. The agency envisions compliance testing will be conducted with the above framework in mind. Tesla may be raising a point that certain test conditions may not be necessarily relevant or appropriate for some vehicles, if, for example, the vehicle parking brake status is not appropriate. While NHTSA agrees that FMVSS test conditions should be relevant and appropriate for the vehicle and for the safety need addressed by the standard at issue, the agency is not currently aware of a situation where the parking brake status is an inappropriate test condition or would be inappropriate for an ADS-equipped vehicle. Consistent with the NPRM, the final rule does not change any regulatory text related to interfacing with ADS-equipped vehicles on pre-test transmission and brake status.

## V. Occupant-Less Vehicles

Currently, the 200-Series ''vehicle'' standards apply to passenger cars, multipurpose passenger vehicles (MPVs), trucks, buses, and school buses. These vehicle types, as they are defined in 49 CFR 571.3, are all, by definition, passenger-carrying vehicles, except for ''trucks.'' (A driver of a truck is considered an occupant but is not

[34] 85 FR at 17634.

[35] *Id.*

[36] Uber presented several hypothetical situations relating to the Safety Act's ''make inoperative'' provision, 49 U.S.C. 30122, which were beyond the scope of the NPRM. The Agency recommends persons seeking a request for interpretation of NHTSA's standards or regulations, or of the statutory provisions of the Safety Act, submit a request for interpretation to NHTSA's Chief Counsel's Office.

[37] Waymo stated the Agency should remain flexible in compliance testing in general: ''[t]o implement this principle, NHTSA could adopt policies allowing manufacturers to provide the tools and information necessary for the agency to conduct compliance tests in a manner befitting each manufacturer's unique automated vehicle designs.''

considered a ''passenger.'') Occupant-less vehicles would not have designated seating positions or any other vehicle features that aid in the transportation of seated or standing occupants. These vehicles, which would not even have a driver's DSP, are expected to be more oriented to commercial movement of goods. Thus, by definition, occupant-less vehicles cannot be categorized as a passenger car, MPV, or bus of any kind. The definition of ''truck'' in § 571.3 is the only vehicle type definition that specifically covers vehicles designed to carry property and not ''persons.''

Because occupant-less vehicles qualify as trucks,[38] and since the 200-Series standards apply to trucks, occupant-less vehicles are currently subject to the 200-Series standards even though they do not carry occupants. In the NPRM, NHTSA tentatively determined that a safety need did not exist to apply the existing 200-Series standards to occupant-less vehicles. In addition, the analysis concluded that for some 200-Series standards, the application to occupant-less trucks could create uncertainty about certification because the requirements are seemingly linked to the existence of specified designated seating positions. Accordingly, with respect to trucks, NHTSA proposed to amend the application sections of FMVSS Nos. 201, 205, 206, 207, 208, 214, 216, and 226 to apply only to trucks with DSPs.

There are some standards that are applicable to trucks that the NPRM did not propose to amend because they only apply if a DSP were present. One such example is FMVSS No. 202a, *Head restraints.* Similarly, the agency did not propose amending the applicability of FMVSS No. 203, *Impact protection for the driver from the steering control system,* and 204, *Steering control rearward displacement,* to trucks. As discussed in the NPRM, this is because those standards only apply to vehicles with steering controls, which an occupant-less vehicle necessarily lacks. No change was proposed for FMVSS No. 209, *Seat belt assemblies,* because the standard is an equipment standard, and no change was proposed for FMVSS No. 210, *Seat belt assembly anchorages,* because that standard's requirements only apply to DSPs. That said, NHTSA requested comment on whether any ''additional changes are necessary or appropriate'' to accomplish the goals of the NPRM.[39]

Comments

Most commenters that addressed this issue were supportive of the proposal, but a few had reservations about how the approach could affect crash compatibility and other safety matters. A number of commenters focused on the applicability of FMVSS Nos. 203 and 204, FMVSS No. 205, *Glazing materials,* FMVSS Nos. 212, *Windshield mounting,* and 219, *Windshield zone intrusion.*

Most commenters believed that no safety need exists requiring occupant protection standards for occupant-less vehicles, and that the 200-series standards were not relevant for such vehicles. The American Trucking Associations (ATA) specifically supported changes to standards that apply to trucks with a GVWR greater than 4,536 kg (10,000 lb.). Uber argued that ''equipment that is designed to protect occupants in traditional vehicles will do nothing but create unnecessary potential safety hazards in the event of a crash or if that equipment malfunctions.'' Nuro stated that applying occupant protection standards to occupant-less vehicles could degrade safety by adding weight and rigidity, which may increase ''the risk to occupants'' of other vehicles. A number of other commenters suggested that NHTSA overlooked several other 200-Series FMVSSs that should also be amended to exclude occupant-less trucks from their applicability, namely FMVSS Nos. 212 and 219.

Commenters expressing concern about the proposal included the State of California (CalSTA) regarding possible degradation to the safety of vulnerable road users, such as pedestrians and bicyclists, if occupant-less vehicle were excluded from FMVSS No. 205. The Automotive Safety Council (ASC) raised the potential for crash compatibility concerns stemming from the potential loss of energy absorption in a crash involving an occupant-less vehicle.

Agency Response

While NHTSA believes the non-applicability of certain standards was implicit in the proposal, the agency has considered the comments and is adopting amendments to provide clarity. Several commenters (including the Alliance, the Consumer Technology Association (CTA), Nuro, and, Zoox) suggested that additional clarity is needed with respect to the 200-Series FMVSSs sections the NPRM did not propose to modify. As discussed later below, NHTSA agrees to amend FMVSS Nos. 212 and 219 to clarify non-applicability to occupant-less vehicles.

*a. General Observations*

The Center for Auto Safety argued that a truck with an optional or deployable control system should not be excluded from FMVSS Nos. 201, 205 and 206. NHTSA would like to be clear that this subject pertains to occupant-less vehicles that are specifically designed *not* to contain occupants. NHTSA's intent is to keep the safety of occupants, including drivers, at the forefront of this rule.

Nuro suggested three possible ways to limit the applicability of the FMVSSs to occupant-less vehicles: (1) A blanket exclusion in section 571.7; (2) a preamble statement; or (3) a change to all application sections. First, a blanket change to section 571.7 or to change ''all'' application sections would be overly broad and exceed the scope of this notice, which focuses exclusively on the 200-series standards. Second, a statement in the preamble would not provide appropriate transparency and clarity. In other words, the applicability of the standards to the vehicles in question would not be apparent from the actual text of the standards. Thus, to assure a full and careful consideration of the applicability of the FMVSSs to subject vehicles and avoid unintended consequences, NHTSA has decided to evaluate each standard and determine applicability on a standard-by-standard basis. In some cases, no change was needed because the non-applicability of the standard to occupant-less vehicles is indirect (*e.g.,* by virtue of reference to a seating position, such as for FMVSS No. 202a).

In the NPRM, NHTSA proposed to exclude occupant-less trucks from the FMVSS occupant protection requirements, tentatively concluding that, ''the safety need that supports the crashworthiness requirement of FMVSS No. 208 for the protection of vehicle occupants does not exist for occupant-less trucks.'' While this final rule affirms this conclusion, the agency notes that the language proposed to accomplish this exclusion applies standards to ''trucks with at least one designated seating position.'' Commenters such as the National Disability Rights Network, in different contexts covered in Section VI.f of this preamble, raised the prospect of vehicles with ADS that do not include a DSP, but accommodate people with certain physical disabilities (*e.g.,* through wheelchair securement mechanisms). NHTSA notes that the

[38] Under NHTSA's self-certification framework, manufacturers must certify their vehicles as meeting all FMVSSs applicable to the vehicle type, and, to do so, must classify their vehicles for purposes of determining which FMVSSs apply. NHTSA may take issue with that classification if the agency believes the manufacturer has misclassified the vehicle and thus failed to certify the compliance of the vehicle appropriately with applicable FMVSSs.

[39] 85 FR at 17625.

definition of DSP only encompasses wheelchair securement devices for a ''vehicle sold or introduced into interstate commerce for purposes that include carrying students to and from school or related events.'' Accordingly, the proposed applicability language (referring to trucks with at least one designated seating position) may leave ambiguity as to whether an occupant-less truck could be permissibly outfitted with a wheelchair securement mechanism and avoid occupant protection requirements. While the NPRM's preamble discussion tentatively concluded that occupant-less trucks do not present a safety need for occupant protection requirements, the language used to exclude such trucks was imprecise and conflicted with the tentative conclusion, which could lead to confusion. Accordingly, the agency has decided that, rather than amending the application sections to include ''trucks with at least one designated seating position,'' the final rule will specify, ''trucks designed to carry at least one person,'' which would include occupants in wheelchair securements. We believe this will ameliorate the problems related to referencing the DSP definition, yet will achieve the same purpose. We note that this change should not result in any reduction in objectivity since the definitions of passenger car, MPV, and bus all refer to being designed to carry a certain number of persons.

*b. FMVSS No. 205, Glazing Materials*

CalSTA posited that vulnerable road users, such as pedestrians and bicyclists, might be placed at risk if occupant-less vehicles are excluded from meeting FMVSS No. 205. The State suggested that ''[i]f the glazing materials standard is removed, a standard providing a commensurate level of safety for vulnerable road users should be implemented.''

Given that one of NHTSA's guiding principles for this rulemaking was maintaining safety levels provided by existing FMVSS, the agency carefully considered this issue. The agency first analyzed the intended purpose of FMVSS No. 205. The focus of the Society of Automotive Engineers (SAE) standard, SAE J673-Automotive Safety Glasses—on which FMVSS No. 205 is based—was to benefit the occupants of motor vehicles. The purpose of Standard No. 205 as promulgated, and as specified today, references vehicle occupants and makes no mention to persons struck outside the vehicle. Nonetheless, the commenter raises the possibility that FMVSS No. 205 has had an unintended benefit for vulnerable road users, and the agency sought to understand any unintended consequences of this rulemaking. Accordingly, NHTSA undertook a thorough search, but found no crash data or research studies that could verify unintended benefits for pedestrians, cyclists or other persons resulting from FMVSS No. 205 glazing.

The effect of glazing in pedestrian and other road users' collisions with motor vehicles is complex, as the crash may manifest potential tradeoffs between various design aspects of glazing and glazing retention. The center of the windshield, if it breaks on impact, can be a relatively forgiving area with respect to the impact forces/deceleration of the struck person. However, in contrast to the middle of the windshield, the area of windshield attachment, particularly at the A-pillars, may be relatively hazardous to a person striking it as the pillars are stiff structural elements. For a windshield to protect occupants, it must be adequately retained in a crash. FMVSS No. 212 specifies windshield mounting requirements that must be met, for the benefit of occupants, when subjected to a 48 km/h (30 mph) barrier crash test. In order to retain the windshield, the perimeter mounting must be sufficiently stiff. It is unclear whether or to what extent the crashworthiness test requirements of FMVSS No. 205 contribute to, or are offset by, these forgiving yet stiff aspects of a windshield. That is, even if the glazing is forgiving in the center once it breaks, the windshield mounting must be stiff enough to meet FMVSS No. 212. Any overall benefit to pedestrians and cyclists from compliance with FMVSS No. 205 is uncertain.

It bears noting that FMVSS No. 205 is an ''if equipped'' standard. Accordingly, the standard only requires FMVSS No. 205 glazing if vehicles have glazing. The extent to which occupant-less vehicles would have glazing is unknown at this time.

In its comment, Nuro argued that, if manufacturers of occupant-less vehicles were not required to meet occupant protection requirements, they could concentrate on protection of other road users.[40]

After consideration of the information above, NHTSA has decided that information is not available to substantiate the view that there would be lost safety benefits to pedestrians and other road users by excluding occupant-less vehicles from FMVSS No. 205. However, NHTSA will monitor this issue. In view of Nuro's statement above, NHTSA believes that the amendment adopted by this final rule may open up avenues for potential development of more pedestrian-friendly designs for occupant-less vehicles, though the agency is not relying on this belief in making the decision to exclude these vehicles, as these vehicles would not be required to make these changes.

As to more general matters, both NADA and Ford asserted that the change to FMVSS No. 205 would not address the standard in its entirety, and that transmissibility/visibility aspects of the standard would need to be revisited in the future. In response, NHTSA notes that the NPRM proposed, and this final rule adopts, revisions to FMVSS No. 205 that apply the standard only to vehicles with occupants.

In its comment to the NPRM, Nuro stated that, just as the NPRM proposed changes to FMVSS No. 205, conforming changes should be made to FMVSS No. 500, *Low speed vehicles,* and part 565, *Vehicle identification number (VIN) requirements.* Nuro sought a change to FMVSS No. 500 to make clear that a windshield is required only if the low speed vehicle had at least one DSP. In response, NHTSA has decided no change to the low speed vehicle standard is necessary because FMVSS No. 500 incorporates by reference various aspects of other FMVSS. This means, in practice, that when NHTSA makes changes to FMVSS No. 205, those changes will automatically be incorporated into FMVSS No. 500. While the low speed vehicle standard refers to FMVSS No. 205, the change to the application section of FMVSS No. 205 makes clear that it does not apply to occupant-less vehicles. Also, other aspects of FMVSS No. 500 will still apply to occupant-less vehicles, so changing FMVSS No. 500 could be confusing.

Nuro noted that part 565 requires that the VIN be visible through ''the vehicle glazing'' by an observer ''whose eye-point is located outside the vehicle adjacent to the left windshield pillar.'' This final rule does not amend part 565, as the matter is beyond the scope of the NPRM. However, the agency understands the issue and will consider addressing it in a future action.

*c. Vehicle Crash Compatibility*

The Automotive Safety Council (ASC) supported limiting the crash protection requirements of FMVSS No. 208 to

[40] Nuro made similar arguments specific to FMVSS No. 205 in its petition for a temporary exemption from aspects of FMVSS No. 500, which the Agency granted on February 11, 2020. Docket NHTSA–2019–0017–0002; 85 FR 7826. FMVSS No. 500 requires low speed vehicles to have a windshield that meets FMVSS No. 205.

vehicles with at least one designated seating position but argued that measures are still needed to ensure adequate crash compatibility with the fleet. ASC referenced ADS 2.0 statements that ''unoccupied vehicles equipped with ADSs should provide geometric and energy absorption crash compatibility with existing vehicles on the road.'' ASC stated that crash compatibility ''is currently controlled to some degree by the crash requirements of FMVSS [No.] 208. Energy absorption in the crash by the unoccupied vehicle structure is a necessary factor in helping to protect the occupied vehicle passengers.''

In its comment, Nuro mentioned that the preamble of the NPRM indicated NHTSA is considering crash compatibility research and possible rulemaking for occupant-less vehicles. Nuro stated that crash compatibility should not be the agency's initial foray into drafting standards for these vehicles. Nuro argued there is no reason to believe that occupant-less vehicles should be less compatible than existing vehicles, but that ''the opposite is true due to the lower mass and smaller size that can be achieved for vehicles that will not carry, and need not include protections for, humans.''

The NPRM did not include provisions related to potential vehicle-to-vehicle crash compatibility, and this final rule continues this approach. As stated in the NPRM, this is a complex issue that has not yet been adequately researched and we have no evidence that vehicle-to-vehicle crash compatibility might cause adverse safety consequences at this time, as occupant-less vehicles do not exist in the fleet in any significant number. However, NHTSA is engaged in research on this subject and will also monitor on-road deployments. In addition, NHTSA does not agree with Nuro's assertion that all future occupant-less vehicles will necessarily be small and light and thereby a safer collision partner because NHTSA's decision in this final rule is not limited by weight and thus will apply to any occupant-less vehicle. NHTSA notes that the American Trucking Associations' comment on this subject, as previously mentioned in the Comments subsection of section V. of this preamble, was especially supportive of changes made to standards applying to occupant-less trucks with a GVWR greater than 4,536 kg (10,000 lb.), thus indicating that there may be occupant-less vehicles that are much larger and heavier than Nuro's vehicles. Further, the fact that an occupant-less vehicle does not have to protect its own occupant does not mean that they will necessarily be designed to protect other road users more, as it is possible that manufacturers of occupant-less vehicles might tolerate increased risks to other road users in the interest of protecting their own cargo. Potential crash compatibility implications relating to occupant-less trucks is an area of interest for the agency and warrants further examination.

*d. FMVSS Nos. 212, Windshield Mounting and 219, Windshield Zone Intrusion*

The NPRM requested comment on whether the agency had included all relevant FMVSSs that might need changes similar to those identified in the proposal. Many commenters suggested there was no safety need to apply FMVSS Nos. 212 and 219 to occupant-less vehicles, as there would be no occupants in the vehicles to protect with the countermeasures installed to meet these *Windshield mounting* and *Windshield zone intrusion* standards, respectively.

Agency Response

NHTSA agrees that FMVSS No. 212 and 219 should also be amended to exclude occupant-less vehicles. It was an oversight by NHTSA not to have included those standards in the NPRM. The NPRM for this rulemaking action was broad and intended to include all crashworthiness (200-Series FMVSSs) standards. In the NPRM, NHTSA discussed whether there was a need to apply FMVSSs that serve primarily to protect vehicle occupants to occupant-less vehicles, and whether those FMVSSs had a continuing safety purpose for occupant-less vehicles. NHTSA requested comment on ''whether additional changes are necessary or appropriate'' to accomplish the goals of the NPRM.[41] This request sought the very input that NHTSA received from commenters on FMVSS Nos. 212 and 219, and was included in the NPRM with the intent of soliciting input on whether the agency had included all relevant FMVSSs that might need changes.

As requested, commenters provided additional input, and the comments received on FMVSS Nos. 212 and 219, helped NHTSA assure the final rule would address a more complete set of relevant standards. Given that NHTSA proposed FMVSS No. 205, *Glazing materials* be amended so as not to require a windshield in an occupant-less vehicle to meet that standard due to an absence of a safety need for the glazing, failing to make conforming changes to FMVSS Nos. 212 and 219 would be inconsistent with both the Agency's intended outcome and with commenters' requests. The modifications to FMVSS Nos. 212 and 219 are the logical outgrowth of both the discussions related to occupant-less vehicles and the proposed regulatory text for FMVSS No. 205. Given the absence of a safety need to apply FMVSS No. 205 to occupant-less vehicles, there is also no safety need for occupant-less vehicles to retain a windshield to protect against injury from penetrating objects or ejection (FMVSS No. 212), or from windshield intrusion (FMVSS No. 219).

Accordingly, NHTSA is amending FMVSS Nos. 212 and 219 in this final rule to exclude trucks that are not designed to carry at least one person (occupant-less vehicles).

## VI. FMVSS No. 208, Occupant Crash Protection

Making appropriate amendments to FMVSS No. 208, *Occupant crash protection* is one of the most important aspects of this rulemaking. Not only is Standard No. 208 a significant 200-Series standard, but it includes several terms that differentiate a ''driver's'' position from a front ''passenger's'' seating position. Thus, translating the terms of FMVSS No. 208 to account for vehicles that do not have manually operated steering controls, or vehicles where the manually operated steering controls could be stowed, is central to this final rule.

The NPRM discussed proposals for: Applying FMVSS No. 208's advanced air bag requirements to front outboard seats without manually operated driving controls (including to seats that had been considered a driver's seat); applying the standard's telltale requirements; applying requirements for front outboard seats to seats that are no longer ''outboard''; and suppressing vehicle motion when a child restraint system is sensed in a seating position with manually operated steering controls. The NPRM also proposed amending FMVSS No. 208's bus requirements to account for buses equipped with ADS and that lack manually operated steering controls.

FMVSS No. 208 currently establishes crash protection requirements that are the same for the driver's designated seating position (DSP) as for the right front outboard seating position (commonly referred to as the front passenger seat). The vehicle's compliance with the requirements is assessed in a frontal crash test using adult-sized crash test dummies.

[41] 85 FR at 17625.

To minimize air bag risks to children and small-statured adults, however, FMVSS No. 208 also establishes ''advanced air bag'' requirements that, among other things, require the air bags at the right front DSP to either turn off automatically in the presence of detected young children, or deploy in a manner less likely to cause serious or fatal injury to child occupants. Manufacturers may also choose to combine these approaches. Vehicles that disable the passenger air bag utilize weight sensors and/or other means of detecting the presence of young children. To test detection capability, FMVSS No. 208 specifies that child dummies be placed in child restraint systems (child seats) that are, in turn, placed on the passenger seat. It also specifies ''out-of-position'' tests that are conducted with unrestrained child dummies sitting, kneeling, standing, or lying on the passenger seat. For manufacturers that design their passenger air bags to deploy in a low risk manner, the standard specifies that unbelted child dummies be placed against the instrument panel. The air bag is then deployed. The ability of driver air bags to deploy in a low risk manner is tested by placing the 5th percentile adult female dummy against the steering wheel and then deploying the air bag.

In the NPRM, NHTSA tentatively concluded that the most practical way to maintain occupant protection in ADS-equipped vehicles with no ''manually operated driving controls'' (and thus, with no driver's seat) would be to treat any seat that does not have immediate access to such controls as a passenger seat under the standard. Thus, all front outboard seats in such vehicles are front outboard passenger seats and would be required to meet FMVSS No. 208's performance requirements that currently apply to the right front outboard passenger seat. For a seat located in the left front outboard position, this would be done by mirroring the test procedures and requirements from the right side. Among other things, to maintain the level of safety currently afforded to right front outboard passengers under FMVSS No. 208, NHTSA proposed requiring that all front outboard ''passenger seats'' meet advanced air bag requirements.

Comments

Commenters were generally supportive of the proposed changes to FMVSS No. 208. Consumer Reports (CR) stated NHTSA should, ''maintain the maximum protection under the standard in any modification. In the case of vehicles without manual controls, this means treating each front seat as a front outboard passenger seat and requiring all the protections required by that designation.''

Ford supported the proposal, but with a caveat that occupant protection requirements should not apply to an ''occasional use seat'' which is clearly marked.

Safe Ride News (SRN) supported the proposed changes but raised the lockability requirements of S7.1.1.5a of FMVSS No. 208. These requirements require vehicles to have a seat belt assembly with a lockable lap belt at each seating position to facilitate the secure attachment of child restraint systems. The standard currently excludes the driver's seating position from lockability requirements, since, in traditional vehicles, a child restraint would not be installed at the driver's seat. SRN suggested NHTSA remove the exception from lockability for seats without manually operated driving controls or with stow-able controls in the left front seat.

Agency Response

In response, NHTSA emphasizes that under this final rule, a left front DSP without manually operated driving controls is a passenger seat. Similarly, a left front DSP with stow-able controls will have a mode that makes it a passenger seat. In either case, the DSP would be required to have a lockable seat belt. In response to Ford, we would make clear that the requirements would apply if the seat in question meets the definition of a DSP. Part of the DSP definition allows the labeling of certain seats as ''not designated for occupancy while the vehicle is in motion.'' We believe this addresses Ford's concern, but the agency is not further expanding this provision. In the situation of a dual-mode vehicle whose controls are always in place, *i.e.,* the controls cannot be stowed so the seat is always a driver's seat, the lockability requirements would not apply, since a child restraint is unlikely to be used at this DSP.[42] Issues relating to children seated in a DSP with driving controls are discussed in more detail later in this document.

CalSTA requested that NHTSA ensure that any changes in nomenclature relative to the terms ''passenger seat'' or ''driver's seat'' would not degrade occupant safety and requested research to confirm there is no unintended degradation of occupant safety.

In response, NHTSA emphasizes that the left front outboard passenger will be required to have the same protection as the right front outboard passenger DSP, which for adults are the same requirements that would apply to a driver's seat. The current occupant protection requirements have been in place for almost 30 years. The immense technical data and information NHTSA and the occupant safety community have acquired over this period indicate there is no difference in the FMVSS No. 208 protection afforded adult occupants by the left or right front seating position. The data and other information on advanced air bag safety protections also indicate there are no technical reasons why the protections provided by a seat in the right front outboard seating position could not be mirrored by a passenger seat on the left side. Additional research is not necessary to verify that protections afforded to one seating position would be sufficient for the other seating position, as identical designs could be applied to the opposite sides of a vehicle.

This final rule adopts the proposal's provisions relating to the left front seat when that DSP meets the definition of a passenger seating position. The final rule makes minor clarifying changes to the regulatory text in response to comments, which are discussed below. This final rule adopts the provisions of the NPRM that relate to advanced air bag requirements, telltale requirements (indicating air bag suppression for the left front outboard seating position), and other requirements, except as discussed below.

*a. Advanced Air Bags*

As discussed in the proposal, applying advanced air bag requirements to all front outboard seating positions maintains the current levels of safety for ADS-equipped vehicles without manually operated driving controls. Applying the requirements meets the need for safety because an occupant will receive the same crash protection whether they choose to sit in the left or right front outboard seat. In addition, an important benefit of advanced air bags over conventional air bags is the protection of out-of-position occupants, particularly children. In a traditional vehicle, the occupant in the driver's seat is typically an adult. In contrast, occupants of the left front outboard passenger seats in an ADS-equipped vehicle without manually operated driving controls could possibly be children, as there would be no driving control mechanism at any position that may deter occupancy of the seating position by a child. NHTSA tentatively

[42] Further, NHTSA discourages the use of child restraints in this driver's designated seating position. A lockable belt at that position might imply that the DSP is appropriate for a child restraint, and it is not.

concluded in the NPRM that the most straightforward way to protect children against air bag risks would be to require that any front outboard seat that could potentially be occupied by a child (*i.e.,* a passenger seat) must meet the current advanced air bag requirements. This final rule adopts the provisions of the NPRM that relate to the protection of the left front seat occupant when that DSP meets this final rule's definition of a passenger seating position.

With regard to the static suppression requirement of FMVSS No. 208 S22.2 for the 3-year-old child dummy, GM and the Alliance asked that the regulatory text ''clearly specify that suppression is tested only for the seating position where the child dummy is placed.'' NHTSA agrees the clarification is warranted and has added language to S22.1 to make clear that the relevant air bag that is to be suppressed is the air bag associated with the designated seating position being assessed. NHTSA has made similar clarifications to the text of FMVSS No. 208 regarding tests with the 12-month-old (S20.2) and 6-year-old (S24.2) child dummies.

NADA commented that air bag switch installation should apply, ''to the extent applicable and appropriate.'' However, air bag on/off switch requirements comprise a topic beyond the scope of this rulemaking. Accordingly, NHTSA is not considering this suggestion in this rulemaking.

*b. Telltales*

FMVSS No. 208 currently requires that vehicles display a telltale, visible to the front row occupants, which indicates whether the front outboard passenger seat air bag is suppressed. Given that this rulemaking may result in multiple front outboard passenger seats, NHTSA proposed amending this requirement to specify that a separate telltale would be required for each outboard front passenger seat based upon the belief that doing so would maintain the current level of safety provided by the standard. The NPRM proposed that the current telltale's substantive performance criteria would remain the same to provide occupants with the same level of information about the status of each pertinent air bag as provided by the current standard. Because the left front seat without manually operated controls would be a passenger seat, the NPRM proposed to require an additional telltale.

Commenters had differing views on this issue. The Alliance and GM requested that NHTSA consider a single telltale unit for both front outboard seating positions, so long as that telltale is visible from each seating position. The Center for Auto Safety (CAS) stated, ''it is important for occupants to verify the operational capability of safety-critical equipment in vehicles they occupy, including telltales for suppression-based advanced air bag systems.'' Safe Ride News (SRN) supported requiring seat-specific telltales. Various commenters had concerns or suggestions that are addressed below.

Agency Response

The final rule adopts the provisions of the NPRM, with a few modifications in response to comments received. The Alliance and GM requested allowing a single telltale for both front outboard seating positions. It is NHTSA's position that, while a single telltale unit that distinguishes both indicators would be acceptable, a single light indicating the suppression status of both air bag systems, but not distinguishing their individual state of suppression would not. Separate suppression telltales clarify which associated seating position is suppressed, allowing the corresponding passenger to respond to the information with appropriate action. Separate suppression telltales verify to the caregiver of children placed in seating positions that the corresponding air bag is suppressed and allow other users to determine whether the air bag corresponding to their seating position is properly functioning. Thus, this final rule requires the telltale to be clearly recognizable to a driver and any front outboard passenger with which seat each telltale is associated.

IIHS argued that the proposal's use of ''any'' in reference to seating position requirements from which telltales required by FMVSS Nos. 226 (S4.2.2) and 208 (S19.2.2(d)) must be visible, is ambiguous, and suggested that the final rule use the term ''all.'' The IIHS comment seems to interpret the proposal as seeking to require that the suppression telltale be visible from any DSP in the vehicle. This is incorrect. The proposal restricted visibility to the front outboard seats for the FMVSS No. 208 telltale. Accordingly, the final rule will retain the word ''any'' in FMVSS No. 208 S19.2.2(d). Comments specific to the FMVSS No. 226 telltale are addressed later in this document.

Safe Ride News commented that the location should be ''on the dash in easy-to-see, logical juxtaposition to the seat for which it applies.'' On the other hand, the Automotive Safety Council (ASC) believed that the location of the telltale should be chosen to provide information regardless of where an adult may be seated in the vehicle. As noted above in our response to IIHS, we decline to implement the suggestion that the suppression telltales be visible from all seating positions. While expanding telltale visibility requirements generally is worthy of discussion, it is beyond the scope of this rulemaking. As stated elsewhere in the proposal and this document, NHTSA plans to issue a separate notice that will focus on telltales and warnings for ADS-equipped vehicles. In the interim, this final rule will establish requirements that will allow front seat occupants in vehicles without manual controls to determine whether either outboard front seating position has a suppressed air bag.

Disability rights advocacy groups (National Disability Rights Network (NDRN), Disability Rights Education Fund (DREDF), and the Consortium for Citizens with Disabilities (CCD)) requested that NHTSA consider adding audible or haptic alerts to the visual alerts for suppression telltale information.[43] NHTSA is not aware of any previous implementation of haptic non-driving related warnings. More information and research may be necessary to implement types of layered alerts to ensure that vehicle occupants receive clear information that would not confuse or conflict with other information. NHTSA is aware that audible warnings have been implemented and there may be merit to such an implementation. However, as we reasoned above, we decline to implement audible warnings now because they require a larger discussion and more input on how best to achieve the goals of providing information, while also avoiding confusing vehicle occupants. That discussion is beyond the scope of this rulemaking but could be explored in the forthcoming notice on telltales. The agency notes, though, that nothing in this rule would prohibit audible or haptic alerts when used to complement the required visual alert.

IEE expressed concern that ADS-equipped vehicles might have no seat belt warning system as required by FMVSS No. 208, S7.3 because they may have no driver's DSP. IEE recommended that NHTSA require a seat belt reminder system in ADS vehicles that provides audio-visual warnings for unbelted occupants. The requested revisions are

[43] These groups also suggested the Agency look to information presented at the November 2019 meeting, NHTSA Research Public Meeting, [*www.regulations.com* NHTSA–2019–0083–0007]. Among many topics, this meeting covered research on vulnerable and disabled road users. The Agency presented a brief summary of a research program entitled ''Vulnerable and Disabled Road Users: Considerations Inside and Outside the Vehicle.'' The research program is ongoing and scheduled for completion in 2022.

beyond the scope of the present rulemaking. NHTSA may consider this issue in future agency work related to telltales and indicators for ADS-equipped vehicles.

*c. Front Outboard Versus Center or Inboard Seating Position*

An ''outboard seating position'' is defined in 49 CFR 571.3 as ''a designated seating position where a longitudinal vertical plane tangent to the outboard side of the seat cushion is less than 12 inches from the innermost point on the inside surface of the vehicle at a height between the design H-point and the shoulder reference point (as shown in fig. 1 of Federal Motor Vehicle Safety Standard No. 210) and longitudinally between the front and rear edges of the seat cushion.'' FMVSS No. 208 requires, for most light vehicles (GVWR less than 4,536 kg (10,000 lb.)), each ''outboard designated seating position,'' including the driver's seat, to have a lap/shoulder (Type 2) seat belt assembly that conforms to FMVSS No. 209, *Seat belt assemblies.* Moreover, the subset of light vehicles that have a GVWR of less than 3,855 kg (8,500 lb.) and unloaded weight of 2,495 kg (5,500 lb.) are statutorily required [44] to have frontal air bag protection at the driver's and right front DSPs, which are evaluated by FMVSS No. 208's frontal barrier crash tests. Under FMVSS No. 208, any center seating positions in these light vehicles can be equipped with only a lap belt.

In the NPRM, NHTSA acknowledged that future vehicle designs might not have two front outboard seating positions. The agency sought to amend FMVSS No. 208 to be inclusive of and account for ADS-equipped vehicles (particularly those without driving controls) that might not have a front left outboard DSP or, for that matter, any outboard DSP, as those terms are defined in NHTSA's regulations. NHTSA envisioned that one or both of the outboard seating positions on a current vehicle could be moved toward the center of the vehicle and thus fall outside of the outboard seating position definition. NHTSA sought to amend FMVSS No. 208 to provide occupants of an ADS-equipped vehicle with fewer than two front outboard seating positions no degradation in the crash protection now required by the standard for vehicles that are not ADS vehicles. The agency requested comment on including in the final rule air bag (including out-of-position occupant protection) and lap/shoulder (Type 2) seat belt protection to these inboard seating positions if outboard positions were removed. We also requested comment on the implications of such designs upon the statutory obligation for frontal air bags.

Comments

Several entities, primarily consumer advocacy groups, commented in favor of providing Type 2 belts and air bags at all inboard seats. The Center for Auto Safety (CAS) stated that both lap/shoulder belts and air bags should be required for inboard seating positions in ADS-equipped vehicles. Safe Ride News (SRN) commented that the front center seating position in ADS and non-ADS vehicles ''should no longer be allowed to be equipped with Type 1 (lap-only) belts, which are far less protective than Type 2 belts.'' SRN noted that it believes this request is even more important since it expects it will be more likely that children would be seated in the front row in ADS-equipped vehicles, though did not provide any support for this expectation. IEE requested FMVSS No. 208 require advanced air bags at inboard seats. The Automotive Safety Council (ASC) stated that ''automated vehicles may have increased usage/presence of a center seating position, possibly without accompanying outboard seating positions.'' ASC argued that ''it is reasonable'' to apply the out-of-position advanced air bag requirements for all front designated seating positions. IIHS stated that all designated seating positions should receive ''the same level of crash protection'' in ADS-equipped vehicles, and that front row center positions should be required to have Type 2 belts and air bag protection.

Some commenters focused on the protection that should be afforded a single center seat. The Alliance commented that ''[w]here there is only a single forward-facing front row center seat (and no other front row seating positions), current levels of FMVSS 208 crash performance, including advanced air bag performance criteria, if applicable, should be required for that position.'' However, the commenter also stated, ''there should not be a specific air bag installment requirement to meet this crash performance.'' Ford expressed support for the final rule ''to apply the current performance requirements for the passenger seat called out in FMVSS [No.] 208, to both outboard positions when there are no controls, or to the center seat when the outboard seating positions are absent.'' [45] GM also suggested that ''where there is only a single forward-facing front row center seat, GM supports applying current right front outboard passenger side FMVSS [No.] 208 crash performance requirements.'' ZF argued that if a single seat is installed in the front of the vehicle without driving controls, that occupant should be protected in the same manner as an outboard passenger occupant, including seat belts, and an air bag. The National Automobile Dealers Association (NADA) stated that ''any vehicle (ADS-equipped or otherwise) with a single forward-facing front row center seat should be subject to FMVSS [No.] 208 crash performance requirements, including applicable advanced air bag performance criteria.''

Several commenters requested additional research on the issue. Waymo stated ''considerable technical research and a new proposed rule'' may be needed to address the protection that should be offered to inboard front seats when there are no outboard seats. Waymo also stated that ''[i]f such seating arrangements are in fact likely,'' Waymo prefers that NHTSA finalize this rule and deal with this ''novel'' issue in a separate rulemaking. Tesla urged NHTSA first to conduct research on the appropriateness and type of equipment (especially for out-of-position) that is needed to protect an occupant in the non-outboard seating position, including, *e.g.,* where the center seat could serve as both an armrest for outboard occupants and a foldable seat. CalSTA recommended further testing to ensure there is not an unintended compromise to occupant safety if implemented.

Agency Response

In deciding how to respond in this final rule to the comments expressed on this topic, NHTSA considered its guiding principles for this rulemaking.[46] One principle is for NHTSA to take every effort to maintain the level of crashworthiness performance in ADS-equipped vehicles without traditional manual controls currently required for vehicles without ADS functionality. Another is for NHTSA to adapt existing FMVSS requirements to ADS-equipped vehicles in a way that does not change requirements for non-ADS vehicles. In addition, NHTSA seeks to modify the FMVSSs in a manner that is more

[44] Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102–240, 2508 (Dec. 18, 1991).

[45] To clarify, Ford suggested these occupant protection requirements should not apply to an ''occasional use seat'' which is clearly marked. This comment was addressed previously in this preamble.

[46] These are set forth in the Executive Summary at the beginning of this preamble.

attentive to the innovative interior designs that are expected to accompany ADS-equipped vehicles.

Applying these principles, NHTSA's decisions focus on protecting the public and minimizing any potential loss in crash protection provided by vehicles if outboard seats are removed in favor of inboard seats. Further, NHTSA primarily seeks to retain the protections from existing requirements in a manner that allows for innovators to develop certain alternative configurations that can accommodate vehicles with ADS. NHTSA has also made decisions considering the practicability of meeting requirements and the reasonableness of applying current FMVSS No. 208 requirements to inboard seat designs.

Taking these principles into account, NHTSA notes that passenger cars, multipurpose passenger vehicles, trucks and buses with a GVWR of less than 3,855 kg (8,500 lb.) and unloaded weight of 2,495 kg (5,500 lb.) are already required to have advanced air bag systems installed at the front outboard seating positions. Accordingly, the agency has decided to apply the FMVSS No. 208 protections now applying to the outboard seating positions to inboard seating positions, to the extent technically feasible. This final rule adopts a balanced path between the commenters that desire air bag and lap/shoulder belt protection at *all* inboard seats and those that believe such protection should be required only at a *single* inboard seat.

To accomplish this, this final rule will implement the following (see Figure 1). First, FMVSS No. 208 currently protects two designated seating positions in the front row of seats with a ''full'' suite of occupant protection countermeasures: Type 2 (lap/shoulder belt system), and an advanced air bag system. Those protected seats are currently the outboard seating positions. To maintain FMVSS No. 208's protection of two seating positions in the front row—to the extent technically feasible—this final rule continues protecting two designated seating positions in the front row with the full suite of protective countermeasures (Type 2 belt and advanced air bag). Thus, where there is a single inboard seat and one or no outboard seats, the single inboard seat would be required to have lap/shoulder seat belts and advanced air bag protection in that single front row inboard seat, and any one remaining outboard seat will continue to offer the same protection as it does currently in vehicles with driving controls (the full suite of crash protection).

Second, NHTSA considered a front row with multiple inboard seats and one or no outboard seats. As discussed above, this final rule seeks to maintain protecting two designated seating positions in the front row with the full suite of protective countermeasures (Type 2 belt and advanced air bag). Thus, for this situation, the protection required by the vehicle depends on whether there is a remaining single outboard seat or not. If there is a remaining single outboard seat, that outboard DSP will be required to provide the full suite of protection (lap/shoulder seat belts and advanced air bag protection), and one of the inboard seats will be required to offer the same full suite. The manufacturer will have the discretion to determine which of the inboard seats will offer this protection. The other inboard seat (if any) would only require a lap belt (a lap/shoulder belt may be provided at the manufacturers' choice), as this is the requirement now specified for an inboard first row seat under FMVSS No. 208. Thus, the protection offered by this configuration is essentially the same as vehicles with driving controls and three front seats (*i.e.,* two DSPs with full suite of protection and one with lap belt protection).

In the second case, it is possible there is no outboard seat, but multiple inboard seats. For this situation, only a single inboard seat will be required to provide the full suite of protection (lap/shoulder seat belts and advanced air bag protection). The other inboard seat will only be required to offer a lap/shoulder belt. While the agency would like to require the full suite of protections for two DSPs in accordance with our principles above, we are not requiring a full suite of protection for the second DSP because of potential safety risks posed by air bags operating in close proximity to each other (*e.g.,* interaction between the two air bags or between occupants in close proximity when reacting to the air bags), as in the case of two inboard side-by-side seats. Commenters Waymo, Tesla and CalSTA suggested that additional research may be needed to discern if there are any unintended consequences related to more than one inboard seat with frontal air bag protection being in close proximity. NHTSA agrees with these commenters and plans to conduct research to determine the minimum lateral distance between the seats where air bag protection could be provided to both DSPs. The agency does not know how commonly such vehicle configurations will be produced and will seek additional information on this issue before pursuing a regulatory mandate.

To be clear, NHTSA does not believe any such research is needed for the situation where a single inboard passenger seat has frontal air bag protection, even with another non-air bag protected seat in close proximity. Neither does NHTSA believe that a separate rulemaking is necessary to provide FMVSS No. 208 protections to a single inboard seating position. This is because the technology required in that situation is used by the millions in vehicles today, with decades of experience (currently there are front outboard seating positions with Type 2 belts and air bags right next to a center seating position with a lap belt or Type 2 belt). Vehicle manufacturers may need to address the specifics of the vehicle interior geometry and crash pulse to develop an appropriate design, but the agency has no reason to believe that providing a full suite of protection to a single inboard seat will be more challenging than for an outboard seat.

The above specified regulatory changes have been implemented in S4.1.5.6 and S4.5.6.4 of FMVSS No. 208. The regulatory approach taken in these sections was to point to the test procedures as specified for front outboard designated seating positions and apply them to the inboard seats, as appropriate. We believe that, except as noted below for bench seat positioning, the procedures as written can be performed on inboard seats, without adaptations. The agency has made minor edits to S16.2.10 and S16.2.10.3 to clarify positioning of inboard seats, in the case where seat positioning cannot be independently controlled.

Finally, NHTSA carefully considered the Alliance comment on inboard seat protection suggesting that current levels of crash performance be provided, including advanced air bag performance criteria, but without a specific air bag installation requirement. We interpreted this to mean that any stipulation for ''inflatable restraint'' should be removed from S4.1.5.6.3, with all other provisions remaining. The agency is declining to make this change at this time. The text is clearer with the reference to ''inflatable restraint'' than without it. Also, there are questions of scope related to this request and NHTSA would like to consider further comments on the suggestion.

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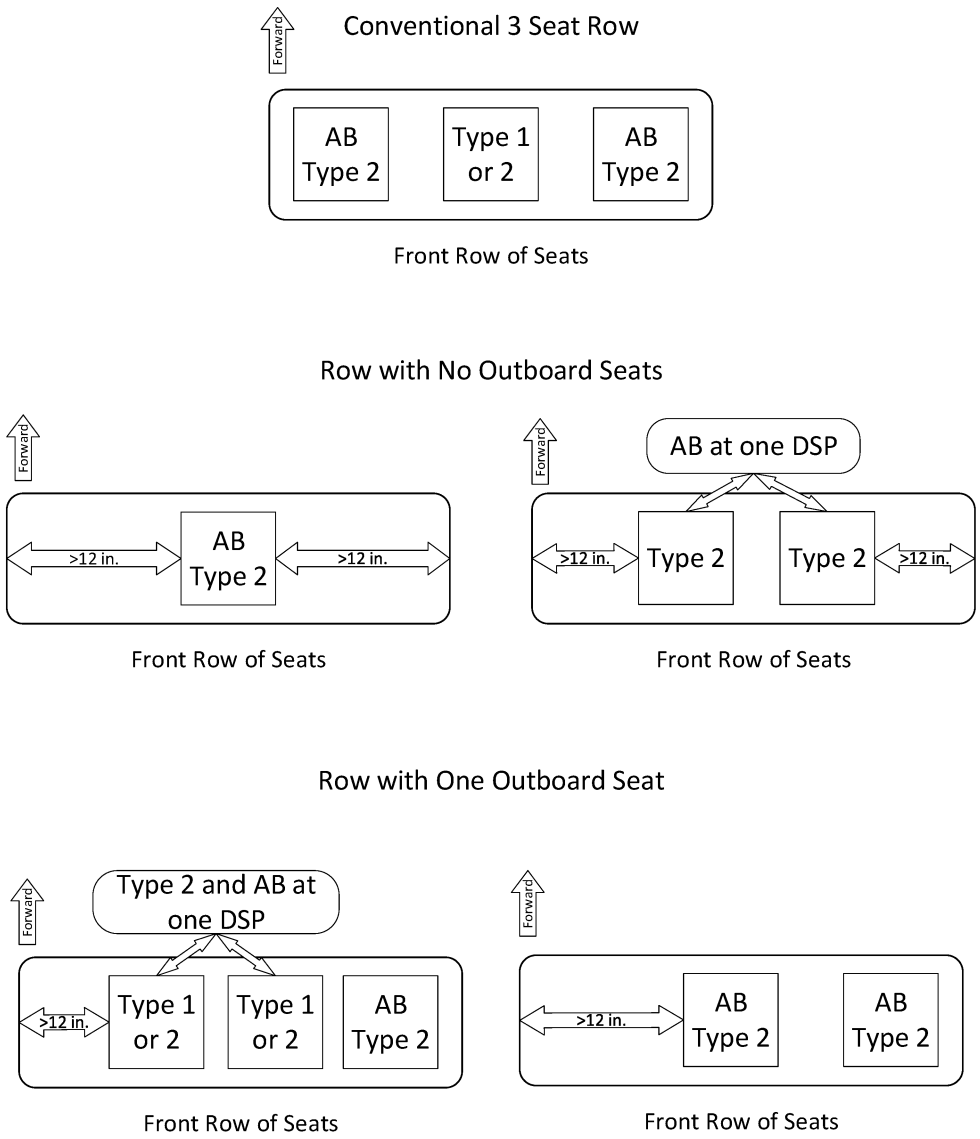


Figure 1- Schematic of air bag (AB) and seat belt protection for vehicles without driving controls and fewer than 2 outboard DSPs (provided for illustration purposes only).

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*d. Suppression of Vehicle Motion When a Child Is Detected in the Driver's Seat*

Because some ADS-equipped vehicles may be designed with a driver's seat (*i.e.,* a seat with immediate access to manually operated driving controls), NHTSA explored the possibility that a child may be seated in a driver's seat during ADS operation. As stated previously, NHTSA believes that children should not occupy the driver's position when the vehicle is operating in ADS mode and steering controls are present. Such a situation might occur when a caregiver places a child in this seat or when an older child places themselves in this position. This is a concern because a driver's seat is not a passenger seat, a driver's seat would not be subject to advanced air bag requirements protecting out-of-position children from air bag risks. In addition, the crash protection in the driver's seat is not tailored to a child. NHTSA was concerned about this possibility and proposed that ADS-equipped vehicles that have manually operated driving controls must render the vehicle incapable of motion if a child is detected in the driver's seat. The agency proposed that the ADS vehicle would be tested for compliance with this ''motion suppression'' requirement using the 12-month-old, 3-year-old and 6-year-old child test dummies currently used for out-of-position testing in the standard.

Many comments discussed this aspect of the proposal, with a variety of approaches. In general, commenters on this topic acknowledged that a potential problem exists that should be addressed but differed in their approach to a solution and beliefs about the readiness for a regulatory solution. Many non-industry commenters agreed with the proposal, as did some suppliers and an ADS developer. However, a couple commenters raised concerns about the proposal. Additional details on these comments are provided below.

Many commenters, including Consumer Reports, Safe Ride News (SRN), Johns Hopkins University, IIHS, IEE, the Automotive Safety Council (ASC), and the Center for Auto Safety (CAS) supported NHTSA's proposal to require motion suppression if a child were detected in the driver's seat of an ADS-equipped vehicle. CAS stated that the vehicle should be immovable if any child were detected in the driver's seat

while the vehicle is stationary and should revert to a safe stop if a child is detected in the driver's seat while underway. CAS and SRN recommended that the suppression test be performed with a Hybrid III 10-year-old child test dummy. Johns Hopkins University requested research on the behavior of occupants of various ages and sizes when seated as passengers in the driver position to ensure that they will receive the same protections.

In contrast, a number of commenters expressed concerns about the proposal. The NDRN explained that ''child protections that limit the vehicle's motion would have the unintended consequence of prohibiting access and discriminating against adult drivers of short stature.'' This concern was also expressed by DREDF and CCS. NDRN stated that a vehicle's sensors would not know the difference between a child and an adult driver whose weight and height may be similar. The Alliance stated that ''whenever a child can be placed in front of an air bag when the vehicle is in motion the appropriate advanced air bag requirements should apply at that seating position.'' That said, the Alliance argued that ''the issue of vehicle motion suppression does not fall within the category of a simple technical translation of current FMVSS [No.] 208 requirements,'' but is an ''operational topic'' that NHTSA can and should address ''on a separate track.'' Waymo stated that it recognized the importance of protecting small children from air bag risks but had concerns about the proposed vehicle motion suppression approach. Waymo stated, ''it may be technically feasible to address that risk by requiring the same advanced air bag protections in the driver's seat of dual-mode vehicles as those that are currently required in the right front outboard passenger seat. In fact, there may be other technical solutions that would obviate the need for the NPRM's proposal. . . . Waymo is confident that auto manufacturers can develop sound technical ways to address this issue.''

Ford stated that it ''appreciates NHTSA's safety concerns for child seats mounted in the driver seat of a 'Dual mode' AV when the ADS is active,'' but sought an additional compliance option beyond motion suppression. Ford identified two risk categories for children in the driver's seat: Crash protections; and unintentional takeover of the driving task. Ford stated that the crash protection risk could be addressed by ''[e]nsur[ing] the same level of crash protection for children of various ages in the driver seat position as provided today in the passenger outboard seating position,'' while the risk of unintentional take-over could be addressed ''by suppressing manual requests to the steering control in ADS mode when a child is detected in the driver seat.'' GM asserted that motion suppression for dual-mode ADS-vehicles should not be the focus of the NPRM, but that it ''is aligned with the need to address child occupant safety in dual-mode ADS-equipped vehicles and would support applying existing air bag suppression requirements (and/or low risk deployment) to accomplish this.''

Agency Response

NHTSA has decided not to adopt the proposal for motion suppression of the vehicle in this final rule. Additional information is needed to gain a fuller understanding of potential unintended consequences of the proposal, the potential safety problem related to interaction with driving controls, and available regulatory solutions before a final decision can be made. While the agency believes that FMVSS No. 208's air bag suppression test procedure could form the basis of a test procedure for a vehicle motion suppression regulatory option, such as that proposed in the NPRM,[47] additional work is necessary to address problems relating to a vehicle's sensors distinguishing between a child and an adult driver similar in size to a child.[48]

While several commenters suggested potential alternative regulatory solutions, they are outside of the scope of this rulemaking, require research to determine their technical feasibility, or require further analysis to determine whether they would be consistent with the requirements of the Safety Act. Some suggested requiring the same advanced air bag protections in the driver's seat of dual-mode vehicles as those that are currently required in the right front outboard passenger seat. That approach does not address concerns with the effect the manually operated driving controls themselves could have on the children's crash protection. For instance, would an infant in a rear-facing child restraint in a seating position with a steering control system be adequately protected when the air bag is suppressed? Would a child in a forward-facing child restraint in a seating position with a steering control system be adequately protected when the air bag is suppressed or in a low risk deployment state? How should test procedures be developed to assess the crash protection provided to children in a driver's seating positions relative to the passenger position? While caregivers are taught to transport children in rear seating positions, to what extent would children be transported in ADS vehicles in seating positions that have manually operated driving controls? To finalize a rule in this area, the agency would like to answer these questions, and those answers require additional research.

NHTSA plans to initiate research into the possibility of alternative regulatory options that allow vehicle motion, but that also address the risk of children in a driver's seat. The agency is interested in the development of an analogous procedure to the child passenger low risk deployment tests, but for seats with manual controls. A test could be developed that assesses the injury risk from a deploying air bag on an out of position child. Another aspect of this research may attempt to discern whether the presence of the steering control (even with a suppressed or low risk deployment air bag) results in an unreasonable safety risk to an in-position child in the driver's seat compared to a child in a passenger seat.

While NHTSA has decided not to proceed with adopting the proposed requirement for vehicle motion suppression, we disagree with the assertion that this proposal was not appropriate for the rulemaking. While the rulemaking focused on translating the current FMVSS No. 208 requirements to account for ADS vehicles, the agency appropriately discerned what it believed to be a crash protection issue and a risk case that is a consequence of the vehicle design changes that may accompany vehicles equipped with ADS technology. After review of the comments, NHTSA has concluded that more information is needed to identify and understand the nature and extent of the potential safety problem and available regulatory alternatives.[49] The agency anticipates revisiting this issue as more is learned from research and as the technologies develop.

*e. Belts in Buses*

FMVSS No. 208 establishes seat belt requirements for ''medium-sized'' buses

[47] Many commenters were under the mistaken impression that the NPRM only proposed that the 12-month-old CRABI dummy was to be used to assure vehicle motion suppression. To clarify, the NPRM proposed to use the 12-month-old, the 3-year-old, and the 6-year-old child dummies in the proposed procedure.

[48] At this time, NHTSA is not aware of any production-ready technical solution for occupant detection that would be able to discriminate between a 6-year-old or younger child and an adult of a similar or smaller size, and does not know of a test procedure that could be used to test a system's ability to do so.

[49] This decision accords with E.O. 12866, *Regulatory Planning and Review,* Section 1.

(with a GVWR between 4,536 kg (10,000 lb) and 11,793 kg (26,000 lb)) and ''large'' buses (GVWR greater than 11,793 kg (26,000 lb)). For school buses, the driver's seating position is required to have a Type 2 seat belt. For the other buses, the driver's seating position is required to have a Type 1 or 2 seat belt (alternatively, a vehicle may meet a crash test option in FMVSS No. 208, depending on the vehicle). The NPRM sought comment on how the belt requirement should apply to an ADS bus that does not have a driver's seat. Comments were requested on whether the standard should require a seat belt for all front seats, for just the left front outboard seating position, or for only at least one front passenger seat. NHTSA proposed that all front passenger seats should be protected with the same level of protection that would apply to the driver of a non-ADS vehicle. Our stated rationale was that there is likely a similar safety risk in all front row seats of these medium and large buses and that the prediction of where an individual might sit in the front row is likely to change in ADS-equipped vehicles. The NPRM discussed concerns with arbitrarily determining which front row occupant receives the protection of a seat belt or allowing manufacturers to make that determination. (*See* proposed amendments to FMVSS No. 208 S4.4.4.1.2, S4.4.4.2 and S4.4.5.3.)

Many commenters (including the Alliance, Hyundai, Safe Kids, CAS, CalSTA, the Automotive Safety Council (ASC), Safe Ride News (SRN)) supported NHTSA's proposal. ASC also believed the proposed text should apply regardless of whether they are ADS or non-ADS vehicles and suggested there should be a seat belt warning for each position. SRN believed that the occupant protection formerly provided for an adult driver should be available for a supervisory adult or adults in school buses with ADS.

Agency Response

The final rule adopts the proposed changes to the seat belts required for the front seats of medium sized buses (GVWR or more than 4,536 kg (10,000 lb), but not greater than 11,793 (26,000 lb)) without driver's DSPs, but will not proceed with the changes for large school buses (GVWR of more than 4,536 kg (10,000 lb)).[50] We will separate this discussion into large school buses and medium size non-school buses.

For large school buses described above, we have decided that more examination is necessary before finalizing a requirement. The FMVSS No. 222 compartmentalization requirements for passenger seats remain in place. We believe any changes to the compartmentalization requirement of FMVSS No. 222 for front row seats of novel ADS-equipped school buses require a more fulsome discussion before moving forward.

NHTSA is finalizing its proposal for medium size buses, other than school buses, to require the same occupant protection at the front seat of an ADS as would currently be met by the driver's seat. However, modifying existing FMVSSs to require seat belt warnings for each bus seat would be outside the scope of this rulemaking.

CAS submitted that school buses should not be included in this rulemaking due to the unique role a human driver has in interacting with and overseeing the student occupants. The commenter is concerned about a rulemaking that has the effect of encouraging the development of school buses with ADS, because school buses rely on the human driver for more tasks such as ''safety during ingress and egress, for discipline while underway, and for emergency evacuation in a variety of life-endangering situations.'' They argue that ''any proposed rule on occupant protection for driverless school buses should be withdrawn unless and until all safety aspects of such operation are considered.''

In response, NHTSA believes the CAS request that this rulemaking action exclude any changes that affect school buses is unwarranted. The final rule simply updates terms in the standards to make them technology-neutral to account for ADS-equipped vehicles, particularly those without manual controls, while providing the same amount of occupant protection. NHTSA notes that Federal law does not prohibit installation of an ADS on a school bus, currently. CAS did not provide any particularized safety issues within the scope of this rulemaking that would justify NHTSA's not proceeding with amending the school bus FMVSSs. NHTSA does not regulate the use or operation of school buses, so even with this final rule, States or local school districts can continue to purchase only non-ADS school buses if they wish to do so, and existing operational and supervisory requirements on a State, local or school district level could apply as well.

*f. Corrections to FMVSS No. 208 Regulatory Text*

NHTSA realized from some of the comments that editorial corrections should be made to some of the provisions of FMVSS No. 208.

Zoox believed that a change in S19.2.2(e) is needed for consistency throughout the regulatory text. NHTSA agrees with Zoox that S19.2.2(e) should be changed such that the reference to the ''right front passenger'' is changed to ''any front outboard passenger.'' The agency believes this is consistent with changes made throughout the FMVSSs to address the situation where there may be more than one front outboard passenger.

FMVSS No. 208, S4.2 defines, for use in that section, the term ''vehicles manufactured for operation by persons with disabilities.'' The purpose of this definition was to allow an exception to the type of seat belt required in the driver's seating position in S4.2.1.2(b), which is a superseded section of FMVSS No. 208. The National Disability Rights Network (NDRN) commented that ''[l]anguage needs to be added to these provisions that takes into consideration the potential for wheelchair accessible ADS-equipped vehicles without manual controls or a driver's seat and reference to a front left outboard seat.''

In response, S4.2.1.2(b) has been superseded and the term ''vehicles manufactured for operation by persons with disabilities'' is no longer used anywhere in active portions of FMVSS No. 208, aside from the definition that is provided in S4.2. NHTSA interprets NDRN's comment as requesting that ''vehicles manufactured for operation by persons with disabilities'' be added in active portions of FMVSS No. 208, as had been included in superseded portions of the standard. Though such a request is outside the scope of this final rule and requires additional analysis, NHTSA may consider similar language in future rulemakings.

## VII. Amendments to Various FMVSSs

This section discusses comments received on proposed amendments to various FMVSSs.

*FMVSS Nos. 203, Impact Protection for the Driver From the Steering Control System and 204, Steering Control Rearward Displacement*

NHTSA proposed modifying the application section (S2) of FMVSS Nos. 203 and 204 to state that the standards do not apply to vehicles without steering controls. The agency tentatively determined that the proposed changes

[50] FMVSS No. 222, ''School bus passenger seating and crash protection,'' considers buses with a GVWR greater than 4,536 kg (10,000 lb.) as large school buses (S5(a)).

would not reduce vehicle safety because, if no steering control is present at the seating position where the driver's seat would normally be located, that seating position would become a passenger seat that is still subject to the protection afforded by the requirements of FMVSS No. 201.

Several commenters supported the proposed wording change, and no commenter opposed. NHTSA is adopting the change. In their comments to the NPRM the American Trucking Association stated their belief that FMVSS No. 204 applied to heavy trucks. In response to this comment we would like to clarify that FMVSS No. 204 does not apply to trucks with a GVWR over 10,000 lb.

The Center for Auto Safety (CAS) discussed implications for vehicles with configurations that could change (*i.e.,* a vehicle could have configurations with steering controls and without), but such controls do not meet the definition of a manually operated driving control while stowed. The agency believes that no change is necessary to address the CAS concern, because it is already addressed by virtue of the fact that when the steering control is not stowed, both FMVSS Nos. 203 and 204 apply (unless otherwise excluded).

*FMVSS No. 207, Seating Systems—Driver's Seat Requirement*

NHTSA proposed to modify a requirement that a vehicle have a driver's seat (FMVSS No. 207, S4.1), to specify instead that a driver's seat would be required only for vehicles with manually operated driving controls. By virtue of the new definition of driver's seat (''driver's designated seating position'') and ''manually operated driving controls,'' a driver's seat inherently has immediate access to such controls. Therefore, the proposed addition to S4.1 would clarify that a vehicle equipped with ADS, without traditional driving controls, need not have a driver's seat.

Most commenters responding to this issue (the California State Transportation Agency (CalSTA), GM, CAS) favored or were neutral on the proposal. GM noted that the NPRM's use of the term ''manually operated driving control'' as used in the requirement for a driver's seat in FMVSS No. 207 was incorrectly singular and instead should be plural. NHTSA agrees with this comment and has adopted the correction in the final rule.

Tesla asked NHTSA to reconsider this requirement, stating that, ''in certain circumstances involving dual-mode vehicles, the driver's designated seating position may become a passenger's designated seating position (*e.g.,* when the manually operated driving controls are stowed).'' Tesla stated that in such cases, there may be no driver's designated seating position, which could create uncertainty about compliance with FMVSS 207, S4.1 for dual-mode vehicles.

NHTSA does not understand how the situation Tesla describes creates uncertainty about S4.1 certification, since the driver's seat requirement is predicated on the presence of driving controls. If the vehicle were dual-mode with stowable controls, the manufacturer would need to provide a seat so that when the controls are in place, the seat would be available. Although such a system would be unnecessary, a manufacturer could provide a system that stows the driver's seat when the controls are stowed.

*FMVSS No. 214, Side Impact Protection*

Zoox commented that the first sentence of FMVSS No. 214, S12.2.1(c) is unnecessary. This section of the standard refers to the positioning of the arms of the test dummy. The NPRM proposed adding a sentence to assure that the specification would apply if the vehicle had multiple front seat passenger dummies. However, since the specification would apply to any dummy, the additional sentence is redundant. NHTSA agrees with Zoox's assessment and is deleting the unnecessary text.

*FMVSS No. 220, School Bus Rollover Protection*

The Alliance suggested that in S5.2(b), the term ''occupant compartment'' should be substituted for ''passenger and driver compartment.'' NHTSA did not propose changes to FMVSS No. 220 because the agency does not believe any are necessary.

We decline to make the requested change to FMVSS No. 220 because the agency continues to believe no changes are necessary. We note that a lack of a driver simply indicates that there is only a passenger compartment.

*FMVSS No. 226—Ejection Countermeasure Readiness Telltales*

The agency stated in the preamble of the NPRM that it would not address telltales and warnings as they relate to ADS vehicles where there is no requirement for any occupant to be seated in what is currently considered the driver's DSP.[51] The NPRM stated that this is a broad topic that will be discussed in a future notice focused solely on these issues, where the agency can engage stakeholders on those issues requiring additional policy and technical discussion. The proposed regulatory text from the NPRM (in S4.2.2 of FMVSS No. 226) included changes that inadvertently would have required the ejection mitigation countermeasure readiness indicator to be visible to the occupant of any DSP for vehicles without a driver's DSP.

This final rule does not proceed with this proposal. Changes to the ejection mitigation readiness indicator in FMVSS No. 226 were not intended to be included in the scope of this rulemaking. The agency will take the comments received on this issue into consideration when developing its next actions related to telltales and indicators for ADS-equipped vehicles.

*FMVSS No. 226, Ejection Mitigation—Modified Roof Definition*

FMVSS No. 226 excludes ''modified roof vehicles'' from the standard (S2). The existing FMVSS No. 226 definition of ''modified roof'' (in S3) uses the term ''driver's compartment.'' NHTSA proposed to make a simple substitution of ''occupant compartment'' to replace ''driver's compartment.'' We noted that this change would affect the applicability of the standard to all vehicles. However, we expected that it would not have any substantive effect on non-ADS vehicles, *i.e.,* we expected that the driver's compartment and the occupant compartment would be identical and requested comment on our expectation.

This final rule adopts the proposed change. Only CalSTA commented on this aspect of the proposal, and they did so in agreement with the change. CalSTA asserted that this modification will increase occupant safety. NHTSA does not have information demonstrating that this change affects the level of protection provided by current requirements, since the modification does not expand applicability.

## VIII. Effective Date

This final rule is effective 180 days after date of publication in the **Federal Register**, with optional early compliance permitted. 49 U.S.C. 30111(d) states that a FMVSS may not become effective before the 180th day the standard is prescribed unless good cause is shown that a different effective

[51] The preamble stated (85 FR at 17630): ''The Agency notes that other barriers, such as those involving the ejection mitigation countermeasure indicator included in FMVSS No. 226, would be more appropriately addressed in the Agency's planned future notice relating to the appropriate applicability of telltale requirements in ADS-equipped vehicles.''

date is in the public interest. This final rule makes modifications to existing FMVSSs in a way that does not require manufacturers of traditional vehicles to modify their products. Moreover, providing for optional early compliance will allow manufacturers to benefit immediately from the flexibility afforded by the modifications to the FMVSSs included in this final rule, providing the same relief as if the effective date were earlier.

## IX. Cost and Benefit Impacts of This Final Rule

A Final Regulatory Impact Analysis (FRIA) can be found in the docket for this final rule. A summary of the FRIA findings is provided below. The cost impacts of this rule will depend on the per-vehicle costs savings to each vehicle that would no longer need certain manual controls, times the number of vehicles produced each year that will be produced without those controls. The Agency has reliable information on the former category, given that we generally know the current costs of this equipment, but can only estimate the broader effects. Thus, NHTSA calculated the impact of the final rule on costs by analyzing production cost savings arising from forgoing the installation of manual steering controls. These cost savings are partially offset by incremental costs associated with augmenting safety equipment in the left front seating position to make that position equivalent to the right front seating position, *i.e.,* when what would have previously been a driver's seating position would become a passenger seating position in an ADS–DV without manual controls.[52]

Monetized estimated per-vehicle cost impacts (2018 dollars) are presented by discount rate in Table IX–1 below based on a scenario presented by the Energy Information Administration (EIA),[53] in which ADS–DVs represent 31 percent of the share of new light-duty vehicle sales in the year 2050:

TABLE IX–1—SUMMARY OF NET PER-VEHICLE COST IMPACT ESTIMATES

[ADS–DV cost impacts in 2050, 2018 dollars]

| Discount rate | Mean net cost impact | 5th- to 95th-Percentile net cost impacts |
|---|---|---|
| 0% (Effects in 2050) | −$995 | −$636 to −$1,350. |
| 3% (Discounted back to 2022) | −435 | −$279 to −$590. |
| 7% Discounted back to 2022) | −149 | −$96 to −$203. |

The ranges of estimates were identified within an uncertainty analysis addressing uncertainty in the average level of cost savings that would be achieved by ADS–DV manufacturers. The uncertainty analysis centered on identifying plausible ranges of the per-vehicle cost savings, with corresponding assumptions regarding the distributions of values across each range (*i.e.,* the likelihood of observing a particular value). The uncertainty analysis generated 50,000 simulated outcomes, across which the mean and percentile values reported in Table IX–2 were identified. In addition to the above ranges of estimates, the Agency performed a sensitivity analysis in which 30 percent of ADS–DV sales in 2050 are comprised of dual-mode vehicles. See the FRIA for the results of that analysis.

Although attempting to project the number of vehicles that may benefit from these savings is, of course, highly uncertain, NHTSA has conducted an analysis that shows how these cost savings would look if these types of vehicles became more present in the fleet, as explained in greater detail in the FRIA. NHTSA assumed that light-duty vehicle sales would follow the identical baseline path projected in the Corporate Average Fuel Economy (CAFE) Model[54] through 2032 (the last year specified in the baseline), and then would continue to grow at the average annual growth rate in the baseline from 2027–2032 (approximately 0.2 percent per year; the projected baseline growth rate was also approximately 0.2 percent per year for 2027–2032 in the CAFE Model) for each year after 2032, growing to 18.7 million new light-duty vehicles sold in 2050. NHTSA assumed that the share of new light-duty vehicle sales comprised of ADS–DVs would reach 31 percent in the year 2050, based on the EIA scenario described above;[55] thus, new ADS–DV sales in 2050 are assumed to be equal to 31 percent of 18.7 million, or 5.8 million. Based on these assumptions, NHTSA estimates that the final rule would save ADS–DV manufacturers and consumers approximately $2.5 billion in the year 2050 ($2.7 billion in production cost savings, offset partially by $0.2 billion in incremental costs) at a three-percent discount rate; and approximately $0.7 billion in the year 2050 ($0.9 billion in production cost savings, offset partially by approximately $0.1 billion in incremental costs) at a seven-percent discount rate.

[52] An ADS–DV is defined as ''[a] vehicle designed to be operated exclusively by a level 4 or level 5 ADS for all trips within its given operational design domain (ODD) limitations (if any).'' High driving automation (Level 4) is defined as ''[t]he sustained and ODD-specific performance by an ADS of the entire dynamic driving task (DDT) and DDT fallback without any expectation that a user will respond to a request to intervene.'' Full driving automation (Level 5) is defined as ''[t]he sustained and unconditional (*i.e.,* not ODD-specific) performance by an ADS of the entire DDT and DDT fallback without any expectation that a user will respond to a request to intervene.'' SAE J3016_201806 Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles.

[53] Chase, N., Maples, J., and Schipper, M. (2018). Autonomous Vehicles: Uncertainties and Energy Implications. Issue in Focus from the Annual Energy Outlook 2018. Washington, DC: U.S. Energy Information Administration. Available at *https://www.eia.gov/outlooks/aeo/av.php* (last accessed October 22, 2019).

[54] Detailed information on the CAFE Model, including model files, is available at *https://www.nhtsa.gov/corporate-average-fuel-economy/compliance-and-effects-modeling-system.*

[55] Chase, N., Maples, J., and Schipper, M. (2018). Autonomous Vehicles: Uncertainties and Energy Implications. Issue in Focus from the Annual Energy Outlook 2018. Washington, DC: U.S. Energy Information Administration. Available at *https://www.eia.gov/outlooks/aeo/av.php* (last accessed October 22, 2019).

TABLE IX–2—SUMMARY OF TOTAL MONETIZED ANNUAL BENEFIT, COST, AND NET COST IMPACT ESTIMATES

[ADS–DV Cost impacts in 2050, billions of 2018 dollars]

| Discount rate | Benefits (cost savings) | Incremental costs | Net cost impact |
|---|---|---|---|
| 3% | $2.7 | $0.2 | −$2.5 |
| 7% | 0.9 | 0.1 | −0.9 |

The estimated cost impacts above represent the subset of potential impacts that are quantifiable (albeit with considerable uncertainty) under the available information. NHTSA identified five unquantified benefit impacts associated with the final rule: impacts on fuel consumption, impacts on safety, incremental producer and consumer surplus, changes in administrative burden, and changes in manufacturer uncertainty. The final rule could affect per-vehicle fuel consumption by changing the mass of ADS–DVs. NHTSA expects ADS–DV mass to either decrease (due to the removal of currently required equipment) slightly or remain essentially unchanged (due to the addition of automated steering components that offset the mass savings of the removed equipment) under the final rule. NHTSA acknowledges that, in principle, ADS–DV mass could increase (if vehicle seating configurations and amenities are changed sufficiently when exploiting the reduction in design constraints when removing manual steering controls) under the final rule. Conversely, ADS–DV net mass could decrease for cases where vehicles are used for travel without occupants (*e.g.,* automated deliveries or empty running between trips with occupants). However, we do not have data to support any specific projections in changes in vehicle mass.

In any event, current corporate average fuel economy (CAFE) requirements are based on a vehicle's ''footprint,'' and thus any change in a vehicles mass will not affect a manufacturer's obligations under that program. Finally, as stated in the NPRM, NHTSA has not attempted to address the revisions that may be necessary to provide regulatory certainty for manufacturers that wish to self-certify ADS-equipped vehicles with unconventional seating arrangements. The final rule is assumed to have no effect on the per-mile risk of travel in ADS–DVs, as it does not revise, remove, or establish anything associated with their safety performance. That is, the removal of manual steering controls is not assumed to offer any direct safety benefit or detriment for travel in ADS–DVs. However, it is feasible that changes in ADS–DV demand associated with the final rule (*e.g.,* due to changes in vehicle design or decreases in cost) could increase the use of ADS–DVs. In turn, safety outcomes associated with the final rule would be equal to the net effects of: (1) Changes in per-mile fatality and injury risk for travel that is shifted from conventional vehicles to ADS–DVs; and (2) incremental fatalities and injuries for travel in ADS–DVs that would not have taken place in any vehicle otherwise. It is difficult to project net safety impacts associated with the final rule without information on: (1) Per-mile fatality and injury risk for ADS–DVs and conventional vehicles over time; and (2) demand for travel in ADS–DVs and conventional vehicles as a function of ADS–DV price and design attributes.

NHTSA recognizes that incremental consumer and producer surplus under the final rule would accrue in addition to the production cost savings estimated in the preceding section. That is, by reconfiguring seating configurations and amenities to exploit the lack of manual steering controls, ADS–DV manufacturers would generate incremental consumer and producer surplus as consumers' willingness-to-pay increases. However, NHTSA does not have sufficient information available on the demand and supply of ADS–DVs and their substitutes to estimate the components of incremental consumer and producer surplus that are not captured within the estimates of production cost savings. Thus, the share of incremental consumer and producer surplus not comprised of the cost savings identified in the preceding section is an unquantified benefit.

The final rule would lead to a reduction in the number of standards from which manufacturers of ADS–DVs would have to seek exemptions. The reduction in exemption requests would be associated with a reduction in administrative costs for both manufacturers and NHTSA. NHTSA does not have sufficient information to establish a specific estimate of administrative cost savings. However, the cost savings would be expected to be small relative to the production cost savings associated with the rule.

A less tangible, but still important, expected impact of the final rule would be a reduction in uncertainty for manufacturers of ADS-equipped vehicles. The final rule provides clarity to manufacturers on constraints to developing FMVSS-compliant ADS-equipped vehicles. In turn, developmental paths for ADS-equipped vehicles could be implemented with greater precision and efficiency. The reduction in uncertainty could reduce not only the costs associated with manufacturing ADS-equipped vehicles, but also the time it would take to bring these vehicles to the market. An accelerated development timeline would be a benefit both to manufacturers and consumers.

## X. Regulatory Notices and Analyses

### *Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures*

NHTSA has considered the impacts of this rulemaking action under E.O. 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), E.O. 13563, ''Improving Regulation and Regulatory Review,'' and DOT regulatory requirements. This final rule is ''significant'' and was reviewed by OMB. This action is significant because it raises novel legal and policy issues surrounding the regulation of vehicles equipped with ADS and is the subject of much public interest and has anticipated annual economic impacts greater than $100 million. NHTSA has prepared a Final Regulatory Impact Analysis (FRIA) for this final rule, which can be found in the docket for this final rule. The cost savings of this final rule are described in the preamble and discussed in greater detail in the accompanying FRIA.

### Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small

entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)(1)). No regulatory flexibility analysis is required if the head of an agency certifies the proposed or final rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a proposed or final rule will not have a significant economic impact on a substantial number of small entities.

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule finalizes NHTSA's proposal of amendments to and clarifications of the application of existing occupant protection standards to vehicles equipped with ADS that also lack traditional manual controls. This final rule will apply to small motor vehicle manufacturers who wish to produce ADS without manual controls and with conventional seating arrangements (*i.e.,* forward-facing, front row seats). In the NPRM, NHTSA analyzed current small manufacturers and current small ADS developers in detail in the Preliminary Regulatory Impact Analysis (PRIA) for the NPRM, and found that none of the entities listed in the analysis would be impacted by this rulemaking. NHTSA received no comments on this analysis. For the reasons discussed in the PRIA and set forth in the FRIA, NHTSA concludes this rulemaking will not have a significant economic impact on a substantial number of small entities.

**Executive Order 13132 (Federalism)**

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This final rule will not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision may be preserved. However, the Supreme Court has recognized the possibility of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the higher standard effectively imposed through a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard, creating an obstacle to the accomplishment and execution of that standard. If and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to E.O. 13132, NHTSA has considered whether this final rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation. Under the principles enunciated in *Geier* it is possible that a rule of State tort law could conflict with a NHTSA safety standard if it created an obstacle to the accomplishment and execution of that standard. Since this final rule translates existing occupant protection standards to vehicles equipped with alternative cabin configurations that lack manual driving controls, NHTSA does not currently foresee the likelihood of any such tort requirements and does not have a basis for concluding that such a conflict exists.

NHTSA solicited comments from the States and other interested parties on this assessment of issues relevant to E.O. 13132 in the NPRM. While one commenter touched on the organization's general support for the concept of federalism, it did not assert that the rulemaking was anything but an appropriate balance between State and Federal regulation.

**Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 et. seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective sixty days after the date of publication in the **Federal Register**.

**Executive Order 12988 (Civil Justice Reform)**

When promulgating a regulation, Executive Order 12988 specifically requires that the agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity

and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this final rule is discussed above in connection with Executive Order 13132. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

**Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)**

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks,'' (62 FR 19885; April 23, 1997) applies to any proposed or final rule that: (1) Is determined to be ''economically significant,'' as defined in E.O. 12866, and (2) concerns an environmental health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If a rule meets both criteria, the Agency must evaluate the environmental health or safety effects of the rule on children, and explain why the rule is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not expected to have a disproportionate health or safety impact on children. Consequently, no further analysis is required under Executive Order 13045.

**Executive Order 13609, Promoting International Regulatory Cooperation**

Executive Order 13609, ''Promoting International Regulatory Cooperation,'' promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. NHTSA has analyzed this final rule under the policies and Agency responsibilities of Executive Order 13609, and has determined this rule would have no effect on international regulatory cooperation.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal Agency unless the collection displays a valid OMB control number. This final rule imposes no new reporting requirements on any person.

**National Technology Transfer and Advancement Act and 1 CFR Part 51**

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as SAE. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

Pursuant to the above requirements, the agency conducted a review of voluntary consensus standards to determine if any were applicable to this final rule. NHTSA searched for, but did not find, voluntary consensus standards directly applicable to the amendments adopted in this final rule. Neither is NHTSA aware of any international regulations or Global Technical Regulation (GTR) activity addressing the subject of this final rule.

SAE Standard J826–1980 was previously approved for use in § 571.208 and that approval continues unchanged.

**Unfunded Mandates Reform Act**

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, 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. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This final rule does not contain a mandate that would impose costs on any of the entities listed above of more than $100 million annually (adjusted for inflation with base year of 1995). As a result, the requirements of Section 202 of the Act do not apply.

**National Environmental Policy Act**

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this final rule will not have any significant impact on the quality of the human environment.

**Regulation Identifier Number (RIN)**

The Department of Transportation assigns a regulation identifier number (RIN) 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. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

**List of Subjects in 49 CFR Part 571**

Incorporation by Reference, Motor vehicles, Motor vehicle safety.

**Regulatory Text**

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Section 571.3 is amended in paragraph (b) by:

■ a. Adding in alphabetical order definitions for ''Driver air bag,'' ''Driver dummy,'' ''Driver's designated seating position,'' and ''Manually operated driving controls'';

■ b. Revising the definition of ''Outboard designated seating position''; and

■ c. Adding in alphabetical order definitions for ''Passenger seating position,'' ''Row,'' ''Seat outline,'' and ''Steering control system''.

The additions and revision read as follows:

**§ 571.3 Definitions.**

* * * * *

(b) * * *

*Driver air bag* means the air bag installed for the protection of the occupant of the driver's designated seating position.

*Driver dummy* means the test dummy positioned in the driver's designated seating position.

*Driver's designated seating position* means a designated seating position providing immediate access to manually operated driving controls. As used in this part, the terms ''driver's seating position'' and ''driver's seat'' shall have the same meaning as ''driver's designated seating position.''

* * * * *

*Manually operated driving controls* means a system of controls:

(i) That are used by an occupant for real-time, sustained, manual manipulation of the motor vehicle's heading (steering) and/or speed (accelerator and brake); and

(ii) That is positioned such that they can be used by an occupant, regardless of whether the occupant is actively using the system to manipulate the vehicle's motion.

* * * * *

*Outboard designated seating position* means a designated seating position where a longitudinal vertical plane tangent to the outboard side of the seat cushion is less than 12 inches from the innermost point on the inside surface of the vehicle at a height between the design H-point and the shoulder reference point (as shown in fig. 1 of Federal Motor Vehicle Safety Standard No. 210) and longitudinally between the front and rear edges of the seat cushion. As used in this part, the terms ''outboard seating position'' and ''outboard seat'' shall have the same meaning as ''outboard designated seating position.''

* * * * *

*Passenger seating position* means any designated seating position other than the driver's designated seating position, except as noted below. As used in this part, the term ''passenger seat'' shall have the same meaning as ''passenger seating position.'' As used in this part, ''passenger seating position'' includes what was a ''driver's designated seating position'' prior to stowing of the present manually operated driving controls.

* * * * *

*Row* means a set of one or more seats whose seat outlines do not overlap with the seat outline of any other seats, when all seats are adjusted to their rearmost normal riding or driving position, when viewed from the side.

* * * * *

*Seat outline* means the outer limits of a seat projected laterally onto a vertical longitudinal vehicle plane.

* * * * *

*Steering control system* means the manually operated driving control used to control the vehicle heading and its associated trim hardware, including any portion of a steering column assembly that provides energy absorption upon impact. As used in this part, the term ''steering wheel'' and ''steering control'' shall have the same meaning as ''steering control system.''

* * * * *

■ 3. Amend § 571.201 by revising paragraph S2, the definition of the terms ''A-pillar,'' ''B-pillar,'' and ''Pillar'' in paragraph S3, and revising paragraphs S5.1(b), S5.1.1(d), S5.1.2(a), S6.3(b), S8.6, S8.20, and S8.24 to read as follows:

**§ 571.201 Standard No. 201; Occupant protection in interior impact.**

* * * * *

S2. *Application.* This standard applies to passenger cars and to multipurpose passenger vehicles, trucks designed to carry at least one person, and buses with a GVWR of 4,536 kilograms or less, except that the requirements of S6 do not apply to buses with a GVWR of more than 3,860 kilograms.

S3. * * *

*A-pillar* means any pillar that is entirely forward of a transverse vertical plane passing through the seating reference point of the driver's designated seating position or, if there is no driver's designated seating position, any pillar that is entirely forward of a transverse vertical plane passing through the seating reference point of the rearmost designated seating position in the front row of seats.

* * * * *

*B-pillar* means the forwardmost pillar on each side of the vehicle that is, in whole or in part, rearward of a transverse vertical plane passing through the seating reference point of the driver's designated seating position or, if there is no driver's designated seating position, the forwardmost pillar on each side of the vehicle that is, in whole or in part, rearward of a transverse vertical plane passing through the seating reference point of the rearmost designated seating position in the front row of seats, unless:

(1) There is only one pillar rearward of that plane and it is also a rearmost pillar; or

(2) There is a door frame rearward of the A-pillar and forward of any other pillar or rearmost pillar.

* * * * *

*Pillar* means any structure, excluding glazing and the vertical portion of door window frames, but including accompanying moldings, attached components such as safety belt anchorages and coat hooks, which:

(1) If there is a driver's designated seating position, supports either a roof or any other structure (such as a roll-bar) that is above the driver's head, or if there is no driver's designated seating position, supports either a roof or any other structure (such as a roll-bar) that is above the occupant in the rearmost designated seating position in the front row of seats, or

(2) Is located along the side edge of a window.

* * * * *

S5.1 * * *

(b) A relative velocity of 19 kilometers per hour for vehicles that meet the occupant crash protection requirements of S5.1 of 49 CFR 571.208 by means of inflatable restraint systems and meet the requirements of S4.1.5.1(a)(3) by means of a Type 2 seat belt assembly at any front passenger designated seating position, the deceleration of the head form shall not exceed 80 g continuously for more than 3 milliseconds

S5.1.1 * * *

(d) If the steering control is present, areas outboard of any point of tangency on the instrument panel of a 165 mm diameter head form tangent to and inboard of a vertical longitudinal plane tangent to the inboard edge of the steering control; or

* * * * *

S5.1.2 * * *

(a) The origin of the line tangent to the instrument panel surface shall be a point on a transverse horizontal line through a point 125 mm horizontally forward of the seating reference point of any front outboard passenger designated seating position, displaced vertically an amount equal to the rise which results from a 125 mm forward adjustment of the seat or 19 mm; and

* * * * *

S6.3 * * *

(b) Any target located rearward of a vertical plane 600 mm behind the seating reference point of the rearmost designated seating position. For altered vehicles and vehicles built in two or more stages, including ambulances and motor homes, any target located rearward of a vertical plane 300 mm behind the seating reference point of the driver's designated seating position or the rearmost designated seating position in the front row of seats, if there is no driver's designated seating position (tests for altered vehicles and vehicles built in two or more stages do not include, within the time period for measuring HIC(d), any free motion headform contact with components rearward of this plane). If an altered vehicle or vehicle built in two or more stages is equipped with a transverse

vertical partition positioned between the seating reference point of the driver's designated seating position and a vertical plane 300 mm behind the seating reference point of the driver's designated seating position, any target located rearward of the vertical partition is excluded.

* * * * *

S8.6 *Steering control and seats.*

(a) During targeting, the steering control and seats may be placed in any position intended for use while the vehicle is in motion.

(b) During testing, the steering control and seats may be removed from the vehicle.

* * * * *

S8.20 *Adjustable steering controls—vehicle to pole test.* Adjustable steering controls shall be adjusted so that the steering control hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions.

* * * * *

S8.24 *Impact reference line—vehicle to pole test.* On the striking side of the vehicle, place an impact reference line at the intersection of the vehicle exterior and a transverse vertical plane passing through the center of gravity of the head of the dummy seated in accordance with S8.28, in any front outboard designated seating position.

* * * * *

■ 4. Amend § 571.203 by revising paragraph S2 and removing and reserving S3.

The revision reads as follows:

**§ 571.203 Standard No. 203; Impact protection for the driver from the steering control system.**

* * * * *

S2. *Application.* This standard applies to passenger cars and to multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating of 4,536 kg or less. However, it does not apply to vehicles that conform to the frontal barrier crash requirements (S5.1) of Standard No. 208 (49 CFR 571.208) by means of other than seat belt assemblies. It also does not apply to walk-in vans or vehicles without a steering control.

* * * * *

■ 5. Amend § 571.204 by revising paragraph S2 to read as follows:

**§ 571.204 Standard No. 204; Steering control rearward displacement.**

* * * * *

S2. *Application.* This standard applies to passenger cars and to multipurpose passenger vehicles, trucks, and buses. However, it does not apply to walk-in vans or vehicles without steering controls.

* * * * *

■ 6. Amend § 571.205 by revising paragraph S3(a) to read as follows:

**§ 571.205 Standard No. 205, Glazing materials.**

* * * * *

S3. * * *

(a) This standard applies to passenger cars, multipurpose passenger vehicles, trucks designed to carry at least one person, buses, motorcycles, slide-in campers, pickup covers designed to carry persons while in motion and low speed vehicles, and to glazing materials for use in those vehicles.

* * * * *

■ 7. Amend § 571.206 by revising paragraph S2, the definitions of ''Side Front Door'' and ''Side Rear Door'' in paragraph S3, and paragraph S5.1.1.4(b)(1)(ii)(C) to read as follows:

**§ 571.206 Standard No. 206; Door locks and door retention components.**

* * * * *

S2. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks designed to carry at least one person, and buses with a gross vehicle weight rating (GVWR) of 4,536 kg or less.

S3. * * *

*Side Front Door* is a door that, in a side view, has 50 percent or more of its opening area forward of the rearmost point on the driver's seat back, when the seat back is adjusted to its most vertical and rearward position. For vehicles without a driver's designated seating position it is a door that in a side view, has 50 percent or more of its opening area forward of the rearmost point on the most rearward passenger's seat back in the front row of seats, when the seat backs are adjusted to their most vertical and rearward position.

*Side Rear Door* is a door that, in a side view, has 50 percent or more of its opening area to the rear of the rearmost point on the driver's seat back, when the driver's seat is adjusted to its most vertical and rearward position. For vehicles without a driver's designated seating position it is a door that in a side view, has 50 percent or more of its opening area rear of the rearmost point on the most rearward passenger's seat back in the front row of seats, when the seat backs are adjusted to their most vertical and rearward position.

* * * * *

S5.1.1.4 * * *

(b) * * *

(1) * * *

(ii) * * *

(C) Transverse Setup 1. Orient the vehicle so that its transverse axis is aligned with the axis of the acceleration device, simulating a left-side impact.

* * * * *

■ 8. Amend § 571.207 by revising paragraphs S2 and S4.1 to read as follows:

**§ 571.207 Standard No. 207; Seating systems.**

* * * * *

S2. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks designed to carry at least one person, and buses.

* * * * *

S4.1 *Driver's seat.* Each vehicle with manually operated driving controls shall have a driver's designated seating position.

* * * * *

■ 9. Amend § 571.208 as follows:

■ a. Revise paragraph S3(a);

■ b. Add paragraphs S4.1.5.6, S.4.1.5.6.1, S4.1.5.6.2, S4.1.5.6.3, S4.1.5.6.4, S4.1.5.6.5, S4.1.5.6.6;

■ c. Revise paragraphs S4.2 introductory text, S4.2.5.4(c), S4.2.5.5(a)(2), and S4.2.6.1.1;

■ d. Add paragraph S4.2.6.4;

■ e. Revise the definition of ''Perimeter-seating bus'' in S4.4.1, paragraphs S4.4.3.2.1, S4.4.3.2.2, S4.4.4.1.1, S4.4.4.1.2, S4.4.5.1.1, S4.4.5.1.2 introductory text, S4.4.5.1.2(e), S4.5.1(c)(3), S4.5.1(e)(1) introductory text, S4.5.1(e)(2) introductory text, S4.5.1 (e)(3) introductory text, S4.5.1(f)(1), S4.11(d), and S7.1.1.5(a);

■ f. Redesignate paragraph S7.1.6 as paragraph S7.1.1.6; and

■ g. Revise paragraphs S8.1.4, S8.2.7(c), S10.2.1, S10.2.2, S10.3.1, S10.3.2, S10.4.1.1, S10.4.1.2, S10.4.2.1, S10.5, S10.6.1, S10.6.2, S10.7, S13.3, S16.2.9, S16.2.9.1, S16.2.9.2, and S16.2.9.3, the heading for S16.2.10, and paragraphs S16.2.10.3, S16.3.2.1.4, S16.3.2.1.8, S16.3.2.1.9, S16.3.2.3.2, S16.3.2.3.3, S16.3.2.3.4, S16.3.3, S16.3.3.1, S16.3.3.1.2, S16.3.3.1.4, S16.3.3.2, S16.3.3.3, S16.3.4, S16.3.5, S19.2.1, S19.2.2 introductory text, S19.2.2(d), S19.2.2(e), S19.2.2(g), S19.2.2(h), S19.2.3, S19.3, S20.1.2, S20.2, S20.2.1.4, S20.2.2.3, S20.3, S20.3.1, S20.3.2, S20.4.1, S20.4.4, S20.4.9, S21.2.1, S21.2.3, S21.3, S21.4, S22.1.2, S22.1.3, S22.2, S22.2.1.1, S22.2.1.3, S22.2.2, S22.2.2.1(a) and (b), S22.2.2.3(a) and (b), S22.2.2.4(a), S22.2.2.5(a), S22.2.2.6(a) and (b), S22.2.2.7(a) and (b), S22.2.2.8(a) introductory text, S22.2.2.8(a)(6), S22.3, S22.3.1, S22.3.2, S22.4.2.2, S22.4.3.1, S22.4.3.2, S22.4.4, S22.5.1, S23.2.1, S23.2.3, S23.3, S23.4, S24.1.2, S24.1.3, S24.2 introductory text, S24.2.3

introductory text, S24.2.3(a), S24.3, S24.3.1, S24.3.2, S24.4.2.3 introductory text, S24.4.3.1, S24.4.3.2 introductory text, S24.4.4, S26.2.1, S26.2.2, S26.2.4.3, S26.2.4.4, S26.2.5, S26.3.2, S26.3.3, S26.3.4.3, S26.3.5, S26.3.6, S26.3.7, S27.5.2, S27.6.2, S28.2, and S28.4;

The revisions and additions read as follows:

**§ 571.208 Standard No. 208; Occupant crash protection.**

* * * * *

S3. *Application.* (a) This standard applies to passenger cars, multipurpose passenger vehicles, trucks designed to carry at least one person, and buses. In addition, S9, *Pressure vessels and explosive devices,* applies to vessels designed to contain a pressurized fluid or gas, and to explosive devices, for use in the above types of motor vehicles as part of a system designed to provide protection to occupants in the event of a crash.

* * * * *

S4.1.5.6 *Inboard designated seating positions in passenger cars without manually operated driving controls.*

S4.1.5.6.1 *For vehicles specified in S4.1.5.6 with no outboard designated seating positions and with a single front inboard designated seating position, the vehicle shall at that position meet the requirements of S4.1.5.6.3 and S4.1.5.6.4.* The above specified vehicles with multiple front inboard designated seating position shall at one inboard position meet the requirements S4.1.5.6.3 and S4.1.5.6.4 and at all other inboard positions meet the requirements of S4.1.5.6.6.

S4.1.5.6.2 *For vehicles specified in S4.1.5.6 with only one outboard designated seating position and a single front inboard designated seating position, the vehicle shall at that position meet the requirements of S4.1.5.6.3 and S4.1.5.6.4.* The above specified vehicles with multiple front inboard designated seating position shall at one inboard position meet the requirements of S4.1.5.6.3 and S4.1.5.6.4 and at all other inboard positions meet the requirements of S4.1.5.6.5.

S4.1.5.6.3 As specified in S4.1.5.6.1 and S4.1.5.6.2, the vehicles shall meet the frontal crash protection requirements of S5.1.2(b) as specified for front outboard passenger designated seating positions by means of an inflatable restraint system that requires no action by vehicle occupants and the requirements of S14, as specified for front outboard passenger designated seating positions.

S4.1.5.6.4 As specified in S4.1.5.6.1 and S4.1.5.6.2, the designated seating positions have a Type 2 seat belt assembly that conforms to Standard No. 209 and S7.1 through S7.3 of this standard, as specified for front outboard passenger designated seating positions.

S4.1.5.6.5 As specified in S4.1.5.6.1 and S4.1.5.6.2, as appropriate, have a Type 1 or Type 2 seat belt assembly that conforms to Standard No. 209 and S7.1 through S7.3 of this standard.

S4.1.5.6.6 As specified in S4.1.5.6.1 and S4.1.5.6.2, as appropriate, have a Type 2 seat belt assembly that conforms to Standard No. 209 and S7.1 through S7.3 of this standard, as specified for front outboard passenger designated seating positions.

* * * * *

S4.2 *Trucks and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less.* As used in this section, *vehicles manufactured for operation by persons with disabilities* means vehicles that incorporate a level change device (*e.g.,* a wheelchair lift or a ramp) for onloading or offloading an occupant in a wheelchair, an interior element of design intended to provide the vertical clearance necessary to permit a person in a wheelchair to move between the lift or ramp and the driver's position or to occupy that position, and either an adaptive control or special driver's seating accommodation to enable persons who have limited use of their arms or legs to operate a vehicle. For purposes of this definition, special driver's seating accommodations include a driver's seat easily removable with means installed for that purpose or with simple tools, or a driver's seat with extended adjustment capability to allow a person to easily transfer from a wheelchair to the driver's seat.

* * * * *

S4.2.5.4 * * *

(c) Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1995, but before September 1, 1998, whose driver's seating position complies with the requirements of S4.1.2.1(a) of this standard by means not including any type of seat belt and whose right front passenger seating position is equipped with a manual Type 2 seat belt that complies with S5.1 of this standard, with the seat belt assembly adjusted in accordance with S7.4.2, shall be counted as a vehicle complying with S4.1.2.1.

S4.2.5.5 * * *

(a) * * *

(2) Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less whose driver's seating position complies with the requirements of S4.1.2.1(a) by means not including any type of seat belt and whose right front passenger seating position is equipped with a manual Type 2 seat belt that complies with S5.1 of this standard, with the seat belt assembly adjusted in accordance with S7.4.2, is counted as one vehicle.

* * * * *

S4.2.6.1.1 The amount of trucks, buses, and multipurpose passenger vehicles complying with the requirements of S4.1.5.1(a)(1) of this standard by means of an inflatable restraint system shall be not less than 80 percent of the manufacturer's total combined production of subject vehicles manufactured on or after September 1, 1997 and before September 1, 1998. Each truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997 and before September 1, 1998, whose driver's seating position complies with S4.1.5.1(a)(1) by means of an inflatable restraint system and whose right front passenger seating position is equipped with a manual Type 2 seat belt assembly that complies with S5.1 of this standard, with the seat belt assembly adjusted in accordance with S7.4.2 of this standard, shall be counted as a vehicle complying with S4.1.5.1(a)(1) by means of an inflatable restraint system. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

* * * * *

S4.2.6.4 *Inboard designated seating positions in trucks, buses, and multipurpose passenger vehicles without manually operated driving controls and with a single or multiple front inboard designated seating position and no outboard seating positions and with a GVWR of 3,855 kg (8,500 lb) or less and an unloaded vehicle weight of 2,495 kg (5,500 lb) or less.* The above specified vehicles shall meet the requirements of S4.1.5.6 as specified for passenger cars.

* * * * *

S4.4.1 * * *

*Perimeter-seating bus* means a bus, which is not an over-the-road bus, that has 7 or fewer designated seating positions that are forward-facing or can convert to forward-facing without the use of tools, and are rearward of the driver's designated seating position or

rearward of the outboard designated seating position(s) in the front row of seats, if there is no driver's designated seating position.

* * * * *

S4.4.3.2.1 The driver's designated seating position and any outboard designated seating position not rearward of the driver's seating position shall be equipped with a Type 2 seat belt assembly. For a school bus without a driver's designated seating position, the outboard designated seating positions in the front row of seats shall be equipped with Type 2 seat belt assemblies. The seat belt assembly shall comply with Standard No. 209 (49 CFR 571.209) and with S7.1 and S7.2 of this standard. The lap belt portion of the seat belt assembly shall include either an emergency locking retractor or an automatic locking retractor. An automatic locking retractor shall not retract webbing to the next locking position until at least ¾ inch of webbing has moved into the retractor. In determining whether an automatic locking retractor complies with this requirement, the webbing is extended to 75 percent of its length and the retractor is locked after the initial adjustment. If the seat belt assembly installed in compliance with this requirement incorporates any webbing tension-relieving device, the vehicle owner's manual shall include the information specified in S7.4.2(b) of this standard for the tension-relieving device, and the vehicle shall comply with S7.4.2(c) of this standard.

S4.4.3.2.2 Passenger seating positions, other than those specified in S4.4.3.2.1, shall be equipped with Type 2 seat belt assemblies that comply with the requirements of S7.1.1.5, S7.1.5 and S7.2 of this standard.

* * * * *

S4.4.4.1.1 *First option—complete passenger protection system—driver only.* The vehicle shall meet the crash protection requirements of S5, with respect to an anthropomorphic test dummy in the driver's designated seating position, by means that require no action by vehicle occupants.

S4.4.4.1.2 *Second option—belt system.* The vehicle shall, at the driver's designated seating position and all designated seating positions in the front row of seats, if there is no driver's designated seating position, be equipped with either a Type 1 or a Type 2 seat belt assembly that conforms to § 571.209 of this part and S7.2 of this Standard. A Type 1 belt assembly or the pelvic portion of a dual retractor Type 2 belt assembly installed at these seating positions shall include either an emergency locking retractor or an automatic locking retractor. If a seat belt assembly includes an automatic locking retractor for the lap belt or the lap belt portion, that seat belt assembly shall comply with the following:

* * * * *

S4.4.5.1.1 The driver's designated seating position and any outboard designated seating position not rearward of the driver's seating position shall be equipped with a Type 2 seat belt assembly. The seat belt assembly shall comply with Standard No. 209 (49 CFR 571.209) and with S7.1 and S7.2 of this standard. For a bus without a driver's designated seating position, any outboard designated seating position in the front row of seats, shall be equipped with Type 2 seat belt assemblies. If a seat belt assembly installed in compliance with this requirement includes an automatic locking retractor for the lap belt portion, that seat belt assembly shall comply with paragraphs (a) through (c) of S4.4.4.1.2 of this standard. If a seat belt assembly installed in compliance with this requirement incorporates any webbing tension-relieving device, the vehicle owner's manual shall include the information specified in S7.4.2(b) of this standard for the tension-relieving device, and the vehicle shall comply with S7.4.2(c) of this standard.

S4.4.5.1.2 Passenger seating positions, other than those specified in S4.4.5.1.1 and seating positions on prison buses rearward of the driver's seating position, shall:

* * * * *

(e) Comply with the requirements of S7.1.1.5, S7.1.1.6, S7.1.3, and S7.2 of this standard.

* * * * *

S4.5.1 * * *

(c) * * *

(3) If a vehicle does not have an inflatable restraint at any front seating position other than that for the driver's designated seating position, the pictogram may be omitted from the label shown in Figure 6c.

* * * * *

(e) * * *

(1) Except as provided in S4.5.1(e)(2) or S4.5.1(e)(3), each vehicle that is equipped with an inflatable restraint for the passenger position shall have a label attached to a location on the dashboard or the steering control hub that is clearly visible from all front seating positions. The label need not be permanently affixed to the vehicle. This label shall conform in content to the label shown in Figure 7 of this standard, and shall comply with the requirements of S4.5.1(e)(1)(i) through S4.5.1(e)(1)(iii).

* * * * *

(2) Vehicles certified to meet the requirements specified in S19, S21, and S23 before December 1, 2003, that are equipped with an inflatable restraint for the passenger position shall have a label attached to a location on the dashboard or the steering control hub that is clearly visible from all front seating positions. The label need not be permanently affixed to the vehicle. This label shall conform in content to the label shown in either Figure 9 or Figure 12 of this standard, at manufacturer's option, and shall comply with the requirements of S4.5.1(e)(2)(i) through S4.5.1(e)(2)(iv).

* * * * *

(3) Vehicles certified to meet the requirements specified in S19, S21, and S23 on or after December 1, 2003, that are equipped with an inflatable restraint for the passenger position shall have a label attached to a location on the dashboard or the steering control hub that is clearly visible from all front seating positions. The label need not be permanently affixed to the vehicle. This label shall conform in content to the label shown in Figure 12 of this standard and shall comply with the requirements of S4.5.1(e)(3)(i) through S4.5.1(e)(3)(iv).

* * * * *

(f) *Information to appear in owner's manual.* (1) The owner's manual for any vehicle equipped with an inflatable restraint system shall include an accurate description of the vehicle's air bag system in an easily understandable format. The owner's manual shall include a statement to the effect that the vehicle is equipped with an air bag and lap/shoulder belt at both front outboard seating positions, and that the air bag is a supplemental restraint at those seating positions. The information shall emphasize that all occupants should always wear their seat belts whether or not an air bag is also provided at their seating position to minimize the risk of severe injury or death in the event of a crash. The owner's manual shall also provide any necessary precautions regarding the proper positioning of occupants, including children, at seating positions equipped with air bags to ensure maximum safety protection for those occupants. The owner's manual shall also explain that no objects should be placed over or near the air bag on the instrument panel, because any such objects could cause harm if the vehicle is in a crash severe enough to cause the air bag to inflate.

* * * * *

S4.11 * * *

(d) For driver dummy low risk deployment tests, the injury criteria shall be met when calculated based on

data recorded for 125 milliseconds after the initiation of the final stage of air bag deployment designed to deploy in any full frontal rigid barrier crash up to 26 km/h (16 mph).

* * * * *

S7.1.1.5 * * *

(a) Each designated seating position, except the driver's designated seating position, and except any right front seating position that is equipped with an automatic belt, that is in any motor vehicle, except walk-in van-type vehicles and vehicles manufactured to be sold exclusively to the U.S. Postal Service, and that is forward-facing or can be adjusted to be forward-facing, shall have a seat belt assembly whose lap belt portion is lockable so that the seat belt assembly can be used to tightly secure a child restraint system. The means provided to lock the lap belt or lap belt portion of the seat belt assembly shall not consist of any device that must be attached by the vehicle user to the seat belt webbing, retractor, or any other part of the vehicle. Additionally, the means provided to lock the lap belt or lap belt portion of the seat belt assembly shall not require any inverting, twisting or otherwise deforming of the belt webbing.

* * * * *

S8.1.4 Adjustable steering controls are adjusted so that the steering control hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions.

* * * * *

S8.2.7 * * *

(c) A vertical plane through the geometric center of the barrier impact surface and perpendicular to that surface passes through the driver's seating position seating reference point in the tested vehicle.

* * * * *

S10.2.1 The driver dummy's upper arms shall be adjacent to the torso with the centerlines as close to a vertical plane as possible.

S10.2.2 Any front outboard passenger dummy's upper arms shall be in contact with the seat back and the sides of the torso.

* * * * *

S10.3.1 The palms of the driver dummy shall be in contact with the outer part of the steering control rim at the rim's horizontal centerline. The thumbs shall be over the steering control rim and shall be lightly taped to the steering control rim so that if the hand of the test dummy is pushed upward by a force of not less than 2 pounds and not more than 5 pounds, the tape shall release the hand from the steering control rim.

S10.3.2 The palms of any passenger test dummy shall be in contact with the outside of the thigh. The little finger shall be in contact with the seat cushion.

* * * * *

S10.4.1.1 In vehicles equipped with bench seats, the upper torso of the driver and front outboard passenger dummies shall rest against the seat back. The midsagittal plane of the driver dummy shall be vertical and parallel to the vehicle's longitudinal centerline, and pass through the center of rotation of the steering control. The midsagittal plane of any passenger dummy shall be vertical and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the midsagittal plane of the driver dummy, if there is a driver's seating position. If there is no driver's seating position, the midsagittal plane of any front outboard passenger dummy shall be vertical and parallel to the vehicle's longitudinal centerline, and pass through the seating reference point of the seat that it occupies.

S10.4.1.2 In vehicles equipped with bucket seats, the upper torso of the driver and passenger dummies shall rest against the seat back. The midsagittal plane of the driver and any front outboard passenger dummy shall be vertical and shall coincide with the longitudinal centerline of the bucket seat.

* * * * *

S10.4.2.1 *H-point.* The H-points of the driver and any front outboard passenger test dummies shall coincide within ½ inch in the vertical dimension and ½ inch in the horizontal dimension of a point ¼ inch below the position of the H-point determined by using the equipment and procedures specified in SAE Standard J826–1980 (incorporated by reference, see § 571.5), except that the length of the lower leg and thigh segments of the H-point machine shall be adjusted to 16.3 and 15.8 inches, respectively, instead of the 50th percentile values specified in Table 1 of SAE Standard J826–1980.

* * * * *

S10.5 *Legs.* The upper legs of the driver and any front outboard passenger test dummies shall rest against the seat cushion to the extent permitted by placement of the feet. The initial distance between the outboard knee clevis flange surfaces shall be 10.6 inches. To the extent practicable, the left leg of the driver dummy and both legs of any front outboard passenger dummy shall be in vertical longitudinal planes. To the extent practicable, the right leg of the driver dummy shall be in a vertical plane. Final adjustment to accommodate the placement of feet in accordance with S10.6 for various passenger compartment configurations is permitted.

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S10.6.1 *Driver dummy position.*

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S10.6.2 Front outboard *passenger dummy position.*

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S10.7 *Test dummy positioning for latchplate access.* The reach envelopes specified in S7.4.4 of this standard are obtained by positioning a test dummy in the driver's or front outboard passenger seating position and adjusting that seating position to its forwardmost adjustment position. Attach the lines for the inboard and outboard arms to the test dummy as described in Figure 3 of this standard. Extend each line backward and outboard to generate the compliance arcs of the outboard reach envelope of the test dummy's arms.

* * * * *

S13.3 *Vehicle test attitude.* When the vehicle is in its ''as delivered'' condition, measure the angle between the left side door sill and the horizontal. Mark where the angle is taken on the door sill. The ''as delivered'' condition is the vehicle as received at the test site, with 100 percent of all fluid capacities and all tires inflated to the manufacturer's specifications as listed on the vehicle's tire placard. When the vehicle is in its ''fully loaded'' condition, measure the angle between the left side door sill and the horizontal, at the same place the ''as delivered'' angle was measured. The ''fully loaded'' condition is the test vehicle loaded in accordance with S8.1.1(a) or (b) of Standard No. 208, as applicable. The load placed in the cargo area shall be centered over the longitudinal centerline of the vehicle. The pretest door sill angle, when the vehicle is on the sled, (measured at the same location as the as delivered and fully loaded condition) shall be equal to or between the as delivered and fully loaded door sill angle measurements.

* * * * *

S16.2.9 *Steering control adjustment.*

S16.2.9.1 Adjust a tiltable steering control, if possible, so that the steering control hub is at the geometric center of its full range of driving positions.

S16.2.9.2 If there is no setting detent at the mid-position, lower the steering control to the detent just below the mid-position.

S16.2.9.3 If the steering column is telescoping, place the steering column

in the mid-position. If there is no mid-position, move the steering control rearward one position from the mid-position.

S16.2.10 *Front seat set-up.*

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S16.2.10.3 *Seat position adjustment.* If the front right outboard passenger seat does not adjust independently of the front left outboard seat, the front left outboard seat shall control the final position of the front right outboard passenger seat. If an inboard passenger seat does not adjust independently of an outboard seat, the outboard seat shall control the final position of the inboard passenger seat.

* * * * *

S16.3.2.1.4 *Bench seats.* Position the midsagittal plane of the dummy vertical and parallel to the vehicle's longitudinal centerline and aligned within ±10 mm (±0.4 in) of the center of the steering control.

* * * * *

S16.3.2.1.8 If needed, extend the legs slightly so that the feet are not in contact with the floor pan. Let the thighs rest on the seat cushion to the extent permitted by the foot movement. Keeping the leg and the thigh in a vertical plane, place the foot in the vertical longitudinal plane that passes through the centerline of the accelerator pedal. Rotate the left thigh outboard about the hip until the center of the knee is the same distance from the midsagittal plane of the dummy as the right knee ±5 mm (±0.2 in). Using only the control that primarily moves the seat fore and aft, attempt to return the seat to the full forward position. If either of the dummy's legs first contacts the steering control, then adjust the steering control, if adjustable, upward until contact with the steering control is avoided. If the steering control is not adjustable, separate the knees enough to avoid steering control contact. Proceed with moving the seat forward until either the leg contacts the vehicle interior or the seat reaches the full forward position. (The right foot may contact and depress the accelerator and/or change the angle of the foot with respect to the leg during seat movement.) If necessary to avoid contact with the vehicles brake or clutch pedal, rotate the test dummy's left foot about the leg. If there is still interference, rotate the left thigh outboard about the hip the minimum distance necessary to avoid pedal interference. If a dummy leg contacts the vehicle interior before the full forward position is attained, position the seat at the next detent where there is no contact. If the seat is a power seat, move the seat fore and aft to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the point on the dummy that would first contact the vehicle interior. If the steering control was moved, return it to the position described in S16.2.9. If the steering control contacts the dummy's leg(s) prior to attaining this position, adjust it to the next higher detent, or if infinitely adjustable, until there is 5 mm (0.2 in) clearance between the control and the dummy's leg(s).

S16.3.2.1.9 For vehicles without adjustable seat backs, adjust the lower neck bracket to level the head as much as possible. For vehicles with adjustable seat backs, while holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform of the head is level to within ±0.5 degree, making sure that the pelvis does not interfere with the seat bight. Inspect the abdomen to ensure that it is properly installed. If the torso contacts the steering control, adjust the steering control in the following order until there is no contact: Telescoping adjustment, lowering adjustment, raising adjustment. If the vehicle has no adjustments, or contact with the steering control cannot be eliminated by adjustment, position the seat at the next detent where there is no contact with the steering control as adjusted in S16.2.9. If the seat is a power seat, position the seat to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the steering control as adjusted in S16.2.9 and the point of contact on the dummy.

* * * * *

S16.3.2.3.2 Place the palms of the dummy in contact with the outer part of the steering control rim at its horizontal centerline with the thumbs over the steering control rim.

S16.3.2.3.3 If it is not possible to position the thumbs inside the steering control rim at its horizontal centerline, then position them above and as close to the horizontal centerline of the steering control rim as possible.

S16.3.2.3.4 Lightly tape the hands to the steering control rim so that if the hand of the test dummy is pushed upward by a force of not less than 9 N (2 lb) and not more than 22 N (5 lb), the tape releases the hand from the steering control rim.

S16.3.3 Front outboard *passenger dummy positioning.*

S16.3.3.1 Front outboard *passenger torso/head/seat back angle positioning.*

* * * * *

S16.3.3.1.2 Fully recline the seat back, if adjustable. Install the dummy into any front outboard passenger seat, such that when the legs are 120 degrees to the thighs, the calves of the legs are not touching the seat cushion.

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S16.3.3.1.4 *Bench seats.* Position the midsagittal plane of the dummy vertical and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline, within ±10 mm (±0.4 in), as the midsagittal plane of the driver dummy, if there is a driver's seating position. Otherwise, the midsagittal plane of any front outboard passenger dummy shall be vertical, parallel to the vehicle's longitudinal centerline, and pass, within ±10 mm (±0.4 in), through the seating reference point of the seat that it occupies.

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S16.3.3.2 Front outboard *passenger foot positioning.*

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S16.3.3.3 Front outboard *passenger arm/hand positioning.*

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S16.3.4 *Driver and front outboard passenger adjustable head restraints.*

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S16.3.5 *Driver and front outboard passenger manual belt adjustment (for tests conducted with a belted dummy)*

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S19.2.1 The vehicle shall be equipped with an automatic suppression feature for any front outboard passenger air bag which results in deactivation of the air bag during each of the static tests specified in S20.2 (using the 49 CFR part 572 Subpart R 12-month-old CRABI child dummy in any of the child restraints identified in sections B and C of appendix A or A–1 of this standard, as appropriate and the 49 CFR part 572 subpart K Newborn Infant dummy in any of the car beds identified in section A of appendix A or A–1, as appropriate), and activation of the air bag system during each of the static tests specified in S20.3 (using the 49 CFR part 572 Subpart O 5th percentile adult female dummy).

S19.2.2 The vehicle shall be equipped with telltales for each front outboard passenger seat which emit light whenever the associated front outboard passenger air bag system is deactivated and does not emit light whenever the associated front outboard passenger air bag system is activated, except that the telltale(s) need not illuminate when the associated front outboard passenger seat is unoccupied. For telltales associated with multiple front outboard passenger seats, it shall

be clearly recognizable to a driver and any front outboard passenger the seat with which seat each telltale is associated. Each telltale:

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(d) Shall be located within the interior of the vehicle and forward of and above the design H-point of both the driver's and any front outboard passenger's seat in their forwardmost seating positions and shall not be located on or adjacent to a surface that can be used for temporary or permanent storage of objects that could obscure the telltale from either the driver's or any-front outboard passenger's view, or located where the telltale would be obscured from the driver's view or the adjacent front outboard passenger's view if a rear-facing child restraint listed in appendix A or A–1, as appropriate, is installed in any-front outboard passenger's seat.

(e) Shall be visible and recognizable to a driver and any front outboard passenger during night and day when the occupants have adapted to the ambient light roadway conditions.

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(g) Means shall be provided for making telltales visible and recognizable to the driver and any front outboard passenger under all driving conditions. The means for providing the required visibility may be adjustable manually or automatically, except that the telltales may not be adjustable under any driving conditions to a level that they become invisible or not recognizable to the driver and any front outboard passenger.

(h) The telltale must not emit light except when any passenger air bag is turned off or during a bulb check upon vehicle starting.

S19.2.3 The vehicle shall be equipped with a mechanism that indicates whether the air bag system is suppressed, regardless of whether any front outboard passenger seat is occupied. The mechanism need not be located in the occupant compartment unless it is the telltale described in S19.2.2.

S19.3 *Option 2—Low risk deployment.* Each vehicle shall meet the injury criteria specified in S19.4 of this standard when any front outboard passenger air bag is deployed in accordance with the procedures specified in S20.4.

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S20.1.2 Unless otherwise specified, each vehicle certified to this option shall comply in tests conducted with any front outboard passenger seating position, if adjustable fore and aft, at full rearward, middle, and full forward positions. If the child restraint or dummy contacts the vehicle interior, move the seat rearward to the next detent that provides clearance, or if the seat is a power seat, using only the control that primarily moves the seat fore and aft, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) clearance between the dummy or child restraint and the vehicle interior.

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S20.2 *Static tests of automatic suppression feature which shall result in deactivation of any front outboard passenger air bag, associated with that designated seating position.* Each vehicle that is certified as complying with S19.2 shall meet the following test requirements.

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S20.2.1.4 For bucket seats, ''Plane B'' refers to a vertical plane parallel to the vehicle longitudinal centerline through the longitudinal centerline of any front outboard passenger vehicle seat cushion. For bench seats in vehicles with manually operated driving controls, ''Plane B'' refers to a vertical plane through any front outboard passenger vehicle seat parallel to the vehicle longitudinal centerline the same distance from the longitudinal centerline of the vehicle as the center of the steering control. For bench seats in vehicles without manually operated driving controls, ''Plane B'' refers to the vertical plane parallel to the vehicle longitudinal centerline, through any front outboard passenger seat's SgRP.

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S20.2.2.3 For bucket seats, ''Plane B'' refers to a vertical plane parallel to the vehicle longitudinal centerline through the longitudinal centerline of any front outboard passenger vehicle seat cushion. For bench seats in vehicles with manually operated driving controls, ''Plane B'' refers to a vertical plane through any front outboard passenger seat parallel to the vehicle longitudinal centerline the same distance from the longitudinal centerline of the vehicle as the center of the steering control. For bench seats in vehicles without manually operated driving controls, ''Plane B'' refers to the vertical plane parallel to the vehicle longitudinal centerline, through any front outboard passenger seat's SgRP.

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S20.3 *Static tests of automatic suppression feature which shall result in activation of any front outboard passenger air bag system.*

S20.3.1 Each vehicle certified to this option shall comply in tests conducted with any front outboard passenger seating position, if adjustable fore and aft, at the mid-height, in the full rearward and middle positions determined in S20.1.9.4, and the forward position determined in S16.3.3.1.8.

S20.3.2 Place a 49 CFR part 572 subpart O 5th percentile adult female test dummy at any front outboard passenger seating position of the vehicle, in accordance with procedures specified in S16.3.3 of this standard, except as specified in S20.3.1, subject to the fore-aft seat positions in S20.3.1. Do not fasten the seat belt.

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S20.4.1 Position any front outboard passenger vehicle seat at the mid-height in the full forward position determined in S20.1.9.4, and adjust the seat back (if adjustable independent of the seat) to the nominal design position for a 50th percentile adult male as specified in S8.1.3. Position adjustable lumbar supports so that the lumbar support is in its lowest, retracted or deflated adjustment position. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. If adjustable, set the head restraint at the full down and most forward position. If the child restraint or dummy contacts the vehicle interior, do the following: Using only the control that primarily moves the seat in the fore and aft direction, move the seat rearward to the next detent that provides clearance; or if the seat is a power seat, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) clearance.

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S20.4.4 For bucket seats, ''Plane B'' refers to a vertical plane parallel to the vehicle longitudinal centerline through the longitudinal centerline of any front outboard passenger seat cushion. For bench seats in vehicles with manually operated driving controls, ''Plane B'' refers to a vertical plane through any front outboard passenger seat parallel to the vehicle longitudinal centerline that is the same distance from the longitudinal centerline of the vehicle as the center of the steering control. For bench seats in vehicles without manually operated driving controls, ''Plane B'' refers to the vertical plane parallel to the vehicle longitudinal centerline, through any front outboard passenger seat's SgRP.

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S20.4.9 Deploy any front outboard passenger frontal air bag system. If the air bag system contains a multistage inflator, the vehicle shall be able to comply at any stage or combination of stages or time delay between successive

stages that could occur in the presence of an infant in a rear facing child restraint and a 49 CFR part 572, subpart R 12-month-old CRABI dummy positioned according to S20.4, and also with the seat at the mid-height, in the middle and full rearward positions determined in S20.1.9.4, in a rigid barrier crash test at speeds up to 64 km/h (40 mph).

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S21.2.1 The vehicle shall be equipped with an automatic suppression feature for any front outboard passenger air bag which results in deactivation of the air bag during each of the static tests specified in S22.2 (using the 49 CFR part 572 subpart P 3-year-old child dummy and, as applicable, any child restraint specified in section C and section D of appendix A or A–1 of this standard, as appropriate), and activation of the air bag system during each of the static tests specified in S22.3 (using the 49 CFR part 572 subpart O 5th percentile adult female dummy).

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S21.2.3 The vehicle shall be equipped with a mechanism that indicates whether the air bag is suppressed, regardless of whether any front outboard passenger seat is occupied. The mechanism need not be located in the occupant compartment unless it is the telltale described in S21.2.2.

S21.3 *Option 2—Dynamic automatic suppression system that suppresses the air bag when an occupant is out of position.* (This option is available under the conditions set forth in S27.1.) The vehicle shall be equipped with a dynamic automatic suppression system for any front outboard passenger air bag system which meets the requirements specified in S27.

S21.4 *Option 3—Low risk deployment.* Each vehicle shall meet the injury criteria specified in S21.5 of this standard when any front outboard passenger air bag is deployed in accordance with both of the low risk deployment test procedures specified in S22.4.

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S22.1.2 Unless otherwise specified, each vehicle certified to this option shall comply in tests conducted with any front outboard passenger seating position at the mid-height, in the full rearward, middle, and the full forward positions determined in S22.1.7.4. If the dummy contacts the vehicle interior, using only the control that primarily moves the seat fore and aft, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) clearance.

S22.1.3 Except as otherwise specified, if the child restraint has an anchorage system as specified in S5.9 of FMVSS No. 213 and is tested in a vehicle with any front outboard passenger vehicle seat that has an anchorage system as specified in FMVSS No. 225, the vehicle shall comply with the belted test conditions with the restraint anchorage system attached to the vehicle seat anchorage system and the vehicle seat belt unattached. It shall also comply with the belted test conditions with the restraint anchorage system unattached to the vehicle seat anchorage system and the vehicle seat belt attached.

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S22.2 *Static tests of automatic suppression feature which shall result in deactivation of any front outboard passenger air bag, associated with that designated seating position.* Each vehicle that is certified as complying with S21.2 shall meet the following test requirements:

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S22.2.1.1 Install the restraint in any front outboard passenger vehicle seat in accordance, to the extent possible, with the child restraint manufacturer's instructions provided with the seat for use by children with the same height and weight as the 3-year-old child dummy.

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S22.2.1.3 For bucket seats, ''Plane B'' refers to a vertical longitudinal plane through the longitudinal centerline of the seat cushion of any front outboard passenger vehicle seat. For bench seats in vehicles with manually operated driving controls, ''Plane B'' refers to a vertical plane through any front outboard passenger vehicle seat parallel to the vehicle longitudinal centerline the same distance from the longitudinal centerline of the vehicle as the center of the steering control. For bench seats in vehicles without manually operated driving controls, ''Plane B'' refers to the vertical plane parallel to the vehicle longitudinal centerline, through any front outboard passenger seat's SgRP.

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S22.2.2 *Unbelted tests with dummies.* Place the 49 CFR part 572 subpart P 3-year-old child dummy on any front outboard passenger vehicle seat in any of the following positions (without using a child restraint or booster seat or the vehicle's seat belts):

S22.2.2.1 * * *

(a) Place the dummy on any front outboard passenger seat.

(b) In the case of vehicles equipped with bench seats and with manually operated driving controls, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline, within ±10 mm (±0.4 in), as the center of the steering control. For bench seats in vehicles without manually operated driving controls, position the midsagittal plane of any front outboard dummy vertically and parallel to the vehicle's longitudinal centerline, within ±10 mm (±0.4 in) of the seating reference point of the seat that it occupies. In the case of vehicles equipped with bucket seats, position the midsagittal plane of any front outboard dummy vertically such that it coincides with the longitudinal centerline of the seat cushion, within ±10 mm (±0.4 in). Position the torso of the dummy against the seat back. Position the dummy's thighs against the seat cushion.

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S22.2.2.3 * * *

(a) Place the dummy on any front outboard passenger seat.

(b) In the case of vehicles equipped with bench seats and with manually operated driving controls, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline, within ±10 mm (±0.4 in), as the center of the steering control. For bench seats in vehicles without manually operated driving controls, position the midsagittal plane of any front outboard dummy vertically and parallel to the vehicle's longitudinal centerline, within ±10 mm (±0.4 in) of the seating reference point of the seat that it occupies. In the case of vehicles equipped with bucket seats, position the midsagittal plane of any front outboard dummy vertically such that it coincides with the longitudinal centerline of the seat cushion, within ±10 mm (±0.4 in). Position the dummy with the spine vertical so that the horizontal distance from the dummy's back to the seat back is no less than 25 mm (1.0 in) and no more than 150 mm (6.0 in), as measured along the dummy's midsagittal plane at the mid-sternum level. To keep the dummy in position, a material with a maximum breaking strength of 311 N (70 lb) may be used to hold the dummy.

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S22.2.2.4 * * *

(a) In the case of vehicles equipped with bench seats and with manually operated driving controls, position the midsagittal plane of the dummy vertically and parallel to the vehicle's

longitudinal centerline and the same distance from the vehicle's longitudinal centerline, within ±10 mm (±0.4 in), as the center of the steering control. For bench seats in vehicles without manually operated driving controls, position the midsagittal plane of any front outboard dummy vertically and parallel to the vehicle's longitudinal centerline, within ±10 mm (±0.4 in) of the seating reference point of the seat that it occupies. In the case of vehicles equipped with bucket seats, position the midsagittal plane of any front outboard dummy vertically such that it coincides with the longitudinal centerline of the seat cushion, within ±10 mm (±0.4 in).

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S22.2.2.5 * * *

(a) In the case of vehicles equipped with bench seats and with manually operated driving controls, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline, within ±10 mm (±0.4 in), as the center of the steering control rim. For bench seats in vehicles without manually operated driving controls, position the midsagittal plane of any front outboard dummy vertically and parallel to the vehicle's longitudinal centerline, within ±10 mm (±0.4 in) of the seating reference point of the seat that it occupies. In the case of vehicles equipped with bucket seats, position the midsagittal plane of any front outboard dummy vertically such that it coincides with the longitudinal centerline of the seat cushion, within ±10 mm (±0.4 in). Position the dummy in a standing position on any front outboard passenger seat cushion facing the front of the vehicle while placing the heels of the dummy's feet in contact with the seat back.

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S22.2.2.6 * * *

(a) In the case of vehicles equipped with bench seats and manually operated driving controls, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline, within ±10 mm (±0.4 in), as the center of the steering control. For bench seats in vehicles without manually operated driving controls, position the midsagittal plane of any front outboard dummy vertically and parallel to the vehicle's longitudinal centerline, within ±10 mm (±0.4 in) of the seating reference point of the seat that it occupies. In the case of vehicles equipped with bucket seats, position the midsagittal plane of any front outboard dummy vertically such that it coincides with the longitudinal centerline of the seat cushion, within ±10 mm (±0.4 in).

(b) Position the dummy in a kneeling position in any front outboard passenger vehicle seat with the dummy facing the front of the vehicle with its toes at the intersection of the seat back and seat cushion. Position the dummy so that the spine is vertical. Push down on the legs so that they contact the seat as much as possible and then release. Place the arms parallel to the spine.

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S22.2.2.7 * * *

(a) In the case of vehicles equipped with bench seats and manually operated driving controls, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline, within ±10 mm (±0.4 in), as the center of the steering control. For bench seats in vehicles without manually operated driving controls, position the midsagittal plane of any front outboard dummy vertically and parallel to the vehicle's longitudinal centerline, within ±10 mm (±0.4 in) of the seating reference point of the seat that it occupies. In the case of vehicles equipped with bucket seats, position the midsagittal plane of any front outboard dummy vertically such that it coincides with the longitudinal centerline of the seat cushion, within ±10 mm (±0.4 in).

(b) Position the dummy in a kneeling position in any front outboard passenger vehicle seat with the dummy facing the rear of the vehicle. Position the dummy such that the dummy's head and torso are in contact with the seat back. Push down on the legs so that they contact the seat as much as possible and then release. Place the arms parallel to the spine.

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S22.2.2.8 * * *

(a) Lay the dummy on any front outboard passenger vehicle seat such that the following criteria are met:

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(6) The head of the dummy is positioned towards the nearest passenger door, and

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S22.3 *Static tests of automatic suppression feature which shall result in activation of any front outboard passenger air bag system.*

S22.3.1 Each vehicle certified to this option shall comply in tests conducted with any front outboard passenger seating position at the mid-height, in the full rearward, and middle positions determined in S22.1.7.4, and the forward position determined in S16.3.3.1.8.

S22.3.2 Place a 49 CFR part 572 subpart O 5th percentile adult female test dummy at any front outboard passenger seating position of the vehicle, in accordance with procedures specified in S16.3.3 of this standard, except as specified in S22.3.1. Do not fasten the seat belt.

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S22.4.2.2 Place the dummy in any front outboard passenger seat such that:

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S22.4.3.1 Place any front outboard passenger seat at the mid-height, in full rearward seating position determined in S22.1.7.4. Place the seat back, if adjustable independent of the seat, at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. If adjustable, set the head restraint in the lowest and most forward position.

S22.4.3.2 Place the dummy in any front outboard passenger seat such that:

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S22.4.4 Deploy any front outboard passenger frontal air bag system. If the frontal air bag system contains a multistage inflator, the vehicle shall be able to comply with the injury criteria at any stage or combination of stages or time delay between successive stages that could occur in a rigid barrier crash test at or below 26 km/h (16 mph), under the test procedure specified in S22.5.

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S22.5.1 The test described in S22.5.2 shall be conducted with an unbelted 50th percentile adult male test dummy in the driver's seating position according to S8 as it applies to that seating position and an unbelted 5th percentile adult female test dummy either in any front outboard passenger vehicle seating position according to S16 as it applies to that seating position or at any fore-aft seat position on any passenger side.

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S23.2.1 The vehicle shall be equipped with an automatic suppression feature for any front outboard passenger frontal air bag system which results in deactivation of the air bag during each of the static tests specified in S24.2 (using the 49 CFR part 572 subpart N 6-year-old child dummy in any of the child restraints specified in section D of appendix A or A–1 of this standard, as appropriate), and activation of the air bag system

during each of the static tests specified in S24.3 (using the 49 CFR part 572 subpart O 5th percentile adult female dummy).

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S23.2.3 The vehicle shall be equipped with a mechanism that indicates whether the air bag is suppressed, regardless of whether any front outboard passenger seat is occupied. The mechanism need not be located in the occupant compartment unless it is the telltale described in S23.2.2.

S23.3 *Option 2—Dynamic automatic suppression system that suppresses the air bag when an occupant is out of position.* (This option is available under the conditions set forth in S27.1.) The vehicle shall be equipped with a dynamic automatic suppression system for any front outboard passenger frontal air bag system which meets the requirements specified in S27.

S23.4 *Option 3—Low risk deployment.* Each vehicle shall meet the injury criteria specified in S23.5 of this standard when any front outboard passenger air bag is statically deployed in accordance with both of the low risk deployment test procedures specified in S24.4.

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S24.1.2 Unless otherwise specified, each vehicle certified to this option shall comply in tests conducted with any front outboard passenger seating position at the mid-height, in the full rearward seat track position, the middle seat track position, and the full forward seat track position as determined in this section. Using only the control that primarily moves the seat in the fore and aft direction, determine the full rearward, middle, and full forward positions of the SCRP. Using any seat or seat cushion adjustments other than that which primarily moves the seat fore-aft, determine the SCRP mid-point height for each of the three fore-aft test positions, while maintaining as closely as possible, the seat cushion angle determined in S16.2.10.3.1. Set the seat back angle, if adjustable independent of the seat, at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. If the dummy contacts the vehicle interior, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the point on the dummy that would first contact the vehicle interior.

S24.1.3 Except as otherwise specified, if the booster seat has an anchorage system as specified in S5.9 of FMVSS No. 213 and is used under this standard in testing a vehicle with any front outboard passenger vehicle seat that has an anchorage system as specified in FMVSS No. 225, the vehicle shall comply with the belted test conditions with the restraint anchorage system attached to the FMVSS No. 225 vehicle seat anchorage system and the vehicle seat belt unattached. It shall also comply with the belted test conditions with the restraint anchorage system unattached to the FMVSS No. 225 vehicle seat anchorage system and the vehicle seat belt attached. The vehicle shall comply with the unbelted test conditions with the restraint anchorage system unattached to the FMVSS No. 225 vehicle seat anchorage system.

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S24.2 *Static tests of automatic suppression feature which shall result in deactivation of any passenger air bag, associated with that designated seating position.* Each vehicle that is certified as complying with S23.2 of FMVSS No. 208 shall meet the following test requirements with the child restraint in any front outboard passenger vehicle seat under the following conditions:

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S24.2.3 *Sitting back in the seat and leaning on any front outboard passenger door.*

(a) Place the dummy in the seated position in any front outboard passenger vehicle seat. For bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion, within ±10 mm (±0.4 in). For bench seats in vehicles with manually operated driving controls, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the longitudinal centerline of the vehicle, within ±10 mm (±0.4 in), as the center of rotation of the steering control. For bench seats in vehicles without manually operated driving controls, position the midsagittal plane of any front outboard dummy vertically and parallel to the vehicle's longitudinal centerline, within ±10 mm (±0.4 in) of the seating reference point of the seat that it occupies.

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S24.3 *Static tests of automatic suppression feature which shall result in activation of any front outboard passenger air bag system.*

S24.3.1 Each vehicle certified to this option shall comply in tests conducted with any front outboard passenger seating position at the mid-height, in the full rearward and middle positions determined in S24.1.2, and the forward position determined in S16.3.3.1.8.

S24.3.2 Place a 49 CFR part 572 subpart O 5th percentile adult female test dummy at any front outboard passenger seating position of the vehicle, in accordance with procedures specified in S16.3.3 of this standard, except as specified in S24.3.1. Do not fasten the seat belt.

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S24.4.2.3 Place the dummy in any front outboard passenger seat such that:

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S24.4.3.1 Place any front outboard passenger seat at the mid-height full rearward seating position determined in S24.1.2. Place the seat back, if adjustable independent of the seat, at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. Position an adjustable head restraint in the lowest and most forward position.

S24.4.3.2 Place the dummy in any front outboard passenger seat such that:

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S24.4.4 Deploy any front outboard passenger frontal air bag system. If the frontal air bag system contains a multistage inflator, the vehicle shall be able to comply with the injury criteria at any stage or combination of stages or time delay between successive stages that could occur in a rigid barrier crash test at or below 26 km/h (16 mph), under the test procedure specified in S22.5.

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S26.2.1 Adjust the steering controls so that the steering control hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions. If there is no setting at the geometric center, position it one setting lower than the geometric center. Set the rotation of the steering control so that the vehicle wheels are pointed straight ahead.

S26.2.2 Mark a point on the steering control cover that is longitudinally and transversely, as measured along the surface of the steering control cover, within ±6 mm (±0.2 in) of the point that is defined by the intersection of the steering control cover and a line between the volumetric center of the smallest volume that can encompass the folded undeployed air bag and the volumetric center of the static fully inflated air bag. Locate the vertical plane parallel to the vehicle longitudinal centerline through the

point located on the steering control cover. This is referred to as ''Plane E.''

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S26.2.4.3 The dummy's thorax instrument cavity rear face is 6 degrees forward (toward the front of the vehicle) of the steering control angle (*i.e.,* if the steering control angle is 25 degrees from vertical, the thorax instrument cavity rear face angle is 31 degrees).

S26.2.4.4 The initial transverse distance between the longitudinal centerlines at the front of the dummy's knees is 160 to 170 mm (6.3 to 6.7 in), with the thighs and legs of the dummy in vertical planes.

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S26.2.5 Maintaining the spine angle, slide the dummy forward until the head/torso contacts the steering control.

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S26.3.2 Adjust the steering controls so that the steering control hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions. If there is no setting at the geometric center, position it one setting lower than the geometric center. Set the rotation of the steering control so that the vehicle wheels are pointed straight ahead.

S26.3.3 Mark a point on the steering control cover that is longitudinally and transversely, as measured along the surface of the steering control cover, within ±6 mm (±0.2 in) of the point that is defined by the intersection of the steering control cover and a line between the volumetric center of the smallest volume that can encompass the folded undeployed air bag and the volumetric center of the static fully inflated air bag. Locate the vertical plane parallel to the vehicle longitudinal centerline through the point located on the steering control cover. This is referred to as ''Plane E.''

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S26.3.4.3 The dummy's thorax instrument cavity rear face is 6 degrees forward (toward the front of the vehicle) of the steering control angle (*i.e.,* if the steering control angle is 25 degrees from vertical, the thorax instrument cavity rear face angle is 31 degrees).

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S26.3.5 Maintaining the spine angle, slide the dummy forward until the head/torso contacts the steering control.

S26.3.6 While maintaining the spine angle, position the dummy so that a point on the chin 40 mm (1.6 in) ±3 mm (±0.1 in) below the center of the mouth (chin point) is, within ±10 mm (±0.4 in), in contact with a point on the steering control rim surface closest to the dummy that is 10 mm (0.4 in) vertically below the highest point on the rim in Plane E. If the dummy's head contacts the vehicle windshield or upper interior before the prescribed position can be obtained, lower the dummy until there is no more than 5 mm (0.2 in) clearance between the vehicle's windshield or upper interior, as applicable.

S26.3.7 If the steering control can be adjusted so that the chin point can be in contact with the rim of the uppermost portion of the steering control, adjust the steering control to that position. If the steering control contacts the dummy's leg(s) prior to attaining this position, adjust it to the next highest detent, or if infinitely adjustable, until there is a maximum of 5 mm (0.2 in) clearance between the control and the dummy's leg(s). Readjust the dummy's torso such that the thorax instrument cavity rear face is 6 degrees forward of the steering control angle. Position the dummy so that the chin point is in contact, or if contact is not achieved, as close as possible to contact with the rim of the uppermost portion of the steering control.

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S27.5.2 Front outboard *passenger (49 CFR part 572 subpart P 3-year-old child dummy and 49 CFR part 572 subpart N 6-year-old child dummy).* Each vehicle shall meet the injury criteria specified in S21.5 and S23.5, as appropriate, when any front outboard passenger air bag is deployed in accordance with the procedures specified in S28.2.

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S27.6.2 Front outboard *passenger.* The DASS shall suppress any front outboard passenger air bag before head, neck, or torso of the specified test device enters the ASZ when the vehicle is tested under the procedures specified in S28.4.

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S28.2 Front outboard *passenger suppression zone verification test (49 CFR part 572 subpart P 3-year-old child dummy and 49 CFR part 572 subpart N 6-year-old child dummies).* [Reserved]

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S28.4 Front outboard *passenger dynamic test procedure for DASS requirements.* [Reserved]

* * * * *

■ 10. Amend § 571.212 by revising paragraph S3 to read as follows:

**§ 571.212 Standard No. 212; Windshield mounting.**

* * * * *

S3. *Application.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks designed to carry at least one person, and buses having a gross vehicle weight rating of 4,536 kilograms or less. However, it does not apply to forward control vehicles, walk-in van-type vehicles, or to open-body type vehicles with fold-down or removable windshields.

* * * * *

■ 11. Amend § 571.214 by revising paragraphs S2, S5(c)(4), S8.3.1.3, S8.4, S10.2, S10.3.1, S10.3.2, S10.3.2.3, S10.5, S12.1.1introductory text, S12.1.1(a)(1), S12.1.2 introductory text, S12.1.2(a)(1), S12.1.3(a)(1), S12.2.1(c), S12.3.1(d), S12.3.2(a)(4), S12.3.2(a)(8), S12.3.2(a)(9)(ii), S12.3.2(10), S12.3.3(a)(2), and S12.3.3(a)(4) to read as follows:

**§ 571.214 Standard No. 214; Side impact protection.**

* * * * *

S2 *Applicability.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks designed to carry at least one person and buses with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg) (10,000 pounds (lb)) or less, except for walk-in vans, or otherwise specified.

* * * * *

S5 * * *

(c) * * *

(4) Vehicles in which the seat for the driver or any front outboard passenger has been removed and wheelchair restraints installed in place of the seat are excluded from meeting the vehicle-to-pole test at that position; and

* * * * *

S8.3.1.3 *Seat position adjustment.* If the driver and any front outboard passenger seats do not adjust independently of each other, the struck side seat shall control the final position of the non-struck side seat. If the driver and any front outboard passenger seats adjust independently of each other, adjust both the struck and non-struck side seats in the manner specified in S8.3.1.

* * * * *

S8.4 *Adjustable steering controls.* Adjustable steering controls are adjusted so that the steering control hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions. If there is no setting detent in the mid-position, lower the steering control to the detent just below the mid-position. If the steering column is telescoping, place the steering column in the mid-position. If there is no mid-position, move the steering control rearward one position from the mid-position.

* * * * *

S10.2 *Vehicle test attitude.* When the vehicle is in its ''as delivered,''

''fully loaded'' and ''as tested'' condition, locate the vehicle on a flat, horizontal surface to determine the vehicle attitude. Use the same level surface or reference plane and the same standard points on the test vehicle when determining the ''as delivered,'' ''fully loaded'' and ''as tested'' conditions. Measure the angles relative to a horizontal plane, front-to-rear and from left-to-right for the ''as delivered,'' ''fully loaded,'' and ''as tested'' conditions. The front-to-rear angle (pitch) is measured along a fixed reference on the left and right front occupant's door sills. Mark where the angles are taken on the door sills. The left to right angle (roll) is measured along a fixed reference point at the front and rear of the vehicle at the vehicle longitudinal center plane. Mark where the angles are measured. The ''as delivered'' condition is the vehicle as received at the test site, with 100 percent of all fluid capacities and all tires inflated to the manufacturer's specifications listed on the vehicle's tire placard. When the vehicle is in its ''fully loaded'' condition, measure the angle between the left front occupant's door sill and the horizontal, at the same place the ''as delivered'' angle was measured. The ''fully loaded condition'' is the test vehicle loaded in accordance with S8.1 of this standard (49 CFR 571.214). The load placed in the cargo area is centered over the longitudinal centerline of the vehicle. The vehicle ''as tested'' pitch and roll angles are between the ''as delivered'' and ''fully loaded'' condition, inclusive.

* * * * *

S10.3.1 *Driver and front outboard passenger seat set-up for 50th percentile male dummy.* The driver and front outboard passenger seats are set up as specified in S8.3.1 of this standard, 49 CFR 571.214.

S10.3.2. *Driver and front outboard passenger seat set-up for 49 CFR part 572 Subpart V 5th percentile female dummy.*

* * * * *

S10.3.2.3 *Seat position adjustment.* If the driver and any front outboard passenger seats do not adjust independently of each other, the struck side seat shall control the final position of the non-struck side seat. If the driver and any front outboard passenger seats adjust independently of each other, adjust both the struck and non-struck side seats in the manner specified in S10.3.2.

* * * * *

S10.5 *Adjustable steering controls.* Adjustable steering controls are adjusted so that the steering control hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions. If there is no setting detent in the mid-position, lower the steering control to the detent just below the mid-position. If the steering column is telescoping, place the steering column in the mid-position. If there is no mid-position, move the steering control rearward one position from the mid-position.

* * * * *

S12.1.1 *Positioning a Part 572 Subpart F (SID) dummy in the driver's seating position.*

(a) * * *

(1) For a bench seat. The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and passes through the center of the steering control.

* * * * *

S12.1.2 *Positioning a Part 572 Subpart F (SID) dummy in any front outboard passenger seating position.*

(a) * * *

(1) For a bench seat. The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline. For vehicles with manually operated driving controls the midsagittal plane of the test dummy is the same distance from the vehicle's longitudinal centerline as would be the midsagittal plane of a test dummy positioned in the driver's seating position under S12.1.1(a)(1). For vehicles without manually operated driving controls the midsagittal plane of the test dummy shall be vertical and parallel to the vehicle's longitudinal centerline, and passes through any front outboard passenger seat's SgRP.

* * * * *

S12.1.3 * * *

(a) * * *

(1) For a bench seat. The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and, if possible, the same distance from the vehicle's longitudinal centerline as the midsagittal plane of a test dummy positioned in the driver's seating position under S12.1.1(a)(1) or left front passenger seating positioned under S12.1.2(a)(1) in vehicles without manually operated driving controls. If it is not possible to position the test dummy so that its midsagittal plane is parallel to the vehicle longitudinal centerline and is at this distance from the vehicle's longitudinal centerline, the test dummy is positioned so that some portion of the test dummy just touches, at or above the seat level, the side surface of the vehicle, such as the upper quarter panel, an armrest, or any interior trim (*i.e.,* either the broad trim panel surface or a smaller, localized trim feature).

* * * * *

S12.2.1 * * *

(c) *Arms.* Place the dummy's upper arms such that the angle between the projection of the arm centerline on the mid-sagittal plane of the dummy and the torso reference line is 40° ±5°. The torso reference line is defined as the thoracic spine centerline. The shoulder-arm joint allows for discrete arm positions at 0, 40, and 90 degree settings forward of the spine.

* * * * *

S12.3.1 * * *

(d) *Driver and any front outboard passenger dummy manual belt adjustment.* Use all available belt systems. Place adjustable belt anchorages at the nominal position for a 5th percentile adult female suggested by the vehicle manufacturer.

* * * * *

S12.3.2 * * *

(a) * * *

(4) Bench seats. Position the midsagittal plane of the dummy vertical and parallel to the vehicle's longitudinal centerline and aligned within ±10 mm (±0.4 in) of the center of the steering control rim.

* * * * *

(8) If needed, extend the legs slightly so that the feet are not in contact with the floor pan. Let the thighs rest on the seat cushion to the extent permitted by the foot movement. Keeping the leg and the thigh in a vertical plane, place the foot in the vertical longitudinal plane that passes through the centerline of the accelerator pedal. Rotate the left thigh outboard about the hip until the center of the knee is the same distance from the midsagittal plane of the dummy as the right knee ±5 mm (±0.2 in). Using only the control that moves the seat fore and aft, attempt to return the seat to the full forward position. If either of the dummy's legs first contacts the steering control, then adjust the steering control, if adjustable, upward until contact with the steering control is avoided. If the steering control is not adjustable, separate the knees enough to avoid steering control contact. Proceed with moving the seat forward until either the leg contacts the vehicle interior or the seat reaches the full forward position. (The right foot may contact and depress the accelerator and/or change the angle of the foot with respect to the leg during seat movement.) If necessary to avoid

contact with the vehicle's brake or clutch pedal, rotate the test dummy's left foot about the leg. If there is still interference, rotate the left thigh outboard about the hip the minimum distance necessary to avoid pedal interference. If a dummy leg contacts the vehicle interior before the full forward position is attained, position the seat at the next detent where there is no contact. If the seat is a power seat, move the seat fore and aft to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the point on the dummy that would first contact the vehicle interior. If the steering control was moved, return it to the position described in S10.5. If the steering control contacts the dummy's leg(s) prior to attaining this position, adjust it to the next higher detent, or if infinitely adjustable, until there is 5 mm (0.2 in) clearance between the control and the dummy's leg(s).

(9) * * *

(ii) *Vehicles with adjustable seat backs.* While holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform angle of the head is level to within ±0.5 degrees, making sure that the pelvis does not interfere with the seat bight. (If the torso contacts the steering control, use S12.3.2(a)(10) before proceeding with the remaining portion of this paragraph.) If it is not possible to level the transverse instrumentation platform to within ±0.5 degrees, select the seat back adjustment position that minimizes the difference between the transverse instrumentation platform angle and level, then adjust the neck bracket to level the transverse instrumentation platform angle to within ±0.5 degrees if possible. If it is still not possible to level the transverse instrumentation platform to within ±0.5 degrees, select the neck bracket angle position that minimizes the difference between the transverse instrumentation platform angle and level.

(10) If the torso contacts the steering control, adjust the steering control in the following order until there is no contact: Telescoping adjustment, lowering adjustment, raising adjustment. If the vehicle has no adjustments or contact with the steering control cannot be eliminated by adjustment, position the seat at the next detent where there is no contact with the steering control as adjusted in S10.5. If the seat is a power seat, position the seat to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the steering control as adjusted in S10.5 and the point of contact on the dummy.

* * * * *

S12.3.3 * * *

(a) * * *

(2) Fully recline the seat back, if adjustable. Place the dummy into any passenger seat, such that when the legs are positioned 120 degrees to the thighs, the calves of the legs are not touching the seat cushion.

* * * * *

(4) Bench seats. Position the midsagittal plane of the dummy vertical and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline, within ±10 mm (±0.4 in), as the midsagittal plane of the driver dummy, if there is a driver's seating position. Otherwise, the midsagittal plane of any front outboard passenger dummy shall be vertical, parallel to the vehicle's longitudinal centerline, and pass, within ±10 mm (±0.4 in), through the seating reference point of the seating that it occupies.

* * * * *

■ 12. Amend § 571.216a by revising paragraph S3.1(a) introductory text and S7.1 to read as follows:

**§ 571.216a Standard No. 216a; Roof crush resistance; Upgraded standard.**

* * * * *

S3.1 * * *

(a) This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks designed to carry at least one person, and buses with a GVWR of 4,536 kilograms (10,000 pounds) or less, according to the implementation schedule specified in S8 and S9 of this section. However, it does not apply to—

* * * * *

S7.1 Support the vehicle off its suspension and rigidly secure the sills and the chassis frame (when applicable) of the vehicle on a rigid horizontal surface(s) at a longitudinal attitude of 0 degrees ±0.5 degrees. Measure the longitudinal vehicle attitude along both the left and right front sill. Determine the lateral vehicle attitude by measuring the vertical distance between a level surface and a standard reference point on the bottom of the left and right front side sills. The difference between the vertical distance measured on the left front side and the right front side sills is not more than ±10 mm. Close all windows, close and lock all doors, and close and secure any moveable roof panel, moveable shade, or removable roof structure in place over the occupant compartment. Remove roof racks or other non-structural components. For a vehicle built on a chassis-cab incomplete vehicle that has some portion of the added body structure above the height of the incomplete vehicle, remove the entire added body structure prior to testing (the vehicle's unloaded vehicle weight as specified in S5 includes the weight of the added body structure).

* * * * *

■ 13. Amend § 571.219 by revising paragraph S3 to read as follows:

**§ 571.219 Standard No. 219; Windshield zone intrusion.**

* * * * *

S3. *Application.* This standard applies to passenger cars and to multipurpose passenger vehicles, trucks designed to carry at least one person, and buses of 4,536 kilograms or less gross vehicle weight rating. However, it does not apply to forward control vehicles, walk-in van-type vehicles, or to open-body-type vehicles with fold-down or removable windshields.

* * * * *

■ 14. Amend § 571.225 by revising the definition of ''Shuttle bus'' in paragraph S3 to read as follows:

**§ 571.225 Standard No. 225; Child restraint anchorage systems.**

* * * * *

S3. * * *

*Shuttle bus* means a bus with only one row of forward-facing seating positions rearward of the driver's seat or, for a vehicle without manually operated controls, means a bus with only one row of forward-facing seating positions rearward of all front row passenger seats.

* * * * *

■ 15. Amend § 571.226 by:

■ a. Revising paragraph S2;

■ b. Revising the definition of ''Modified roof'' in paragraph S3;

■ c. Removing the definitions of ''Row'' and ''Seat outline'' in paragraph S3; and

■ d. Revising paragraphs S6.1(d) and (f).

The revisions read as follows:

**§ 571.226 Standard No. 226; Ejection mitigation.**

* * * * *

S2. *Application.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks designed to carry at least one person, and buses with a gross vehicle weight rating of 4,536 kg or less, except walk-in vans, modified roof vehicles, convertibles, and vehicles with no doors or with doors that are designed to be easily attached or removed so the vehicle can be operated without doors. Also excluded from this standard are

law enforcement vehicles, correctional institution vehicles, taxis and limousines, if they have a fixed security partition separating the 1st and 2nd or 2nd and 3rd rows and if they are produced by more than one manufacturer or are altered (within the meaning of 49 CFR 567.7).

S3. * * *

*Modified roof* means the replacement roof on a motor vehicle whose original roof has been removed, in part or in total, or a roof that has to be built over the occupant compartment in vehicles that did not have an original roof over the occupant compartment.

* * * * *

S6.1 * * *

(d) Pitch: Measure the sill angle of the left front door sill and mark where the angle is measured.

* * * * *

(f) Support the vehicle off its suspension such that the left front door sill angle is within ±1 degree of that measured at the marked area in S6.1(d) and the vertical height difference of the two points marked in S6.1(e) is within ±5 mm of the vertical height difference determined in S6.1(e).

* * * * *

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**Steven S. Cliff,**

*Deputy Administrator.*

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