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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1207

[Doc. No. AMS–SC–21–0032]

Amendments to the United States Potato Board Membership and Assessment Methods

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the approved data sources used to determine the number of National Potato Promotion Board (Board) seats, expands payment methods used to remit assessments to include electronic submission, and updates the table of Harmonized Tariff Schedule of the United States (HTS) codes and assessment rates for imported potatoes and potato products. Finally, this rule includes new language eliminating the need to amend the Potato Research and Promotion Plan to update the list of relevant HTS codes.

DATES: Effective May 16, 2022.

FOR FURTHER INFORMATION CONTACT: Alexandra Caryl, Branch Chief of Mid-Atlantic Region, Market Development Division, Specialty Crop Program, AMS, USDA, Stop 0244, 1400 Independence Avenue SW, Room 1406–S, Washington, DC 20250–0244; telephone: (202) 253–4768; or electronic mail: *Alexandra.Caryl@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule, affecting the Potato Research and Promotion Plan (Plan) (7 CFR part 1207) is authorized under the Potato Research and Promotion Act (Act) (7 U.S.C. 2611–2627).

Executive Orders 12866 and 13563

The U.S. Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The Agricultural Marketing Service (AMS) has assessed the impact of this final rule on Indian tribes and determined that this rule will not have tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the changes to the regulations were shared during a quarterly call on April 9, 2020, and tribal leaders were informed about the revisions to the regulation and the opportunity to submit comments. AMS is committed to working with the USDA Office of Tribal Relations to ensure meaningful consultation is provided, as needed, with regards to this change to the Plan.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

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

The Congressional Review Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 311 of the Act (7 U.S.C. 2620), a person subject to a plan may file a petition with USDA stating that such plan, any provision of such plan, or any obligation imposed in connection with such plan, is not in accordance with law and request a modification of such plan or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Congressional Review Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition if the petitioner files a complaint for that purpose not later than 20 days after date of the entry of USDA's final ruling.

Background

This rule amends the Plan's allowed sources of potato production data used to determine the number of Board seats to which each State is entitled. Additionally, this rule expands payment methods used to remit assessments to include electronic submission, and updates the table of HTS codes and assessment rates for imported potatoes and potato products. Finally, this rule inserts new language to avoid future amendments to the Plan if HTS numbers subject to assessment reflected in the table are changed and such changes are merely a replacement of previous numbers.

Data Sources for Board Membership

The Plan became effective on March 9, 1972. Section 1207.320(b) of the Plan provides the formula used to determine how many Board member seats to which each State is entitled. Under the Plan every State is eligible to have a representative on the Board and is eligible to have additional members based on the potato production levels in that State. For each five million hundredweight of such production, or major fraction thereof, produced within each State, such State shall be entitled to one member.

The Plan states potato production totals must come from the ''latest Crop Production Annual Summary Report issued by the Crop Reporting Board, U.S. Department of Agriculture.'' See § 1207.320(b). The Crop Production Annual Summary Report is currently issued by the National Agricultural Statistics Service (NASS).

In March 2020, USDA's NASS and AMS communicated to the Board that NASS will no longer be collecting potato production data for the following

ten states: Alaska, Illinois, Kansas, Maryland, Missouri, Montana, New Jersey, New York, North Carolina, and Virginia. In June 2020, NASS estimated the cost of collecting the data to approximately $80,000 per year. The Board considered this estimate and concluded that the cost to collect this information will exceed the value of assessments collected from the ten States. Subsequently, the Board decided to temporarily freeze the number of seats for those ten States at their 2019 quantities so it could move forward with the assignment of Board member seats for 2020 nominations.

At the July Board 2020 meeting, Board staff presented to the Board's Administrative Committee a summary of constraints related to the collection of production data. During a January 2021 meeting, Board staff further discussed the need to update the Plan with the Administrative Committee and made the recommendation to amend the Plan during a subsequent meeting on March 9, 2021.

The Board recommended to use production data from audited assessment reports in place of NASS data for states that have not been included in NASS reports.

As indicated in Table 1, this amendment will allow the Board to use audited assessment data in instances where NASS data is unavailable.

TABLE 1—NASS PRODUCTION AND BOARD PRODUCTION (BOARD) AND NUMBER OF PRODUCER MEMBERS BY STATE

State	NASS 2016 (cwt)	NASS 2017 (cwt)	NASS 2018 (cwt)	Board 2018 (cwt)	2016–2018 NASS avg. (1,000 cwt)	2016–2018 NASS & Board avg. (1,000 cwt)	2020 NASS number of members (cwt/5,000)	2020 NASS & Board number of members (cwt/5,000)
Alabama (AL)	.....	.....	.....	70	.....	.....	1	1
Illinois (IL)	2,812	3,321	2,850	394	2,994	2,176	1	1
Kansas (KS)	1,260	1,558	1,419	483	1,412	1,100	1	1
Maryland (MD)	.....	913	510	389	474	651	1	1
Missouri (MO)	2,410	2,423	1,665	1,012	2,166	1,948	1	1
Montana (MT)	3,685	3,774	3,830	149	3,763	2,536	1	1
New Jersey (NJ)	.....	600	530	125	377	363	1	1
New York (NY)	3,552	4,032	4,118	899	3,901	2,828	1	1
North Carolina (NC)	2,992	3,473	2,318	1,702	2,928	2,722	1	1
Virginia (VA)	1,189	1,193	1,034	450	1,139	944	1	1

Assessment Payment Options

This rule will allow electronic submission in the list of allowable methods of payment to remit assessments and remove references to drafts and money orders.

The Board staff stated that allowing electronic submission (*e.g.,* bank transfer payments (Automated Clearing House) (ACH) or wire transfer payments) of assessments will improve and streamline operations by lowering the cost of processing mailed checks. This change will remove references to drafts and money orders as handlers are no longer using these forms of payment.

Harmonized Tariff Schedule Table

Section 1207.510(b)(3) of the Plan contains an HTS table that reflects outdated HTS codes, assessment rates, and potato categories for imports.

Pursuant to Section 1207.327(b) of the Plan, the Board has the authority to recommend to AMS amendments to this Plan. To reduce **Federal Register** publication costs associated with amending the Plan to remain consistent with updated HTS codes, the Board recommended removing the actual HTS chart from the Plan and replacing the HTS chart with a reference to the HTS codes, assessment rates and potato categories for imports.

AMS has adopted an alternative approach that includes amending the Plan by updating the current HTS chart and inserting new language to avoid future amendments to the Plan if an HTS number subject to assessment reflected in the table is changed and such change is merely a replacement of a previous number. This change will reduce future **Federal Register** publication costs associated with amending the Plan to remain consistent with future updated HTS numbers that have no impact on the description of potato involved.

Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the final rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $1 million and small agricultural service firms (handlers) as those having annual receipts of no more than $30 million.

According to the Board, there were approximately 60 importers, 955 handlers, and 1,500 producers in 2020. These numbers are used in computations, explained in the following paragraphs, to develop estimates of the proportion of small and large businesses using the size criteria of the Small Business Administration.

Large agricultural producers under the criteria established by the SBA are those with $1 million or more in annual sales. Producers that pay Board assessments have a minimum of 5 acres of potatoes.

The 2017 Agricultural Census reported 2,420 farms with 5 or more harvested acres of potatoes, of which 1,283 (53 percent) had annual sales of $1,000,000 or more. Although there is a difference between the Board producer number and the Census farm number estimate, a majority the of potato producers responsible for paying assessments would likely be classified as large businesses according to the SBA criteria.

The SBA threshold size for a large agricultural service firm is $30 million in annual sales. The Board estimate of the number of potato handlers in 2020 was 955. According to NASS, the total value of the 2020 U.S. potato crop was $3.9 billion. Dividing $3.9 billion by 955 yields an annual estimate of potato sales per handler of approximately $4.1 million, well below the $30 million, threshold for a large agricultural service firm.

Applying handler margins of twenty to fifty percent (representing a range of possible handler costs above the farm-level value) would increase that $4.1 million sales per handler number to between $4.9 and $6.2 million, still well below the $30 million SBA threshold. In

addition, the NASS $3.9 billion U.S. crop value for 2020 overstates to a moderate extent the crop value relevant to this computation because an unknown, but likely small, portion of that annual potato crop value was provided by farms with less than 5 harvested acres.

With estimated average annual sales per handler in a moderate range above or below $4 million, it can be stated that a majority of potato handlers are small agricultural service firms, according to SBA criteria.

The Board received approximately $14.5 million in 2020 assessments ($0.03 per hundredweight, abbreviated as cwt) and reported that about 20 percent of those assessments ($2.9 million) were paid by potato importers. Dividing $2.9 million by the $0.03 per cwt assessment rate yields a potato import quantity estimate of 96.67 million cwt. Multiplying the 96.67 million cwt imported quantity by the NASS 2020 average U.S. grower price per cwt of $9.30 yields a 2020 import value estimate of $899 million. Dividing that imported potato value estimate by the number of importers (60) yields an average annual sales value per importer estimate of about $15 million.

This average annual sales value per importer estimate was computed using an average farm-level price. It does not include a margin to account for importer costs of marketing, for which there is no publicly available information. Using the $15 million figure, and applying a possible range of importer margins of 20 to 50 percent, would yield an annual average sales value per importer range of $18.0 to $22.5 million. Since these numbers are below the SBA threshold level of $30 million, and assuming a normal distribution, a majority of potato importers are determined to be small agricultural service businesses.

This rule will amend §§ 1207.320, 1207.502, 1207.510 and 1207.513.

Regarding the economic impact of this final rule on affected entities, this action will impose no costs on producers, handlers, or importers. The changes are administrative in nature and will allow the Board to effectively carry out the requirements of the Plan.

In response to the discontinuation of NASS collection of potato production data for 10 States, USDA considered the following alternatives to the chosen amendment language: Take no action and hold constant the production figures for the 10 States to the final year for which NASS published data; or fund NASS collection of data for the 10 States using Board resources. The first of these alternatives will result in the potential for Board representation that is inconsistent with domestic production. Potato production sees relatively high fluctuation from year to year. Consequently, distribution of Board member seats based on a fixed production figure will prevent the Board from adequately reflecting the changes that occur in the industry over time; therefore, this is not a viable alternative. The second alternative will result in an annual cost to the Board of $80,000 to restore the collection of potato production data by NASS for the 10 States which it has omitted. As this amount exceeds the total value of assessments collected from these 10 States, this is also not a viable alternative. The amendments encapsulated by this final rule will streamline and improve Board operations.

In accordance with OMB regulation [5 CFR part 1320], which implements information collection requirements imposed by the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], there are no new requirements contained in this rule.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Regarding outreach efforts, all the Board's meetings are open to the public and interested persons are invited to participate and express their views. No concerns were raised.

AMS has performed this final RFA analysis regarding the impact of this action on small entities.

A proposed rule concerning this action was published in the **Federal Register** on September 16, 2021 (86 FR 51626). A 30-day comment period ending October 18, 2021, was provided to allow interested persons to submit comments.

One comment was received in response to the proposed rule. This comment was immaterial to the topic of this rule. Therefore, no changes have been made to the proposed rule based on the comment received.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board, the comments received, and other relevant information, AMS has determined that this rule, as hereinafter set forth, is consistent with and will effectuate the purposes of the Act.

List of Subjects in 7 CFR Part 1207

Advertising, Agricultural research, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 1207 as follows:

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

■ 1. The authority citation for 7 CFR part 1207 continues to read as follows:

Authority: 7 U.S.C. 2611–2627; 7 U.S.C. 7401.

■ 2. Amend § 1207.320 by revising paragraph (b) to read as follows:

§ 1207.320 Establishment and membership.

* * * * *

(b) Producer membership upon the Board shall be determined on the basis of the potato production reported in the latest Crop Production Annual Summary Report issued by the National Agricultural Statistics Service of the U.S. Department of Agriculture. If a State's potato production data is not provided by the National Agricultural Statistics Service, the Board may use an alternative data source that reliably reflects potato production in the United States. Unless the Secretary, upon recommendation of the Board, determines an alternate basis, for each five million hundredweight of such production, or major fraction thereof, produced within each State, such State shall be entitled to one member. However, each State shall initially be entitled to at least one member.

* * * * *

■ 3. Amend § 1207.502 by revising paragraph (a) to read as follows:

§ 1207.502 Determination of membership.

(a) Pursuant to § 1207.320 and the recommendation of the Board, annual producer memberships on the Board shall be determined on the basis of the average potato production of the 3 preceding years in each State as set forth in the Crop Production Annual Summary Reports issued by the National Agricultural Statistics Service of the U.S. Department of Agriculture. If a State's potato production data is not provided by the National Agricultural Statistics Service, the Board may use an alternative data source that reliably

reflects potato production in the United States.

* * * * *

■ 4. Amend § 1207.510 by revising paragraph (b)(3) to read as follows:

§ 1207.510 Levy of assessments.

* * * * *

(b) * * *

(3) The Harmonized Tariff Schedule (HTS) categories and assessment rates on imported tablestock potatoes and frozen or processed potatoes for ultimate consumption by humans and on imported seed potatoes are listed in the following table. In the event that any HTS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the description of the potatoes, assessments will continue to be collected based on the new numbers.

Tablestock potatoes, frozen or processed potatoes, and seed potatoes	Assessment	
	Cents/cwt	Cents/kg
0701.10.0020	3.0	0.066
0701.10.0040	3.0	0.066
0701.90.1000	3.0	0.066
0701.90.5015	3.0	0.066
0701.90.5025	3.0	0.066
0701.90.5035	3.0	0.066
0701.90.5045	3.0	0.066
0701.90.5055	3.0	0.066
0701.90.5065	3.0	0.066
0710.10.0000	6.0	0.132
2004.10.4000	6.0	0.132
2004.10.8020	6.0	0.132
2004.10.8040	6.0	0.132
2005.20.0070	4.716	0.104
0712.90.3000	21.429	0.472
1105.10.0000	21.429	0.472
1105.20.0000	21.429	0.472
2005.20.0040	21.429	0.472
2005.20.0020	12.240	0.27
1108.13.0010	27.0	0.595

* * * * *

■ 5. Amend § 1207.513 by revising paragraph (c)(1) to read as follows:

§ 1207.513 Payment of assessments.

* * * * *

(c) * * * (1) Except as provided in paragraphs (b) and (d) of this section, each designated handler or importer shall remit assessments directly to the Board by check or electronic payment. Checks are to be made payable to the National Potato Promotion Board or the Board's official doing business as name. Payment is due not later than 10 days after the end of the month such assessment is due together with a report (preferably on Board forms) thereon.

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–08042 Filed 4–14–22; 8:45 am]

BILLING CODE 3410–02–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1707

[Docket No. DNFSB–2022–0001]

Testimony by DNFSB Employees and Production of Official Records in Legal Proceedings

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Direct final rule.

SUMMARY: The Touhy regulations of the Defense Nuclear Facilities Board (DNFSB or the Board) set forth procedures for responding to requests for information, documents, or testimony for use in legal proceedings. This direct final rule revises the regulations by clarifying that Touhy regulations only apply when the United States or the Board is not a party to the underlying legal proceedings.

DATES: This final rule is effective July 14, 2022 unless significant adverse comments are received by May 16, 2022. If the direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**.

ADDRESSES: You may submit comments at any time prior to the comment deadline by the following methods:

Email: Send an email to *comment@dnfsb.gov.* Please include ''Touhy Regulations Comments'' in the subject line of your email.

Mail: Send hard copy comments to the Defense Nuclear Facilities Safety Board, Attn: Office of the General Counsel, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hargrave, Associate General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (202) 694–7000.

SUPPLEMENTARY INFORMATION:

I. Background

Under 5 U.S.C. 301, the ''Housekeeping Statute,'' and in response to a demand for official information that arises out of a legal proceeding, many agencies have regulations governing the production of official information and employee testimony relating to official information. Known as *Touhy* regulations, after *United States ex rel.* v. *Touhy* v. *Ragen,* 340 U.S. 462 (1951), these regulations usually prohibit unauthorized disclosures of official information by employees. These regulations also establish procedures for agencies responding to subpoenas seeking official information or employee

testimony relating to official information.

The Board's *Touhy* regulations are located at 10 CFR part 1707, subpart B (§§ 1707.201 through 1707.210). Those regulations were established in 2001 and have not been amended previously. The Board is amending its *Touhy* regulations at this time to clarify the legal proceedings to which the regulations apply.

Section 1707.102—Applicability

This direct final rule revises the introductory text to remove language suggesting that *Touhy* regulations apply when the Board is a party to the legal proceeding. This amendment clarifies that the regulations apply when the United States or the Board is not a party to the legal proceeding and will make the rule consistent with case law.

II. Regulatory Analysis

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, agencies must consider the impact of their rulemakings on ''small entities'' (small businesses, small organizations, and local governments) when publishing regulations subject to the notice and comment requirements of the Administrative Procedure Act. As noted below in section III. Rulemaking Procedure, the Board has determined that notice and the opportunity to comment are unnecessary because this rulemaking constitutes a limited, routine change to clarify the type of litigation these regulations apply to. Therefore, no analysis is required by the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This rule contains no new reporting or recordkeeping requirements under the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 *et seq.* This update to the Board's *Touhy* regulations does not require or request information from members of the public. Therefore, this rulemaking is not covered by the restrictions of the PRA.

Executive Order 12988 and Executive Order 13132—Federalism

According to Executive Orders 12988 and 13132, agencies must state in clear language the preemptive effect, if any, of new regulations. The amendments to the agency's *Touhy* regulations affect only how the Board responds to requests for information in legal proceedings, and therefore, have no effect on preemption of State, tribal, or local government laws or otherwise have federalism implications.

Congressional Review Act

This action is not a ''rule'' as defined in the Congressional Review Act (5 U.S.C. 804(3)), which excludes any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

Finding of No Significant Environmental Impact

The direct final rule amends the Board's regulations for responding to requests for information in legal proceedings. The procedural change to the *Touhy* implementing regulations will not result in significant impacts affecting the quality of the human environment, unavoidable adverse environmental effects, rejection of reasonable alternatives to the proposed action, or irreversible or irretrievable commitments of environmental resources. The agency has not consulted with any other agencies in making this determination.

III. Rulemaking Procedure

The Board is publishing this rule without a prior proposal because it is a limited, clarifying change, and the Board does not anticipate any significant adverse public comments. This amendment will become effective on July 14, 2022. However, if the Board receives a significant adverse comment by May 16, 2022, then the Board will publish a document in the **Federal Register** withdrawing this rule and publishing the changes as a notice of proposed rulemaking. The Board will respond to the significant adverse comment(s) in that notice of proposed rulemaking and take an additional 30 days of comments before publishing any final rule. If no significant adverse comment is received, the Board will publish a document that confirms the effective date of this direct final rule.

A significant adverse comment is a comment in which the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the Board staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the Board.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition; or

(3) The comment causes the Board to make a change (other than editorial) to the rule.

List of Subjects in 10 CFR part 1707

Administrative practice and procedure, Conflict of interests, Courts, Government employees, Records, Subpoenas, Testimony.

For the reasons described in the preamble, the Board amends 10 CFR part 1707 as follows:

PART 1707—TESTIMONY BY DNFSB EMPLOYEES AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

■ 1. The authority citation for part 1707 continues to read as follows:

Authority: 42 U.S.C. 2286b(c); 44 U.S.C. 3101–3107, 3301–3303a, 3308–3314.

Subpart A—General Provisions

■ 2. Amend § 1707.102 by revising the introductory text to read as follows:

§ 1707.102 Applicability.

This part applies to demands and requests to employees for factual,

opinion, or expert testimony relating to official information, or for production of official records or information, in legal proceedings in which the United States or the DNFSB is not a named party. However, it does not apply to:

* * * * *

Dated: April 12, 2022.

Joyce Connery,

Chairperson.

[FR Doc. 2022–08133 Filed 4–14–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0389; Project Identifier MCAI–2022–00291–T; Amendment 39–22003; AD 2022–07–15]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A318, A319, A320, and A321 series airplanes. This AD was prompted by the detection of several channel failures on a newly developed braking and steering control unit (BSCU). This AD requires replacing affected BSCUs and revising the operator's existing FAA-approved minimum equipment list (MEL), as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also limits the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective May 2, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 2, 2022.

The FAA must receive comments on this AD by May 31, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For EASA material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* For Airbus SAS material IBR in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *https://www.airbus.com.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0389.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0389; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *Dan.Rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0389; Project Identifier MCAI–2022–00291–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

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

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0032, dated March 3, 2022 (EASA AD 2022–0032) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes. Model

A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This AD was prompted by the detection of several BSCU channel failures on a newly developed BSCU, having part number (P/N) E21327307. In the case of a loss of a single channel, the remaining channel will control aircraft braking. However, in case of dual channel failures, a loss of anti-skid function together with the reversion to the alternate braking mode, and the loss of nose wheel steering on these airplanes, could be induced. The FAA is issuing this AD to address this condition, which, if not corrected, could lead to loss of braking performance with significant increase in airplane stopping distance, possibly resulting in runway excursion. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0032 specifies procedures for replacing BSCUs with P/N E21327307, on which a fault signature is triggered. EASA AD 2022–0032 also specifies procedures for implementing the instructions of master minimum equipment list (MMEL) updates on the basis of which the operator's existing MEL must be amended—that is, procedures for revising the operator's existing FAA-approved MEL with the provisions in the MMEL updates specified in the EASA AD. EASA AD 2022–0032 also limits the installation of affected parts.

Airbus Alert Operators Transmission A32N025–22, Rev 00, dated February 24, 2022, including Appendixes 1 through 4, dated February 21, 2022, defines BSCU fault signatures that may be triggered on the airplane, and specifies procedures for replacing affected parts among other actions.

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

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of these same type designs.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2022–0032 described previously, except for any differences identified as exceptions in the regulatory text of this AD.

EASA AD 2022–0032 requires operators to ''inform all flight crews'' of revisions to the MMEL, and thereafter to ''operate the aeroplane accordingly.'' However, this AD does not specifically require those actions as they are already required by FAA regulations. FAA regulations (14 CFR 121.628(a)(2)) require operators to provide pilots with access to all of the information contained in the operator's existing MEL. Furthermore, 14 CFR 121.628 (a)(5) requires airplanes to be operated under all applicable conditions and limitations contained in the operator's existing MEL. Therefore, including a requirement in this AD to operate the airplane according to the revised MEL would be redundant and unnecessary. Further, compliance with such a requirement in an AD would be impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the airplane in such a manner would be unenforceable.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2022–0032 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2022–0032 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0032 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0032. Service information required by EASA AD 2022–0032 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0389 after this AD is published.

Interim Action

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

FAA's Justification and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because dual BSCU channel failures can induce loss of anti-skid function together with the reversion to the alternate braking mode, and the loss of nose wheel steering, and lead to loss of braking performance with significant increase in airplane stopping distance, possibly resulting in runway excursion. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

The FAA estimates that this AD affects 1,500 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 4.5 work-hours × $85 per hour = $382.50	$0	Up to $382.50	Up to $573,750.

The FAA has received no definitive data on which to base the cost estimates for the replacement parts specified in this AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–07–15 Airbus SAS: Amendment 39–22003; Docket No. FAA–2022–0389; Project Identifier MCAI–2022–00291–T.

(a) Effective Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus SAS airplanes, certificated in any category, identified in paragraphs (c)(1) through (4) of this AD.

(1) All Model A318–111, –112, –121, and –122 airplanes.

(2) All Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.

(3) All Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) All Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by the detection of several channel failures on a newly developed braking and steering control unit (BSCU), inducing, in case of dual channel failures, loss of anti-skid function together with the reversion to the alternate braking mode, and the loss of nose wheel steering. The FAA is issuing this AD to address this condition, which could lead to loss of braking performance with significant increase in airplane stopping distance, possibly resulting in runway excursion.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0032, dated March 3, 2022 (EASA AD 2022–0032).

(h) Exceptions to EASA AD 2022–0032

(1) Where EASA AD 2022–0032 defines ''the AOT'' as ''Airbus Alert Operators Transmission (AOT) A32N025–22 [undated],'' this AD requires using Airbus Alert Operators Transmission A32N025–22, Rev 00, dated February 24, 2022, including Appendixes 1 through 4, dated February 21, 2022.

(2) Where paragraph (1) of EASA AD 2022–0032 specifies replacement of affected parts, replace the affected part in accordance with the ''Remove and replace BSCU P/N E21327307'' step in paragraph 5.6., ''Instructions,'' of Airbus Alert Operators Transmission A32N025–22, Rev 00, dated February 24, 2022, including Appendixes 1 through 4, dated February 21, 2022. No other actions in Airbus Alert Operators Transmission A32N025–22, Rev 00, dated February 24, 2022, including Appendixes 1 through 4, dated February 21, 2022, are required for compliance for the replacement.

(3) Where EASA AD 2022–0032 refers to its effective date, this AD requires using the effective date of this AD.

(4) Where paragraph (2) of EASA AD 2022–0032 requires operators to ''implement the instructions of the MMEL [master minimum equipment list] update,'' this AD requires revising the operator's existing FAA-approved minimum equipment list (MEL) with the provisions specified in ''The MMEL update'' as identified in EASA AD 2022–0032.

(5) Where paragraph (2) of EASA AD 2022–0032 specifies to ''inform all flight crews, and, thereafter, operate the aeroplane accordingly,'' this AD does not require those actions as those actions are already required by existing FAA operating regulations.

(6) The ''Remarks'' section of EASA AD 2022–0032 does not apply to this AD.

(i) No Reporting Requirement

Although Airbus Alert Operators Transmission A32N025–22, Rev 00, dated February 24, 2022, including Appendixes 1 through 4, dated February 21, 2022, specifies to report certain information and send affected parts to the manufacturer, this AD does not include those actions.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

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

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0032, dated March 3, 2022.

(ii) Airbus Alert Operators Transmission A32N025–22, Rev 00, dated February 24, 2022, including Appendixes 1 through 4, dated February 21, 2022.

(3) For EASA AD 2022–0032, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* For Airbus service information identified in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *https://www.airbus.com.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on March 29, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–08213 Filed 4–13–22; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0386; Project Identifier AD–2022–00336–E; Amendment 39–22001; AD 2022–07–13]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Pratt & Whitney Division (PW) PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 model turbofan engines. This AD was prompted by an in-flight shutdown (IFSD) of an engine due to an air/oil heat exchanger leak caused by corrosion and subsequent investigation by the manufacturer that revealed additional air/oil heat exchanger leaks. This AD requires an inspection of the air/oil heat exchanger and, depending on the results of the inspection, replacement of the air/oil heat exchanger. This AD also provides instructions for storing an air/oil heat exchanger after inspection. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 2, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 2, 2022.

The FAA must receive comments on this AD by May 31, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: *help24@prattwhitney.com;* website: *https://connect.prattwhitney.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0386.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0386; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for the Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Carol Nguyen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7655; email: *carol.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On November 9, 2021, a Boeing Model 777 airplane, powered by PW PW4077 engines, on a ferry flight from San Francisco, CA to Honolulu, HI, experienced an oil leak on the number 1 engine that resulted in an IFSD and air turnback to San Francisco, CA. A post-flight inspection revealed that the oil leak was from the air/oil heat exchanger. After this event, on December 19, 2021, the manufacturer was made aware of another oil leak related to the air/oil heat exchanger that was discovered during a post-flight inspection after the first flight out of storage. Subsequent investigation revealed 19 air/oil heat exchanger leaks occurred on the affected engines during the past year, which is significantly higher than the three to four air/oil heat exchanger leaks typically occurring each year. After

further investigation, the manufacturer determined that the air/oil heat exchanger leak was due to corrosion. The manufacturer published Pratt & Whitney Special Instruction No. 255F–21A, dated February 15, 2022, which provides instructions for performing an inspection of the air/oil heat exchanger and, depending on the results of the inspection, replacement of the air/oil heat exchanger. This special instruction also provides instructions for storing an air/oil heat exchanger after the inspection. This condition, if not addressed, could result in low oil pressure, failure of one or more engines, IFSD, loss of engine thrust control, reduced control of the airplane, and loss of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pratt & Whitney Special Instruction No. 255F–21A, dated February 15, 2022. This special instruction specifies procedures for performing an inspection of the air/oil heat exchanger and, depending on the results of the inspection, replacement of the air/oil heat exchanger. This special instruction also specifies procedures for storing an air/oil heat exchanger after the inspection. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA reviewed Pratt & Whitney Special Instruction No. 255F–21, dated December 22, 2021. This special instruction describes procedures for performing an inspection of the air/oil heat exchanger and, depending on the results of the inspection, replacement of the air/oil heat exchanger.

AD Requirements

This AD requires an inspection of the air/oil heat exchanger within 30 days prior to the first flight after the effective date of this AD. Depending on the results of the inspection, this AD may require replacement of the air/oil heat exchanger. The air/oil heat exchanger may be inspected more than 30 days prior to the first flight after the effective date of this AD if the air/oil heat exchanger is subsequently stored in accordance with procedures from the manufacturer.

Interim Action

The FAA considers this AD to be an interim action. If final action is later identified, the FAA might consider additional rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule. The Boeing Model 777 fleet with affected engines installed has been grounded after a fan blade-out event that occurred on February 20, 2021. According to the manufacturer, the lack of operation may have exacerbated corrosion on the air/oil heat exchanger. Both engines installed on the airplane may develop leaks on the air/oil heat exchangers. Since the Boeing Model 777 fleet will start to return to service soon, there is an increased risk that these leaks will occur during the first flight out of storage, and there is a risk of a dual-engine IFSD and loss of the airplane. The FAA considers inspection of the air/oil heat exchanger for leaks to be an urgent safety issue. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''FAA–2022–0386 and Project Identifier AD–2022–00336–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Carol Nguyen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 108 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect air/oil heat exchanger	2 work-hours × $85 per hour = $170	$0	$170	$18,360

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace air/oil heat exchanger	0 work-hours × $85 per hour = $0	$12,000	$12,000

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–07–13 Pratt & Whitney Division: Amendment 39–22001; Docket No. FAA–2022–0386; Project Identifier AD–2022–00336–E.

(a) Effective Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pratt & Whitney Division PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 model turbofan engines, with an installed air/oil heat exchanger that has accumulated any number of cycles since new (CSN) or cycles since last overhaul.

(d) Subject

Joint Aircraft System Component (JASC) Code 7921, Engine Oil Cooler.

(e) Unsafe Condition

This AD was prompted by an in-flight shutdown (IFSD) of an engine due to an air/oil heat exchanger leak caused by corrosion and subsequent investigation by the manufacturer that revealed additional air/oil heat exchanger leaks on the affected engines. The FAA is issuing this AD to prevent leaks in the air/oil heat exchanger. The unsafe condition, if not addressed, could result in low oil pressure, failure of one or more engines, IFSD, loss of engine thrust control, reduced control of the airplane, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within 30 days prior to the first flight after the effective date of this AD, perform an inspection for leaks of the air/oil heat exchanger in accordance with the Accomplishment Instructions, paragraph 3., of Pratt & Whitney Special Instruction No. 255F–21A, dated February 15, 2022.

(2) If any air/oil heat exchanger fails the inspection required by paragraph (g)(1) of this AD, before further flight, remove the air/oil heat exchanger and replace with a part eligible for installation.

(h) Definition

For the purpose of this AD, a ''part eligible for installation'' is:

(1) A new air/oil heat exchanger with zero CSN, or

(2) An overhauled air/oil heat exchanger with zero cycles since last overhaul, or

(3) An air/oil heat exchanger that has passed the inspection required by paragraph (g)(1) of this AD.

(i) Effect of Storage on Compliance Time

For performance of the inspection for leaks required by paragraph (g)(1) of this AD, the air/oil heat exchanger may be inspected more than 30 days prior to the first flight after the effective date of this AD if, after performing said inspection, the following are accomplished:

(1) The air/oil heat exchanger is stored in accordance with the Accomplishment Instructions, paragraph 6., of Pratt & Whitney Special Instruction No. 255F–21A, dated February 15, 2022; and

(2) The cumulative time between performance of the inspection and the first flight minus the time stored in accordance with paragraph (i)(1) of this AD does not exceed 30 days.

(j) Credit for Previous Actions

You make take credit for the actions required by paragraph (g)(1) of this AD if the inspection for leaks was performed before the effective date of this AD using the Accomplishment Instructions, paragraph 3., of Pratt & Whitney Special Instruction No. 255F–21, dated December 22, 2021.

(k) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are permitted prior to compliance with paragraph (g)(1) of this AD, provided that the air/oil heat exchanger has first passed an inspection, performed within 60 days of the flight, performed in accordance with:

(1) The Accomplishment Instructions, paragraph 3., of Pratt & Whitney Special Instruction No. 255F–21, dated December 22, 2021, before the effective date of this AD, or

(2) The Accomplishment Instructions, paragraph 3., of Pratt & Whitney Special Instruction No. 255F–21A, dated February 15, 2022.

(l) Alternative Methods of Compliance (AMOCs)

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

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

(m) Related Information

For more information about this AD, contact Carol Nguyen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7655; email: *carol.nguyen@faa.gov.*

(n) Material Incorporated by Reference

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

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

(i) Pratt & Whitney Special Instruction No. 255F–21A, dated February 15, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: *help24@prattwhitney.com;* website: *https://connect.prattwhitney.com.*

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

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

Issued on March 31, 2022.

Derek Morgan,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–08045 Filed 4–14–22; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 270, 274, 275, and 279

[Release No. 33–11047; IA–5985; IC–34547]

Technical Amendments to Commission Rules and Forms

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting technical amendments to various rules and forms under the Securities Act of 1933 (the ''Securities Act''), the Investment Company Act of 1940 (the ''Investment Company Act''), and the Investment Advisers Act of 1940 (the ''Investment Advisers Act''). These revisions make technical changes to correct typographical errors and erroneous cross-references, as well as to clarify instructions.

DATES: Effective April 15, 2022.

FOR FURTHER INFORMATION CONTACT: For the rules and forms under the Investment Advisers Act, Christopher Staley, Branch Chief, at (202) 551–6999, Investment Adviser Regulation Office, Division of Investment Management; and for the rules and forms under the Investment Company Act, Mykaila DeLesDernier or James Maclean, Senior Counsel, at (202) 551–6792, Investment Company Regulation Office, Division of Investment Management, at the Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is amending the following rules and forms:

Commission reference	CFR citation (17 CFR)
Regulation S–T:	
Rule 405	232.405
Securities Act and Investment Company Act [1]:	
Form N–2	239.14 and 274.11a–1
Form N–1A	239.15A and 274.11A
Form N–3	239.17a and 274.11b
Form N–5	239.24 and 274.5
Investment Company Act:	
Rule 18f–4	270.18f–4
Rule 20a–1	270.20a–1
Rule 22c–1	270.22c–1
Rule 22e–3	270.22e–3
Rule 32a–1	270.32a–1
Form N–CEN	274.101
Form N–PX	274.129
Form N–MFP	274.201
Investment Advisers Act [2]:	
Form ADV	279.1
Rule 204–2	275.204–2
Rule 204–3	275.204–3

Commission reference	CFR citation (17 CFR)
Rule 204–5	275.204–5
Rule 206(4)–1	275.206(4)–1

The amendments make a number of technical changes to Commission rules and forms. Several of the amendments update or correct cross-references to rules or provisions. For example, the Commission is amending rule 22c–1 to clarify an internal cross-reference in the rule. Likewise, the Commission is amending rule 18f–4, which it adopted in late 2020, to clarify an internal cross-reference in the rule.[3] Similarly, the amendment to rule 22e–3 clarifies cross-references to certain definitions in 17 CFR 270.2a–7 (Investment Company Act rule 2a–7). In addition, we are amending rule 405 to correct an error in provision (b)(3)(iii), which was adopted by the Commission in 2020.[4] This amendment would add a cross-reference to the statutory provisions cited in corresponding Form N–2 instructions that specify structured data tagging requirements. Finally, we are also amending Form N–5 to clarify cross-references to Regulation S–X and to update the reference to Commission fees under section 6(b) of the Securities Act and 17 CFR 230.457 (rule 457 thereunder).

In addition, the Commission is updating forms to clarify instructions and to make typographical and other corrections, including removing outdated information.[5] For example, when the Commission previously amended Form N–CEN to add additional reporting items, the form did not accurately reflect the reporting entities that must respond to the additional items adopted by the Commission.[6] Similarly, when the Commission previously amended Form N–3, it inadvertently omitted the paragraph on the cover page of this form specifying that a registrant is required to disclose the information that the form specifies, that the Commission will make this information public, and that a registrant is not required to respond to the collection of information that the form contains unless the form displays a currently valid Office of Management and Budget control number.[7] This release also makes a technical correction to clarify that the scope of the amendments to the General Instructions to Item 25.2 of Form N–2 described in the Filing Fee Disclosure and Payment Methods Modernization Adopting Release did not remove existing Instructions 6 and 7.[8] Additionally, the Commission is amending the general instructions to Form ADV with respect to when an adviser is required to file an updating amendment to accurately reflect that advisers are required to file an other than annual updating amendment in the event any information reported with respect to relying advisers in Section 4 of Schedule R of Form ADV becomes materially inaccurate. The current instructions incorrectly reference Section 10 of Schedule R, which does not exist.[9]

With respect to the amendments to Forms N–2, N–1A, N–3, N–5, N–CEN, N–PX, N–MFP, and ADV, the text of these forms do not, and these amendments will not, appear in the Code of Federal Regulations.

List of Subjects

17 CFR Part 232

Electronic Filings; Interactive Data; Securities

17 CFR Part 239

Reporting and recordkeeping requirements; Securities.

17 CFR Parts 270 and 274

Investment companies; Reporting and recordkeeping requirements; Securities.

17 CFR Part 275

Reporting and recordkeeping requirements; Securities.

17 CFR Part 279

Investment advisers; Reporting and recordkeeping requirements; Securities.

Statutory Authority

We are adopting these technical amendments under the authority set forth in Section 19(a) of the Securities Act, Section 211(a) of the Investment Advisers Act and Section 38(a) of the Investment Company Act.

Text of Amendments

For reasons set forth in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l*, 78m, 78n, 78*o*(d), 78w(a), 78*ll*, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Amend § 232.405 by revising paragraph (b)(3)(iii) to read as follows:

§ 232.405 Interactive Data File submissions.

* * * * *

(b) * * *

(3) * * *

(iii) As applicable, all of the information provided in response to Items 3.1, 4.3, 8.2.b, 8.2.d, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a–d, 10.2.a–c, 10.2.e, 10.3, and 10.5 of Form N–2 in

[1] 15 U.S.C. 77a *et seq.;* 15 U.S.C. 80a *et seq.*

[2] 15 U.S.C. 80b *et seq.*

[3] *See Use of Derivatives by Registered Investment Companies and Business Development Companies,* Release No. IC–34084 (Nov. 2, 2020) [85 FR 83162 (Dec. 21, 2020)] (''2020 Derivatives Release''). The definition of ''designated reference portfolio'' in rule 18f–4 includes an erroneous reference to ''paragraph (2) of the definition of *designated index* of this section.'' Because the rule's definition of ''designated index'' includes no paragraph (2), we are adopting an amendment that will update the definition of ''designated reference portfolio'' to instead reference the first sentence of ''designated index.'' The 2020 Derivatives Release reflects the Commission's intent to cross-reference in the definition of ''designated reference portfolio'' this part of the definition of ''designated index.'' *See* 2020 Derivatives Release at paragraph accompanying nn.339–340.

[4] *See Securities Offering Reform for Closed-End Investment Companies,* Release No. IC–33836 (Apr. 8, 2020) [85 FR 28853 (May 5, 2020)].

[5] *See* amendments to § 270.20a–1(a); § 270.32a–1; Form N–5; Form ADV; Form N–1A; Form N–PX; Form N–MFP; Form N–CEN; and Form N–2.

[6] *See Fund of Funds Arrangements,* Release No. IC–34045 (Oct. 7, 2020) [85 FR 73924 (Nov. 19, 2020)].

[7] *See Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts,* Release No. IC–33814 (Mar. 11, 2020) [85 FR 25964 (May 1, 2020)] (''Variable Annuity Summary Prospectus Adopting Release''). The Commission proposed to include this paragraph in Form N–3, however, it was inadvertently omitted in the final rule. *See Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts,* Release, No. 33–10569 (Feb. 15, 2019) [83 FR 61730 (Nov. 30, 2018)]. The Commission also included a substantively similar paragraph in the amended versions of Form N–4 and Form N–6 that it adopted. *See* Variable Annuity Summary Prospectus Adopting Release.

[8] *See Filing Fee Disclosure and Payment Methods Modernization,* Release No. 33–10997 (Oct. 13, 2021) [86 FR 70166 (Dec. 9, 2021)].

[9] *See Form ADV and Investment Adviser Rules,* Release No. IA–4509 (Aug. 25, 2016) [81 FR 60471 (Sep. 1, 2016)].

any registration statement or post-effective amendment thereto filed on Form N–2; or any form of prospectus filed pursuant to § 230.424 of this chapter (Rule 424 under the Securities Act); or, if a Registrant is filing a registration statement pursuant to General Instruction A.2 of Form N–2, any documents filed pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act, to the extent such information appears therein.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 3. The authority for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Public Law 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

Section 270.22c–1 also issued under secs. 6(c), 22(c), and 38(a) (15 U.S.C. 80a–6(c), 80a–22(c), and 80a–37(a))

* * * * *

■ 4. Amend § 270.18f–4(a) by revising the definition of ''Designated reference portfolio'' to read as follows:

§ 270.18f–4 Exemption from the requirements of section 18 and section 61 for certain senior securities transactions.

* * * * *

Designated reference portfolio means a designated index or the fund's securities portfolio. Notwithstanding the first sentence of the definition of *designated index* of this section, if the fund's investment objective is to track the performance (including a leverage multiple or inverse multiple) of an unleveraged index, the fund must use that index as its designated reference portfolio.

* * * * *

§ 270.20a–1 [Amended]

■ 5. In § 270.20a–1 amend paragraph (a) by removing the words ''registered Fund'' and adding, in their place, the words ''registered fund''.

§ 270.22c–1 [Amended]

■ 6. In § 270.22c–1 amend paragraph (b)(1) by removing the words ''paragraph (e)'' and adding, in their place, the words ''paragraph (d)''.

§ 270.22e–3 [Amended]

■ 7. In § 270.22e–3 amend paragraph (a)(1) by:

■ a. Removing the reference ''§ 270.2a–7(a)(16)'' and adding, in its place, the reference ''§ 270.2a–7(a)(14)''; and

■ b. Removing the reference ''§ 270.2a–7(a)(25)'' and adding, in its place, the reference ''§ 270.2a–7(a)(21)''.

§ 270.32a–1 [Amended]

■ 8. In § 270.32a–1 amend the introductory text by removing the words ''independent public accounts'' and adding, in their place, the words ''independent public accountants''.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 9. The authority for part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78*o*(d), 80a–8, 80a–24, 80a–26, 80a–29, and 80a–37, unless otherwise noted.

* * * * *

Note: The text of Form N–5 does not, and these amendments will not, appear in the *Code of Federal Regulations*

■ 10. Amend Form N–5 (referenced in §§ 239.24 and 274.5) by:

■ a. In General Instruction B removing the first two sentences and adding in their place ''Section 6(b) of the 1933 Act [15 U.S.C. 77f(b)] and Rule 457 thereunder [17 CFR 230.457] set forth the fee requirements under the 1933 Act. Please refer to the Commission's website at *http://www.sec.gov* for accurate fee rate information.'';

■ b. In Item 22(a) removing ''Article 5 of Regulation S–X'' and adding in its place ''Article 6 of Regulation S–X'';

■ c. In Instruction to Item 27 removing ''Subject to Rule 407, the'' and adding in its place ''The''; and

■ d. In Item 28 removing '', other than those prepared in accordance with Rule 12–16 of Regulation S–X,''.

Note: The text of Form N–1A does not, and these amendments will not, appear in the *Code of Federal Regulations.*

■ 11. Amend Form N–1A (referenced in §§ 239.15A and 274.11A) by:

■ a. In Instruction 2(d) to Item 4(b)(2) removing the term ''Item 26(b)(2)'' and adding, in its place, the term ''Item 26(b)(4)''; and

■ b. In Item 26(b)(5) removing the term ''paragraph (b)(2)'' and adding, in its place, the term ''paragraph (b)(4)''.

Note: The text of Form N–2 does not, and these amendments will not, appear in the *Code of Federal Regulations.*

■ 12. Amend Form N–2 (referenced in §§ 239.14 and 274.11a–1) by revising Instruction 16 to Item 4.1 and amending the General Instructions to Item 25.2 by adding Instructions 6 and 7 to read as follows:

Form N–2

* * * * *

Item 4. Financial Highlights

1. General. * * *

* * * * *

Instructions

* * * * *

16. Compute the ''ratio of expenses to average net assets'' using the amount of expenses shown in the Registrant's statement of operations for the relevant fiscal year, including increases resulting from complying with paragraph 2(g) of Rule 6–07 of Regulation S–X, and including reductions resulting from complying with paragraphs 2(a) and (f) of Rule 6–07 regarding fee waivers and reimbursements.

* * * * *

Item 25. Financial Statements and Exhibits

* * * * *

2. Exhibits

* * * * *

General Instructions.

* * * * *

6. The Registrant may redact specific provisions or terms of exhibits required to be filed by paragraph k. of this Item if the Registrant customarily and actually treats that information as private or confidential and if the omitted information is not material. If it does so, the Registrant should mark the exhibit index to indicate that portions of the exhibit have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and the type that the Registrant treats as private or confidential. The Registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the Registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the Registrant's supplemental materials, the Commission or its staff may require the Registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the Registrant's analyses. The Registrant may request confidential treatment of the supplemental material submitted under this Instruction 6 pursuant to Rule 83 of the Commission's Organizational Rules [17 CFR 200.83]

while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it, if the Registrant complies with the procedures outlined in Rule 418 under the Securities Act [17 CFR 230.418].

7. Each exhibit identified in the exhibit index (other than an exhibit filed in eXtensible Business Reporting Language) must include an active link to an exhibit that is filed with the registration statement or, if the exhibit is incorporated by reference, an active hyperlink to the exhibit separately filed on EDGAR. If the registration statement is amended, each amendment must include active hyperlinks to the exhibits required with the amendment.''

* * * * *

Note: The text of Form N–3 does not, and these amendments will not, appear in the *Code of Federal Regulations.*

■ 13. Amend Form N–3 (referenced in §§ 239.17a and 274.11b), Cover Page, by adding a new paragraph immediately after the sentence [''t]he Commission also may use the information provided on Form N–3 in its regulatory, disclosure review, inspection, and policy making roles'' To read as follows:

* * * * *

A Registrant is required to disclose the information specified by Form N–3, and the Commission will make this information public. A Registrant is not required to respond to the collection of information contained in Form N–3 unless the Form displays a currently valid Office of Management and Budget (''OMB'') control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

* * * * *

Note: The text of Form N–CEN does not, and these amendments will not, appear in the *Code of Federal Regulations.*

■ 14. Amend Form N–CEN (referenced in § 274.101) by replacing the Instruction following Item F.3 and replacing Item F.18 to read as follows:

* * * * *

Part F: Additional Questions for Unit Investment Trusts

* * * * *

Item F.3. * * *

Instruction. If the answer to Item F.3 is yes, respond to Item F.12 through Item F.19. If the answer to Item F.3 is no, respond to Item F.4 through Item F.11, and Item F.17 through Item F.19.

* * * * *

Item F. 18. Reliance on rule 12d1–4. Did the Registrant rely on rule 12d1–4 under the Act (17 CFR 270.12d1–4) during the reporting period? [Y/N]

* * * * *

Note: The text of Form N–PX does not, and these amendments will not, appear in the *Code of Federal Regulations.*

■ 15. Amend Form N–PX (referenced in § 274.129), Cover Page by removing ''§§ 239.24 and 274.5 of this chapter'' and adding, in its place, ''17 CFR 239.24 and 274.5''.

Note: The text of Form N–MFP does not, and these amendments will not, appear in the *Code of Federal Regulations.*

■ 16. Amend Form N–MFP (referenced in § 274.201), in Item A.14.c. by removing the term ''A.14.a–c.'' and adding, in its place, the term ''A.14.a–b.''

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 17. The authority for part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

Section 275.204–2 is also issued under 15 U.S.C. 80b–6.

* * * * *

Section 275.204–5 is also issued under sec. 913, Public Law 111–203, sec. 124 Stat. 1827–28 (2010).

* * * * *

§ 275.204–2 [Amended]

■ 18. In § 275.204–2 amend paragraph (a)(15)(ii) by removing ''.'' and adding, in its place, ''; and''.

§ 275.204–3 [Amended]

■ 19. In § 275.204–3 amend paragraph (b) by removing ''Subject to paragraph (g), you'' and adding, in its place, ''You''.

§ 275.204–5 [Amended]

■ 20. In § 275.204–5 amend paragraph (e)(1) by removing ''§ 275.204–1(b)(3)'' and adding, in its place ''§ 275.204–1(b)''.

§ 275.206(4)–1 [Amended]

■ 21. In § 275.206(4)–1 amend paragraph (b)(2)(i) by removing '','' and adding in its place '';''.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

■ 22. The authority for part 279 continues to read, in part, as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.,* Public Law 111–203, 124 Stat. 1376.

Note: The text of Form ADV does not, and these amendments will not, appear in the *Code of Federal Regulations.*

■ 23. Amend Form ADV (referenced in § 279.1) by:

■ a. In General Instruction 4 to Form ADV removing ''Section 10 of Schedule R'' and adding, in its place, ''Section 4 of Schedule R''; and

■ b. In the Instruction to Section 4.B.7 of Schedule R removing ''pre-fill Schedule B with the same indirect owners you have provided in Schedule B'' and adding, in its place, ''pre-fill the chart below with the same indirect owners you have provided in Schedule B for your *filing adviser*''.

* * * * *

Dated: March 29, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–06972 Filed 4–14–22; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 79

Office of the Secretary of the Interior

43 CFR Part 3

[NPS–WASO–CR–33054; PPWOCRADI0, PCU00RP14R50000]

RIN 1024–AE58

Curation of Federally Owned or Administered Archeological Collections

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service amends regulations governing the curation of federally owned or administered archeological collections to establish definitions, standards, and procedures to dispose of material remains that have insufficient archeological interest. This rule promotes more efficient and effective curation of archeological collections.

DATES: This rule is effective May 16, 2022.

FOR FURTHER INFORMATION CONTACT: Karen Mudar, Archeology Program, National Park Service, 1849 C Street NW, Washington, DC 20005, 202–354–2103, email: *karen_mudar@nps.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:

Background

Authority To Promulgate Regulations

The Archaeological Resources Protection Act (ARPA; 16 U.S.C. 470aa–mm) authorizes the Secretary of the Interior (the Secretary) to promulgate regulations for the disposition of archeological and other resources recovered under the authority of ARPA, the Reservoir Salvage Act (RSA; 54 U.S.C. 312501–312508), and the Antiquities Act (54 U.S.C. 320301–320303). 36 CFR part 79's disposition process for resources recovered under ARPA, RSA, and the Antiquities Act is authorized thereunder. In addition, the National Historic Preservation Act (NHPA; 54 U.S.C. 302107 and 306131) authorizes the Secretary to promulgate regulations for the proper curation of archeological collections created under ARPA, RSA, and NHPA. 36 CFR part 79's curation requirements for resources recovered under ARPA, RSA, and NHPA are authorized thereunder. The Department of the Interior's Departmental Manual entitled ''Protection of the Cultural Environment'' (519 DM 2.3D) requires the Departmental Consulting Archeologist (DCA), located within the National Park Service (NPS), to develop regulations concerning the preservation of prehistoric and historic material remains of archeological interest under ARPA.

Regulatory History

The regulations at 36 CFR part 79 establish definitions, standards, procedures, and guidelines to be followed by Federal agencies to preserve collections of prehistoric and historic material remains and associated records that generally include those resulting from a prehistoric or historic resource survey, excavation, or other study conducted in connection with a Federal action, assistance, license, or permit.

As currently written, 36 CFR part 79 does not discuss processes for Federal agencies to dispose of particular material remains from archeological collections. It is important for Federal agencies to establish appropriate methods of disposal because prehistoric or historic material remains improperly disposed of could later be rediscovered and misinterpreted by archeologists or others as evidence of activity in the distant past. A proposed rule to establish procedures for discarding particular material remains from Federal collections was published in the **Federal Register** in 1990 (55 FR 37670, September 12, 1990). A final rule was never published. Instead, the DCA focused on the proper curation of federally owned or administered collections and left the subject of disposal of material remains for a future rulemaking.

In recent years, renewed interest from Federal agencies to address the issue of deaccessioning certain material remains has led to the promulgation of this rule. Specifically, Federal agencies such as the Department of Defense asked the DCA to help them find solutions to the growing costs of managing archeological collections. The NPS published a proposed rule in the **Federal Register** on November 18, 2014 (79 FR 68640).

Final Rule

This rule establishes procedures for the disposal of particular material remains of insufficient archeological interest that are held in federally owned or administered archeological collections. The procedures are not intended to apply to entire collections. Material remains refers to artifacts, objects, specimens, and other physical evidence, including human remains, of a historic or prehistoric resource. Federal agencies are responsible for ensuring that disposition of material remains is conducted in accordance with this rule and 36 CFR 79.7 ''Methods to fund curatorial services.'' This rule does not affect any material remains defined as ''cultural items'' by the Native American Graves Protection and Repatriation Act (NAGPRA; 25 U.S.C. 3001 *et seq.*) and subject to that statute. NAGPRA cultural items include Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony.

In addition to providing a mechanism for appropriate and carefully considered disposition, this rule will improve the curation of federally owned or administered archeological collections, such as by promoting more effective space and cost management. This rule addresses many of the comments submitted in 1990 by incorporating independent advice and opinions supplied by numerous experts that were consulted between 2005 and 2013. The NPS stresses that the disposition process laid out in this rule must be employed as part of a comprehensive collection management program that emphasizes collection stewardship and responsible accessioning practices. The best deaccession policy is a good accession policy. This rule provides measures to allow for deaccessioning only as a last resort. The NPS recommends that, in addition to proposing deaccession, agencies implement carefully designed field collection policies and create and implement clear and thoughtful scope of collections statements. Consistent with the Secretary's authority to promulgate regulations for ultimate disposition of certain material remains, this rule uses the term disposition throughout. The NPS acknowledges the museum practice of deaccessioning will be an integral and parallel part of the disposition process described in this rule.

In addition to adding a new Subpart E—Disposition of Particular Material Remains (Sections 79.12–79.18), this rule organizes existing sections 79.1–79.11 into Subparts A (Administrative Provisions), B (Archeological Collections Management), C (Public Access to and Use of Collections), and D (Inspections and Inventories of Collections). This rule also revises sections 79.1–79.4 to update legal citations, removes paragraph designations for defined terms in section 79.4 as recommended by the Office of the Federal Register's Document Drafting Handbook, and adds two defined terms that are used in Subpart E. A section-by-section analysis of the rule can be found in the Background section of the proposed rule.

Summary of Public Comments

The NPS published a proposed rule in the **Federal Register** on November 18, 2014 (79 FR 68640). The NPS accepted comments on the proposed rule through the mail, hand delivery, and through the Federal eRulemaking Portal at *http://www.regulations.gov.* Comments were accepted through February 17, 2015. The NPS received comments from individuals, federally recognized tribes, state and local government agencies, public institutions, and professional organizations. Summaries of the issues raised in the comments and responses from the NPS are provided below.

Disposition Process

1. Comment: Several commenters addressed the notification and consultation requirements in the

proposed rule. Commenters requested more time be given to interested parties to comment on a proposed disposition, and that additional direct notice be given to interested parties during the disposition process. Commenters asked that the Federal Agency Official (FAO) take additional steps to engage with public stakeholders during the disposition process.

NPS Response: The NPS made several changes in the final rule to ensure there is sufficient notice provided to interested parties during the disposition process. The NPS added a requirement that the FAO provide at least 60 days for notified entities to comment on a proposed disposition. The NPS increased the time allowed for objecting to a final determination of disposition from 30 to 60 days. The NPS added to the list of parties who must receive notice of proposed dispositions by including state archeologists, certain private landowners, broader categories of Indian tribes with cultural relationships to material remains in the collections, and organizations and institutions for which the agency has an existing relationship for research, excavation, curation, education, or other partnership in the state and region from which the material remains to be disposed were recovered. The NPS believes these notice requirements will sufficiently involve the relevant stakeholders in the disposition process prior to any determination of disposition published in the **Federal Register**.

2. Comment: Two commenters recommended that the rule limit the amount of time given to the FAO to choose a method of disposition.

NPS Response: The NPS declines to adopt this recommendation because it is important to preserve flexibility in this part of the disposition process, so that the most appropriate method is chosen. Time limits are required in other phases of the process such as during the periods for commenting on and objecting to determinations of disposition. A time limit at this stage would not further the purpose of the rule because agencies could be motivated to forego considered deliberation in order to select a method of disposition merely to meet a time limit.

3. Comment: One commenter argued that judgements other than those of the Indian Claims Court, as well as other types of documentation, should be allowed to determine aboriginal occupancy of land for purposes of whether an Indian tribe may receive deaccessioned materials excavated from lands other than Indian lands. Another commenter argued that culturally affiliated tribes that request deaccessioned material remains should be allowed to receive them.

NPS Response: The NPS has added two methods of disposition in paragraph 79.13(b) to accommodate these requests. Aboriginal occupation of lands where material remains were removed can now be documented by any type of evidence. The final rule allows material remains to be conveyed to federally recognized Indian tribes for the purposes of traditional, cultural, educational, or religious practices.

4. Comment: One commenter asked whether deaccessioned materials could be reused for educational or interpretive purposes (*i.e.,* adaptive reuse).

NPS Response: Deaccessioned materials may be used for educational or interpretive purposes. The methods of disposition in section 79.13 allow for such reuse. The rule is therefore sufficiently flexible to allow adaptive reuse after material remains have been deaccessioned.

5. Comment: One commenter argued that all methods of disposition are unacceptable because disposition is not a preservation activity.

NPS Response: ARPA section 5 (16 U.S.C. 470dd) specifically authorizes the Secretary of the Interior to promulgate regulations providing for the ultimate disposition of archeological resources. A requirement for specific disposition methods to constitute a preservation activity has no basis in the statutory authority.

6. Comment: Two commenters requested that the NPS list the methods of disposition in priority order for material remains excavated from public lands. One commenter requested that the rule provide a clear step-by-step process.

NPS Response: The NPS declines to impose a priority order on the methods of disposition because this would unduly restrict the discretion given to FAOs to dispose of deaccessioned material remains in the manner most appropriate to the situation. With the goal of making the disposition process as clear as possible, the NPS has provided a step-by-step process for an FAO to follow.

Federal Agency Official (FAO)

7. Comment: One commenter asked the NPS to identify the level of government where the FAO is located.

NPS Response: The FAO is defined in section 79.4 to mean ''any officer, employee or agent officially representing the secretary of the department or the head of any other agency or instrumentality of the United States having primary management authority over a collection that is subject to this part.'' In practice, the FAO is typically situated at the departmental, national, headquarters, or equivalent level of the agency, unless the agency has a different policy.

Collections Advisory Committee

8. Comment: Several commenters asked that individuals from outside of the Federal government be invited to participate on the collections advisory committee. One commenter proposed that any disposition should be contingent on a consensus recommendation from the collections advisory committee. Another commenter suggested that the DCA should not be eligible to serve on a collections advisory committee. Several commenters recommended that qualified experts be given more influence on the committee, while one commenter argued that the collections advisory committee should be made up of individuals who are professionally disinterested or distanced from the material remains being considered for disposition.

NPS Response: The NPS has revised the rule to clarify the qualifications necessary to serve on a collections advisory committee. The NPS added a requirement that the committee make consensus recommendations to the FAO about proposed dispositions. The NPS also added a provision stating that the DCA may not participate on the committee, because the DCA may be called upon to make recommendations in the case of a dispute. With the exception of certain Tribal officials specified in paragraph 79.15(e)(3), the NPS declines to delegate the responsibilities of Federal agencies for federally owned or administered property to non-Federal employees through an expansion of the composition of the committee. In order to increase the transparency of the committee, the final rule requires the collections advisory committee to prepare a written report for the FAO that contains, at a minimum, the following:

- The information required for the **Federal Register** notice of determination of disposition identified in paragraphs (i)(1)(i) through (iii) of section 79.15;
- The membership of the committee and their role and expertise pertinent to the deliberations;
- The committee's recommendations, including any conditions of transfer or conveyance; and
- An explanation of why the committee determined other methods of disposition were of lesser public benefit.

9. Comment: Several commenters asked the NPS to include specific procedures in the rule that collections advisory committee members must follow in order to make recommendations to the FAO about proposed dispositions, rather than allowing the committee to determine their own rules. One commenter recommended that the committee have clearly written procedures, including timelines and opportunities for public consultation and input. Another argued that the rule should identify the specific tasks and procedures of the collections advisory committee. One commenter proposed that the regulations establish a single committee to review every proposed disposition.

NPS Response: The rule supports the need for flexibility in the disposition process, including in the formation and operation of collection advisory committees. The NPS believes these committees must address the unique circumstances of each proposed disposition, as well as reflect the unique needs, capacities, and operating environments of the responsible Federal agencies, which a single central committee could not do. However, the rule also establishes some basic requirements about the composition and operation of the committees to enable appropriate recommendations. In order to strike a balance between fostering flexibility and imposing standard requirements, the rule establishes qualifications for committee membership and requires written procedures to be approved by the FAO. The NPS believes this is sufficient to ensure all recommendations are fair, open, timely, and in the best interest of the public. Mandating specific rules of procedure for each committee would be unduly rigid and make the work of the committees more difficult because they would be forced to apply strict rules to the unique situations and capacities of each committee. Although the regulations require that the composition of the committees be tailored to the characteristics of each disposition, nothing in the regulations prevents the same committee from reviewing more than one disposition of a similar nature. Under these circumstances, the Federal agency would not need to form a new committee for each proposed disposition provided the members of the committee meet the requirements in the regulations with respect to the particular collection under review.

Insufficient Archeological Interest

10. Comment: One commenter argued that a determination of insufficient archeological interest should be made on the basis of independent peer review that includes experts outside of the Federal government.

NPS Response: The NPS added a requirement in the final rule that the FAO must consult with qualified museum professionals at non-Federal repositories about the appropriateness of a proposed disposal. The NPS acknowledges that the perspective of qualified museum professionals responsible for the care and curation of the subject materials is necessary for the FAO to make an informed determination. FAOs must use appropriate judgment and base determinations of disposition on appropriate supporting information. Because the rule regulates federally owned or administered collections, however, it remains appropriate that Federal agency staff and officials, with verifiable knowledge of the materials, make decisions regarding the disposition of material remains in those collections.

11. Comment: One commenter argued that a lack of original records should not be sufficient to presume a determination of insufficient archeological interest if provenience can be reconstructed through other means.

NPS Response: The loss or destruction of associated records is one factor in determining whether there is a lack of provenience information. Under section 79.12, a qualified archeological or museum professional must determine that a disposition will not negatively impact the overall value of the collection in order to make a finding of insufficient archeological interest. In doing so, the professional must make a concerted effort to research all records, including museum records, associated with a collection. In addition, the FAO must determine that disposition of the material remains will not negatively impact the overall integrity of the original collection.

12. Comment: One commenter stated that it is unclear who makes the determination of insufficient archeological interest and what that individual's qualifications should be.

NPS Response: At least one qualified archeological or museum professional with verifiable knowledge of and experience in the type of material remains being evaluated makes a determination of insufficient archeological interest. The FAO determines whether the professional is qualified, using the Professional Qualification Standards set by the Secretary of the Interior as a benchmark, and considering the professional's verifiable knowledge of the material remains. The FAO then determines, under section 79.15, whether the material remains are eligible for disposition under this subpart.

13. Comment: Two commenters requested that the rule define the following terms related to insufficient archeological interest: Material remains, physical integrity, irreparable damage, overly abundant, and representative sample.

NPS Response: Existing regulations define material remains as ''artifacts, objects, specimens and other physical evidence that are excavated or removed in connection with efforts to locate, evaluate, document, study, preserve or recover a prehistoric or historic resource.'' This definition goes on to provide illustrative examples of different classes of material remains. The NPS declines to define the other terms requested by the commenters. These terms are commonly used by the archeological community and must be applied in context using the professional judgement of qualified personnel. For example, the amount sampled and sampling method for a representative sample must be determined on a case-by-case basis, using the professional discretion of subject matter experts and best available information. The rule requires subject matter experts to have verifiable knowledge of the material remains to be examined.

14. Comment: One commenter questioned whether material remains could possess increasing archeological interest over time.

NPS Response: For material remains that are overly redundant and not useful for research, the rule requires that a sampling strategy be developed and implemented in order that the retained samples may be subjected to new or improved analytical technologies in the future that could demonstrate those materials remains have greater archeological interest than previously known. The NPS has revised the rule to clarify that samples of material remains determined to be overly redundant and not useful for research must be representative of the population as a whole from which the sample was taken. This will help ensure the integrity and potential future worth of samples that are retained.

15. Comment: One commenter suggested that the criterion ''overly redundant and not useful for research'' be split into two separate criteria, each of which could support a determination of insufficient archeological interest.

NPS Response: The NPS declines to split this criterion into separate criteria because both elements of this criterion are necessary to establish insufficient

archeological interest. Fulfilling only one of these two elements (overly redundant or not useful for research) could not result in a determination of insufficient archeological interest. A redundant set of material remains that is still useful for research could have sufficient archeological interest. For instance, two sets of similar material remains derived from different archeological contexts are likely, by virtue of their spatial disparity, to provide some information about the past, even though those material remains may seem similar or identical in a museum setting. Alternatively, material remains not useful for research but not overly redundant could still have archeological interest because: (1) Their uniqueness may render them inherently informative about the past and (2) they may become useful for research in the future as new technologies are developed. Thus, to meet this test, material remains must be both overly redundant and not useful for research.

16. Comment: One commenter suggested that the NPS establish a hierarchy of levels of archeological interest and provide a range of disposition options for each level.

NPS Response: The rule only addresses the ultimate disposition of certain materials that have insufficient archeological interest. Identifying different degrees or levels of insufficient archeological interest and assigning different disposal options for each level would unnecessarily complicate the process.

Costs

17. Comment: Several commenters addressed the costs for Federal agencies and recipient entities of complying with the disposition process under the rule. Several commenters were concerned that the rule would place financial strain on repositories for retaining materials during the disposition process without addressing a general shortfall of personnel and funding. One commenter expressed concern that several methods of disposition (*e.g.,* conveyance to suitable repositories or institutions) would impose unfair financial burdens on recipients of deaccessioned material remains.

NPS Response: The rule will impose little or no direct cost upon the public. Section 79.7 makes Federal agencies responsible for funding the curation of material remains. This includes costs associated with deaccessioning material remains in federally owned or administered collections, including costs borne by repositories that retain materials during the disposition process. Federal agencies must accession and catalog material remains before deaccessioning, and must follow relevant law and agency policy in ensuring that funding decisions address all aspects of collection stewardship, not just deaccessioning. The rule provides a series of options for disposition and does not require any group or individual to accept material remains that are eligible for disposal. The rule does not impose unfair financial burdens on recipients of deaccessioned material remains because those recipients are under no obligation to accept the material remains. A recipient must independently choose to accept deaccessioned material, thus it will have an opportunity in advance to consider the financial impact of its participation in the disposition process. The NPS believes the disposition process in the rule is financially achievable for Federal agencies.

18. Comment: Two commenters inquired about the costs of deaccessioning material remains of insufficient archeological interest. They were concerned that resources, which could be used to catalog and curate collections, might be diverted to deaccessioning instead.

NPS Response: To limit the possibility that Federal agencies allocate resources to deaccessioning rather than to curating collections, the rule provides controls, under section 79.12, on the disposition process, intended to limit its use only to appropriate circumstances. Deaccessioning is one part of a comprehensive curation methodology. In order to be eligible for disposition, material remains must be part of a Federal collection, and thus have undergone appropriate intake and accessioning procedures, which must be documented in accordance with agency protocols. Agency staff responsible for determining whether particular material remains lack archeological interest must consider the relationship of the material remains to the collection as a whole. Any effort to determine the archeological interest of material remains must include a review of the overall collection, along with associated documentation, from which those material remains are derived. For these reasons, the NPS does not believe that the disposition process will divert funds from curation because deaccessioning is part of a responsible curation program.

19. Comment: One commenter suggested that the disposition process will impose new costs for excavation because allowing for disposition will force archeologists to perform a more thorough analysis of material remains prior to curating them in a repository.

NPS Response: The NPS does not consider this scenario as likely to occur. However, a more thorough analysis of collections during an initial excavation project could be a desirable outcome because it means that the documentation concerning material remains will provide a better understanding of the archeological interest and improve the value of the resulting curated collections to the public. Any increase in the initial cost of analysis would be voluntary.

Compliance

20. Comment: Several commenters discussed ways that implementation of the rule will support and interplay with compliance regimes for laws such as the NHPA and the National Environmental Policy Act (NEPA).

NPS Response: Under section 106 of the NHPA, Federal agencies must consider the effect of an undertaking on any historic property that is included in or eligible for inclusion in the National Register. Museum collections, including archeology collections, are not generally considered historic properties (see National Register Bulletin 15). Further, material remains determined to be of insufficient archeological interest are not likely to be included in or eligible for inclusion in the National Register because, characteristically, they would not be worthy of preservation. NEPA requires Federal agencies to fully consider the impacts of proposals that would affect the human environment prior to deciding to take an action. The disposal of material remains under this rule will generally not constitute a Federal action under NEPA that would have a significant effect on the human environment. Nevertheless, FAOs must consider the context related to each proposed disposal of material remains and comply with all applicable laws, including the NHPA and NEPA, before making a final determination. The FAO must consider the opinions, as appropriate, of the collections advisory committee, Indian Tribes, and other available experts in making disposition decisions to ensure compliance with Federal law. In cases where collections are held under a compliance agreement, such as a Memorandum of Agreement under section 106 of NHPA, the FAO must consider the context and the terms of the agreement to determine whether disposal is appropriate.

Administrative Record

21. Comment: Several commenters focused on the creation and preservation of the administrative record of the disposition process. One commenter asked that the

administrative record be provided to tribes and SHPOs, particularly when they possess additional data about the site or collection. Other commenters asked the NPS to clarify the requirement in paragraph 79.15(i)(2)(i) to prepare a detailed list of material remains to be deaccessioned and better define when photographic documentation would be considered appropriate.

NPS Response: Section 79.18 requires Federal agencies to include in their administrative record specific documentation of the determination of disposition. Consistent with these requirements, Federal agencies should follow their own procedures for preparing, preserving, and distributing administrative records. The FAO should follow existing practices that comply with applicable state and Federal standards for recording material remains in archeological collections when preparing the detailed list of material remains required by paragraph 79.15(i)(2)(i). This paragraph specifies that the list must include a description of each object, or lot of objects if there are multiples of a particular type, and photograph(s) of the objects when appropriate. The FAO should also consider standard practices to determine when photographic documentation is appropriate.

Authority and Applicability of Regulations

22. Comment: Two commenters questioned whether the authorities cited in section 79.2 authorize the NPS to allow the disposition of material remains. Two commenters questioned the applicability of the rule to material remains excavated under the Antiquities Act and the interplay with prior regulations.

NPS Response: Section 5 of ARPA (16 U.S.C. 470dd) gives the Secretary the explicit and sole authority to promulgate regulations providing for ''the ultimate disposition'' of ARPA archeological resources and other resources removed pursuant to the Antiquities Act and the RSA. These authorities are cited in paragraph 79.2(b)(2) which, except for updated citations, is not changed by this rule. The explicit statutory authority to promulgate this rule supersedes any preceding regulatory requirements regarding similar subject matter, in particular, 43 CFR 3.17. This more recent statutory authority thus makes it appropriate to include those resources excavated under the Antiquities Act and eligible for disposal via the process described in the new Subpart E as subject to this rule. For clarity, this rule adds a note to 43 CFR 3.17 stating that resources excavated under the Antiquities Act are eligible for disposal via Subpart E of 36 CFR 79.

23. Comment: Several commenters requested clarification about the term ''practical management authority'' and the meaning of ''indirect'' practical management authority.

NPS Response: Part 79 applies to federally owned or administered collections. Section 79.3(a) uses the term ''practical management authority'' to further explain the circumstances under which collections that are owned by the United States are subject to Part 79. Federal agencies have ownership of collections due to specific laws, activities on Federal lands, or other circumstances, and these collections are managed in a variety of ways. In order for those collections to be subject to Part 79, a Federal agency that owns a collection also must have ''practical management authority'' over that collection, either directly or indirectly. Otherwise, Federal agencies would be responsible for curating collections that they do not control. Direct practical management authority generally includes situations where a Federal agency is directly administering collections at Federal facilities. Indirect practical management authority includes situations in which a Federal agency has legal responsibility and control over collections but a non-Federal entity has responsibility for curating the collection. This is usually documented through the terms of an agreement, contract, permit, or authorized expenditures.

24. Comment: One commenter stated that the rule should only apply to federally owned collections and that there should be no question about who has legal title over material remains that are proposed for disposal.

NPS Response: The FAO should be able to discern the ownership of material remains when determining if those remains are eligible for disposal under paragraph 79.12(a) and when reviewing the provenience information to determine if those remains have insufficient archeological interest under paragraph 79.12(e)(2)(i). Directions from ascertainable owners or questions regarding ownership must inform the FAO's proposed disposition determination. Clear legal ownership by the United States is not a prerequisite for disposal of material remains under Part 79; the rule also applies to material remains that are not owned by the United States but that are managed or controlled by a Federal agency pursuant to the Antiquities Act, NHPA, RSA and ARPA. Other provisions of the rule explicitly ensure that certain owners of federally administered collections, such as Indian individuals or tribes under 79.13(a), have an opportunity to receive them or to object to a proposed disposition. This aspect of the rule is intended to ensure that the government cares for archeological collections in its possession in accordance with applicable laws.

25. Comment: Based on established practices that allow for the re-interment of human remains not subject to NAGPRA, several commenters suggested that this rule should apply to human remains not subject to NAGPRA and identify reburial as a method of disposition. One commenter suggested that the rule establish a disposition process for human remains that are not subject to NAGPRA.

NPS Response: During consultation for the proposed rule, Federal agencies, Tribes, and professional organizations suggested that excluding all human remains from the disposition process for materials of insufficient archeological interest described in this subpart would simplify the rule and avoid confusion with NAGPRA and its implementing regulations. As a result, the proposed rule excluded all human remains from disposition and, in doing so, did not distinguish between human remains subject to NAGPRA and other human remains. The final rule clarifies in paragraph 7.12(b)(1) that Native American cultural items under NAGPRA, which can include human remains, are not eligible for disposition under this rule. Native American human remains are subject to disposition or repatriation under NAGPRA. In paragraph 7.12(b)(2), the final rule also states that other human remains not subject to NAGPRA are ineligible for disposition under Subpart E. The NPS does not intend for this subpart to affect established practices that otherwise allow for the disposition and re-interment of human remains not subject to NAGPRA. The final rule clarifies that human remains not subject to NAGPRA are excluded only from the process described in Subpart E. The NPS is reserving section 79.14 to address this issue in the future if necessary.

Disputes

26. Comment: Several commenters addressed the procedures for objecting to determinations of disposition. One commenter asked that the public have 90 days to dispute a determination of disposition, and that the requirement for submission of documentation be removed. Another commenter recommended that those objecting to a disposition should be responsible for finding a new repository. One

commenter suggested that the DCA should make binding decisions for all objections instead of non-binding recommendations to the FAO. Another commenter requested that the rule require the DCA to thoroughly explain their recommendation to the FAO. Two commenters asked that the rule include a dispute resolution process in section 79.16 to help resolve disagreements over which tribes should receive material remains that have been determined to be eligible for disposal. One commenter specifically recommended adopting the dispute resolution language from NAGPRA.

NPS Response: The NPS made several changes in section 79.16 of the final rule to provide a more effective and inclusive process for objecting to a determination of disposition. The NPS lengthened the timeframe to object to a determination of disposition from 30 to 60 days. The NPS believes this will provide sufficient time for interested parties to file an objection, in part because the list of those notified and consulted with prior to the determination of disposition is comprehensive. It is important that the objecting party document the reasons for the objection so that the DCA and the FAO are able to evaluate the merits of the objection. While objecting parties may suggest a different repository, they are not required to as a condition to filing an objection. The NPS also shortened the timeframe for the FAO to respond to the DCA's non-binding recommendation from 60 to 30 days and added a requirement that the DCA forward a copy of the objection to the FAO within 5 days of receipt of the objection. The final rule also requires the DCA to consult with the objecting party and the FAO with the aim of resolving the objection. This will ensure that the DCA plays a significant role in the resolution of disputes over determinations of disposition. The final rule requires that the DCA explain their recommendation to the FAO.

The NPS declines to make the DCA's decision binding because the DCA's role to other government agencies is advisory in nature. The DCA has no authority to broker binding arbitration with other Federal agencies, nor does the DCA have the authority to make decisions on their behalf. Similarly, the NPS declines to outline a dispute resolution process specifically for tribes because such a process would be duplicative of the appeal process in section 79.16. In addition, the NPS notes that the dispute resolution process in NAGPRA is specifically authorized in 25 U.S.C. 3006(c); no such authorization exists in ARPA or the other applicable authorities for this rule.

Rulemaking Process

27. Comment: Several commenters stated that the rulemaking process was inadequate because of insufficient opportunities for public comment. One commenter asked for an extension of the public comment period.

NPS Response: The NPS consulted widely with Tribes and interest groups before publishing the proposed rule. The proposed rule was open for public comment for 90 days, from November 18, 2014, through February 17, 2015. This is 30 days longer that the standard comment period of 60 days that is identified in Department of the Interior Policy (318 Departmental Manual, section 5.3). The NPS received a substantial number of comments and has worked to address or respond to all issues raised by those comments in this final rule.

Impacts to Federal Collections

28. Comment: Two commenters stated that many collections were made with the understanding that they would be held in perpetuity by the government for future study, and that perpetual curation might be required by agreements entered into for purposes of complying with section 106 of the NHPA.

NPS Response: Legal instruments for the curation of materials, including those created under the section 106 consultation process, such as memoranda of agreement or programmatic agreements, may contain provisions requiring curation of materials beyond what otherwise would be required by this rule. When considering the potential disposal of materials covered by any such agreement, the FAO must review the terms of the agreement to determine whether the agreement and section 79.12 can be reconciled to allow disposal. Legally binding requirements for the perpetual curation of materials that appear in an agreement or other written instrument will not be affected by the disposition process established in this rule.

29. Comment: One commenter argued that deaccessioning would greatly reduce the volume of material remains available for study, which would lead to increased excavation.

NPS Response: The disposition process established in this rule applies narrowly to material remains of insufficient archeological interest. The rule does not compel the wholesale divestment by the government of its collections, but instead allows for small reductions in the size of some collections under specific circumstances. Samples of material remains to be deaccessioned under this rule must be retained when those materials are deemed overly redundant and not useful for research. The cautious approach to disposition required by this rule makes it unlikely that the rule will result in a steep reduction in the amount of materials available for study in Federal collections, and a consequential need for additional excavations.

NAGPRA Consultation

30. Comment: Two commenters sought stronger requirements to consult with Tribes regarding the determination that material remains are not subject to NAGPRA. One commenter asked the NPS to clarify the FAO's responsibilities to consider NAGPRA compliance.

NPS Response: Federal agencies have separate procedural requirements under NAGPRA to ensure that NAGPRA cultural items in their collections are included in inventories and summaries. Extensive consultation is required during the inventory and summary process under 43 CFR 10.8 and 10.9. In general, Federal agencies were required to complete their NAGPRA summaries by November 16, 1993, and their NAGPRA inventories by November 16, 1995, so, in most cases, Federal agencies will have already determined which items in their collections are NAGPRA cultural items. Section 79.12 provides an additional measure to ensure NAGPRA cultural items are handled pursuant to NAGPRA and not subject to disposition under this rule. Prior to making a final determination of disposition, the FAO must determine that the material remains are not NAGPRA cultural items. The rule further states that, when Native American material remains are proposed for disposition, the collections advisory committee must include one or more elected officers (or their designees) of federally recognized Indian Tribes that are regularly consulted by the Federal agency. The rule also contains robust notification requirements that will help ensure that interested Tribes are aware of proposed dispositions. Further, any Tribe may object to determinations of disposition if it believes the materials are NAGPRA cultural items. The NPS believes that these requirements are sufficient to ensure that Native American cultural items subject to NAGPRA will not be disposed of under this rule.

Use of Deaccessioned Material Remains

31. Comment: One commenter argued that enforcing the restrictions on disposition of material remains in the proposed rule would constitute a taking of property under the Fifth Amendment of the Constitution, specifically for material remains excavated and removed from Indian lands and returned to the Indian individual or Indian tribe having rights of ownership over the resources. Commenters sought to ensure that deaccessioned material remains may not be sold in the future. Another commenter questioned the ability of the FAO to enforce prohibitions on government employees receiving deaccessioned material remains.

NPS Response: The NPS has clarified in paragraph 79.13(b) that, as a condition of disposal, the FAO will reasonably ensure that material remains from public lands that are not Indian lands may not be traded, sold, bought, or bartered after disposal is completed. This condition will not apply to material remains from Indian lands. The NPS has removed the prohibition on government employees receiving deaccessioned material remains because it is redundant with government-wide ethics requirements that address the concerns originally underlying this proposed restriction. Indian individuals who are also Federal employees must work with their agency's ethics officials to determine a course of action in the event that they wish to receive deaccessioned material remains.

General Support and Opposition

32. Comment: Some commenters expressed general support for the rule, praising its clear language and stringent and rigorous disposition process. Commenters recognized the need for the rule and its potential to improve the value of collections and reduce careless accession of material remains. Other commenters expressed general opposition to the rule, citing their belief that material remains should not be deaccessioned and that the rule will not provide a complete solution to the curation crisis.

NPS Response: Responsible deaccessioning is a necessary tool for maintaining the scientific value of collections. Several Federal agencies requested this rule, which supports the proper curation of Federal collections. This rule establishes a rigorous and deliberative disposition process that, when properly implemented, will prevent the careless deaccessioning of material remains. Supporting agency stewardship of archeological collections is the foundational goal of 36 CFR 79.

Changes in the Final Rule

After considering the public comments and after additional review, the NPS made the following substantive changes in the final rule. The NPS made other non-substantive, editorial changes for clarity and ease of reading. In many places, the NPS replaced outdated citations to Title 16 of the U.S. Code with correct citations to Title 54. The NPS also removed the paragraph designations in section 79.4 and organized the defined terms alphabetically, as recommended in the Office of the Federal Register's Document Drafting Handbook. In order to make these changes, the entire section 79.4 appears below in the regulatory text even though the only changes to that section are to add definitions of ''Departmental Consulting Archeologist'' and ''provenience information.''

Final rule section or paragraph	Change	Reason for change
79.4	Added definitions of the terms ''Departmental Consulting Archeologist'' and ''provenience information''.	Clarifies the meaning of these terms for non-specialists.
79.12(b)(2)	Specified that the term ''human remains'' refers to human remains that are not ''cultural items'' under NAGPRA.	Clarifies that no human remains may be disposed of under this rule, whether or not they are subject to NAGPRA.
79.12(c)	Clarified that only persons who meet the applicable Professional Qualification Standards set by the Secretary may propose the disposal of material remains.	Helps ensure that only qualified experts may initiate the disposition process. Ensures that disposition is not undertaken casually or as a matter of convenience. The professional standards are available here: *https://www.nps.gov/articles/sec-standards-prof-quals.htm.*
79.12(c)(1)	Added a requirement that Federal agency staff members must have verifiable knowledge of the particular material remains that are proposed for disposal.	Helps ensure that disposition is not undertaken improperly because qualified experts were not involved.
79.12(e)	Added a requirement that archeological or museum professionals must have verifiable knowledge of the particular material remains in order to determine whether those material remains have insufficient archeological interest.	Helps ensure that disposition is not undertaken improperly because qualified experts were not involved.
79.12(e)(2)(i)(C)	Clarified that a lack of provenience information may be established if associated records never existed, have been lost, or have been destroyed.	Addresses a legitimate circumstance where there is no existing provenience information.
79.12(e)(2)(iii)	Clarified that representative samples of material remains that are overly redundant and not useful for research must be representative of the population as a whole from which the sample was taken.	Helps ensure that a statistically valid sample is retained in the event that new analytical techniques are developed that allow the sample to generate useful information about the past.
79.13(a)(2)	Clarified that the FAO must receive written consent and relinquishment of ownership from the Indian individual or tribe having rights of ownership before otherwise disposing of material remains excavated from Indian lands.	Helps ensure that the FAO will not dispose of material remains owned by Indian individuals or tribes without their consent.
79.13(b)(5)	Added the following method of disposal for material remains excavated or removed from public lands: Convey to a federally recognized Indian tribe for the purpose of traditional cultural, educational, or religious practices.	Responds to public comment and improves consistency between the acceptable methods of disposition for materials removed from Indian and public lands.

Final rule section or paragraph	Change	Reason for change
79.15(d)	Added a requirement that the FAO consult with qualified museum professionals located in the repository that provides curatorial services for material remains proposed for disposal when those museum professionals did not propose the disposal.	Helps ensure that appropriate experts are involved in the disposition process.
79.15(e)	Added a requirement that the collections advisory committee make consensus recommendations to the FAO about proposed dispositions.	Responds to public comment and helps ensure that disposition is not undertaken lightly or improperly.
79.15(e)(1)	Added a provision stating that the DCA may not participate on a collections advisory committee.	Helps maintain the impartiality of the DCA, who serves as the arbiter of disputes about proposed dispositions.
79.15(e)(3)	Clarified that the requirement that collections advisory committees include at least one representative of an Indian tribe only applies if there are Native American material remains proposed for disposal.	Ensures the appropriate inclusion of tribal viewpoints in considering a disposition of Native American material remains.
79.15(e)(5)	Added a requirement that the collections advisory committee submit a written report to the FAO about any proposed disposition.	Responds to public comments and improves the administrative record of a disposition.
79.15(g)	Added a requirement that, for material remains excavated from Indian land, the FAO provide a copy of the associated records to the appropriate Tribal Historic Preservation Officer or tribal official.	Responds to public comments and improves accountability to tribal governments.
79.15(h)	Added a minimum duration of 60 days for the public comment period for a proposed disposition. Made the FAO responsible for responding only to relevant, substantive comments.	Responds to public comments to improve timeliness and public accountability. Reduces the administrative burden on the FAO during the comment review period.
79.15(h)(1)	Added a requirement that the FAO must give notice of proposed dispositions to the State Archeologist if there is one.	Improves coordination with state officials and improves the administrative record.
79.15(h)(3)	Added a requirement that the FAO must give notice of proposed dispositions to private landowners from whose lands the objects to be disposed were removed.	Responds to public comments to provide additional information to landowners.
79.15(h)(5)	Removed the requirement that the FAO must give notice to organizations and institutions with an active department of or program in archeology or anthropology pertaining to the archeology of the state or region from which the material remains to be disposed of were recovered. Clarified that the FAO must give notice of proposed dispositions to organizations and institutions for which the agency has an existing relationship pursuant to a written instrument (*e.g.,* permit, agreement) for research, excavation, curation, education, or other partnership in the state and region from which the objects to be disposed were recovered.	Removes ambiguity about which institutions and organizations must receive notice of proposed dispositions. Reduces the burden of compliance for the FAO by requiring only notification of those entities that have a formal relationship. Improves communication about proposed disposition actions with interested researchers.
79.16	Lengthened the timeframe to object to a determination of disposition from 30 to 60 days after publication of the notice of determination of disposition in the **Federal Register**.	Responds to public comments and provides more opportunity for the public to object to a proposed disposition.
79.16(a)	Added a requirement that the DCA forward a copy of objections to the FAO within 5 days of receipt.	Improves accountability from the DCA to the FAO and streamlines the objection process.
79.16(c)	Added a requirement that the DCA consult with the objecting party and the FAO with the aim of resolving the objection.	Responds to public comments to improve the fairness of the objection process by providing another opportunity for discussion between the objecting party and the FAO.
79.16(d)	Added a requirement that the DCA must thoroughly explain their non- binding recommendation to the FAO.	Responds to public comment to provide a more effective and inclusive disputes process.
79.16(e)	Shortened the timeframe for the FAO to respond to the DCA and the objector with a final determination from 60 to 30 days.	Streamlines the objection process and encourages timely resolution to objections.
79.16(f)	Clarified that notice of a decision on an objection is a final agency action under the Administrative Procedure Act.	Responds to public comment to make procedures clear to the public.
79.17	Added a requirement that disposition after an objection will occur no sooner than 30 days after the FAO publishes the notice of decision on the objection and any amendments in the **Federal Register**.	Responds to public comment to make procedures clear to the public.
43 CFR 3.17	Added a note that resources excavated under the Antiquities Act may be eligible for disposal under Subpart E of 36 CFR 79.	Responds to public comments questioning the applicability of the rule to material remains excavated under the Antiquities Act.

Compliance With Other Laws, Executive Orders and Department Policy. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. Executive Order 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the economic analyses found in the report entitled ''Cost-Benefit and Regulatory Flexibility Analyses: Proposed Regulations on the Curation of Federally-Owned or Administered Archeological Collections'' that is available online at the following URL: *https://www.nps.gov/orgs/1187/upload/Regulatory_Analyses_36_CFR_Part_79_12.pdf.*

Congressional Review Act (CRA)

This rule is not a major rule under 5 U.S.C. 804(2), the CRA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

The rule relates to internal administrative procedures and management of government function. It does not regulate external entities, impose any costs on them, or eliminate any procedures or functions that would result in a loss of employment or income on the part of the private sector.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on state, local or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule does not regulate, change, or otherwise affect the relationship between Federal and state governments. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. The NPS 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.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required because this rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it qualifies as a regulation of an administrative and procedural nature. (For further information see 43 CFR 46.210(i)). This rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Federal Advisory Committee Act

Intergovernmental consultation recommended under this rule is exempt from the Federal Advisory Committee Act (FACA). This rule requires that consultation with Indian tribes be conducted between Federal officials and elected tribal officers or their designated employees acting in their official capacities, who meet solely for the purpose of exchanging views, information, or advice related to the management or implementation of this rule. Consultation with Tribes under this rule thus meets the two-part test for an exemption from the FACA set out in the Unfunded Mandates Reform Act of 1995, Public Law 104–4.

Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consult with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. The NPS has evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and has determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes. Nevertheless, the NPS conducted outreach to tribes and Native Hawaiian Organizations, initiated consultation through two letters to tribal leaders, and conducted face-to-face consultation on this rule upon request. Additional information regarding the identified effects on Indian Tribes and these outreach and consultation efforts is contained in a document entitled ''Consultation with Indian Tribes (E.O. 13175) regarding the proposed 36 CFR 79.12,'' which is available at the following URL: *https://www.nps.gov/orgs/1187/upload/Tribal_Consultation_36_CFR_Part_79_12.pdf.*

Effects on the Energy Supply (E.O. 13211)

This rulemaking is not a significant energy action under the definition in Executive Order 13211; the rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the rule has not otherwise been designated by the Administrator of OIRA as a significant energy action. A Statement of Energy Effects is not required.

Drafting Information

This rule was written with the cooperation and consultation of the following Federal agencies and bureaus: U.S. Bureau of Indian Affairs, U.S. Bureau of Land Management, U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service, U.S. Air Force, U.S. Army Corps of Engineers, U.S. Navy, and U.S. Forest Service. Each agency and bureau provided a specialist in the curation of archeological collections to participate in an informal interagency working group to provide expert advice during the drafting of this rule.

List of Subjects

36 CFR Part 79

Archives and records, Historic preservation, Indians—lands, Museums, Public lands.

43 CFR Part 3

Agriculture Department, Army Department, Historic preservation, Smithsonian Institution.

In consideration of the foregoing, the National Park Service and Department of the Interior amend 36 CFR part 79, and 43 CFR part 2, as set forth below:

PART 79—CURATION OF FEDERALLY OWNED OR ADMINISTERED ARCHEOLOGICAL COLLECTIONS

■ 1. The authority citation for part 79 is revised to read as follows:

Authority: 16 U.S.C. 470aa–mm, 54 U.S.C. 300101 *et seq.*

■ 2. Revise the part heading to read as shown above.

§§ 79.1 through 79.4 [Designated as Subpart A]

■ 3. Designate §§ 79.1 through 79.4 as subpart A and add a heading for subpart A to read as follows:

Subpart A—Administrative Provisions

§ 79.1 [Amended]

■ 4. In § 79.1 amend paragraph (a) by:
■ a. Removing ''(16 U.S.C. 431–433)'' and adding, in its place, ''(54 U.S.C. 320301–320303)'';
■ b. Removing ''(16 U.S.C. 469–469c)'' and adding, in its place, ''(54 U.S.C. 312501–312508)''; and
■ c. Removing ''(16 U.S.C. 470h-2)'' and adding, in its place, ''(54 U.S.C. 306101–306114)''.

■ 5. In § 79.2:
■ a. Revise paragraph (a).
■ b. In paragraph (b)(2), remove ''(16 U.S.C. 431–433)'' and add, in its place, ''(54 U.S.C. 320301–320303)'' and remove ''(16 U.S.C. 469–469c)'' and add, its place, ''(54 U.S.C. 312501–312508)''.

The revision reads as follows:

§ 79.2 Authority

(a) The regulations in this part are promulgated under 54 U.S.C. 302107 which requires that the Secretary of the Interior issue regulations ensuring that significant prehistoric and historic artifacts and associated records are deposited in an institution with adequate long-term curatorial capabilities. This requirement applies to artifacts and associated records subject to the National Historic Preservation Act (54 U.S.C. 300101 *et seq.*), the Reservoir Salvage Act (54 U.S.C. 312501–312508), and the Archaeological Resources Protection Act (16 U.S.C. 470aa–mm).

* * * * *

■ 6. In § 79.3, revise paragraph (a) to read as follows:

§ 79.3 Applicability.

(a) Except as otherwise stated in this section, the regulations in this part apply to collections, as defined in § 79.4 of this part, that are excavated or removed under the authority of the Antiquities Act (54 U.S.C. 320301–320303), the Reservoir Salvage Act (54 U.S.C. 312501–312508), section 110 of the National Historic Preservation Act (54 U.S.C. 306101–306114) or the Archaeological Resources Protection Act (16 U.S.C. 470aa–mm). Such collections generally include those that are the result of a prehistoric or historic resource survey, excavation or other study conducted in connection with a Federal action, assistance, license, or permit. Such collections include those that are owned by the United States and for which a Federal agency has practical management authority, either directly or indirectly, as a result of that ownership; and those collections that are not owned by the United States but that are managed or controlled by a Federal agency pursuant to the laws cited in this paragraph (a).

* * * * *

■ 7. Revise § 79.4 to read as follows:

§ 79.4 Definitions.

As used for purposes of this part:

Associated records means original records (or copies thereof) that are prepared, assembled and document efforts to locate, evaluate, record, study, preserve or recover a prehistoric or historic resource. Some records such as field notes, artifact inventories and oral histories may be originals that are prepared as a result of the field work, analysis, and report preparation. Other records such as deeds, survey plats, historical maps and diaries may be copies of original public or archival documents that are assembled and studied as a result of historical research. Classes of associated records (and illustrative examples) that may be in a collection include, but are not limited to:

(1) Records relating to the identification, evaluation, documentation, study, preservation, or recovery of a resource (such as site forms, field notes, drawings, maps, photographs, slides, negatives, films, video and audio cassette tapes, oral histories, artifact inventories, laboratory reports, computer cards and tapes, computer disks and diskettes, printouts of computerized data, manuscripts, reports, and accession, catalog, and inventory records);

(2) Records relating to the identification of a resource using remote sensing methods and equipment (such as satellite and aerial photography and imagery, side scan sonar, magnetometers, subbottom profilers, radar, and fathometers);

(3) Public records essential to understanding the resource (such as deeds, survey plats, military and census records, birth, marriage and death certificates, immigration and naturalization papers, tax forms and reports);

(4) Archival records essential to understanding the resource (such as historical maps, drawings and photographs, manuscripts, architectural and landscape plans, correspondence, diaries, ledgers, catalogs, and receipts); and

(5) Administrative records relating to the survey, excavation, or other study of the resource (such as scopes of work, requests for proposals, research proposals, contracts, antiquities permits, reports, documents relating to compliance with section 106 of the National Historic Preservation Act (16 U.S.C. 470f), and National Register of Historic Places nomination and determination of eligibility forms).

Collection means material remains that are excavated or removed during a survey, excavation, or other study of a prehistoric or historic resource, and associated records that are prepared or

assembled in connection with the survey, excavation, or other study.

Curatorial services means managing and preserving a collection according to professional museum and archival practices, including, but not limited to:

(1) Inventorying, accessioning, labeling, and cataloging a collection;

(2) Identifying, evaluating, and documenting a collection;

(3) Storing and maintaining a collection using appropriate methods and containers, and under appropriate environmental conditions and physically secure controls;

(4) Periodically inspecting a collection and taking such actions as may be necessary to preserve it;

(5) Providing access and facilities to study a collection; and

(6) Handling, cleaning, stabilizing, and conserving a collection in such a manner to preserve it.

Departmental Consulting Archeologist means the individual serving as the agent of the Secretary of the Interior in overseeing and coordinating the Department's archeological activities.

Federal Agency Official means any officer, employee or agent officially representing the secretary of the department or the head of any other agency or instrumentality of the United States having primary management authority over a collection that is subject to this part.

Indian lands has the same meaning as in § -.3(e) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

Indian tribe has the same meaning as in § -.3(f) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

Material remains means artifacts, objects, specimens, and other physical evidence that are excavated or removed in connection with efforts to locate, evaluate, document, study, preserve or recover a prehistoric or historic resource. Classes of material remains (and illustrative examples) that may be in a collection include, but are not limited to:

(1) Components of structures and features (such as houses, mills, piers, fortifications, raceways, earthworks, and mounds);

(2) Intact or fragmentary artifacts of human manufacture (such as tools, weapons, pottery, basketry, and textiles);

(3) Intact or fragmentary natural objects used by humans (such as rock crystals, feathers, and pigments);

(4) By-products, waste products or debris resulting from the manufacture or use of man-made or natural materials (such as slag, dumps, cores and debitage);

(5) Organic material (such as vegetable and animal remains, and coprolites);

(6) Human remains (such as bone, teeth, mummified flesh, burials, and cremations);

(7) Components of petroglyphs, pictographs, intaglios, or other works of artistic or symbolic representation;

(8) Components of shipwrecks (such as pieces of the ship's hull, rigging, armaments, apparel, tackle, contents, and cargo);

(9) Environmental and chronometric specimens (such as pollen, seeds, wood, shell, bone, charcoal, tree core samples, soil, sediment cores, obsidian, volcanic ash, and baked clay); and

(10) Paleontological specimens that are found in direct physical relationship with a prehistoric or historic resource.

Personal property has the same meaning as in 41 CFR 100–43.001–14. Collections, equipment (*e.g.,* a specimen cabinet or exhibit case), materials and supplies are classes of personal property.

Provenience information means recorded data about the physical location of an object as it was found during a survey, excavation, or other study of a prehistoric or historic resource.

Public lands has the same meaning as in § -.3(d) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

Qualified museum professional means a person who possesses knowledge, experience and demonstrable competence in museum methods and techniques appropriate to the nature and content of the collection under the person's management and care, and commensurate with the person's duties and responsibilities. Standards that may be used, as appropriate, for classifying positions and for evaluating a person's qualifications include, but are not limited to, the following:

(1) The Office of Personnel Management's ''Position Classification Standards for Positions under the General Schedule Classification System'' (U.S. Government Printing Office, stock No. 906—028–00000–0 (1981)) are used by Federal agencies to determine appropriate occupational series and grade levels for positions in the Federal service. Occupational series most commonly associated with museum work are the museum curator series (GS/GM–1015) and the museum technician and specialist series (GS/GM–1016). Other scientific and professional series that may have collateral museum duties include, but are not limited to, the archivist series (GS/GM–1420), the archeologist series (GS/GM–193), the anthropologist series (GS/GM–190), and the historian series (GS/GM–170). In general, grades GS–9 and below are assistants and trainees while grades GS–11 and above are professionals at the full performance level. Grades GS–11 and above are determined according to the level of independent professional responsibility, degree of specialization and scholarship, and the nature, variety, complexity, type, and scope of the work.

(2) The Office of Personnel Management's ''Qualification Standards for Positions under the General Schedule (Handbook X–118)'' (U.S. Government Printing Office, stock No. 906–030–00000–4 (1986)) establish educational, experience and training requirements for employment with the Federal Government under the various occupational series. A graduate degree in museum science or applicable subject matter, or equivalent training and experience, and three years of professional experience are required for museum positions at grades GS–11 and above.

(3) The ''Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation'' (48 FR 44716, Sept. 29, 1983) provide technical advice about archeological and historic preservation activities and methods for use by Federal, State, and local Governments and others. One section presents qualification standards for a number of historic preservation professions. While no standards are presented for collections managers, museum curators or technicians, standards are presented for other professions (*i.e.,* historians, archeologists, architectural historians, architects, and historic architects) that may have collateral museum duties.

(4) Copies of the Office of Personnel Management's standards, including subscriptions for subsequent updates, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Copies may be inspected at the Office of Personnel Management's Library, 1900 E Street NW, Washington, DC, at any regional or area office of the Office of Personnel Management, at any Federal Job Information Center, and at any personnel office of any Federal agency. Copies of the ''Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation'' are available at no charge from the Interagency Resources Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

Religious remains means material remains that the Federal Agency Official

has determined are of traditional religious or sacred importance to an Indian tribe or other group because of customary use in religious rituals or spiritual activities. The Federal Agency Official makes this determination in consultation with appropriate Indian tribes or other groups.

Repository means a facility such as a museum, archeological center, laboratory, or storage facility managed by a university, college, museum, other educational or scientific institution, a Federal, State, or local Government agency or Indian tribe that can provide professional, systematic, and accountable curatorial services on a long-term basis.

Repository Official means any officer, employee or agent officially representing the repository that is providing curatorial services for a collection that is subject to this part.

Tribal Official means the chief executive officer or any officer, employee or agent officially representing the Indian tribe.

§§ 79.5 through 79.9 [Designated as Subpart B]

■ 8. Designate §§ 79.5 through 79.9 as subpart B and add a heading for subpart B to read as follows:

Subpart B—Archeological Collections Management

§ 79.10 [Designated as Subpart C]

■ 9. Designate § 79.10 as subpart C and add a heading for subpart C to read as follows:

Subpart C—Public Access to and Use of Collections

§ 79.11 [Designated as Subpart D]

■ 10. Designate § 79.11 as subpart D and add a heading for subpart D to read as follows:

Subpart D—Inspections and Inventories of Collections

■ 11. Add subpart E to read as follows:

Subpart E—Disposition of Particular Material Remains

Sec.

79.12 Determining which particular material remains are eligible for disposal.
79.13 Acceptable methods for disposition of particular material remains.
79.14 [Reserved].
79.15 Final determination of disposition of particular material remains.
79.16 Objecting to a determination of disposition of particular material remains.
79.17 Timing of disposition.
79.18 Administrative record of disposition.

§ 79.12 Determining which particular material remains are eligible for disposal.

(a) *Which material remains are eligible for disposal under this subpart?* In order to be eligible for disposal under this subpart, material remains from collections must be:

(1) Archaeological resources, as defined in the Archaeological Resources Protection Act (16 U.S.C. 470bb(1)), or other resources excavated and removed under the Reservoir Salvage Act (54 U.S.C. 312501–312508) or the Antiquities Act (54 U.S.C. 320301–320303); and

(2) Considered to be of insufficient archeological interest under the criteria in paragraph (e) of this section, based on the definition of ''of archaeological interest'' in 43 CFR 7.3(a)(1).

(b) *Which material remains are not eligible for disposal under this subpart?* The following material remains from collections are not eligible for disposal under this subpart:

(1) Native American ''cultural items'' as defined in the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001(3)), because disposition is governed by that Act and its implementing regulations (43 CFR part 10);

(2) Other human remains not subject to the Native American Graves Protection and Repatriation Act of 1990;

(3) Material remains excavated and removed from Indian lands on or before the enactment of the Archaeological Resources Protection Act (16 U.S.C. 470aa–mm) on October 31, 1979; and

(4) Material remains excavated and removed from Indian lands under the Antiquities Act (54 U.S.C. 320301–320303).

(c) *Who may propose the disposal of particular material remains?* The following individuals who meet the applicable Professional Qualification Standards set by the Secretary of the Interior may propose the disposal of particular material remains from a collection:

(1) Federal agency staff members with verifiable knowledge of the particular material remains, including archeologists, curators, and conservators; and

(2) Qualified museum professionals located in a repository that provides curatorial services for a collection held in that repository.

(d) *Who is responsible for the disposal of particular material remains?* The Federal Agency Official is responsible for ensuring that particular material remains are disposed of according to the requirements of this subpart.

(e) *When are particular material remains considered to be of insufficient archeological interest?* Particular material remains are considered to be of insufficient archeological interest when, on a case-by-case basis, at least one qualified archeological or museum professional who meets the Professional Qualification Standards set by the Secretary of the Interior and possesses verifiable knowledge of and experience in the type of material remains being evaluated makes a determination. The determination must follow the process established in § 79.15 and document that:

(1) Disposition of the material remains will not negatively impact the overall integrity of the original collection recovered during the survey, excavation, or other study of a prehistoric or historic resource; and

(2) At least one of the following three requirements—lack of provenience information; lack of physical integrity; or overly redundant and not useful for research—are met:

(i) *Lack of provenience information.* Lack of provenience information may be established after a concerted effort to recover the information in the related associated records is performed and documented and by one or more of the following circumstances:

(A) The labels on the material remains or the labels on the containers that hold the material remains do not provide adequate information to reliably establish meaningful archeological context for the material remains;

(B) The labels on the material remains or the labels on the containers that hold the material remains have been lost or destroyed over time and cannot be reconstructed through the associated records; or

(C) The associated records of the material remains never existed, have been lost, or have been destroyed.

(ii) *Lack of physical integrity.* Material remains lack physical integrity when, subsequent to recovery during the survey, excavation, or other study of a prehistoric or historic resource, the material remains were irreparably damaged through decay, decomposition, or inadvertent loss. Examples may include human-caused incidents, exposure to elements, or natural disaster.

(iii) *Overly redundant and not useful for research.* Material remains are overly redundant and not useful for research in light of the collection's archeological context, research questions, and research potential. These considerations may vary based on geography, time and culture period, scientific or cultural significance, prior analysis, and other factors. Because it is difficult to predict if future analytical methods will yield

useful information about the material remains proposed for disposal, a sample of the material remains deemed to be overly redundant and not useful for research must be retained for curation, as required by § 79.15(f).

§ 79.13 Acceptable methods for disposition of particular material remains.

(a) *Indian lands.* This paragraph applies to material remains that are determined to be of insufficient archeological interest under § 79.12(e) and that were excavated or removed from Indian lands after October 31, 1979. Under the Archaeological Resources Protection Act (16 U.S.C. 470aa–mm), these material remains are the property of the Indian individual or Indian tribe having rights of ownership over the resources. Under the authority of 16 U.S.C. 470dd, disposition of these material remains is subject to the consent of the Indian individual or Indian tribe. The Federal Agency Official must use the following methods of disposal for these material remains in the following order:

(1) Return them to the Indian individual or Indian tribe having rights of ownership under the Archaeological Resources Protection Act's custody regulations, 43 CFR 7.13(b), 36 CFR 296.13(b), 32 CFR 229.13(b), and 18 CFR 1312.13(b).

(2) If the Indian individual or Indian tribe having rights of ownership does not wish to accept and take physical custody of the material remains, the Federal Agency Official may otherwise dispose of the material remains using the disposition methods in paragraph (b) of this section after receiving written consent and relinquishment of ownership from the Indian individual or Indian tribe having rights of ownership.

(b) *Public lands.* This paragraph applies to material remains that are determined to be of insufficient archeological interest under § 79.12(e) and that were excavated or removed from public lands that are not Indian lands. As a condition of disposal, the Federal Agency Official will reasonably ensure that material remains from such lands may not be traded, sold, bought, or bartered after disposal. The Federal Agency Official must consider the following methods for disposal of the material remains:

(1) Transfer to another Federal agency.

(2) Convey to a suitable public or tribal scientific or professional repository as defined in § 79.4(k) of this part.

(3) Convey to a federally recognized Indian tribe if the material remains were excavated or removed from lands of religious or cultural importance to that tribe and were identified and documented by a Federal land manager under 43 CFR 7.7(b)(1), 36 CFR 296.7(b)(1), 32 CFR 229.7(b)(1), or 18 CFR 1312.7(b)(1).

(4) Convey to a federally recognized Indian tribe from whose aboriginal lands the material remains were removed. Aboriginal occupation may be documented by evidence including, but not limited to, a final judgment of the Indian Claims Commission or the United States Court of Claims, or a treaty, Act of Congress, or Executive Order.

(5) Convey to a federally recognized Indian tribe for the purpose of traditional cultural, educational, or religious practices.

(6) Transfer within the Federal agency for the purpose of education or interpretation, or convey to a suitable institution to be used for public benefit and education including, but not limited to, local historical societies, museums, university or college departments, and schools.

(7) If the Federal Agency Official considers each of these prior methods carefully and is still unable to find an acceptable method of disposition, then the material remains may be destroyed. The Federal Agency Official or their designee must witness and document the destruction, including through photography or video as practicable.

§ 79.14 [Reserved]

§ 79.15 Final determination of disposition of particular material remains.

The Federal Agency Official is responsible for ensuring that the agency disposes of material remains according to the requirements of this subpart. A determination made under this subpart in no way affects a Federal land manager's obligations under other applicable laws or regulations. The Federal Agency Official must take all the following actions before making a final determination that it is appropriate to dispose of material remains.

(a) The Federal Agency Official must determine that the material remains are eligible for disposal under the criteria in § 79.12(a).

(b) The Federal Agency Official must verify in writing that none of the material remains proposed for disposal meet the criteria in § 79.12(b).

(c) The Federal Agency Official must verify that the material remains proposed for disposal are appropriately documented through a professional procedure approved by the Federal agency that is consistent with curatorial services, including accessioning and cataloging, as defined in § 79.4(b).

(d) The Federal Agency Official must consult with qualified museum professionals located in the repository that provides curatorial services for the material remains proposed for disposal if those museum professionals did not propose the disposal under § 79.12(c)(2). This consultation with the qualified museum professionals must address the appropriateness of the proposed disposal.

(e) The Federal Agency Official must establish a collections advisory committee of at least five members to review proposed dispositions of material remains. The committee must make a consensus recommendation to the Federal Agency Official about each proposed disposition based on the adequacy of the documentation addressing the requirements in paragraphs (a) and (b) of this section and the appropriateness of the proposed disposition based on the criteria in § 79.12(e).

(1) The collections advisory committee must consist of qualified employees from Federal agencies who meet appropriate Professional Qualification Standards set by the Secretary of the Interior, and must include the curator and the principal archeologist of the Federal agency that owns or administers the material remains if either or both of these two positions exist. The Departmental Consulting Archeologist may not participate on the collections advisory committee. If the Departmental Consulting Archeologist is the principal archeologist, then the Federal Agency Official must designate another qualified archeologist at the agency instead.

(2) Collections advisory committee members must include Federal employees with subject matter or technical expertise in the object types, cultural period, and culture area of the proposed disposition. These employees may include archeologists, anthropologists, curators, and conservators with expertise in historic, prehistoric, or underwater material remains.

(3) If the material remains being proposed for disposal are Native American, then collections advisory committee members must also include at least one or more individuals who are Tribal Officials acting in their official capacities representing their respective federally recognized Indian tribes that are regularly consulted by the Federal agency regarding the collection containing the material remains being proposed for disposal.

(4) The collections advisory committee must have written

procedures and governing rules, including terms of member appointments and the duration of the committee, approved by the Federal Agency Official, to ensure all recommendations about the appropriateness of disposal are fair, open, timely, and in the best interests of the public.

(5) The collections advisory committee must submit a written report to the Federal Agency Official for each proposed disposition that, at a minimum, documents the information required for the **Federal Register** notice identified in paragraphs (i)(1)(i) through (iii) of this section; membership of the committee and each member's role and expertise pertinent to the proposed disposition; a summary of any comments received on the proposed disposition under paragraph (h) of this section; the recommendations for disposition, including any conditions of transfer or conveyance; and the reasons why other methods of disposal would be of lesser public benefit.

(6) Federal employees or qualified members of federally recognized Indian tribes may be temporarily added to the committee if its existing members determine that specific expertise, including archeological knowledge of the cultural period and cultural area, is needed on a case-by-case basis.

(7) Collections advisory committee members, whether permanent or temporary, and their family members may not benefit financially or in any other way from a disposition of material remains, except to the extent that members of a federally recognized Indian Tribe, when that Indian Tribe is being considered as a potential recipient of material remains, may participate in the collections advisory committee as described in § 79.15(e)(3).

(f) The Federal Agency Official must retain in the curated collection a sample of those material remains determined to be overly redundant and not useful for research that is representative of the population as a whole from which the sample was taken.

(1) The size of the representative sample must be large enough to permit future analysis for research purposes.

(2) The method for establishing a representative sample, including sample size and typology, must be determined by a qualified museum or archeological professional with expertise in the type of prehistoric or historic material remains being sampled.

(3) The sampling method must be documented and consistent with professional prehistoric or historic archeological practice.

(g) The Federal Agency Official must retain all associated records in the archeological collection as defined in § 79.4(a)(2). A copy of the original associated records must be given to the recipient of any transferred or conveyed items subject to the restrictions stipulated in the Archaeological Resources Protection Act (16 U.S.C. 470hh(a)). For material remains excavated and removed from Indian land, a copy of the original associated records must be given to the Tribal Historic Preservation Officer (or other designated tribal representative) from the tribal land where the material remains were recovered.

(h) The Federal Agency Official must notify the entities listed in this paragraph of the proposed disposition and solicit comments on the proposal. Notifications must be made in writing, and must include a deadline for submitting comments that is at least 60 days after notice is issued, in accordance with procedures established by the Federal agency. All written comments must be reviewed by the Federal Agency Official and the collections advisory committee. The Federal Agency Official will respond to all relevant, substantive comments received. Notice must be given to the following:

(1) The State Historic Preservation Officer and, where established, the State Archeologist, from the state(s) where the material remains to be disposed of were recovered.

(2) The Tribal Historic Preservation Officer (or other designated tribal representative) from the Indian land(s) where the material remains to be disposed of were recovered.

(3) Federal, state, tribal, or local agencies that were involved in the recovery of the material remains to be disposed of.

(4) Private landowners from whose lands the material remains to be disposed of were removed, but only in such cases where the Federal agency obtained practical management authority over the material remains as the result of activities conducted in connection with a Federal action, assistance, license, or permit, on those private lands.

(5) Universities, museums, scientific institutions, and educational institutions with which the agency has an existing relationship pursuant to a written instrument (*e.g.,* permit, agreement) for research, excavation, curation, education, or other partnership in the state and region from which the material remains to be disposed of were recovered.

(6) Indian tribes that consider the land to have religious or cultural importance, if the material remains are from a site on public lands that has religious or cultural importance to Indian tribes under 43 CFR 7.7(b)(1).

(7) Indian tribes from whose aboriginal lands the material remains were removed, if aboriginal occupation has been documented by a final judgment of the Indian Claims Commission or the United States Court of Claims, treaty, Act of Congress, or Executive Order.

(i) The Federal Agency Official must, after the comment period described in paragraph (h) of this section has expired and the Federal Agency Official has responded to all relevant, substantive comments received, publish a notice of determination of disposition in the **Federal Register**.

(1) The notice published in the **Federal Register** must include the following:

(i) A general description of the material remains to be disposed.

(ii) The criteria used to determine that the material remains are of insufficient archeological interest under § 79.12(e).

(iii) The method of disposal.

(iv) The name of the Federal Agency Official or their designee as a point of contact.

(v) An explanation of a person's right to object to the determination of disposition under § 79.16 and the name, email, and physical address of the Departmental Consulting Archeologist.

(2) The Federal Agency Official must also prepare a determination of disposition that includes the following:

(i) A detailed list of the material remains to be disposed, including a description of each object, or lot of objects if there are multiples of a particular type, and photograph(s) of the objects when appropriate.

(ii) The report of the collections advisory committee as stipulated in paragraph (e)(5) of this section.

(iii) Documentation that all of the procedures in § 79.15 have been met.

(iv) The name of the recipient entity or method of disposal, as appropriate.

(v) Justification of the method to be used to dispose of the material remains under § 79.13.

(vi) The name of the Federal Agency Official or their designee as a point of contact.

(vii) Other conditions of transfer or conveyance, as appropriate.

(viii) A statement that the determination is a final agency action under the Administrative Procedure Act (5 U.S.C. 704) unless an objection is filed in accordance with § 79.16.

§ 79.16 Objecting to a determination of disposition of particular material remains.

Anyone may object to and request in writing that the Departmental Consulting Archeologist review a Federal Agency Official's determination to dispose of material remains within 60 days of publication of the notice of determination of disposition in the **Federal Register**. The objection must document why the objector disagrees with the Federal Agency Official's decision regarding the disposal. The procedure for objecting to a determination of disposition is as follows:

(a) The objection must be sent to the Departmental Consulting Archeologist. The Departmental Consulting Archeologist must forward a copy of the objection within 5 days of receipt to the Federal Agency Official who made the determination under objection. The Federal Agency Official must halt the planned disposition until the Departmental Consulting Archeologist completes the requested review.

(b) The Departmental Consulting Archeologist must review the objection, and the Federal Agency Official's determination of disposition in § 79.15(i)(2).

(c) The Departmental Consulting Archeologist must consult with the objecting party or parties and the Federal Agency Official with the aim of resolving the objection.

(d) Within 60 days of receipt of the objection, whether or not a formal resolution has been agreed upon, the Departmental Consulting Archeologist must transmit to the Federal Agency Official a non-binding recommendation, including a thorough explanation, for further consideration.

(e) The Federal Agency Official must consider the recommendation of the Departmental Consulting Archeologist prior to making a decision on the objection. Within 30 days of receipt of the recommendation, the Federal Agency Official must respond to the Departmental Consulting Archeologist and the objector with a decision on the objection and a justification for that decision. The decision document must include any information about administrative appeal rights required by internal agency appeal procedures or a statement that the decision document is a final agency action under the Administrative Procedure Act, as appropriate.

(f) The Federal Agency Official must publish notice of the decision on the objection and any amendments made to the determination of disposition in the **Federal Register**. This may only be done after the objector exhausts any internal appeal procedures identified in the decision document sent to the objector under § 79.16(e). Publication of the notice of the decision on the objection constitutes a final agency action under the Administrative Procedure Act (5 U.S.C. 704).

§ 79.17 Timing of disposition.

Disposition will occur no sooner than 60 days after the notice of determination of disposition is published in the **Federal Register** under § 79.15(i). If the Federal agency receives an objection under § 79.16, then disposition will occur no sooner than 30 days after the notice of decision on the objection and any amendments are published in the **Federal Register** under § 79.16(f).

§ 79.18 Administrative record of disposition.

(a) After the Federal Agency Official has made a determination of disposition, he or she must document the determination and retain the administrative record as part of the associated records as defined in § 79.4(a)(2), which must include:

(1) The professional evaluation of the material remains conducted under §§ 79.12(e) and 79.15(b).

(2) The report of the collections advisory committee provided under § 79.15(e)(5).

(3) Notifications of the proposed disposition under § 79.15(h); consent of Indian individuals or tribes, if applicable, under § 79.13(a)(2); and comments received from the parties notified under § 79.15(h).

(4) Objections received by the Departmental Consulting Archeologist, the non-binding recommendation of the Departmental Consulting Archeologist, and the decision on the objection and any amendments made to the determination of disposition, if applicable, under § 79.16.

(5) The disposition action with specific information, including a description and evaluation of objects; the method of disposition and the reason for the method chosen; names and titles of persons initiating and approving the disposition; date of disposition; relevant accession and catalog numbers; evidence of the receipt for the return, transfer, or conveyance of the material remains by the recipient tribe, agency, repository, or institution, including the title to the received material remains, as appropriate; photographic documentation, as appropriate; and the name and location of the recipient institution or entity, as appropriate.

(6) A detailed inventory of the representative sample of material remains retained, when the larger proportion is disposed of because it is overly redundant and not useful for research.

(7) Other activities and decisions pertaining to the disposition of the material remains, such as conditions of use after the disposition is completed, as appropriate.

(b) The administrative record must be made available to the public upon request, unless the information or a portion of it must be withheld under the terms of the Freedom of Information Act (5 U.S.C. 552) or the Archaeological Resources Protection Act (16 U.S.C. 470hh). The latter restricts the government's ability to make sensitive information, such as archeological site location data, available to the public.

(c) After disposition, the accession and catalog records must be reviewed and amended through a procedure established by the Federal agency. The amendments must identify the material remains that were deaccessioned and disposed of, the date of disposition, and the manner in which they were disposed. The documentation prepared under § 79.15, § 79.16, and paragraph (a) of this section must be retained in accordance with Federal agency policy.

TITLE 43: PUBLIC LANDS: INTERIOR

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR

PART 3—PRESERVATION OF AMERICAN ANTIQUITIES

■ 12. The authority citation for part 3 is revised to read as follows:

Authority: 54 U.S.C. 320302–320303.

■ 13. Amend § 3.17 by adding a note at the end of the section to read as follows:

§ 3.17 Preservation of Collection

* * * * *

Note to § 3.17: Regulations concerning curation of federally owned or administered archeological collections are found in 36 CFR part 79. Objects excavated under the Antiquities Act may be eligible for disposal under subpart E of 36 CFR part 79.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2022–07471 Filed 4–14–22; 8:45 am]

BILLING CODE 4312–52–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2021–0870; EPA–HQ–OAR–2021–0663; FRL–9468–02–R7]

Air Plan Approval; Iowa; 2015 Ozone NAAQS Interstate Transport Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Iowa as meeting the Clean Air Act (CAA) requirement that each State's SIP contain adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone national ambient air quality standards (NAAQS) in any other state. This action is being taken in accordance with the CAA.

DATES: This final rule is effective on May 16, 2022.

ADDRESSES: The EPA has established dockets for this action under Docket ID No. EPA–R07–OAR–2021–0870 with additional supporting documentation included in Docket ID No. EPA–HQ–OAR–2021–0663. All documents in the dockets 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 through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: William Stone, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7714; email address: *stone.william@epa.gov.*

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

Table of Contents

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

I. Background and Purpose

On February 22, 2022, EPA published a notice of proposed rulemaking (NPRM) for the State of Iowa. *See* 87 FR 9477. The NPRM proposed approval of an Iowa SIP revision that addresses the CAA requirement prohibiting emissions from the State that significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in other states. *See* CAA section 110(a)(2)(D)(i)(I) (the ''good neighbor provision''). The SIP revision was submitted to EPA by Iowa on November 30, 2018. The rationale for EPA's proposed action is given in the NPRM and will not be repeated here.

The EPA solicited comments on the proposed revision to Iowa's SIP and received no comments.

II. Final Action

EPA is approving an Iowa SIP revision, which was submitted on November 30, 2018. This submission is approved as meeting CAA section 110(a)(2)(D)(i)(I) requirements that Iowa's SIP includes adequate provisions prohibiting any source or other type of emissions activity within the State from emitting any air pollutant in amounts that will contribute significantly to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

III. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the 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).
- This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).
- Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 14, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 11, 2022.

Meghan A. McCollister,

Regional Administrator, Region 7.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart Q—Iowa

■ 2. In § 52.820, the table in paragraph (e) is amended by adding the entry ''(55)'' in numerical order to read as follows:

§ 52.820 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IOWA NONREGULATORY PROVISIONS

Name of non regulatory SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(55) Transport SIP for the 2015 Ozone Standard.	Statewide	11/30/2018	April 15, 2022, [insert **Federal Register** citation].	[EPA–R07–OAR–2021–0870; EPA–HQ–OAR–2021–0663; FRL–9468–02–R7]. This transport SIP shows that Iowa does not significantly contribute to ozone nonattainment or maintenance in any other state. This submittal is approved as meeting the requirements of Clean Air Act section 110(a)(2)(D)(i)(I).

[FR Doc. 2022–08028 Filed 4–14–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 158

[EPA–HQ–OPP–2020–0124; FRL–5331–05–OCSPP]

RIN 2070–AJ49

Pesticide Product Performance Data Requirements for Products Claiming Efficacy Against Certain Invertebrate Pests

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is codifying product performance data requirements to support registration of pesticidal products claiming efficacy against three categories of invertebrate pests: Those identified to be of significant public health importance (*e.g.,* ticks, mosquitoes, cockroaches, etc.), wood-destroying insects (*e.g.,* termites), and certain invasive invertebrate species (*e.g.,* Asian longhorned beetle). The latter two categories are pests considered to be of significant economic or ecological importance. Product performance data (efficacy studies) document how well the pesticide performs the intended function, such as killing or repelling, against an invertebrate pest.

DATES: This final rule is effective on June 14, 2022.

ADDRESSES: The EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2020–0124. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* 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 electronically through *https://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be affected by this action if you are a producer or registrant of pesticide products making claims against the specified categories of invertebrate pests. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining if this action might apply to certain entities. This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed could also be affected. Potentially affected entities may include, but are not limited to,

- Chemical Producers (NAICS 32532), *e.g.,* pesticide manufacturers or formulators of pesticide products, pesticide importers or any person or company who seeks to register a pesticide.
- Research and Development in the Physical, Engineering, and Life Sciences (NAICS code 541712), *e.g.,* research and development laboratories or services that perform efficacy testing for invertebrate pests.
- Colleges, universities, and professional schools (NAICS code 611310), *e.g.,* establishments of higher learning which are engaged in development and marketing of products for invertebrate pest control.

B. What action is the Agency taking?

EPA is codifying product performance data requirements for pesticide products claiming efficacy against three categories of invertebrate pests: Those identified to be of significant public health importance (*e.g.,* ticks, mosquitoes, cockroaches, etc.), wood-

destroying insects (*e.g.,* termites), and certain invasive invertebrate species (*e.g.,* Asian longhorned beetle). The latter two categories are considered to be of significant economic and/or ecological importance.

Product performance data (efficacy studies) document how well the product performs the intended function, such as killing or repelling, against an invertebrate pest. The product performance data requirements will inform the data needed to substantiate pesticidal claim(s) made on the label of the pesticide products. The numerical performance standards specify the level of efficacy that would need to be achieved for EPA to deem the submitted data as acceptable for a product bearing the specified claim(s) against the invertebrate pest. For the most part, the data requirements that EPA is codifying are consistent with EPA's current practices in data supporting applications for registration of a pesticide product that bears a pesticidal claim against one or more of these pests.

This final rule presents the data requirements in tabular format. These tables link the efficacy claim on the label of a pesticide product with the data needed to substantiate that claim. Applicants must submit studies demonstrating their product's efficacy using specified test species and meeting specified performance standards. Numerical performance standards, such as the percent mortality, percent repellency, percent knockdown, or complete protection time, will need to be achieved to deem the data acceptable for the purpose of supporting a product making a claim against an invertebrate pest. Codifying essential elements relating to test species and performance standards will provide the regulated community a better understanding of the data necessary to support registration of a product that claims efficacy against invertebrate pests.

This final rule:

- Codifies a new subpart R in 40 CFR part 158 entitled, ''Product Performance for Products Claiming Effectiveness Against Invertebrate Pests;''
- Renames 40 CFR part 158, subpart E to ''Product Performance for Products Claiming Effectiveness Against Vertebrate Pests, Products with Prion-related Claims, and Products for Control of Organisms Producing Mycotoxins'' in order to add specificity to the title and reduce the potential for confusion with the new subpart R; and
- Revises the data requirements for biochemicals in 40 CFR 158.2070 and microbials in 40 CFR 158.2160 to clarify the requirements for claims that would be subject to both subpart R and either subpart U or V.

Additionally, this final rule updates 40 CFR 158.1(c) to insert references to the subparts to categorize them under the ''scope of the subparts'' section. EPA is also updating subpart W at 40 CFR 158.2200(b) to insert a cross reference to the newly created subpart R to clarify the status of a product that bears both an antimicrobial claim and a non-antimicrobial claim against one of the pests specified in proposed subpart R.

C. What is EPA's authority for taking this action?

This action is issued under the authority of sections 3, 5, 10, 12, and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136–136y), as amended. Under FIFRA section 3(c)(2)(A), EPA is required to specify ''the kinds of information which will be required to support the registration of a pesticide and shall revise such guidelines from time to time.'' EPA's codification of these data requirements is in 40 CFR part 158.

Additionally, the Pesticide Registration Improvement Extension Act of 2018 (PRIA 4) (7 U.S.C. 136 note, 133 Stat. 484) was enacted into law on March 8, 2019. PRIA was developed by a coalition of pesticide stakeholders representing seven different trade groups within the pesticide industry and public interest groups reflecting the environmental and farmworker safety communities. The result of this collaboration is that there are elements of PRIA 4 important to all the represented stakeholder entities in the coalition. PRIA 4 specifically establishes a new maintenance fee set-aside of up to $500,000/year to develop and finalize rulemaking and guidance for product performance data requirements for certain invertebrate pests of significant public health or economic importance. Specific to this rule, PRIA 4 requires EPA to finalize product performance data requirements by September 30, 2021, for certain pesticides intended for preventing, destroying, repelling, or mitigating specified invertebrate pest of significant public health or economic importance.

This final rule includes product performance data requirements for the categories of invertebrate pests specified in PRIA 4 and, thus, is intended to satisfy the aforementioned rulemaking requirement. EPA notes that this final rule covers some invertebrate pests in addition to those specified in PRIA 4 due to their public health, economic, or ecological significance (*e.g.,* wood destroying insects).

D. Why is EPA taking this action?

The following objectives were considered by EPA in developing this rule:

1. *Obtaining reliable data to make the statutory finding.* The data submitted to EPA for review and evaluation as a result of this final rule are expected to improve the Agency's understanding of the effectiveness of pesticides that make claims against pests of public health or significant economic importance.

2. *Provide clear and transparent data requirements.* This final rule identifies the specific data requirements that apply to pesticides making claims against certain categories of invertebrate pests. As with the original design of 40 CFR part 158 in 1984, and continued in 2007, given the variations in pesticide chemistry, exposure, and hazard, this final rule for product performance data requirements is intended to be clear and transparent while retaining sufficient flexibility to account for special circumstances.

E. What are the estimated incremental impacts?

In conjunction with this rulemaking, EPA prepared an economic analysis entitled, ''Cost Analysis of the Final Product Performance Rule'' (Ref. 1) which presents an economic analysis of the effects of codifying data requirements for product performance, as well as the effects of changes to label claim data requirements published simultaneously.

As noted previously, FIFRA mandates the Agency to register pesticides, including those used against invertebrate pests of public health importance, invertebrate wood destroying pests, and invasive invertebrate pests, under conditions of use such that the pesticide is of a composition to warrant the proposed claims. To make this finding, the Agency requires that registrants submit data demonstrating product efficacy against invertebrate pests of public health importance, invertebrate wood destroying pests, and invasive invertebrate pests. The product performance data requirements historically sought by the EPA and those being finalized in the rule are for claims against pests that either pose a threat to human health (*e.g.,* mosquitoes and cockroaches) or have significant economic or ecological impacts, against which the efficacy of a pesticide cannot be readily determined by the user (*e.g.,* termites and emerald ash borers). In those situations, market forces may operate too slowly to remove ineffective products. This final rule codifies data

requirements for support of label claims that have, to date, been necessary, as determined on a case-by-case basis, to conduct assessments of product performance. This will provide needed clarity to firms seeking to develop and market products to control covered pests.

This final rule clarifies data requirements and therefore improves efficiency and effective use of resources by both the Agency and industry. Moreover, this final rule will serve the public by ensuring that appropriate efficacy data are available to substantiate the label claims on these products. While experience over time has led to a fairly standardized set of data requirements for invertebrate pests of significant public health importance, wood-destroying insects, and invasive pests, codifying these data needs will ensure that new entrants to the field are clear about the information necessary to support registration. As a result, this final rule will help alleviate uncertainties in the regulatory process and enhance transparency for stakeholders. The Agency is specifying data requirements for invertebrate pests of significant public health importance, wood-destroying insects, and invasive invertebrate pests to better indicate when certain data are needed or not. Consistent with 40 CFR 158.30, 158.45 and 40 CFR 158.1707, on a case-by-case basis the Agency may consider alternative information and data that are more appropriate than the final rule requirements, considering the intended purpose and pesticidal claims of a pesticidal product.

EPA estimates that this final rule will result in cost savings of one million dollars annually across all registrants seeking label claims against invertebrate pests of significant public health importance, wood-destroying insects, and invasive invertebrate pests, equivalent to about $17,000 in savings per data package submitted to the Agency (Table 1). The average savings per registrant is $5,500 annually, considering that registrants do not submit products for review every year. This impact is expected to remain consistent over the next ten years, with total cost savings to industry of $1 million annually using either a 3% or a 7% discount rate. Over ten years, this amounts to about $8.5 million in savings at a 3% discount rate or about $7 million in savings at a 7% discount rate. The most expansive estimate of registrant cost savings of the final rule, including all likely impacts of the publication of the rule and the impact of changes in data requirements published concurrently with the rule, is $1.7 million annually. The estimated worst case is a cost increase to registrants of $600,000 annually.

EPA's registration program and efficacy review has substantial benefits for consumers. It ensures product efficacy and label consistency across products, increases consumer confidence in product efficacy, and reduces consumer search costs for effective products. Clarity in data requirements would enhance the efficiency of the registration process and aid new products to market, providing consumers with more product choices.

TABLE 1—SUMMARY OF BENEFITS AND COSTS OF THE FINAL RULE

Expected Benefits of the Final Rule	
Cost savings per data package submitted	• Average impact per submitted data package of $17,000.
Cost savings per registrant submitting data packages.	• Average annual impact per registrant of $5,500.
Annualized Cost Savings	• $1 million at both 3% and 7% discount rates. • This projection assumes 60 data packages submitted annually to the Agency.
Qualitative Effects	• *For registrants:* Quicker label changes, lower discovery costs, lower barriers to innovation. • *For consumers:* Ensuring product efficacy and label consistency; increased consumer confidence in product efficacy; reduced search costs for effective products; and reduction in damage from covered pests.
Expected Costs of the Final Rule	
No increased risk to human health or the environment is expected from publication of the final rule. No increased costs to registrants or consumers are expected from publication of the final rule. Expected direction of costs for the Agency from the final rule is unknown.	
Other Impacts	
Small Business Impacts	• No significant impact on a substantial number of small entities. • Affected NAICS codes contain up to 5,438 small entities. No increased costs to small entities expected, and cost savings may be relatively larger for small firms who do not have experience with the registration process for invertebrate pests of public health importance, invertebrate wood destroying pests, and invertebrate invasive pests.

II. Background

The proposed rule (86 FR 15362, March 22, 2021) (FRL–10011–06) provided detailed background information on the pesticide registration process, the preexisting regulatory framework, why product performance data matter, and the relationship between this rulemaking and other guidance documents (see proposed rule pages 15365–15368). This section briefly summarizes that information.

A. Statutory Background

As a general matter, no person may distribute or sell an unregistered pesticide in the U.S. (FIFRA section 3(a)). The process for obtaining a registration for a pesticide so that it may be distributed or sold begins with submission to EPA of an application with the necessary data to review the application request. Taking into account the information submitted, EPA must grant the requested registration, if it concludes, when considered with any restrictions imposed, that:

- Composition of the proposed pesticide is such as to warrant the proposed claims for it;
- Labeling for the proposed pesticide and other material required to be submitted comply with the requirements of FIFRA;
- The proposed pesticide will perform its intended function without unreasonable adverse effects on the environment; and

• When used in accordance with widespread and commonly recognized practice, the proposed pesticide will not generally cause unreasonable adverse effects on the environment.

FIFRA section 3(c)(5) further provides that EPA ''may waive data requirements pertaining to efficacy, in which event the Administrator may register the pesticide without determining that the pesticide's composition is such as to warrant proposed claims of efficacy.'' This final rule identifies the data requirements EPA has determined are typically necessary to determine whether the proposed claims of efficacy are warranted, along with the opportunity for waiver or modifications pursuant to 40 CFR 158.30 and 158.45 and newly codified 40 CFR 158.1707.

B. Registration Regulatory Framework

FIFRA section 3 contains the requirements for granting and maintaining registration. FIFRA section 3(c)(2) provides EPA broad authority, before and after registration, to require scientific testing and submission of the resulting data to the Agency. Under this authority, EPA requires such testing and submission of data through rulemaking, see, 40 CFR part 158 or, for existing registrations, through issuance of a ''data call-in.'' (See, FIFRA section 3(c)(2)(B)). EPA may also request further data if the data submitted fail to adequately address an issue necessary for making the requisite statutory findings. (See, 40 CFR 158.75). Consistent with the requirements EPA has imposed and the data that have been identified as needed to review applications for registration of pesticides of significant health or economic importance, an applicant for registration must furnish EPA with data on the pesticide, its composition, toxicity, potential human exposure, environmental properties and ecological effects, as well as its product performance (efficacy).

The pre-existing regulatory data requirements for product performance for pesticides are contained in 40 CFR part 158, subpart E, which for the most part is specific to vertebrates (*e.g.,* birds, rodents, etc.); 40 CFR part 158, subpart U, section 158.2070, which is specific to biochemicals; 40 CFR, subpart V section 158.2160, which is specific to microbials; and 40 CFR part 158, subpart W, 158.2220, which is specific to antimicrobials. However, subpart E does not specifically require submission of product performance data for those pesticide products claiming effectiveness against invertebrate pests (*e.g.,* insects, spiders, etc.). Instead, the test note in 40 CFR 158.400(e)(1) contemplates requiring the submission of product performance data on a case-by-case basis, consistent with the general authority in 40 CFR 158.75 to require additional data as part of the registration process, if the information that is required and submitted for registration is not sufficient to make the requisite statutory findings. EPA has relied on these authorities for some years to obtain needed product performance data for conventional pesticides intended for use against certain invertebrate pests of public health or economic significance. This rulemaking creates a new subpart R for invertebrate product performance requirements to capture the updates to the product performance data requirements for pesticides, and makes conforming edits to subparts E, U, V, and W.

C. Why does product performance matter?

The primary goal of this final rule is to assure that pesticide products claiming effectiveness against an invertebrate pest of significant public health or economic importance perform effectively. This action addresses both health concerns and economic consequences stemming from pesticide products that might not perform as claimed on the label. Consistent with the regulatory text in 40 CFR 158.400(e)(1) and as noted in PRN 2002–1 and PRN 96–7: Termiticide Labeling, (Refs. 2 and 3), EPA has regularly exercised its discretion to require submission of product performance data for pesticides intended for use against invertebrate pests of significant public health or economic importance. The preamble to the proposed rule provides a more detailed discussion of the consequence of ineffective control of these pests (see proposed rule at page 15366).

D. Label Requirements

Pesticide product labeling provides information to users on, among other things, the product's intended uses, and how to handle and apply the EPA's product labeling regulations are contained in 40 CFR part 156. EPA reviews pesticide labels to determine whether the labeling is consistent with EPA's regulations, and is accurate, clear and enforceable. The accuracy of the information on the labeling is of particular importance for products making a claim to kill or repel pests of significant public health importance and wood-destroying pests. Such pests, if uncontrolled, can transmit disease pathogens, thus posing a widely recognized and significant risk to human health, and can result in significant economic impacts.

E. EPA's Harmonized Test Guidelines for Invertebrate Product Performance

EPA has established a unified library for test guidelines issued by the Office of Chemical Safety and Pollution Prevention (OCSPP) for use in testing chemical substances to develop data for submission to EPA under the Toxic Substances Control Act (TSCA) and FIFRA. This library of test guidelines represents an Agency effort that began in 1991 to harmonize the test guidelines within OCSPP, as well as to harmonize the OCSPP test guidelines with those of the Organization for Economic Cooperation and Development, which includes representation of countries, including the U.S., throughout the world.

As a general matter, this final regulation describes the product performance data requirements, and the guidelines give examples of how to conduct studies to generate those data. The guidelines themselves do not impose requirements. Instead, they provide recognized methods for conducting acceptable tests, guidance on reporting data, and definitions of terms. Since these are guidance, pesticide registrants are not required to use these guidelines to fulfill data requirements. Applicants may instead seek to fulfill the data requirements by other appropriate means or by using a non-guideline protocol. The applicant may submit a protocol of his own devising for the Agency to review. EPA notes that there is a PRIA fee category for submitting a protocol for EPA to review.

III. The Scope of Subpart R

The proposed rule provided a detailed discussion of EPA's rationale for the scope of the rule, including EPA's reasoning for including the specified pests, EPA's methods for selecting the representative test species, and the reasoning behind the performance standards. (See proposed rule at pg. 15386). This section provides a summary of that discussion. Unit VII. of the preamble to this final rule discusses public comments related to the scope of the final rule and EPA's response to those comments. EPA selected three pest categories for this rule: Pests of significant public health importance, wood-destroying insects, and invasive species. The rationale for selection of these three categories follows.

A. Categories of Pests Covered by This Regulation

The invertebrate species of significant public health importance identified in this rule as requiring submission of product performance data are derived from the invertebrate pest list identified in PR Notice 2002–1, a draft update which was released for comment in 2020 (Ref. 2). These invertebrate pests pose a threat of injury, disease transmission and/or pathogen transfer, and allergen production. They can have venomous bites or stings, and can vector serious diseases such as Rocky Mountain Spotted Fever, Lyme Disease, Ehrlichiosis, West Nile Virus, Dengue Fever, Malaria, Encephalitis, Yellow Fever, Chikungunya Fever, and Zika Virus.

Structural pests differ from pests of significant public health importance because health of individuals is not imperiled. However, the effectiveness of the treatment is not readily apparent to the applicator at the time of application or during the occupancy of the building or home, and a potential for significant financial loss to the property owner exists. EPA has generally required submission of product performance data for wood-destroying insects for over 40 years. Similarly, invertebrate invasive species can impose serious economic costs by causing or vectoring diseases against native species that have little or no natural defenses. Invertebrates such as the emerald ash borer and the Asian longhorned beetle kill trees over very large geographic areas, thus, having substantial ecological and economic impacts by destroying both urban cover and forests used for recreation purposes and timber stands.

As proposed, EPA is not codifying a comprehensive list of all the specific invasive species for which product performance data might be deemed necessary. Currently, EPA is codifying product performance data submission requirements only for the emerald ash borer and the Asian longhorned beetle. However, the submission of product performance data to support claims for effectiveness against other invasive invertebrate pests will be considered on a case-by-case basis.

B. Pest Groups and Subgroups

EPA has identified pest groupings on the basis of the biology and life history characteristics of the pests identified as public health or wood destroying pests. The groupings are taxonomically based. ''Pest groups'' and ''pest sub-groups'' are designations simply intended to convey the fact that some pests groups are part of larger groups. Therefore, when practical, ''pest sub-groups'' have been identified to define a meaningful subset of the larger group.

EPA developed the pest groups and pest sub-groups with the intention that product performance testing performed on a particular species can adequately represent a claim against the general group or subgroup. The Agency intends these pest groupings to decrease data submission burdens on applicants and data review burden on the Agency as well as increasing the consistency, reliability, and integrity of data submitted to EPA.

To develop the groupings, EPA considered species sensitivity. In certain cases, one member of a pest grouping is known to be significantly harder to kill, control, or repel than other members of the grouping. If product performance testing is performed using the species that is harder to kill, control, or repel, then logically, it can be assumed that the results of this testing can be extrapolated to other members of the grouping. Additional considerations included the availability of species in a laboratory setting, the occurrence of species over wide areas and/or those species most commonly associated with transmission of diseases to humans.

C. General Requirements

The provisions at 40 CFR 158.1700 contain the general requirements that are applicable to any pesticide product that is making a claim(s) against an invertebrate pest, and describes how to use the data tables in subpart R. These general requirements describe when product performance data may be required, specifically for products that bear a claim against a pest of significant public health importance or a pest of economic significance. The required tests must be conducted using the end-use product to ensure that the product's claims are supported in the form in which the user will be using the product.

In order to ensure consistent implementation of subpart R, EPA is finalizing definitions specific to the subpart. The provisions at 40 CFR 158.1701 and 158.1703 contain the definitions pertaining to subpart R. The provisions at 40 CFR 158.1704 codify a set of performance standards that, in the absence of performance standards specified elsewhere in subpart R, will apply generally and must be met for data cited to be considered acceptable in support of a specific labeling claim on the product's labeling. The provisions at 40 CFR 158.1705 codify a reference to EPA's Harmonized Test Guidelines, which set forth a recommended approach to generate the data required for product performance testing. The provisions at 40 CFR 158.1707 state that on a case-by-case basis, the data requirements identified in subpart R may need to be modified for novel technologies or because a product's unusual physical, chemical, or biological properties or atypical use patterns would make particular data requirements inappropriate, either because it would not be possible to generate the required data or because the data would not be useful in the Agency's evaluation of the risks or benefits of the product. EPA recommends that registrants of novel technologies contact the Agency prior to conducting product performance testing. Pursuant to 40 CFR 158.30 and 158.45, EPA has historically taken the position that data requirements can be modified or waived on a case-by-case basis. The provision at 40 CFR 158.1707 is not intended to supersede or alter those provisions, but rather to provide that the data requirements, including the performance standards, in subpart R may be modified using the procedures consistent with those in 40 CFR 158.45. The provisions at 40 CFR 158.1709, state that if a registrant requests a labeling claim specific to a disease vector, additional testing conducted with the species specific to that disease vector claim is required if that species is not already required under subpart R as part of the pest group tested.

The provisions at 40 CFR 158.1710 state that if an application for registration or amended registration requests a labeling claim specific to a structural or wood-destroying pest that is not identified in 40 CFR 158.1782 through 158.1786, EPA may require submission of product performance data to support those claims for effectiveness. This requirement will ensure that any claim against structural and wood-destroying pests that have not been accounted for at this time are supported by product performance data in the event that a new threat emerges.

D. Pest-Specific Claims

EPA is codifying product performance data submission requirements for pest groups, sub-groups, and some specific species. The term ''pest-specific labeling claim'' means a claim or statement on the labeling of the pesticide product that the product is effective against a particular arthropod species, such as German cockroach or house fly. The representative test species were selected on the basis of vigor of the pest species and the likely ability of the species to serve as an adequate surrogate for other pests in the group, as well as other factors including their availability for

laboratory testing, ubiquity, and whether they are one of the primary drivers of the human health concerns within a grouping. For pests that are not listed as a ''pest-specific claim'' in subpart R, the data required to support a group (or subgroup) claim would also be sufficient to support pest-specific claims for species within that group. Consistent with EPA's current practices, EPA has added a provision at 40 CFR 158.1700(4)(b) that makes clear that for a pest-specific claim against any pest that is listed as a representative test species for a group or subgroup claim, pest-specific data would need to be submitted even if the pest is not listed in a subpart R provision explicitly requiring a pest-specific claim. For example, the American house dust mite (*Dermatophagoides farinae*) is listed as an option for testing for a claim against dust mites, and accordingly submission of data on the American house dust mite (*Dermatophagoides farinae*) would be needed for a pest-specific claim against American house dust mite (*Dermatophagoides farinae*). In contrast, the pavement ant (*Tetramorium caespitum*), for example, is not listed as a pest-specific claim nor is it a representative test species for a group or subgroup claim, thus it does not require submission of pest-specific data.

As noted in the preamble to the proposed rule, the provisions at 40 CFR 158.75 and 40 CFR 158.1708 would permit the EPA to require pest-specific data on a case-by-case basis when necessary to evaluate a pesticide product. These provisions allow EPA to address the Agency's data needs in the face of emergent invertebrate pest concerns. Additionally, as proposed, EPA is finalizing provisions that would require group testing for mosquitos and ticks in order to make a claim against pests within those groups.

E. Data Requirements for Subpart R

The data requirements that EPA is finalizing are consistent with the Agency's current practices when considering the product performance data needed to register a pesticide product that bears a pesticidal claim against one or more of these pests or pest groups/sub-groups. FIFRA section 3(c)(2) directs EPA to specify the kinds of data that applicants and registrants must submit to EPA to support regulatory determinations under FIFRA. The data requirements for pesticide products are codified in 40 CFR part 158. The product performance data needs being finalized in this rule link the labeling claim for pesticide products claiming efficacy against an invertebrate pest with the data needed to substantiate that claim. EPA views these standards as performance standards for the acceptability of data and, as explained elsewhere, are waivable under 40 CFR 158.45.

IV. Response to Public Comments

The 60-day public comment for the proposed rule closed on May 22, 2021. EPA received 16 unique submissions to the docket. Commenters included trade associations (5), industry groups (4), consulting groups (2), state government associations (1), public interest groups (1), and private citizens (3). In this unit, EPA provides a summary of the major issues raised by commenters and EPA's responses, as well as summaries of public comments that prompted changes to the proposed requirements for the final rule. All public comments and EPA's responses to comments received, including those that do not raise significant issues or substantially change the proposed requirements, are included in Response to Comments document (Ref. 4) that is available in the docket for this rule.

Commenters were supportive of the rulemaking. Their concerns were, in large part, focused and technical (*e.g.,* add XXX pest, change XXX performance standard and/or related to uncertainty around rule implementation). EPA also received several comments that are outside the scope of the rule (*e.g.,* related to testing guidelines). While EPA is finalizing this rule substantially as proposed, EPA is making some discrete changes to the rule in response to public comments. Those changes, and the reasons behind them, are discussed further in this Unit and in the Response to Comments Document.

A. Technical Comments

EPA received several technical comments on the proposed regulation, including suggestions to add categories of claims, add or remove representative tests species, add additional definitions, and reevaluate the listed performance standards.

One commenter suggested that EPA add a ''general flies'' claim to the regulations and that testing house fly, a *tabanid sp.,* blow fly sp., and *Fannia sp.* would warrant this claim. After review of this comment EPA has determined that it is appropriate to add a general fly label claim category to the regulatory provisions. However, Tabanids have been included and little house flies have been excluded because of their relative size. Therefore, a general flies label claim would require testing of the following five species: (1) House fly (*Musca domestica*), AND (2) (Flesh fly (*Sarcophaga* sp., *Wohlfahrtia* sp., and other genera of flesh flies) OR Blow fly (*Phaenicia* sp., *Calliphora* sp., and other genera of blow flies)), AND (3) Stable fly (*Stomoxys calcitrans*), AND (4) (Biting midge (punkie, granny nipper, no-see-um) (any *Culicoides* sp.) OR Black fly (any Simulium sp. or Prosimulium sp.) OR Black gnat (any *Leptoconops* sp.)), AND (5) (Black horse fly (*Tabanus atratus*) OR Deer fly (*Chrysops* sp.) OR Striped horse fly (*Tabanus lineola*)). For readability, EPA is combining the sections on ''Filth flies'' and ''Biting flies'' into one section for ''Flies.''

A commenter suggested adding an option to test the Arizona bark scorpion (*Centrurioides sculpturatus*) as an alternative to *Centruroides vittatus.* After review of the comment's suggestion, EPA agrees that the Arizona bark scorpion is more venomous and thus a greater health concern. EPA also agrees that it is a suitable alternative for testing for a claim against scorpions. Another comment recommended that EPA list *Anopheles hermsi* as a test species, because it is a closely related sibling species of *Anopheles freeborni.* EPA agrees with the commenter and is adding *Anopheles hermsi* as a testing option for the *Anopheles* genus. Accordingly, another scorpion (*Centrurioides sculpturatus*) and mosquito species (*Anopheles hermsi*) were added to the list of representative species options in 40 CFR 158.1722 and 40 CFR 158. 1756.

EPA received other comments suggesting changes to the representative test species, including requiring testing for only conenose or kissing bugs to receive a claim for both, allowing either the tropical or common bed bug as representatives for a general bed bug claim, substituting any recluse or widow spider as a representative species, adding *Aedes taeniorhynchus* as an additional option for testing the *Aedes* genus, including the lesser house fly as a representative species, and providing that Formosan subterranean termites are adequate for the entire group of ''subterranean termites. EPA is not adopting these suggestions because the Agency has determined that they do not provide adequate representation to support the claim or because the Agency does not have data to establish that they are adequate representatives. Please see the Response to Comments Document for more information on EPA's rationale for declining to adopt these suggestions.

Commenters requested that EPA confirm that for products wishing to claim efficacy against a single species of termite, testing on that species alone would be adequate. EPA proposed provisions for mosquitoes and ticks that specifically required group testing for an

individual species claim because they are high stakes disease vectors and because consumers have difficulty differentiating between species. This has also been the Agency's general practice for termiticides because, due to the cryptic nature of subterranean termites, it is not possible for an applicator to know which species are present at the site of application. Visual confirmation of only one genus or species does not negate the possibility of the presence of another species at the time of application or during the period over which the treatment is intended to provide protection. For subterranean termites, EPA did not propose regulatory text provisions analogous to those propose for mosquitoes and ticks because EPA does not generally receive requests for claims against a single species of subterranean termite and because EPA would intend to continue its current practice even absent the regulatory change in those rare cases a request for such claims is submitted.

In response to the comment submitted, however, EPA realizes that clear text in the provisions for ticks and mosquitoes may create confusion as to the data need in this context. As discussed in more detail in the Response to Comments document, no data have been provided to support the claim that *Coptotermes formosanus* is a more robust species and that products and application concentrations that are efficacious against *C. formosanus* are universally efficacious against the other subterranean termite species in the United States. (Refs. 5 & 6). As a result, EPA has generally concluded that products claiming efficacy against subterranean termites must demonstrate efficacy against both genera and EPA has generally required—for structural protection and wood preservative claims against subterranean termites—field testing in areas of the U.S. that have both *Reticulitermes* and *Coptotermes* species. (See, *e.g.,* the guidance provided in OPPTS Guideline 810.3800 (Ref. 7); see also Ref. 8). For this reason, in response to comment, EPA has added a provision to the final regulatory text specifying that for the structural protection and wood preservative claim categories, a claim against any specific genus of subterranean termite must be supported by data on that individual genus and all the required test genera for a subterranean termite claim must be tested and submitted.

A commenter raised concerns with the proposed terminology. The commenter suggested that ''Nonstructural: Wood Preservative Treatment'' be deleted and replaced with ''No Structural Protection'' and the definition of ''No Structural Protection'' be added to 158.1701. The terms ''Structural'' and ''non-structural'' are used in other facets of construction and should not be used as it will cause confusion. The commenter also suggested that in Table 2 to Paragraph (c) in sections 158.1782, 158.1784 and 158.1786, the column heading ''Application Category'' be changed to ''Label Claim'' as the criteria in each table are really related to claims.

In response to the concerns that the commenter raised, in addition to the definition of ''structural protection'' which was included in the proposal, EPA is adding a definition for ''wood protectants and other non-structural protection'' in § 158.1703, Application categories. With respect to the comment that in Table 2 to Paragraph (c) in sections 158.1782, 158.1784 and 158.1786, EPA should change the column heading ''Application Category'' to ''Label Claim,'' EPA is changing the column heading to ''Claim Category'' and reorganizing the table to clearly identify non-structural wood-preservative claims and structural protection claims. EPA chose ''Claim Category'' instead of the commenter's suggestion of ''Label Claim'' because a bait treatment is an application method not a label claim.

One commenter noted that EPA agreed with the SAP's conclusion that an across-the-board 95 percent standard was impractical, and EPA generally adjusted that standard to 90 percent, but kept the 95 and 100 percent performance standards for certain pests, including carpenter ants, termites, wood-destroying beetles, human mites and lice, wood-destroying pests, and non-structural wood preservative treatments. Commenters recommended lowering the standard to no higher than 90 percent for all covered pests because the commenters believe biological variability, scientific probabilities, and testing artifacts can affect the outcome of a study, and it is still difficult or impossible to rely on a performance standard greater than 90 percent. One commenter believes that a higher standard could impede the development of new chemistries.

As the commenter recognizes, for the majority of pests, EPA proposed and is finalizing in this rule a performance standard of 90 percent. However, for the limited instances where EPA proposed and is finalizing in this rule a performance standard above 90 percent, there are countervailing reasons why the lower standard is not appropriate. In those cases, EPA has determined that proposed performance standards are both attainable and prudent. Registrants can and have been meeting these standards for years. The studies are conducted under highly controlled field and/or laboratory conditions. EPA notes that the 100 percent performance standard for the dog follicle mite is to ensure a product works and should not require repeat treatment. Because dogs that show symptoms have a weakened immune system and would continue to show symptoms if the mites are not eliminated from the animal, the 100 percent standard is appropriate for efficacy against this pest. Additionally, for products that are intended to provide structural protection of homes and other occupied structures or prevention of damage to wood that is a critical element of a structure (*e.g.,* bridges), reducing the performance level could result in dangerous or financially ruinous damage. In the case of lice, complete eradication of the infestation is necessary to prevent reinfestation of the host by remaining insects.

With respect to the concern that performance standards of greater than 90 percent limit the development of novel products, EPA notes that provisions in the regulations give the Agency the flexibility to modify the data requirements, where appropriate (see 40 CFR 158.1707). Pursuant to that provision, data requirements may, on a case-by-case basis, be modified by EPA in response to written requests for novel technologies or products that have unusual physical, chemical, or biological properties or atypical use patterns which would make a particular data requirement, or data performance standard, inappropriate. The procedures for requesting a modification under 40 CFR 158.1707 are the same as the procedures for requesting a waiver under 40 CFR 158.45.

One commenter wrote that in section 158.1786 ''Termites'' table 2 the 95% claim being would be difficult to obtain, and the commenter questioned whether the table implies wood consumption would be the only measurement for termite trial performance standard. There are several types of termite trials such as direct mortality of individuals and structural protection field trials that typically use other performance standards. In response EPA wishes to clarify that the percentage damage to wood (*i.e.,* consumption of wood) is the endpoint in Table 2, as measured across all replicates, not within each replicate. Structural protection claims do not have direct mortality endpoints. Direct mortality endpoints would be appropriate for products that are intended to kill termites at the time of

application, but do not provide structural protection.

EPA also adjusted the final regulatory text for clarity and to correct omissions. The proposed regulatory text for 40 CFR 158.1780 singled out colony claims for *Vespula* spp. as having a 100% performance standard. In this final rule, EPA is clarifying that the 100% performance standard for colony claims applies to 40 CFR 158.1780 (bees, wasps, yellowjackets, and hornets) and that the reference to *Vespula* spp. was intended to be an example. Additionally, EPA has added provisions for colony claims and for claims for baits products and products involving outdoor use to the Carpenter Ants section (40 CFR 158.1782). In the proposal those provisions were included only in the Ants section (40 CFR 158.1776), but they are also applicable to carpenter ants. These changes are consistent with EPA's current practices and data needs.

B. Comments on the Implementation of the Rule

EPA received several comments and questions regarding how the Agency intends to implement the regulations. These comments included suggestions for a more defined process for covering invasive exotic species, questions about waivers or modifications of these data requirements, and questions about the status of existing pesticide products.

A commenter requested a transparent process for the addition of invasive species, beyond the emerald ash borer and the Asian longhorned beetle, which are currently the only invasive invertebrate species proposed. The commenter also requested clarity on the entity that can add invasive species that would require the submission of product performance data to the Agency to support efficacy claims—specifically including registrants if third parties are involved. The Agency did not propose to codify a process whereby additional invasive exotic species are added to a defined list of species requiring submission of efficacy data. Due to the sudden appearance and often rapid spread of invasive species, except for the pests noted, EPA does not presently intend to list the specific invasive species for which product performance data might be deemed necessary to support registration of the pesticide product. Instead, the submission of product performance data to support claims for effectiveness against invasive invertebrate pests will be considered on a case-by-case basis. Given the expectation of infrequent submission of such an application, a ''case-by-case'' approach is the most suitable. EPA recommends that applicants consult with the Agency when first considering a submission to place an invasive species on the label of a pesticide product. As part of the consultation, EPA would be able to provide information on protocol development and selection of test species.

A pest's status as an invasive exotic species is just one factor that may warrant submission of product performance data so that EPA can make the requisite statutory findings under FIFRA. EPA does not anticipate requiring data for invasive exotic species solely because they are invasive exotic species. EPA anticipates requiring submission of data for invasive exotic species when they are likely to have significant ecological or economic impacts, or when EPA determines they are pests of significant health importance. As with the emerald ash borer and Asian longhorned beetle, whether the efficacy of the products can be determined at the time of application is one factor EPA takes into consideration when determining if submission of efficacy data is necessary to make the requisite findings under FIFRA.

Commenters asked questions about the flexibilities included in the proposed rule and in part 158 generally. One commenter indicated that 40 CFR 158.1700, which states ''[t]he Agency may require, as specified herein and on a case-by-case basis, submission of product performance data for any pesticide product registered or proposed for registration or amendment'' gives the reviewer too much discretion to require additional data. First, notwithstanding the provisions that EPA is finalizing in this action, registrants are required to generate, and make available to the Agency on request, data to support all pests for which claims are made on the label. Moreover, the provision cited by the commenter is merely intended to echo currently existing provisions (see, *e.g.,* 40 CFR 158.30, 158.400(d), footnote 1) and allow EPA to maintain the flexibility it needs to make the requisite scientific findings under FIFRA in the face of emerging pests. Conversely, the provisions at 40 CFR 158.1707 and 40 CFR 158.45 allow entities to request a modification of data requirements or a waiver from those requirements that they believe are not appropriate for the unique circumstances of their products. In those cases, EPA has the discretion to grant such a modification request or waiver when the modified or the existing data available would be sufficient to permit EPA to evaluate the potential of the product to cause unreasonable adverse effects to man or the environment.

One commenter asks that EPA clarify the requirements of the rule as they pertain to existing pesticides. The commenter states that there are many situations in which the historical efficacy data for an existing EPA approved pesticide has been sufficient to reliably substantiate the claims of the pesticide's effectiveness, even when the data do not meet the testing methods and documentation proposed by the rule. Applying the provisions of the proposed rule retroactively to these existing pesticides would be unnecessary, creating a financial burden for the registrant and additional cost to the end-user without added benefit. One commenter disagrees that the proposed regulatory requirements are consistent with EPA's current practices for wood preservatives and pressure-treated wood products.

While EPA has the authority to issue a data call-in (DCI) for a particular product, because the provisions of this rule reflect the longstanding data-needs of the Agency, EPA expects that the Agency already has the necessary data for most of existing pesticide products covered by this rule. EPA notes that as part of the economic analysis conducted in support of this rulemaking, EPA looked at a sampling of more than 30 data package submissions and did not find any that did not meet the requirements as encompassed by the rule, although EPA did find some that had submitted extra data beyond what this rule requires.

C. Comments Outside the Scope of This Rule

EPA received several comments on documents that are outside the scope of the proposed rule, but nonetheless of interest to stakeholders. EPA received comments on Pesticide Registration Notice (PRN) 2002–1: List of Pests of Significant Public Health Importance and on topics covered by the Series 810—Product Performance Test Guidelines. EPA did not propose to modify these guidance documents and is not doing so in this final rule. Likewise, EPA is not establishing or revisiting a process whereby these guidance documents may be modified. Because the topics raised may be of interest to stakeholders, EPA is summarizing these comments and providing clarifying information on the scope of these documents and how they are related to the final regulatory provisions.

One commenter stated that pests of public health significance will evolve over time and requests clarity on how

the list of pests of significant public health importance will be updated to include emerging public health pests. The commenter requests a clear process for reviewing and, if needed, updating the list at least every five years. The commenter states that the addition of pests of public health significance, should be a collaborative process with stakeholder engagement.

PRN 2002–1: List of Pests of Significant Public Health Importance is a guidance document published in accordance with section 28(d) of FIFRA which requires the EPA in coordination with the United States Department of Health and Human Services (HHS) and United States Department of Agriculture (USDA), to identify pests of significant public health importance and, in coordination with the Public Health Service, to develop and implement programs to improve and facilitate the safe and necessary use of chemical, biological and other methods to combat and control such pests of public health importance. The contents of the list are both over inclusive and under inclusive of the types of pests covered by this rulemaking. The list covers non-invertebrate pests of significant publish health importance such a fungi, bacteria and mammalian pests; but the list does not cover the wood-destroying insects covered by this action. This list is intended to be a reference document, and inclusion on the list does not affect the regulatory status of any registration or application for registration of any pesticide product.

Because the list itself is outside the scope of this action, EPA is not modifying the list or codifying a new process for modifying the list. EPA acknowledges that changes in pest pressures brought about by climate change or other factors may necessitate seeking product performance data during the registration process to address concerns about efficacy of pesticides for use against a pest not listed in the PRN or in this rule. EPA agrees that it may be appropriate to update the PRN and the rule to include these new pests over time. In fact, in 2020, EPA solicited comment on updating the PRN for the first time in roughly twenty years (see proposed rule at page 70146) and the Agency is currently in the process of developing the final guidance revisions.

Updates of PRNs are done in accordance with PRN 2003–3: Procedural Guidance for EPA's Office of Pesticide Programs Procedures Concerning the Development, Modification, and Implementation of Policy Guidance Documents. EPA's Office of Pesticide Programs (OPP) thinks that public involvement in the development of all types of policy guidance documents is useful. Therefore, OPP's general practice is to provide notice and an opportunity for public comment as early as practicable and appropriate in the development of all significant new pesticide policy guidance documents or significant modifications to such policy guidance documents.

Several commenters raised issues on topics covered by the Series 810—Product Performance Test Guidelines (*e.g.,* time to mortality, use of field versus semi-field tests, which sex to use, adults versus juveniles, etc.) and one commenter requested that EPA adopt separate industry developed testing protocols for wood-destroying insects. EPA did not propose to modify these guidance documents or to adopt new testing protocols and is not doing so in this final rule. While EPA encourages the use of these test guidelines, their use is not mandated by these regulations.

With respect to the comment that EPA should reference Wood Protection Association (AWPA) standards, EPA acknowledges that the National Technology Transfer Advancement Act (NTTAA) directs federal agencies to use technical standards developed or adopted by voluntary consensus standards bodies if compliance would not be inconsistent with applicable law or otherwise impracticable. However, part 158 was never intended to mandate specific testing protocols. The purpose of part 158 is to describe the minimum data and information EPA typically requires. Part 158 ''does not include study protocols, methodology, or standards for conducting or reporting test results'' (40 CFR 158.1(b)(3)). EPA is not deviating for this longstanding structure for part 158 in this action.

The OCSPP test guidelines serve as a compendium of accepted scientific methodologies for research intended to provide data to inform regulatory decisions under TSCA, FIFRA, and/or the FFDCA. These documents provide guidance for conducting appropriate tests, and are also used by EPA, the public, and the companies that are required to submit data under FIFRA. The methods described in these guidelines are strongly recommended for generating the data that are the subject of the guidelines, but EPA recognizes that departures may sometimes be appropriate. Applicants may propose alternatives to the protocols described in the OCSPP test guidelines, with supporting rationale. The Agency assesses such proposals and does, where appropriate, accept data generated from protocols that deviate from OCSPP guidelines. The applicants may submit a protocol of their own devising for Agency review prior to conducting the study, and such submission is subject to a PRIA fee.

V. References

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

1. U.S. EPA. Cost Analysis of the Final Product Performance Rule, prepared by the Biological and Economic Analysis Division, Office of Pesticide Programs, available in docket: EPA–HQ–OPP–2020–0124.
2. U.S. EPA. Pesticide Registration (PR Notice) Notice 2002–1, available at *https://www.epa.gov/sites/production/files/2014-04/documents/pr2002-1.pdf* at 2 (accessed March 6, 2020); *see also* Public Review Draft: Pesticide Registration (PR Notice) 2020–[X], Draft List of Pests of Significant Public Health Importance—Revised 2020, docket EPA–HQ–OPP–2020–0260.
3. U.S. EPA. PRN 96–7 Termiticide Labeling, available at *https://www.epa.gov/pesticide-registration/prn-96-7-termiticide-labeling* (accessed March 13, 2020).
4. U.S. EPA. Pesticide Product Performance Data Requirements Rule Response to Comments Document, available in docket: EPA–HQ–OPP–2020–0124.
5. U.S. EPA. Mao, Gregg Henderson, Clay W. Scherer. 2011. Toxicity of Seven Termiticides on the Formosan and Eastern Subterranean Termites, Journal of Economic Entomology, Volume 104(3) pp. 1002–1008, *available at https://doi.org/10.1603/EC11005.*
6. Su, N.Y., and R.H. Scheffrahn. 1991. Laboratory Evaluation of Two Slow-acting Toxicants Against Formosan and Eastern Subterranean Termites (isoptera: Thinotermitidae). Journal of Economic Entomology, Volume 84 (1) pp. 170–175. doi: 10.1093/jee/84.1.170.
7. U.S. EPA. OPPTS Guideline 810.3800—Methods for Efficacy Testing of Termite Baits (August 2004).
8. Association of Structural Pest Control Regulatory Officials (ASPCRO) Termiticide Standards Committee, Termiticide Performance Standards, August 5, 2010; *available at https://aspcro.org/wp-content/uploads/2020/12/supdocStatementofPurpose TLRC20100829.pdf.*
9. U.S. EPA. Supporting Statement for an Information Collection Request (ICR) Rule-related ICR Amendment for Pesticide Product Performance Data

Requirements for Products Claiming Efficacy Against Certain Invertebrate Pests (EPA ICR No.: 0277.23; OMB Control No.; 2070–0060).

VI. FIFRA Review Requirements

Pursuant to FIFRA section 25(a), EPA submitted the draft final rule to the Secretary of Agriculture (USDA) and the FIFRA SAP for review. A draft of the final rule was also submitted to the appropriate Congressional Committees.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an analysis of the potential costs and benefits associated with this action (Ref. 1) which is summarized in more detail in Unit I.E. This analysis is available in the docket.

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted to OMB for approval under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA is assigned EPA ICR No. 0277.23 and OMB Control No.: 2070–0060 (Ref. 9). You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The information collection activities in this rule are associated with the codification of efficacy data requirements against certain invertebrate pests. These information collection activities are activities associated with the application for a new or amended registration of a pesticide and are currently approved by OMB under OMB Control No. 2070–0060 (EPA ICR No. 0277.23). As such, this ICR is intended to amend that existing ICR at the final rule stage, incorporating the information collection activities attributable to this rule, including a reduction in transaction costs associated with a clear codification of the product performance data requirements for certain invertebrate pests.

Respondents/affected entities: There are three potential respondent groups: Chemical producers (NAICS 32532); colleges, universities, and professional schools (NAICS code 611310); and research and development labs and services (NAICS code 541712).

Respondent's obligation to respond: Mandatory. These data must be submitted for the applicant to receive the desired pesticide registration or label claim. Authorizing legislation is contained in Section 3 of FIFRA (7 U.S.C. 136). The implementing regulations specific to the product performance data requirements are contained in 40 CFR part 158.

Estimated number of respondents: EPA estimates that registrants of products covered by this rule submit 60 data packages to the Agency annually for efficacy review. Some registrants may submit multiple data packages per year. Under this rule the number of submissions may decline—and therefore the number of respondents may also decrease.

Frequency of response: On occasion.

Total estimated burden: This rule is expected to reduce burden hours by 4,683 annually, including 4,515 hours from reduced paperwork burden associated with data generation and 168 hours from reduced paperwork burden associated with the application process. Burden is defined at 5 CFR 1320.3(b). EPA already accounts for the activities associated with the rule in the currently approved ICR, which covers most activities associated with new and amended registrations; EPA estimates a total annual respondent burden of 1.5 million hours for all these activities. As discussed in the supporting statement (Ref. 5), 483,000 of those hours are paperwork burden from data generation for new products, and 102,000 of those hours are paperwork burden from application for new and amended products.

Total estimated cost: The estimated burden reduction is expected to reduce burden cost by $330,000 annually, including $315,000 from reduced paperwork burden associated with data generation and $15,000 from reduced paperwork burden associated with the application process, which includes $0 annualized capital or operation and maintenance costs. EPA already accounts for the activities associated with the rule in the currently approved ICR, which covers most activities associated with new and amended registrations; EPA estimates a total annual respondent burden of $109 million for all these activities. As discussed in the supporting statement (Ref. 5), $33.7 million of that cost is paperwork burden from data generation for new products, and $9.3 million of that cost is paperwork burden from application for new and amended products.

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 OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule relieves regulatory burden on the small entities subject to the rule. EPA's small entity analysis suggests that the greatest impact, and the most potential cost savings, will accrue to small entities and new registrants. While large established registrants have experience with the registration process and are aware of EPA's data requirements or have the means to determine the appropriate studies, new and small registrants without that experience may bear significant costs of acquiring this information. The registrants will have easier access to the data requirements, and the reduction in information acquisition costs would be largest for those registrants with the greatest information acquisition needs. Thus, EPA anticipates that this rule will result in cost savings, particularly for small and first-time registrants. While the affected NAICS codes contain up to 5,438 small entities, EPA does not expect all entities to experience cost savings in all years as a result of this rule. As the cost analysis (Ref. 1) describes, a sample of 30 applications was selected at random. These applications were submitted by 16 different firms, four of which EPA was able to identify as small businesses according to the Small Business

Administration Employees or Revenue Thresholds. About 60 packages are received annually by EPA for control claims. Therefore, EPA expects that, on average, approximately ten small entities, as defined by the RFA will experience cost savings each year as a result of this rule.

While not every element of the rule will result in savings for registrants, EPA conservatively estimates that the rule will result in $1 million in annual reductions in registrant expenditures on the process of receiving label claims against public health, wood destroying, and invasive species pests, equivalent to about $17,000 in savings per data package submitted to the Agency and about $5,500 per registrant in annual savings. I have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities. The basis for this determination is presented in the small entity analysis prepared as part of the cost analysis for this rule (Ref. 1), which is summarized in Unit I.E., and a copy is available in the docket for this rulemaking. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and will not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments. This rule will primarily affect the private sector, *i.e.,* pesticide registrants. The rule is not expected to result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (when adjusted annually for inflation) in any one year. Accordingly, this rule is not subject to the requirements of UMRA sections 202, 203, or 205. The cost analysis for this action is summarized in Unit I.E. and is available in the docket.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. At present, no Tribal governments hold, or have applied for, a pesticide registration. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated as a significant energy action by the Administrator of the Office of Information and Regulatory Affairs.

I. National Technology Transfer Advancement Act (NTTAA)

This action does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14008: Tackling the Climate Crisis at Home and Abroad

In accordance with Executive Order 12898 (59 FR 7629, February 16, 1994) and Executive Order 14008 (86 FR 7619, January 27, 2021), EPA finds that this action will not result in disproportionately high and adverse human health, environmental, climate-related, or other cumulative impacts on disadvantaged communities because this action does not establish an environmental health or safety standard. Rather, it codifies existing practices in terms of the efficacy data that EPA will typically need to register a product with a claim for one of the covered pests. The Agency notes, that the requirements in this final rule will provide data that will be used to assure that pesticide products perform effectively if claiming effectiveness against an invertebrate pest of significant public health or economic importance, and to address both health concerns and economic consequences stemming from pesticide products that might not perform as claimed on the label, including consequences for sensitive subpopulations and minority or low-income communities.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Lists of Subjects in 40 CFR Part 158

Environmental protection, Administrative practice and procedure, Agricultural and non-agricultural, Pesticides and pests, Reporting and recordkeeping requirements.

Michael S. Regan,
Administrator.

For the reasons set forth in the preamble, 40 CFR chapter I is amended as follows:

PART 158—DATA REQUIREMENTS FOR PESTICIDES

■ 1. The authority citation for part 158 continues to read as follows:

Authority: 7 U.S.C. 136–136y; 21 U.S.C. 346a.

■ 2. In § 158.1, revise paragraph (c) to read as follows:

§ 158.1 Purpose and scope.

* * * * *

(c) *Scope of individual subparts.* (1) *Conventional pesticides.* Subparts A, B, C, D, E, F, G, K, L, N, O, and R apply to conventional pesticides.

(2) *Biochemical pesticides.* Subparts A, B, E, R, and U apply to biochemical pesticides.

(3) *Microbial pesticides.* Subparts A, B, E, R, and V apply to microbial pesticides.

(4) *Antimicrobial pesticides.* Subparts A, B, C, D, E, R, and W of this part apply to antimicrobial pesticides.

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

Subpart E—Product Performance for Products Claiming Effectiveness Against Vertebrate Pests, Products With Prion-Related Claims, and Products for Control of Organisms Producing Mycotoxins

■ 4. Add subpart R to read as follows:

Subpart R—Product Performance for Products Claiming Effectiveness Against Invertebrate Pests

Sec.

158.1700 General requirements.
158.1701 Definitions.
158.1703 Application categories.
158.1704 Performance standards for data acceptability.
158.1705 Test Guidelines.
158.1707 Data requirement modifications.
158.1708 Invasive species claims.
158.1709 Invertebrate disease vector claims.
158.1710 Structural and wood-destroying pest claims.
158.1712 Mites (excluding chiggers).
158.1714 Chiggers.
158.1718 Ticks.
158.1722 Scorpions.
158.1726 Spiders.
158.1732 Centipedes.
158.1736 Lice.
158.1740 Fleas.
158.1744 Cockroaches.
158.1748 Keds, screwworms, and bot flies.
158.1752 Flies.
158.1756 Mosquitoes.
158.1768 Bed bugs.
158.1772 Conenose bugs and kissing bugs.
158.1776 Ants (excluding carpenter ants).
158.1780 Bees, wasps, yellowjackets, and hornets.
158.1782 Carpenter ants.
158.1784 Wood-destroying beetles.
158.1786 Termites.

§ 158.1700 General requirements.

(a) *General.* Each applicant must ensure through testing that their product is efficacious when used in accordance with label directions and commonly accepted pest control practices. The Agency may require, as specified herein and on a case-by-case basis, submission of product performance data for any pesticide product registered or proposed for registration or amendment.

(1) *Test substance.* All product performance testing is performed using the end-use product.

(2) *Test organism.* All product performance testing must report the species tested.

(3) *Testing.* All products are to be tested to support the claim(s) made on the labeling of the pesticide product.

(4) *Data requirements.* To determine the specific product performance data required to support the registration of each pesticide product, the applicant must refer to the applicable sections of this subpart.

(b) *Product performance data submission.* Each product that bears a claim subject to this subpart, must be supported by submission of product performance data, as listed in this subpart. This product performance data must be submitted with any application for registration or amended registration. For the pest-specific claims listed in this subpart, data must be for the species specified to support the claim. For pests listed as part of a group or subgroup, pest-specific data would also need to be submitted to support a pest-specific claim.

§ 158.1701 Definitions.

Definitions. The following terms are defined for purposes of this subpart.

Complete protection time (CPT) means the time from application of a skin-applied insect repellent until efficacy failure, which is described in Product Performance Test Guideline 810.3700.

Introduction means the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity.

Invasive species means with respect to a particular ecosystem, any species that is not native to that ecosystem, and whose introduction does or is likely to cause economic or environmental harm or harm to human health.

Performance standard means a benchmark or reference against which the efficacy of the pesticide is compared (including, but not limited to, the ability of the pesticide product to control, kill, or repel an invertebrate pest species).

Pest group labeling claim means a claim or statement on the labeling of the pesticide product that the product is effective against a group of related species or taxa demonstrating adequate similarity in basic biology and life history characteristics to permit identification of representative test species for the entire assemblage of taxa.

Pest-specific labeling claim means a claim or statement on the labeling of the pesticide product that the product is effective against a particular arthropod species, such as German cockroach or house fly.

Pest sub-group labeling claim means a claim or statement on the labeling of the pesticide product that the product is effective against a set of related species or taxa demonstrating adequate similarity in basic biology and life history characteristics to permit identification of representative test species and part of a larger identified taxonomic grouping (*e.g.,* Biting flies) that includes other pest species, which may or may not have a specified pest group.

Skin-applied insect repellent means a product intended to disrupt the host-seeking behavior of insects or other arthropods, driving or keeping them away from treated human skin. The repellent product, such as a liquid, lotion, or spray, is intended to be applied directly to human skin. Efficacy of skin-applied insect repellents is expressed as complete protection time.

Species means a group of organisms all of which have a high degree of physical and genetic similarity, generally breed only among themselves, and show persistent differences from members of allied groups of organisms.

Wood-destroying applies to pests that feed on or nest in wood, and therefore are highly destructive to wood buildings or structures, and stored lumber.

Vector means any organism capable of transmitting the causative agent of human and/or animal disease, including but not limited to mosquitoes and ticks.

§ 158.1703 Application categories.

The following terms are defined for purposes of this subpart.

Bait treatment means a pesticide product intended to be ingested by the target pest that kills or controls an invertebrate pest such as ants, cockroaches, or termites. This is normally through the insect feeding on the product directly, but may also include products which the target will contact and later ingest during grooming/cleaning. The attractiveness of these products is through the use of a palatable food base, however they may also incorporate an attractant (*e.g.,* pheromone) which is intended to attract the target pests over a greater distance.

Soil-applied termiticides means pesticide products that are applied to the soil beneath and/or adjacent to the structure, pre- or post-construction, to kill or control termites. Treatments can be preventive (*i.e.,* to provide structural protection before a termite infestation is present) or remedial (*i.e.,* to kill and control a termite infestation when present).

Spatial repellents include treatments of both indoor and outdoor sites where the product is applied into the air rather than onto a surface or the skin in order to drive away insects or other arthropods from that space. They are intended to repel the target pest through the dispersal of pesticide into the atmosphere of a room or other open space.

Structural protection means the prevention of termite or other wood-destroying pest activity in an entire structure as the result of an application of a pesticide product.

Wood protectants and other non-structural protection means the prevention of termite or other wood-destroying pest activity only to the treated wood (or other treated material), whereas structural protectants, however applied, claim to prevent damage to the structure.

§ 158.1704 Performance standards for data acceptability.

(a) *General.* The claim stated on the pesticide product labeling (such as knockdown, control, mortality, or repellency) determines the performance standard that must be met. In the absence of specific pest/labeling claims/performance standards specified in §§ 158.1708 through 158.1786, the performance standards of paragraphs (b) and (c) of this section apply.

(b) *Skin-applied insect repellent labeling claims.* (1) For skin-applied insect repellent labeling claims, the performance standard must be greater than or equal to 2-hours complete protection time.

(2) Any testing required under this part which involves any human subjects must comply with all applicable requirements under 40 CFR part 26. For example, 40 CFR part 26 requirements are pertinent to the part 158 testing requirement if the testing involves intentional exposure of human subjects. Protocols for such testing must be submitted to EPA for review prior to study initiation. Those protocols determined by EPA to involve intentional exposure of human subjects also require review by EPA's Human Studies Review Board (HSRB)) prior to study initiation. If you are uncertain about the applicability of the 40 CFR part 26 requirements to this 40 CFR part 158 testing requirement or uncertain about the nature of your planned testing (such as, for example, whether the testing would involve intentional exposure of human subjects or whether the testing would be an observational study), you should contact the Agency prior to initiating the testing.

(c) *Labeling claims for products other than skin-applied insect repellents.* Unless otherwise specified in §§ 158.1712 through 158.1786, a minimum performance standard of 90 percent is required, except skin-applied insect repellents as specified in paragraph (b) of this section, and non-wearable spatial repellents, where a minimum performance standard of 75 percent is required.

§ 158.1705 Test guidelines.

EPA has published the Harmonized Test Guidelines, which set forth the recommended approach to generate the data required in this subpart. The Product Performance Guidelines (Series 810, Group C—Invertebrate Control Agent Test Guidelines) are available on the Agency's website. These guidelines cover some, but not all, of the tests that would be used to generate data under this subpart. In instances where there is a conflict between one of the Harmonized Test Guidelines and the provisions of this subpart, this subpart will control.

§ 158.1707 Data requirement modifications.

The data requirements (including the performance standards associated with the data requirements) specified in this subpart as applicable to a category of products will not always be appropriate for every product in that category. Data requirements may, on a case-by-case basis, be modified by EPA in response to requests for novel technologies or products that have unusual physical, chemical, or biological properties or atypical use patterns which would make a particular data requirement, or data performance standard, inappropriate. Requests for such data requirement modifications must be submitted in the same manner as waiver requests submitted under 40 CFR 158.45. EPA will respond in writing to those requests. The Agency may grant the request if it finds such modifications are appropriate for the pesticide in question, and will ensure that sufficient data are available to make the determinations required by the applicable statutory standards.

§ 158.1708 Invasive species claims.

(a) *General.* In addition to those species specified in paragraph (b) of this section, if an application for registration or amended registration requests a labeling claim for effectiveness against an invasive invertebrate species, then on a case-by-case basis, EPA may require submission of product performance data and establish performance standards for those data to support those claims for effectiveness.

(b) *Specific.* Applications for registration or amended registration requests for a labeling claim for the emerald ash borer, *Agrilus planipennis,* or Asian longhorned beetle, *Anoplophora glabripennis,* must be accompanied by product performance data to support those claims for effectiveness.

§ 158.1709 Invertebrate disease vector claims.

If an application for registration or amended registration requests a labeling claim specific to a disease vector (such as repels mosquitoes that may carry West Nile virus), then submission of test data conducted with the species specific to the disease vector claim and meeting the specific performance standard for that species is required even if the disease vector species is not the test species required in §§ 158.1712 through 158.1786.

§ 158.1710 Structural and wood-destroying pest claims.

If an application for registration or amended registration requests a labeling claim specific to a structural or wood-destroying pest not identified in §§ 158.1782 through 158.1786, EPA may require submission of product performance data, with testing on that specific pest and subject to specific performance standards, to support those claims for effectiveness.

§ 158.1712 Mites (excluding chiggers).

(a) *General.* The tables and test notes in this section apply to dust, human itch or scabies, and dog follicle mites. The claim stated on the pesticide product labeling determines the required test species. The required test species for a specific type of mite claim appear in paragraph (b) of this section and the required performance standards appear in paragraph (c) of this section.

(b) *Test species.* For pesticide products making a claim against mites, the required test species appear in the following table.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST MITES

[Excluding chiggers]

Labeling claim	Required test species
Dog Follicle Mite	Dog follicle mite (*Demodex canis*).

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST MITES—Continued

[Excluding chiggers]

Labeling claim	Required test species
Dust Mite	Testing on one of the following species is required: American house dust mite (*Dermatophagoides farinae*) OR European house dust mite (*Dermatophagoides pteronyssinus*).
Human Itch or Scabies Mite	Human itch mite (*Sarcoptes scabiei*).

(c) *Performance standards.* (1) For the dog follicle mite, the performance standard is 100 percent.

(2) For the human itch or scabies mite, the performance standard is 100 percent.

§ 158.1714 Chiggers.

If the pesticide product labeling makes a claim against chiggers, then testing is required using the following test species: Chigger (*Trombicula alfreddugesi*).

§ 158.1718 Ticks.

(a) *General.* The table and test notes in this section apply to hard ticks (including cattle ticks) and soft ticks. The claim stated on the pesticide product labeling determines the required test species. The required test species for a specific type of tick claim appear in paragraph (b) of this section. Specific parameters that apply to individual tests appear in paragraph (c) of this section. For a claim against any specific species of ''ticks,'' that individual species and all the listed representative species for ''ticks'' must be tested, but not the representative species for cattle ticks or soft ticks. Claims against ticks in association with tick borne diseases are also subject to the requirements in § 158.1709.

(b) *Test species.* For pesticide products making a claim against ticks, the required test species appear in the following table.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST TICKS

Labeling claim	Required test species
Ticks	Testing on a total of three hard tick species is required: Blacklegged tick (*Ixodes scapularis*) AND Lone star tick (*Amblyomma americanum*). AND One of the following three species: American dog tick (*Dermacentor variabilis*) OR Brown dog tick (*Rhipicephalus sanguineus*) OR Rocky Mountain wood tick (*Dermacentor andersoni*).
Cattle Ticks	Testing on one of the following species is required: Southern cattle tick (*Rhipicephalus microplus*) OR Cattle fever tick (*Rhipicephalus annulatus*).
Soft Ticks	Soft tick (*Ornithodoros hermsi*).

(c) *Specific parameters.* The following parameters are required.

1. For products applied to dogs, testing is required on three species: Blacklegged tick (*Ixodes scapularis*), American dog tick (*Dermacentor variabilis*), and Brown dog tick (*Rhipicephalus sanguineus*).

2. For products applied to cats, testing is required on three species: Blacklegged tick (*Ixodes scapularis*), Lone star tick (*Amblyomma americanum*), and American dog tick (*Dermacentor variabilis*).

§ 158.1722 Scorpions.

If the pesticide product labeling makes a claim against scorpions, then testing is required using one of the following test species: Striped bark scorpion (*Centruroides vittatus*) or Arizona bark scorpion (*Centrurioides sculpturatus*).

§ 158.1726 Spiders.

(a) *General.* The table in this section applies to spiders. The product labeling claim determines the required test species. The required test species for spider labeling claims appear in paragraph (b) of this section.

(b) *Test species.* For products making a claim against spiders, the test species for labeling claims appear in the following table.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST SPIDERS

Labeling claim	Required test species
Pest Group Claim	
Spiders	Testing on two species is required: Brown recluse spider (*Loxosceles reclusa*). AND One of the following species is required: Northern black widow spider (*Latrodectus variolus*) OR Southern black widow spider (*Latrodectus mactans*) OR Western black widow spider (*Latrodectus hesperus*).
Pest Sub-Group Claims	
Black Widow Spiders	Testing on one of the following species is required: Northern black widow spider (*Latrodectus variolus*) OR Southern black widow spider (*Latrodectus mactans*) OR Western black widow spider (*Latrodectus hesperus*).

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST SPIDERS—Continued

Labeling claim	Required test species
Pest-Specific Claims	
Brown recluse spider	Brown recluse spider (*Loxosceles reclusa*).
Brown widow spider	Brown widow spider (*Latrodectus geometricus*).
Northern black widow spider	Northern black widow spider (*Latrodectus variolus*).
Southern black widow spider	Southern black widow spider (*Latrodectus mactans*).
Western black widow spider	Western black widow spider (*Latrodectus hesperus*).

§ 158.1732 Centipedes.

(a) *General.* The table in this section applies to centipedes. The product labeling claim determines the required test species. The required test species for a labeling claim appears in paragraph (b) of the section.

(b) *Test species.* For products making a claim against centipedes, the required test species for a labeling claim is set forth in the following table.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST CENTIPEDES

Labeling claim	Required test species
Centipedes	Testing on one of the following species is required: House centipede (*Scutigera coleoptrata*) OR Florida blue centipede (*Hemiscolopendra marginata*) OR *Scolopendra* sp.

§ 158.1736 Lice.

(a) *General.* The table in this section applies to human lice. The product labeling claim determines the required test species. The required test species for a labeling claim appears in paragraph (b) of this section. The required performance standards appear in paragraph (c) of this section.

(b) *Test species.* For products making a claim against lice, the required test species for a labeling claim appear in the following table.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST LICE

Labeling claim	Required test species
Lice	Testing on one of the following species is required: Head louse (*Pediculus humanus capitis*) OR Body louse (*Pediculus humanus humanus*).

(c) *Performance standards.* For labeling claims against lice, a performance standard of 100 percent is required.

§ 158.1740 Fleas.

(a) *General.* The table in this section applies to fleas. The product labeling claim determines the required test species. The required test species for a labeling claim appears in paragraph (b) of this section.

(b) *Test species.* For products making a claim against fleas, the required test species for a labeling claim is set forth in the following table.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST FLEAS

Labeling claim	Required test species
Pest Group Claim	
Fleas	Testing on the following species is required: Cat flea (*Ctenocephalides felis*).
Pest-Specific Claims	
Cat flea	Cat flea (*Ctenocephalides felis*).
Chigoe flea	Chigoe flea (*Tunga penetrans*).
Dog flea	Dog Flea (*Ctenocephalides canis*).
Hen flea	Hen flea (*Ceratophyllus gallinae*).
Human flea	Human flea (*Pulex irritans*).
Oriental rat flea	Oriental rat flea (*Xenopsylla cheopis*).

§ 158.1744 Cockroaches.

(a) *General.* The table in this section applies to cockroaches. The product labeling claim determines the required test species. The required test species for a labeling claim appears in paragraph (b) of this section.

(b) *Test species.* For products making a claim against cockroaches, the required test species for a labeling claim for cockroaches and the test species for

pest-specific label claims appear in the following table.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST COCKROACHES

Labeling claim	Required test species
Pest Group Claims	
Cockroaches	Testing on two species is required: American cockroach (*Periplaneta americana*) AND German cockroach (*Blattella germanica*).
Pest-Specific Claims	
American cockroach	American cockroach (*Periplaneta americana*).
Australian cockroach	Australian cockroach (*Periplaneta australasiae*).
Brown cockroach	Brown cockroach (*Periplaneta brunnea*).
Brownbanded cockroach	Brownbanded cockroach (*Supella longipalpa*).
German cockroach	German cockroach (*Blattella germanica*).
Oriental cockroach	Oriental cockroach (*Blatta orientalis*).
Smokybrown cockroach	Smokybrown cockroach (*Periplaneta fuliginosa*).
Turkestan cockroach	Turkestan cockroach (*Blatta lateralis*).

§ 158.1748 Keds, screwworms, and bot flies.

(a) *General.* The table in this section applies to keds, screwworms, and bot flies. The product labeling claim determines the required test species. The required test species for labeling claims appear in paragraph (b) of this section.

(b) *Test species.* For products making a claim against keds, screwworms, and bot flies, the required test species for a labeling claim appear in the following table.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST KEDS, SCREWWORMS, AND BOT FLIES

Labeling claim	Required test species
Bot Flies (excluding Human bot fly)	Testing is required on one of the following species: Horse bot fly (*Gasterophilus intestinalis*) OR Throat bot fly (*Gasterophilus nasalis*) OR Nose bot fly (*Gasterophilus haemorrhoidalis*).
Human bot fly	Human bot fly (*Dermatobia hominis*).
Keds	Testing is required on the following species: Sheep ked (*Melophagus ovinus*).
Screwworms	Testing is required on one of the following species: Screwworm (*Cochliomyia hominivorax*) OR Secondary screwworm (*Cochliomyia macellaria*).

§ 158.1752 Flies.

(a) *General.* The table in this section applies to flies. The product labeling claim determines the required test species. The required test species for a labeling claim against flies appear in paragraph (b) of this section.

(b) *Test species.* For products making a claim against flies, the required test species for a labeling claim against flies appear in the following table.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST FLIES

Labeling claim	Required test species
Pest Group Claim	
Flies	Testing of five species is required: House fly (*Musca domestica*) AND Flesh fly (*Sarcophaga* sp., *Wohlfahrtia* sp., and other genera of flesh flies) OR Blow fly (*Phaenicia* sp., *Calliphora* sp., and other genera of blow flies) AND Stable fly (*Stomoxys calcitrans*) AND Biting midge (punkie, granny nipper, no-see-um) (any *Culicoides* sp.) OR Black fly (any *Simulium* sp. or *Prosimulium* sp.) OR Black gnat (any *Leptoconops* sp.) AND Black horse fly (*Tabanus atratus*) OR Deer fly (*Chrysops* sp.) OR Striped horse fly (*Tabanus lineola*).
Pest Sub-Group Claims	
Filth Flies	Testing on two species is required: House fly (*Musca domestica*). AND One of the following species is required: Flesh fly (*Sarcophaga* sp., *Wohlfahrtia* sp., and other *genera* of flesh flies) OR Blow fly (*Phaenicia* sp., *Calliphora* sp., and other *genera* of blow flies).
Biting flies (excluding Sand flies)	Testing is required on three species: Stable fly (*Stomoxys calcitrans*)

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST FLIES—Continued

Labeling claim	Required test species
Large Biting Flies	AND one of the large biting fly species: Black horse fly (*Tabanus atratus*) OR Deer fly (*Chrysops* sp.) OR Striped horse fly (*Tabanus lineola*). AND one of the small biting fly species: Biting midge (punkie, granny nipper, no-see-um) (any *Culicoides* sp.) OR Black fly (any *Simulium* sp. or *Prosimulium* sp.) OR Black gnat (any *Leptoconops* sp.). Testing is required on two species: Stable fly (*Stomoxys calcitrans*). AND one of the following species: Black horse fly (*Tabanus atratus*) OR Deer fly (*Chrysops* sp.) OR Striped horse fly (*Tabanus lineola*).
Small Biting Flies (excluding Sand flies).	Testing is required on one of the following species: Biting midge (punkie, granny nipper, no-see-um) (*Culicoides* sp.) OR Black fly (*Simulium* sp. OR *Prosimulium* sp.) OR Black gnat (*Leptoconops* sp.).
Pest-Specific Claims	
Blow fly	Blow fly (*Phaenicia* sp., *Calliphora* sp., and other *genera* of blow flies).
Cluster fly	Cluster fly (*Pollenia rudis*).
Face fly	Face fly (*Musca autumnalis*).
Flesh fly	Flesh fly (*Sarcophaga* sp., *Wohlfahrtia* sp., and other *genera* of flesh flies).
House fly	House fly (*Musca domestica*).
Little house fly	Little house fly (*Fannia canicularis*).
Biting midges (punkie, granny nipper, no-see-um).	Biting midge (punkie, granny nipper, no-see-um) (*Culicoides* sp.).
Black flies	Testing on one of the following species is required: *Simulium* sp. OR *Prosimulium* sp.
Black gnats	Black gnat (*Leptoconops* sp.).
Deer flies	Deer fly (*Chrysops* sp.).
Greenhead	Greenhead (*Tabanus nigrovittatus*).
Horn fly	Horn fly (*Haematobia irritans*).
Horse flies	Testing on one of the following species is required: Black horse fly (*Tabanus atratus*), OR Striped horse fly (*Tabanus lineola*).
Sand flies	Testing on one of the following species is required: *Lutzomyia* sp. OR *Phlebotomus* sp.
Stable fly	Stable fly (*Stomoxys calcitrans*).

§ 158.1756 Mosquitoes.

(a) *General.* The tables and test notes in this section apply to mosquitoes. The required test species for a labeling claim against mosquitoes appears in paragraph (b) of this section. For a claim against any specific species of mosquito, that individual species and all the required test genera must be tested. Claims against mosquitos in association with mosquito-borne diseases are also subject to the requirements in § 158.1709.

(b) *Test species.* For products making a claim against mosquitoes, the required test species for a labeling claim is set forth in the following table.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST MOSQUITOES

Labeling claim	Required test species
Mosquitoes	Testing in three genera (*Culex, Aedes,* and *Anopheles*) of mosquitoes is required. One of the following *Culex* species: *Culex pipiens* OR *Culex quinquefasciatus* OR *Culex tarsalis*. AND one of the following *Aedes* species: *Aedes aegypti* OR *Aedes albopictus*. AND one of the following *Anopheles* species: *Anopheles albimanus* OR *Anopheles freeborni* OR *Anopheles gambiae* OR *Anopheles hermsi* OR *Anopheles punctipennis* OR *Anopheles quadrimaculatus* OR *Anopheles stephensi*.

§ 158.1768 Bed bugs.

(a) *General.* The table in this section applies to bed bugs. The product labeling claim determines the required test species. The required test species for a labeling claim appears in paragraph (b) of this section.

(b) *Test species.* For products making a claim against bed bugs, the required test species for a labeling claim appear in the following table.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST BED BUGS

Labeling claim	Required test species
Pest Group Claim	
Bed bugs	Common bed bug (*Cimex lectularius*).
Pest-Specific Claims	
Common bed bug	Common bed bug (*Cimex lectularius*).
Tropical bed bug	Tropical bed bug (*Cimex hemipterus*).

§ 158.1772 Conenose bugs and kissing bugs.

(a) *General.* The table in this section applies to Conenose bugs and Kissing bugs. The product labeling claim determines the required test species. The required test species for a labeling claim appears in paragraph (b) of this section.

(b) *Test species.* For products making a claim against either the conenose and/or kissing bugs, the required test species for a labeling claim is set forth in the following table.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST CONENOSE AND KISSING BUGS

Labeling claim	Required test species
Conenose bug	Conenose bug (*Triatoma sanguisuga*).
Kissing bug	Kissing bug (*Triatoma protracta*).

§ 158.1776 Ants (excluding carpenter ants).

(a) *General.* The table in this section applies to ants (excluding carpenter ants). The product labeling claim determines the required test species. The required test species for labeling claims appear in paragraph (b) of this section.

(b) *Test species.* For products making a claim against ants (excluding carpenter ants), the required test species for a labeling claim appear in the following table, unless otherwise specified in paragraphs (c) or (d) of this section. The group and sub-group claims in this paragraph are for direct kill and residual surface application claims against foraging ants only (excluding colony claims).

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST ANTS

[Excluding carpenter ants]

Labeling claim	Required test species
Pest Group Claim	
Ants (excluding carpenter ants)	Testing is required on the following two species: Pharaoh ant (*Monomorium pharaonis*) AND Red imported fire ant (*Solenopsis invicta*).
Pest Sub-Group Claim	
Fire and Harvester	Testing is required on the following species: Red imported fire ant (*Solenopsis invicta*).
Fire ants	Testing is required on the following species: Red imported fire ant (*Solenopsis invicta*).
Pest-Specific Claims	
European fire ant	European fire ant (*Myrmica rubra*).
Harvester ant	Harvester ant (*Pogonomyrmex* sp.).
Pharaoh ant	Pharaoh ant (*Monomorium pharaonis*).
Red imported fire ant	Red imported fire ant (*Solenopsis invicta*).
Southern fire ant	Southern fire ant (*Solenopsis xyloni*).
Tropical fire ant	Tropical fire ant (*Solenopsis geminata*).
Black imported fire ant	Black imported fire ant (*Solenopsis richteri*).

(c) *Colony Claims.* For colony claims, testing must be done for each species listed or each representative species, in the case of a group. For colony claims against the red and/or black imported fire ants, testing may be done on, *S. invicta, S. richteri,* or their hybrid.

(d) *Bait products or claims involving outdoor use.* The group and sub-group claims in paragraph (b) of this section are for direct kill and residual surface application claims against foraging ants only (excluding colony claims). For bait products or claims involving outdoor use, testing must be specific to the species listed or each representative species, in the case of a group.

§ 158.1780 Bees, wasps, yellowjackets, and hornets.

(a) *General.* The table in this section applies to bees, wasps, yellowjackets, and hornets. The labeling claim determines the required test species. The required test species for labeling claims appear in paragraph (b) of this section.

(b) *Test species.* For products making a claim against bees, wasps, yellowjackets, and hornets, the required test species for a labeling claim appear in the following table, unless otherwise specified in paragraph (c) of this section.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST BEES, WASPS, YELLOWJACKETS, AND HORNETS

Labeling claim	Required test species
Pest Group Claims	
Bees, Wasps, Yellowjackets, and Hornets.	Testing on three species is required: Two Yellowjacket species (one *Vespula* sp. AND the Bald-faced hornet (*Dolichovespula maculata*)) AND one Paper wasp (*Polistes* sp.).
Pest-Specific Claims	
Bald-faced hornet	Bald-faced hornet (*Dolichovespula maculata*).
Mud dauber wasp	Mud dauber wasp (*Sphecidae* sp.).
Paper wasp	Paper wasp (*Polistes* sp.).
Yellowjackets	Yellowjacket (*Vespula* sp.).

(c) *Colony claims.* For colony claims, except *Vespula* spp., testing must be specific to the species listed. Acceptable data for any *Vespula* species may support a yellowjacket colony claim for ground nesting *Vespula* species; however, species-specific claims need to be supported by data from testing of the specific species. Colony claims have a performance standard of 100%.

§ 158.1782 Carpenter ants.

(a) *General.* The table in this section applies to carpenter ants. The product labeling claim determines the required test species. The required test species for labeling claims appear in paragraph (b) of this section. The required performance standards appear in paragraph (c) of this section.

(b) *Test species.* For products making a claim against carpenter ants, the required test species for a labeling claim appear in the following table. The group and sub-group claims in this paragraph are for direct kill and residual surface application claims against foraging ants only (excluding colony claims).

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST CARPENTER ANTS

Labeling claim	Required test species
Carpenter ants	Testing on one of the following carpenter ant species is required: Black carpenter ant (*Camponotus pennsylvanicus*) OR Florida carpenter ant (*Camponotus floridanus*) OR Western carpenter ant (*Camponotus modoc*).

(c) *Performance standards.* The performance standards for pesticide products making certain claims against carpenter ants appear in the following table and in paragraphs (d) and (e)of this section. The performance standards for labeling claims not covered in this section appear in § 158.1704.

TABLE 2 TO PARAGRAPH (c)—PERFORMANCE STANDARDS FOR CERTAIN CLAIMS AGAINST CARPENTER ANTS

Claim category	Performance standard
Non-Structural Protection: Wood Preservative Treatment.	100% prevention of damage to wood for ≥2 years.
Structural Protection, except Baits	95% prevention of damage to wood ≥5 years.
Structural Protection: Bait Treatment.	95% prevention of damage to wood ≥3 years.

(d) *Colony Claims.* For colony claims, testing must be done for each species listed or each representative species, in the case of a group.

(e) *Bait products or claims involving outdoor use.* The group and sub-group claims in paragraph (b) of this section are for direct kill and residual surface application claims against foraging ants only (excluding colony claims). For bait products or claims involving outdoor use, testing must be specific to the species listed or each representative species, in the case of a group.

§ 158.1784 Wood-destroying beetles.

(a) *General.* The tables and test notes in this section apply to wood-destroying beetles. The labeling claim determines the required test species. The required test species for a labeling claim appears in paragraph (b) of this section. The required performance standards appear in paragraph (c) of this section.

(b) *Test species.* For products making a claim against wood-destroying beetles, the required test species for a labeling claim is set forth in the following table.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST WOOD-DESTROYING BEETLES

Labeling claim	Required test species
True powderpost beetles	Testing on one species from the Lyctinae subfamily is required.
Wood-destroying or wood-boring beetles.	Testing on three species is required: Anobiid beetle (*Anobiidae* sp.) AND Bostrichid beetle (*Bostrichidae* sp.) AND Old house borer (*Hylotrupes bajulus*).

(c) *Performance standards.* The performance standards for pesticide products making certain claims against wood-destroying beetles appear in the following table. The performance standards for labeling claims that are not specifically provided in the following table appear in § 158.1704.

TABLE 2 TO PARAGRAPH (c)—PERFORMANCE STANDARDS FOR CERTAIN CLAIMS AGAINST WOOD-DESTROYING BEETLES

Claim category	Performance standard
Non-Structural Protection: Wood Preservative Treatment	100% prevention of damage to wood for ≥2 years.
Structural Protection, except Baits	95% prevention of damage to wood ≥5 years.
Structural Protection: Bait Treatment	95% prevention of damage to wood ≥3 years.

§ 158.1786 Termites.

(a) *General.* The tables and test notes in this section apply to the subterranean termite, desert subterranean termite, Formosan subterranean termite, drywood termite, and dampwood termite. The labeling claim determines the required test species. The required test species for labeling claims appear in paragraph (b) of this section. The required performance standards appear in paragraph (c) of this section.

(b) *Test species.* For products making a claim against termites, the required test species for a labeling claim appear in the following table. For the structural protection and wood preservative claim categories, a claim against any specific genus of subterranean termite must be supported by data on that individual genus and all the required test genera for a subterranean termite claim must be tested and submitted.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST TERMITES

Labeling claim	Required test species
Pest Group Claim	
Termites	Testing on species from four genera of termites is required: Testing is required on the following *Coptotermes* termite: *Coptotermes formosanus* AND one of the following *Reticulitermes* species: *Reticulitermes flavipes* OR *Reticulitermes hesperus* OR *Reticulitermes virginicus* AND one of the following arboreal termite species: *Nasutitermes corniger* AND one of the following drywood termite species: *Cryptotermes brevis* OR *Cryptotermes cavifrons* OR *Incisitermes minor* OR *Incisitermes snyderi*.
Pest Sub-Group Claim	
Arboreal Termites	Testing of one arboreal termite species is required: *Nasutitermes corniger.*
Dampwood Termites	Testing of the following dampwood termite is required: *Zootermopsis* sp.
Drywood Termites	Testing of one of the following drywood termites is required: *Cryptotermes brevis* OR *Cryptotermes cavifrons* OR *Incisitermes minor* OR *Incisitermes snyderi.*
Subterranean Termites, including Formosan Subterranean Termites.	Testing in two genera of termites is required: Testing on the following *Coptotermes* species is required: *Coptotermes formosanus*AND one of the following *Reticulitermes* species: *Reticulitermes flavipes* OR *Reticulitermes hesperus* OR *Reticulitermes virginicus.*

(c) *Performance standards.* The performance standards for pesticide products making certain claims against termites appear in the following table. The performance standards for labeling claims not provided in the following table appear in § 158.1704.

TABLE 2 TO PARAGRAPH (c)—PERFORMANCE STANDARDS FOR CERTAIN CLAIMS AGAINST TERMITES

Claim category	Performance standard
Non-Structural Protection: Wood Preservative Treatment	100% prevention of damage to wood for ≥2 years.
Structural Protection, except Baits	95% prevention of damage to wood ≥5 years.
Structural Protection: Bait Treatment	95% prevention of damage to wood ≥3 years.

■ 5. Revise § 158.2070 to read as follows:

§ 158.2070 Biochemical pesticides product performance data requirements.

(a) *General.* Product performance data must be developed for all biochemical pesticides. Each applicant must ensure through testing that the product is efficacious when used in accordance with label directions and commonly accepted pest control practices. The Agency may require, on a case-by-case basis, submission of product performance data for any pesticide product registered or proposed for registration or amendment.

(b) *Product performance data for each product that bears a claim against an invertebrate pest that is covered by subpart R of this part.* The product performance data requirements and performance standards of subpart R of this part apply to biochemical products covered by this subpart. Product performance data must be submitted with any application for registration or amended registration. However, data requirements and the performance standards that determine the acceptability of data may be waived or modified on a case-by-case basis pursuant to the waiver provisions in § 158.45 and modification provisions in § 158.1707.

(c) *Product performance data for each product that bears a public health pest claim, excluding those covered under paragraph (b).* Product performance data must be submitted with any application for registration or amended registration, if the product bears a claim to control public health pests, such as pest microorganisms infectious to humans in any area of the inanimate environment, or a claim to control vertebrates, including but not limited to, rodents, birds, bats, canids, and skunks.

■ 6. Revise § 158.2160 to read as follows:

§ 158.2160 Microbial pesticides product performance data requirements.

(a) *General.* Product performance data must be developed for all microbial pesticides. Each applicant must ensure through testing that the product is efficacious when used in accordance with label directions and commonly accepted pest control practices. The Agency may require, on a case-by-case basis, submission of product performance data for any pesticide product registered or proposed for registration or amendment.

(b) *Product performance data for each product that bears a claim against an invertebrate pest that is covered by subpart R of this part.* The product performance data requirements and the performance standards of subpart R of this part apply to microbial products covered by this subpart. Product performance data must be submitted with any application for registration or amended registration. However, data requirements and the performance standards that determine the acceptability of data may be modified on a case-by-case basis pursuant to the waiver provisions in § 158.45 and the provisions in § 158.1707.

(c) *Product performance data for each product that bears a public health pest claim, excluding those covered under paragraph (b).* Product performance data must be submitted with any application for registration or amended registration, if the product bears a claim to control public health pests, such as pest microorganisms infectious to humans in any area of the inanimate environment, or a claim to control vertebrates, including but not limited to, rodents, birds, bats, canids, and skunks.

■ 7. In § 158.2200, revise paragraph (b) to read as follows:

§ 158.2200 Applicability.

* * * * *

(b) A product that bears both antimicrobial and non-antimicrobial uses or claims is subject to the data requirements for pesticides in subparts C through O, R, and U or V of this part with respect to its non-antimicrobial uses and claims, and to the requirements of this subpart with respect to its antimicrobial uses and claims.

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 220407–0086]

RIN 0648–BJ87

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Lighthouse Repair and Tour Operations at Northwest Seal Rock, California

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

ACTION: Final rule; notification of issuance.

SUMMARY: NMFS Office of Protected Resources, upon request from the St. George Reef Lighthouse Preservation Society (Society), hereby issues regulations to govern the unintentional taking of marine mammals incidental to conducting aircraft operations, lighthouse renovation, light maintenance activities, and tour operations on the St. George Reef Lighthouse Station (Station) on Northwest Seal Rock (NWSR) over the course of five years (2022–2027). These regulations, which allow for the issuance of Letters of Authorization (LOA) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking. We are also issuing a Letter of Authorization to cover the first year of these activities.

DATES: Effective from May 15, 2022 through May 14, 2027.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Regulatory Action

This final rule establishes a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to the Society conducting aircraft operations, lighthouse renovation, light maintenance activities, and tour operations on the Station on NWSR approximately 8 miles (12.9 km) northwest of Crescent City, CA.

We received an application from the Society requesting 5-year regulations and authorization to take multiple species of marine mammals. Take would occur by Level B harassment incidental to acoustic and visual disturbance of pinnipeds during helicopter operations, lighthouse repair, and tour operations. Please see Background section below for definitions of harassment.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to 5 years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the ''least practicable adverse impact'' on the affected species or stocks and their habitat (see the discussion below in the Mitigation section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this rule containing 5-year regulations, and for any subsequent Letters of Authorization (LOAs). As directed by this legal authority, this rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Regulations in This Final Rule

Following is a summary of the major provisions of the regulations in this final rule regarding the Society's activities. These measures include:

- Required implementation of mitigation to minimize impact to pinnipeds and avoid disruption to dependent pups, including several measures to approach haulouts cautiously to minimize disturbance, especially when pups are present.
- Required monitoring of the project areas to detect and record the presence of marine mammals before initiating work.

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are issued, and notice is provided to the public.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On March 23, 2020, NMFS received a request from the Society for a proposed rule and LOAs to take marine mammals incidental to lighthouse maintenance and preservation activities at NWSR, offshore of Crescent City, CA. The application was deemed adequate and complete on April 16, 2020. The Society's request is for take of a small number of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), Steller sea lions (*Eumetopias jubatus*), and northern fur seals (*Callorhinus ursinus*) by Level B harassment only. Neither the Society nor NMFS expects serious injury or mortality to result from this activity. On June 9, 2020 (85 FR 35268), we published a notice of receipt of the Society's application in the **Federal Register**, requesting comments and information related to the request for 30 days. We received no comments. After publication of the notice of receipt, the Society reevaluated their application and decided to seek changes to their deed restriction, so requested that this action be paused. Revised applications were submitted on September 2, 2020, December 9, 2020, and a final revised application was submitted on August 6, 2021, which was deemed adequate and complete. On September 8, 2021 NMFS issued a proposed rule in the **Federal Register** (86 FR 50304) soliciting public comments for 30 days. All public comments were considered in developing this final rule, and are discussed below in the Comments and Responses section.

NMFS previously issued nine 1-year Incidental Harassment Authorizations (IHAs) for similar work (75 FR 4774, January 29, 2010; 76 FR 10564, February 25, 2011; 77 FR 8811, February 15, 2012; 78 FR 71576, November 29, 2013; 79 FR 6179, February 3, 2014; 81 FR 9440, February 25, 2016; 82 FR 11005, February 17, 2017; 83 FR 19254, May 2, 2018; and 84 FR 15598, April 16, 2019). Generally speaking, the Society complied with the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs. However, misunderstandings in past implementation have resulted in missing or incorrectly recorded monitoring data, which compelled NMFS to require more frequent reporting in the first year (at least) of this rule to ensure appropriate monitoring and reporting implementation in the future. Information regarding their monitoring results may be found in the Potential Effects of Specified Activities on Marine Mammals and their Habitat and Estimated Take sections.

Comments and Responses

We received comments from 5 private citizens on the proposed rule.

Comment: Three of the comments were from students who largely summarized various aspects of the incidental take authorization process and support issuance of the incidental take authorization. Ryan Kowalski comments that ''the proposed rule is justified and properly authorized.'' Chelsea Rasmussen agrees with this proposed rule and notes the extensive citations and prior authorizations and suggests the data shows ''a limited potential for the requested work to cause any kind of long term disturbance of the present species of marine mammal.'' Negative effects of not allowing the project to go forward are also discussed. Benjamin Short believes the Society ''should be able to carry out their maintenance tasks to the lighthouse'' since the Society has ''done its due diligence to negate any adverse

impact their work will have on the pinnipeds present.'' He points to ''a clear and concise mitigation plan'' and ''very comprehensive monitoring and reporting measures.''

Response: NMFS appreciates the commenters' thoughtful responses.

Comment: Jean Public commented that the seals were at the site first and the authorization should not be issued.

Response: NMFS appreciates this comment. However, the MMPA does not permit us to deny an incidental harassment authorization because a species existed in a location before a proposed activity. As described herein, the requirements for issuance of MMPA incidental take regulations for this activity have been satisfied.

Comment: Tarin Schalow also disagrees ''with the decision to grant a 5-year authorization to the Society.'' The commenter is concerned the potential shift to year-round activity ''on a more consistent basis may have more than a negligible impact on the pinnipeds.'' The adaptive management provisions are acknowledged, but the commenter argues for unspecified additional protections ''in case the pinniped stock of the area does become impacted more than a negligibly.'' The commenter is also concerned about the ''misunderstandings in past implementation'' of the Society's prior IHAs and argues we should not grant a five-year authorization until the Society is able to demonstrate proper implementation and adherence to requirements.

Response: We appreciate this comment but disagree that year-round activity may have more than a negligible impact on the marine mammals. We analyzed the effects of allowing year-round activity in the proposed rule, and the commenter provides no new information to revise that analysis. As the commenter notes, the proposed authorization includes an adaptive management provision that would allow us to modify the terms and conditions of the authorization should new information come to light on the effect of the activity on marine mammals. In addition, we note we regularly authorize year-round construction and other activities in the region that also do not cause more than negligible impacts on pinnipeds. We also note that, at this time, the Society has been unable to modify the terms of their deed, so the current work window restrictions of the deed will remain in place for the time being.

We share the commenter's concerns about the ''misunderstandings in past implementation'' of the Society prior IHAs. This is why we have initially increased the frequency of reporting for the Society to quarterly instead of our more typical yearly reporting requirement. This is also why the initial LOA we are issuing is only valid for 1-year, rather than for the entirety of the possible 5 years. We have also been engaged in more extensive than normal planning with the Society with regards to their monitoring and reporting plans and preparations before issuing this final rule and initial LOA to ensure that implementation and compliance will be successful. We will reevaluate the Society's implementation and compliance in accordance with the terms of this final rule and the one-year LOA before issuing additional LOAs.

Changes From Proposed to Final Rule

The duration of effectiveness for the regulations in this final rule is five years, as envisioned in the proposed rule, although this final rule is effective from May 15, 2022, through May 14, 2027, rather than from 2021–2026, as generally envisioned in the proposed rule. Additionally, NMFS has removed a mitigation requirement from the proposed rule that required the door to the lower platform of the lighthouse station to remain closed at all times. This requirement was not practicable for the Society, as the open door is the only source of light in the lower room of the station, and the daylight is necessary for work crews to conduct their restoration activities. NMFS has also specified the amount of time that the Society must monitor for marine mammals, and the location from which the Society must monitor, before and after each helicopter takeoff and landing. Finally, NMFS has clarified the required assessment of behavioral responses that the Society must include in their monitoring report(s) to eliminate irrelevant behaviors.

Description of Specified Activity

Overview

The St. George Reef Lighthouse Station was built on NWSR in 1892 and is listed in the National Register of Historic Places. Covering much of the islet's surface, the structure consists of a 14.5 meter (m) high (48 foot (ft)) oval-shaped concrete base (the caisson) that holds much of the equipment and infrastructure for the lighthouse tower, which sits on the top of one end of the base. The square tower consists of hundreds of granite blocks topped with a cast iron lantern room reaching 45.7 m (150 ft) above sea level. An observation gallery platform surrounds the lantern room and provides a 360-degree view to the caisson and rocks below.

The purpose of the project is to conduct annual maintenance of the Station's optical light system, emergency maintenance in the event of equipment failure, restoration activities, and lighthouse tours. Because NWSR has no safe landing area for boats, the Society accesses the Station via helicopter. Restoration work sessions can occur over 3-day weekends or longer one to two week sessions. The following specific aspects of the proposed activities would likely result in the take of marine mammals: Acoustic and visual stimuli from (1) helicopter landings and takeoffs; (2) noise generated during restoration activities (*e.g.,* painting, plastering, welding, and glazing); (3) maintenance activities (*e.g.,* bulb replacement and automation of the light system); and (4) human presence. Thus, NMFS anticipates these activities may occasionally cause behavioral disturbance (*i.e.,* Level B harassment) of four pinniped species. It is expected that the disturbance to pinnipeds from the activities will be minimal and will be limited to Level B harassment.

The regulations issued here (and any issued LOAs) replace annual IHAs, providing a reduction in the time and effort necessary to obtain individual incidental take authorizations.

Dates and Duration

The Society proposes to conduct the activities (aircraft operations, lighthouse restoration and maintenance activities, and public tours) with a maximum of 70 helicopter flight days per year. The Society's deed restricts normal access from June 1 through October 15 annually, so currently proposed trips under this application would occur from October 16 through May 31. However, the Society is attempting to have the deed revised to allow visits at any time of the year. Therefore we have considered the implications of possible visits during any month of the year in our analyses below and we could issue LOAs to cover this time of year should the society be successful in revising their deed. The regulations in this final rule are valid for a period of 5 years (May 15, 2022 through May 14, 2027). Over the course of this 5-year authorization, the Society proposes a maximum of 350 days of activities.

Specific Geographic Region

The Station is located on NWSR, a small, rocky islet (41°50′24″ N, 124°22′06″ W), approximately 9 kilometers (km) (6.0 miles (mi)) offshore of Crescent City, California (41°46′48″

N; 124°14′11″ W). NWSR is approximately 91.4 meters (m) (300 feet (ft)) in diameter and peaks at 5.18 m (17 ft) above mean sea level.

Detailed Description of Specific Activity

A detailed description of the Society's planned activities was provided in our proposed rule (86 FR 50304; September 8, 2021) and is not repeated here. No changes have been made to the specified activities described therein.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species or stocks for which take is expected and authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and the Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2020). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Pacific Marine Mammal SARs (*e.g.,* Carretta *et al.* 2020). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2020 SARs (Carretta *et al.* 2020) (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 1—SPECIES THAT SPATIALLY CO-OCCUR WITH THE ACTIVITY TO THE DEGREE THAT TAKE IS REASONABLY LIKELY TO OCCUR

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S	-, -, N	257,606 (N/A, 233,515, 2014)	14,011	>320
Northern fur seal	*Callorhinus ursinus*	California Breeding	-, D, N	14,050 (N/A, 7,524, 2013)	451	1.8
Steller sea lion	*Eumetopias jubatus*	Eastern U.S	-, -, N	43,201 a (see SAR, 43,201, 2017)	2,592	113
Family Phocidae (earless seals):						
Pacific harbor seal	*Phoca vitulina richardii*	California	-, -, N	30,968 (N/A, 27,348, 2012)	1,641	43

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports,* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual Mortality/Serious Injury (M/SI) often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, all four species (with four managed stocks) in Table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have authorized it. All species that could potentially occur in the proposed survey areas are included in Table 1. Detailed descriptions of these species were provided in our notice of proposed rulemaking (86 FR 50304; September 8, 2021) and are not repeated here. No new information is available.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

We provided discussion of the potential effects of the specified activity on marine mammals and their habitat in our **Federal Register** notice of proposed rulemaking (86 FR 50304; September 8, 2021) and it is not repeated here. The proposed rule included a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this final rule includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of the Negligible Impact Analysis and Determination section and the material it references, the Estimated Take section, and the Mitigation section to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this rulemaking, which informs both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the

MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to helicopter operations and lighthouse maintenance activities. Based on the nature of the activity, Level A harassment is neither anticipated nor authorized.

As discussed earlier, behavioral (Level B) harassment is limited to movement and flushing, defined by the disturbance scale of pinniped responses to in-air sources to determine take (Table 2). Furthermore, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that inform the take calculations.

TABLE 2—DISTURBANCE SCALE OF PINNIPED RESPONSES TO IN-AIR SOURCES TO DETERMINE TAKE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

*Only Levels 2 and 3 are considered take, whereas Level 1 is not.

The Society's monitoring efforts reported zero marine mammals present on NWSR, in 2010. Furthermore, operations were not conducted in the years 2013 through 2016; thus, monitoring was not conducted. No visits occurred in 2020. Visits have occurred in all other years since 2010.

Steller sea lions were first reported during restoration trips conducted in April (9) and November (350, with a maximum of 155/day) of 2011 (St. George Reef Lighthouse Preservation Society (SGRLPS) 2011). Zero observations of Steller sea lions were reported during the one 2012 restoration trip and three 2017 trips conducted (SGRLPS 2012, 2018). Four trips were conducted in 2018 (February, March, April, and November); only the November session reported any individuals (three) on site (SGRLPS 2018). One restoration trip was conducted in November 2019 and had 22 Steller sea lions present (SGRLPS 2020). In the event of an emergency trip to the lighthouse for repairs in summer, or if deed restrictions are changed, more Steller sea lions may be present in June and July (up to 350–400 animals based on CCR (2001)).

The maximum number of California sea lions present per day (160) was observed during the November 2011 trip. The April and November 2011 trip maximums were 2 and 430 individuals, respectively (SGRLPS 2011). Zero California sea lions were reported during the March 2012 trip (SGRLPS 2012). In 2017, the Society reported 16 and zero California sea lions during March and April trips, and 16 during a November trip for a landing zone inspection (SGRLPS 2017). Observations for the 2018 season totaled 40 individuals among its four trips (SGRLPS 2018). Eighteen California sea lions were reported during the November 2019 trip with a maximum of 10 per day (SGRLPS 2020). Should deed restrictions be altered to allow access during summer months, numbers could be somewhat higher based on the data in CCR (2001).

Northern fur seals have not been observed during any of the Society's work from 2010 through 2019 (SGRLPS 2010; 2011; 2012; 2017; 2018; 2020).

The Society first reported 2 Pacific harbor seals on site during the March 2012 restoration trip (SGRLPS 2012). Zero harbor seals were reported during the 2017, 2018, or 2019 work seasons (SGRLPS 2017; 2018; 2020).

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. The monitoring observations described above serve as the underpinnings of the take estimate calculation used to determine the actual number of marine mammals that may be subject to take. Take estimates for each species for which take would be authorized were based on the following equation:

Take estimate per species = maximum number of observations/day during prior monitoring * number of proposed operations days

Based on the Society's previous monitoring reports, the maximum number of observations per day for each species is: Steller sea lions 155, California sea lions 160, and Pacific harbor seals 2. No Northern fur seals have been seen in prior project monitoring but one was observed during the survey work for this project by CCR (2001), so we use one for these calculations.

As discussed above, The Society is proposing no more than 70 flight days per year. This is an optimistic estimate that far exceeds prior efforts, but given adequate funding there is the need for extensive restoration work to the Station so the Society requested consideration of the additional days of work in the take estimate. Therefore NMFS estimates that approximately 10,850 Steller sea lions (calculated by multiplying the maximum single-day count of Steller sea lions that could be present (155) by 70 days of activities), 11,200 California sea lions, 140 Pacific harbor seals, and 70 Northern fur seals could be potentially taken by Level B behavioral harassment annually over the course of this rulemaking (Table 3). NMFS bases these estimates of the numbers of marine mammals that might be affected on consideration of the number of marine mammals that could be on NWSR in a worst case scenario based on prior monitoring, and the assumption that all animals present may exhibit behavioral responses that are considered take (Levels 2 and 3 as described in Table 2). Should deed restrictions be altered to allow access

during summer months, numbers of California sea lions and Steller's sea lions could be somewhat higher during a couple of those months based on the data in CCR (2001). Given these increases are limited in duration, only a fraction of the potential flight days could occur in summer, and the conservative nature of the maximum daily counts relative to the average observed animal counts from prior monitoring discussed above, we believe the take estimates are adequately precautionary.

TABLE 3—ANNUAL LEVEL B HARASSMENT TAKE CALCULATIONS AND PERCENTAGE OF EACH STOCK AFFECTED

Species	Maximum number per day	Days of proposed activity	Take	Percent of stock
California sea lion	160	70	11,200	4.3
Steller sea lion	155	70	10,580	25.1
Pacific harbor seal	2	70	140	0.5
Northern fur seal	1	70	70	0.5

Mitigation

In order to promulgate regulations and issue LOAs under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS does not have a regulatory definition for ''least practicable adverse impact.'' NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

The mitigation strategies described below largely follow those required and successfully implemented under previous incidental take authorizations issued in association with this project.

Following are the mitigation measures:

- No more than six flight days (up to two work trips) per month;
- Avoid direct physical interaction with marine mammals during activity. If a marine mammal comes within 10 m of such activity, operations must cease until the animal leaves of its own accord;
- Conduct training between construction supervisors and crews and tourists and the marine mammal monitoring team and relevant Society staff prior to the start of all visits and when new personnel join the work, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. Visitors to the Station must be instructed to avoid unnecessary noise and not expose themselves visually to pinnipeds around the base of the lighthouse;
- Halt loud outside activity upon observation on NWSR of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met;
- Ensure that helicopter approach patterns to the NWSR are such that the timing and techniques are least disturbing to marine mammals. To the extent possible, the helicopter must approach NWSR when the tide is too high for marine mammals to haul out on NWSR. Avoid rapid and direct approaches by the helicopter to the station by approaching NWSR at a relatively high altitude (*e.g.,* 800–1,000 ft; 244–305 m). Before the final approach, the helicopter must circle lower, and approach from an area where the density of pinnipeds is the lowest. If for any safety reasons (*e.g.,* wind conditions or visibility) such helicopter approach and timing techniques cannot be achieved, the Society must abort the restoration and maintenance session for the day;
- Employ a protected species observer (PSO) and establish monitoring locations as described in the application and Section 5 of any LOA. The Holder must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. For all helicopter flights at least one PSO must be used; and
- Monitoring must take place for all take-offs and landings.

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an LOA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value

is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Visual Monitoring

- Monitoring during each helicopter takeoff and landing must be conducted by qualified, NMFS-approved PSOs, in accordance with the following: PSOs must be independent and have no other assigned tasks during monitoring periods. At least one PSO must have prior experience performing the duties of a PSO. Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training. PSOs resumes must be approved by NMFS prior to beginning any activity subject to these regulations.
- PSOs must record all observations of marine mammals as described in Section 5 of any LOA, regardless of distance from the activity. PSOs must document any behavioral reactions in concert with distance from the activity, according to the levels of response described in Table 2.

PSOs must have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior;
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary;
- The Society must establish the following monitoring locations. For the first flight of the day a PSO with high definition camera must be on the first flight to the station. For 15 minutes before and after all other takeoffs and landings a PSO must be stationed on the platform of the lantern room gallery, and a PSO must be on the last departing helicopter of the day;
- Aerial photo coverage of the island must be completed by an observer using a high definition camera. Photographs of all marine mammals hauled out on the island must be taken at an altitude greater than 300 meters. Photographs of marine mammals present at the last flight of the day must be taken from the helicopter or from the lantern room gallery platform just before the last flight; and
- The Society and/or its designees must forward the photographs to a biologist capable of discerning marine mammal species if one is not present on the trip. The Society must provide the data to NMFS in the form of a report with a data table, any other significant observations related to marine mammals, and a report of restoration activities. The Society must make available the original photographs to NMFS or to other marine mammal experts for inspection and further analysis.

Reporting

A draft marine mammal monitoring report must be submitted to NMFS within 90 days after the completion of each activity period, or 60 days prior to a requested date of issuance of any future LOAs for projects at the same location, whichever comes first. For the first year of the activities, at least, the reports must be submitted quarterly; following submission of the first three quarterly reports, NMFS will evaluate whether it is appropriate to modify subsequent annual LOAs to require annual reports, based on whether the information provided in the first three quarterly reports adequately complies with the requirement. The report must include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring.
- Activities occurring during each daily observation period.
- PSO locations during marine mammal monitoring.
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.
- Upon each flight, the following information must be reported: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; time of sighting; identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; distance and bearing of the nearest marine mammal observed relative to the activity for each flight; estimated number of animals (min/max/best estimate); estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.); animal's closest point of approach to activity; and description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing) using pinniped disturbance scale (Table 2).
- Number of marine mammals detected, by species.
- Detailed information about any implementation of any mitigation triggered, a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft final

report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the activities discover an injured or dead marine mammal, the LOA-holder must report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the Society must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA and regulations. The LOA-holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Activities associated with the restoration, light maintenance and tour projects, as described previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) from in-air sounds and visual disturbance. Potential takes could occur if individual marine mammals are present nearby when activity is happening.

No serious injury or mortality would be expected even in the absence of the mitigation measures. For all species, no Level A harassment is anticipated given the nature of the activities, *i.e.,* much of the anticipated activity would involve noises below thresholds and visual disturbance from tens of meters away, and measures designed to minimize the possibility of injury. The potential for injury is small for pinnipeds, and is expected to be essentially eliminated through implementation of the planned mitigation measures.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as alerts or movements away from the lighthouse structure. Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas.

Reporting from prior years of these activities has similarly reported no apparently consequential behavioral reactions or long-term effects on marine mammal populations as noted above. Repeated exposures of individuals to relatively low levels of sound and visual disturbance outside of preferred habitat areas are unlikely to significantly disrupt critical behaviors. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound and visual disturbance produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring.

In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized.
- No Level A harassment is anticipated or authorized.
- No important biologically important areas have been identified within the project area.
- For all species, NWSR is a very small and peripheral part of their range.
- Monitoring reports from prior activities at the site have documented little to no effect on individuals of the same species impacted by the specified activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is

considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS authorizes is below one third of the estimated stock abundance of all species (in fact, take of individuals is less than 10 percent of the abundance of all of the affected stocks except Steller sea lions, see Table 3). This is likely a conservative estimate because they assume all takes are of different individual animals which is likely not the case, especially within individual trips. Many individuals seen within a single multi-day trip are likely to be the same across consecutive days, but PSOs would count them as separate takes across days.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Adaptive Management

The regulations in this final rule governing the take of marine mammals incidental to Society lighthouse repair and tour operation activities contain an adaptive management component.

The reporting requirements associated with this final rule are designed to provide NMFS with monitoring data from the prior year(s) to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the Society regarding practicability) on an annual basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable. Additionally, monitoring or reporting measures may be modified if appropriate and, in this case, the rule specifies quarterly monitoring and reporting requirements for the first year, which may subsequently be modified to annual requirements, based on NMFS evaluation of the first three reports.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of a rule and subsequent LOAs) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the rule qualifies to be categorically excluded from further NEPA review.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of incidental take authorizations, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the West Coast Regional Protected Resources Division Office.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this final rule is not significant. Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule would not have a significant economic impact on a substantial number of small entities. The Society, a 501(c)(3) non-profit whose mission is to preserve the St. George Reef lighthouse, is the sole entity that would be subject to the requirements in these regulations, and the Society is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

This final rule contains a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: April 11, 2022.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart F to part 217 to read as follows:

Subpart F—Taking Marine Mammals Incidental to Lighthouse Repair and Tour Operations at Northwest Seal Rock, California

Sec.

217.50 Specified activity and specified geographical region.
217.51 Effective dates.
217.52 Permissible methods of taking.

217.53 Prohibitions.
217.54 Mitigation requirements.
217.55 Requirements for monitoring and reporting.
217.56 Letters of Authorization.
217.57 Renewals and modifications of Letters of Authorization.
217.58 [Reserved]
217.59 [Reserved]

Subpart F—Taking Marine Mammals Incidental to Lighthouse Repair and Tour Operations at Northwest Seal Rock, California

§ 217.50 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the St. George Reef Lighthouse Preservation Society (Society) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to lighthouse repair and tour operation activities.

(b) The taking of marine mammals by the Society may be authorized in a Letter of Authorization (LOA) only if it occurs within Pacific Ocean waters in the vicinity of Northwest Seal Rock near Crescent City, California.

§ 217.51 Effective dates.

Regulations in this subpart are effective from May 15, 2022 through May 14, 2027.

§ 217.52 Permissible methods of taking.

Under LOAs issued pursuant to § 216.106 of this chapter and § 217.56, the Holder of the LOA (hereinafter ''Society'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.50(b) by Level B harassment associated with lighthouse repair and tour operation activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

§ 217.53 Prohibitions.

Except for taking authorized by a LOA issued under §§ 216.106 and 217.56 of this chapter, it shall be unlawful for any person to do any of the following in connection with the activities described in § 217.50:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under § 216.106 of this chapter and § 217.56;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified; or

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal.

§ 217.54 Mitigation requirements.

When conducting the activities identified in § 217.50(a), the mitigation measures contained in any LOA issued under § 216.106 of this chapter and § 217.56 must be implemented. These mitigation measures shall include but are not limited to:

(a) *General conditions.* (1) A copy of any issued LOA must be in the possession of the Society, supervisory personnel, pilot, protected species observers (PSOs), and any other relevant designees of the Holder operating under the authority of this LOA at all times that activities subject to this LOA are being conducted.

(2) The Society must conduct training between supervisors and crews and the marine mammal monitoring team and relevant Society staff prior to the start of all trips and when new personnel join the work, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. Visitors to the Station must be instructed to avoid unnecessary noise and not expose themselves visually to pinnipeds around the base of the lighthouse.

(3) All personnel must avoid direct physical interaction with marine mammals during activity. If a marine mammal comes within 10 m of such activity, operations must cease until the animal leaves of its own accord.

(4) Loud outside activity must be halted upon observation on Northwest Seal Rock (NWSR) of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met.

(5) No more than two restoration trips, or 6 days of flight operations, are permitted per month.

(b) *Protocols.* (1) The pilot must ensure that helicopter approach patterns to the NWSR are such that the timing and techniques are least disturbing to marine mammals. To the extent possible, the helicopter must approach NWSR when the tide is too high for marine mammals to haul out on NWSR. The helicopter must avoid rapid and direct approaches to the station by approaching NWSR at a relatively high altitude (*e.g.,* 800–1,000 ft; 244–305 m). Before the final approach, the helicopter must circle lower, and approach from an area where the density of pinnipeds is the lowest. If for any safety reasons (*e.g.,* wind conditions or visibility) such helicopter approach and timing techniques cannot be achieved, the Society must abort the restoration and maintenance session for the day.

(2) Monitoring must be conducted by a trained PSO, who must have no other assigned tasks during monitoring periods. Trained PSOs must be placed at the best vantage point(s) practicable to monitor for marine mammals and implement mitigation procedures when applicable. The Society must adhere to the following additional PSO qualifications:

(i) Independent PSOs are required;

(ii) At least one PSO must have prior experience working as an observer;

(iii) Other observers may substitute education (degree in biological science or related field) or training for experience; and

(iv) The Society must submit PSO resumes for approval by NMFS prior to beginning any activity subject to these regulations.

(3) The PSO must monitor the project area to the maximum extent possible based on the required monitoring locations and environmental conditions. They must record all observations of marine mammals as described in Section 5 of any LOA, regardless of distance from the activity. A PSO with a high definition camera must be on the first flight to the station each day. For 15 minutes before and after all other takeoffs and landings a PSO must be stationed on the platform of the lantern room gallery, and a PSO must be on the last departing helicopter of the day.

§ 217.55 Requirements for monitoring and reporting.

(a) PSOs must document any behavioral reactions in concert with distance from any project activity.

(b) *Reporting*—(1) *Reporting frequency.* (i) The Society must submit a quarterly summary report to NMFS not later than 90 days following the end of each work quarter; after the first three quarterly submissions, NMFS will evaluate whether it is appropriate to modify to annual reports, and modify future LOAs as appropriate to indicate annual reporting requirements if so. The Society must provide a final report within 30 days following resolution of comments on each draft report.

(ii) These reports must contain, at minimum, the following:

(A) Dates and times (begin and end) of all marine mammal monitoring;

(B) Activities occurring during all marine mammal monitoring (*e.g.,* helicopter takeoffs and landings, construction activities);

(C) PSO locations during marine mammal monitoring;

(D) Environmental conditions during monitoring periods (at beginning and

end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;

(E) Upon each flight, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; time of sighting; identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; distance and bearing of each marine mammal observed relative to the activity for each flight; estimated number of animals (min/max/best estimate); estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.); and description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity according to the 3-point scale as defined in the LOA (*e.g.,* no response or changes in behavioral state such as changing direction or flushing);

(F) Number of marine mammals detected, by species; and

(G) Detailed information about any implementation of any mitigation triggered, a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

(2) The Society must submit a comprehensive summary report to NMFS not later than 90 days following the conclusion of marine mammal monitoring efforts described in this subpart.

(c) *Reporting of injured or dead marine mammals.* (1) In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the LOA-holder must immediately report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by activities specified at § 217.50, the Society must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of these regulations and LOAs. The LOA-holder must not resume their activities until notified by NMFS. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(ii) Species identification (if known) or description of the animal(s) involved;

(iii) Condition of the animal(s) (including carcass condition if the animal is dead);

(iv) Observed behaviors of the animal(s), if alive;

(v) If available, photographs or video footage of the animal(s); and

(vi) General circumstances under which the animal was discovered.

(2) [Reserved]

§ 217.56 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the Society must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, the Society may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the Society must apply for and obtain a modification of the LOA as described in § 217.57.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within 30 days of a determination.

§ 217.57 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 217.56 for the activity identified in § 217.50(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 and 217.56 of this chapter for the activity identified in § 217.50(a) may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the Society regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from the Society's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound or disturbance research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to § 216.106 of this chapter and § 217.56, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in

the **Federal Register** within 30 days of the action.

§§ 217.58–217.59 [Reserved]

[FR Doc. 2022–08031 Filed 4–14–22; 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–XB770]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District 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 pollock in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2022 total allowable catch of pollock in the West Yakutat District of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), April 13, 2022, through 2400 hours, A.l.t., December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

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 2022 total allowable catch (TAC) of pollock in the West Yakutat District of the GOA is 6,722 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 Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2022 TAC of pollock in the West Yakutat District of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,522 mt, and is setting aside the remaining 200 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 pollock in the West Yakutat District 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 pollock in the West Yakutat District 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 April 12, 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: April 13, 2022.

Kelly Denit,

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

[FR Doc. 2022–08269 Filed 4–13–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 73
Friday, April 15, 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 HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0269]

RIN 1625–AA00

Safety Zone; Fireworks Display, Willamette River, Portland, OR

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 Willamette River. This action is necessary to provide for the safety of life on these navigable waters near Portland, OR, during a fireworks display on May 27, 2022. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Columbia River 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 May 2, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0269 using the Federal eRulemaking 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 LT Sean Murphy, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, email *D13-SMB-MSUPortlandWWM@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
COTP Captain of the Port Sector Columbia River

II. Background, Purpose, and Legal Basis

On March 8, 2022, Western Display Fireworks, LTD notified the Coast Guard that it will be conducting a fireworks display from 9:30 to 11 p.m. on May 27, 2022, for the Portland Rose Festival Opening Night. The proposed safety zone would last from 8:30 p.m. on May 27, 2022, to 12:00 a.m. on May 28, 2022. The fireworks are to be launched from a barge in the Willamette River between the Hawthorne and Marquam Bridges, Portland, OR. Hazards from fireworks displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Sector Columbia River (COTP) has determined that potential hazards associated with the fireworks display would be a safety concern for anyone within the designated area of the safety zone before, during, or after the fireworks display.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the designated 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 8:30 p.m. on May 27, 2022, to midnight 12:00 a.m. on May 28, 2022. The safety zone would cover all navigable waters of the Columbia River, from surface to bottom, between the Hawthorne and Marquam Bridges. The fireworks barge location will be at the following approximate point: 45°30′37.61″ N/122°40′11.81″ W. The safety zone would encompass approximately 500 feet. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:30 to 11 p.m. fireworks display. 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 any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP to act on his behalf, or a Federal, State, and local officer designated by or assisting the COTP in the enforcement of the safety zone. Vessel operators desiring to enter or operate within the safety zone would contact the COTP's on-scene designated representative by calling (503) 209–2468 or the Sector Columbia River Command Center on Channel 16 VHF–FM. The regulatory text we are proposing appears at the end of this document.

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 size, location, and duration of the safety zone. The safety zone will impact approximately 500 feet of the Columbia River before, during, and after the fireworks event for 3.5 hours and thus is limited in scope. Moreover, the Coast Guard would issue a Notice to Mariners 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 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 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 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 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 effects of this 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 lasting 1.5 hours that would prohibit entry between 2 bridges within approximately 500 yards near a fireworks barge. 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–2022–0269 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.T13–0269 to read as follows:

§ 165.T13–0269 Safety Zone; Fireworks Display, Willamette River, Portland, OR.

(a) *Location.* The following area is a safety zone: All navigable waters of the Willamette River, surface to bottom, between the Hawthorne and Marquam Bridges, Portland, OR. The fireworks barge location will be at the approximate point of 45°30′37.61″ N/122°40′11.81″ W.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Columbia River (COTP) in the enforcement of the safety zone.

Participant means all persons and vessels registered with the event sponsor as a participant in the race.

(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 calling (503) 209–2468 or the Sector Columbia River Command Center on Channel 16 VHF–FM. 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.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 8:30 p.m. on May 27, 2022, to 12:00 a.m. on May 28, 2022. It will be subject to enforcement this entire period unless the COTP determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: April 7, 2022.

M.S. Jackson,

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

[FR Doc. 2022–08049 Filed 4–14–22; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register
Vol. 87, No. 73
Friday, April 15, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 12, 2022.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 16, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Federal-State Supplemental Nutrition Programs Agreement (Form FNS–339).

OMB Control Number: 0584–0332.

Summary of Collection: The Federal-State Supplemental Nutrition Programs Agreement (form FNS–339) is an annual contract between the U.S. Department of Agriculture (USDA) and each State, Territory, and Indian Tribal Government agency seeking to operate one or more of the following programs: The Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the WIC Farmers' Market Nutrition Program (FMNP), and the Seniors Farmers' Market Nutrition Program (SFMNP). The Food and Nutrition Service (FNS), of the USDA, is authorized to administer the WIC and the FMNP Programs under the following authority: Section 17 of the Child Nutrition Act (CNA) of 1966, as amended, and the SFMNP under 7 U.S.C. 3007.

Need and Use of the Information: The FNS–339 requires the signature of the Chief State agency official and includes a certification/assurance regarding drug free workplace, a certification regarding lobbying, and a disclosure of lobbying activities. The signed agreement thereby authorizes USDA/FNS to make funds available to State agencies for the administration of the WIC, FMNP, and/or SFMNP Programs within the State, Indian Tribal Organizations, District of Columbia, and Territories, and in accordance with 7 Code of Federal Regulations (CFR) parts 246, 248, and 249. The State agency agrees to accept Federal funds for expenditure in accordance with applicable statutes and regulations and to comply with all the provisions of such statutes and regulations, and amendments thereto.

Description of Respondents: State, Local, or Tribal government.

Number of Respondents: 127.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 32.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–08093 Filed 4–14–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket #: RBS–21–BUSINESS–0039]

Notice of Application Deadline Extension for the Rural Innovation Stronger Economy (RISE) Grant Program for Fiscal Year 2022

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (Agency), an agency of the United States Department of Agriculture (USDA), published a Notice of Solicitation of Applications (NOSA) for the Rural Innovation Stronger Economy (RISE) program for fiscal year (FY) 2022, on December 20, 2021. This notice is being issued to extend the application deadline from April 19, 2022, to May 19, 2022, due to a technical issue with the Agency's method for receiving concept proposals. In addition, this notice is requesting that potential applicants that submitted concept proposals on or prior to February 18, 2022, reach out to the Agency if they did not receive a response from the Agency regarding their submittal.

DATES: This Notice is applicable beginning April 15, 2022.

Applicants that submitted a concept proposal by February 18, 2022, but did not receive communication from the Agency must contact the Agency by April 26, 2022.

Completed applications must be submitted electronically by no later than 11:59 p.m. Eastern Time, May 19, 2022, through *Grants.gov,* to be eligible for grant funding.

FOR FURTHER INFORMATION CONTACT: For general information on this notice and for potential applicants that did not receive communication on their concept proposal submittal, please contact Rachel Reister, Program Management Division, Rural Business-Cooperative Service, United States Department of Agriculture, via phone (503) 414–3393 or email *rachel.reister@usda.gov* to ensure a timely response.

SUPPLEMENTARY INFORMATION: The Agency published a NOSA in the **Federal Register** on December 20, 2021 (86 FR 71868), and a corresponding correction on February 14, 2022 (87 FR

8217), to solicit applications for the RISE program for FY 2022. The NOSA afforded potential applicants an opportunity to electronically submit concept proposals for review by the Agency at *SM.RISE-RD.RISE@usda.gov* no later than February 18, 2022, in accordance with 7 CFR 4284.1115(a). The Agency experienced technical issues with its receiving method as the email inbox referenced above did not allow properly submitted proposals to be accepted through the intake system.

Potential applicants that submitted their concept proposals by the deadline but did not receive communication from the Agency are asked to reach out to Rachel Reister as identified in the **FOR FURTHER INFORMATION CONTACT** section of this Notice by no later than April 26, 2022, so the Agency can provide feedback on the concept proposals.

Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2022–08243 Filed 4–13–22; 4:15 pm]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Mississippi Advisory Committee (Committee) will hold a meeting on Monday, April 25, 2022 at 12:00 p.m. Central time. The Committee will continue identifying potential civil rights topics for their first study of the 2021–2025 term.

DATES: The meeting will take place on Monday, April 25, 2022 at 12:00 p.m. Central Time.

Public Call Information: Dial: 800–360–9505, Confirmation Code: 2764 784 6162.

Web Access: https://civilrights.webex.com/civilrights/j.php?MTID=m4abff3264bd5ff40803093e9eebb496a.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individual who is deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and confirmation code.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Mississippi Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and roll call
II. Discuss Civil Rights Topics
III. Public comment
IV. Next steps
V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the exceptional circumstances of pending expiration of Committee member appointment terms.

Dated: April 12, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–08089 Filed 4–14–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Georgia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Georgia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a business meeting via web conference on Tuesday, May 3, 2022, at 12:00 p.m. Eastern time for the purpose of discussing findings and recommendations from panels I–IV on Civil Asset Forfeiture and its Impact on Communities of Color in Georgia.

DATES: The meeting will take place on Tuesday, May 3, 2022, from 12:00 p.m.–1:00 p.m. Eastern time.

Online Registration (Audio/Visual): https://tinyurl.com/4jr7h7ed.

Telephone (Audio Only): Dial 800–360–9505 USA Toll Free; Access code: 2762 195 9568.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 202–618–4158.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions.

Committee meetings are available to the public through the above call-in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may follow the proceedings by first calling the Federal Relay Service at 800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at 202–618–4158.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Georgia Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes: April 7, 2022
III. Announcements and Updates
IV. Discussion: Civil Asset Forfeiture in Georgia
V. Next Steps
VI. Public Comment
VII. Adjournment

Dated: April 12, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–08090 Filed 4–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Addition of Title 13 U.S.C. Section 221 to the Citation of Mandatory Collection Authority for the Vehicle Inventory and Use Survey

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. 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. This notice allows for 30 days for public comments.

Agency: U.S. Census Bureau.

Title: Addition of Title 13 U.S.C. Section 221 to the Citation of Mandatory Collection Authority for the Vehicle Inventory and Use Survey (VIUS).

OMB Control Number: 0607–XXXX.

Form Number(s): The VIUS form number are TC–9501 and TC–9502.

Type of Request: Emergency submission, New Information Collection Request.

Number of Respondents: There are 150,000 respondents to the VIUS.

Average Hours per Response: The average response time for the VIUS is 65 minutes.

Burden Hours: The annual burden of the VIUS is 162,500 hours. This clearance will not impact this burden.

Needs and Uses: The Office of Management and Budget approved the VIUS under OMB Approval number 0607–0892 on October 12, 2021. The 2021 VIUS collects data to measure the physical and operational characteristics of trucks from a sample of approximately 150,000 trucks. These trucks are selected from more than 190 million private and commercial trucks registered with motor vehicle departments in the 50 states and the District of Columbia. The Census Bureau is collecting the data for the sampled trucks from the registered truck owners.

The VIUS is the only comprehensive source of information on the physical and operational characteristics of the Nation's truck population. The VIUS provides unique, essential information for government, business, and academia. The U.S. Department of Transportation, State Departments of Transportation, and transportation consultants compliment VIUS microdata as extremely useful and flexible to meet constantly changing requests that cannot be met with predetermined tabular publications. The planned microdata file will enable them to cross-tabulate data to meet their needs.

Due to an oversight, the materials submitted to OMB for review in the original request for clearance of the VIUS did not include the complete legal authority for the mandatory collection of the VIUS. Currently our collection authority cites that Title 13, United States Code, Sections 131 and 182, authorizes the collection and Sections 224 and 225 make the collection mandatory. However, Sections 224 and 225 only apply to respondents who are part of a company, business, or organization. Section 221 also needs to be cited to require mandatory response for individual owners of personal vehicles who are included in the VIUS sample. Including the correct citation will allow us to make VIUS mandatory for individuals who own personal vehicles, as intended.

Affected Public: Individuals and Business.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131 and 182 authorize the collection of VIUS data. Sections 221, 224 and 225 of Title 13 U.S.C. make reporting mandatory for all respondents, including both individuals and businesses.

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 to *pracomments@doc.gov.*

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–08112 Filed 4–14–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; The American Community Survey and Puerto Rico Community Survey

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 September 14, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau.

Title: The American Community Survey and The Puerto Rico Community Survey.

OMB Control Number: 0607–0810.

Form Number(s): ACS–1, ACS–1(SP), ACS–1(PR), ACS–1(PR)SP, ACS–1(GQ),

ACS–1(PR)(GQ), GQFQ, ACS CAPI (HU), ACS RI (HU), AGQ QI, and AGQ RI.

Type of Request: Regular submission, Request for an Extension, without Change, of a Currently Approved Collection.

Number of Respondents: 3,576,000 for household respondents; 20,100 for contacts in Group Quarters; 170,900 persons in Group Quarters; 22,875 households for reinterview; and 1,422 Group Quarters contacts for reinterview. The total estimated number of respondents is 3,791,297. This estimate accurately accounts for Puerto Rico samples sizes and responses. The number of respondents were incorrectly listed as 3,775,200 on the 60-day **Federal Register** Notice.

Average Hours per Response: 40 minutes for the average household questionnaire; 15 minutes for a Group Quarters facility questionnaire; 25 minutes for a Group Quarters person questionnaire; 10 minutes for a household reinterview; 10 minutes for a Group Quarter-level reinterview.

Burden Hours: 2,384,000 for household respondents; 5,025 for contacts in Group Quarters; 71,208 for Group Quarters residents; 3,813 households for reinterview; and 237 Group Quarters contacts for reinterview. The estimate is an annual average of 2,464,283 burden hours. This burden estimate accurately accounts for Puerto Rico sample sizes and responses. On the 60-day **Federal Register** Notice the burden hours were incorrectly listed as 2,443,366.

Needs and Uses: There continues to be a need for current data describing lower geographic areas and subpopulations. The Census Bureau developed a methodology to collect and update demographic, social, economic, and housing data every year that are essentially the same as the ''long-form'' data that the Census Bureau formerly collected once a decade as part of the decennial census. The American Community Survey (ACS) blends the strength of small area estimation with the high quality of current surveys. The ACS is an ongoing monthly survey that collects detailed housing and socioeconomic data from about 3.5 million addresses in the United States and about 36,000 addresses in Puerto Rico each year. The ACS also collects detailed socioeconomic data from about 170,000 residents living in group quarters facilities in the United States and about 900 in Puerto Rico. The ACS is now the only source of comparable data about social, economic, housing, and demographic characteristics for small-areas and small subpopulations across the Nation and in Puerto Rico. Every community in the nation continues to receive a detailed, statistical portrait of its social, economic, housing, and demographic characteristics each year through one-year and five-year ACS products.

To collect the ACS data, the Census Bureau uses a multiple mode contact strategy. These modes include mail, internet, telephone, and personal visit. To encourage self-response in the ACS, the Census Bureau sends up to five mailings to housing units selected to be in the sample. The first mailing, sent to all mailable addresses in the sample, includes an invitation to participate in the ACS online and states that a paper questionnaire will be sent in a few weeks to those unable to respond online. The second mailing is a letter that reminds respondents to complete the survey online, thanks them if they have already done so, and informs them that a paper form will be sent at a later date if the Census Bureau does not receive their response. In a third mailing, the questionnaire package is sent only to those sample addresses that have not completed the online questionnaire within two weeks. The fourth mailing is a postcard that reminds respondents to respond and informs them that an interviewer may contact them if they do not complete the survey. A fifth mailing is a letter sent to respondents who have not completed the survey within five weeks. This letter provides a due date and reminds the respondents to return their questionnaires to be removed from future contact. The Census Bureau will ask those who fill out the survey online to provide an email address, which will be used to send an email reminder to households that did not complete the online form. The reminder asks them to log back in to finish responding to the survey. If the Census Bureau does not receive a response or if the household refuses to participate, the address may be selected for computer-assisted personal interviewing, the nonresponse followup data collection mode.

Some addresses are deemed unmailable because the address is incomplete or directs mail only to a post office box. The Census Bureau currently collects data for these housing units using both online and computer-assisted personal interviewing. A small sample of respondents from the nonresponse follow-up data collection interview are recontacted for quality assurance purposes.

For sample housing units in the Puerto Rico Community Survey, a different mail strategy is employed. The Census Bureau continues to use the previously used mail strategy with no references to an internet response option. The Census Bureau sends up to five mailings to a Puerto Rico address selected to be in the sample. The first mailing includes a prenotice letter. The second and fourth mailings include the paper survey. The third and fifth mailings serve as a reminder to respond to the survey. Puerto Rico addresses deemed unmailable because the address is incomplete or directs mail only to a post office box are collected by computer-assisted personal interviewing. A small sample of respondents from the nonresponse follow-up data collection interview are recontacted for quality assurance purposes.

The Census Bureau employs a different strategy to collect data from Group Quarters. The Census Bureau defines Group Quarters as places where people live or stay, in a group living arrangement that is owned or managed by an entity or organization providing housing and/or services for the residents, such as college/university student housing, residential treatment centers, skilled nursing facilities, group homes, military barracks, correctional facilities, workers' group living quarters and Job Corps centers, and emergency and transitional shelters. The Census Bureau collects data for Group Quarters primarily through personal interview. The Census Bureau will obtain the facility information by conducting a personal visit interview with a Group Quarters contact. During this interview, the Census Bureau obtains roster of residents and randomly selects them for person-level interviews. During the person-level phase, a field representative uses a computer-assisted personal interviewing instrument to collect detailed information for each sampled resident. Field representatives also have the option to distribute a bilingual (English/Spanish) questionnaire to residents for self-response if unable to complete a computer-assisted personal interviewing interview. A small sample of respondents are recontacted for quality assurance purposes.

Affected Public: Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. 141 and 193, and 221.

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 0607–0810.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–08149 Filed 4–14–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Vehicle Inventory and Use Survey

AGENCY: Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on a proposed revision to the Vehicle Inventory and Use Survey, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before June 14, 2022.

ADDRESSES: Interested persons are invited to submit written comments by email to *Thomas.J.Smith@census.gov.* Please reference Vehicle Inventory and Use Survey in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2022–0008, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Kelly Holder, VIUS Branch Chief, (301)763–3462, *Kelly.A.Holder@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The 2021 VIUS collects data to measure the physical and operational characteristics of trucks from a sample of approximately 150,000 trucks. These trucks are selected from more than 190 million private and commercial trucks registered with motor vehicle departments in the 50 states and the District of Columbia. The Census Bureau is collecting the data for the sampled trucks from the registered truck owners.

The VIUS is the only comprehensive source of information on the physical and operational characteristics of the Nation's truck population. The VIUS provides unique, essential information for government, business, and academia. The U.S. Department of Transportation, State Departments of Transportation, and transportation consultants compliment VIUS microdata as extremely useful and flexible to meet constantly changing requests that cannot be met with predetermined tabular publications. The planned microdata file will enable them to cross-tabulate data to meet their needs.

Due to an oversight, the materials submitted to OMB for review in the original request for clearance of the VIUS did not include the complete legal authority for the mandatory collection of the VIUS. Currently our collection authority cites that title 13, United States Code, sections 131 and 182, authorizes the collection and sections 224 and 225 make the collection mandatory. However, sections 224 and 225 only apply to respondents who are part of a company, business, or organization. Section 221 also needs to be cited to require mandatory response for individual owners of personal vehicles who are included in the VIUS sample. Including the correct citation will allow us to make VIUS mandatory for individuals who own personal vehicles, as intended.

The Census Bureau is separately pursuing clearance under the emergency processing provisions of the PRA so that we may implement this change immediately. In the interest of maintaining transparency with the public, this notice announces our intention to also seek approval for this change under the normal clearance procedures of the PRA.

II. Method of Collection

The Vehicle Inventory and Use Survey uses two modes of data collection: Electronic instrument and paper questionnaire. All respondents will receive an initial letter with instructions to log into the electronic instrument. Respondents will be encouraged to use the electronic instrument method, however, a paper questionnaire will be sent as part of the non-response follow-up operation.

Data are collected via two questionnaires based on truck type, one for light trucks (pickups, SUVs, minivans) and one for heavy trucks (including truck tractors). Content differs somewhat between the two forms.

III. Data

OMB Control Number: 0607–0892.

Form Number(s): TC–9501 (Light Trucks) and TC–9502 (Heavy Trucks).

Type of Review: Regular submission, Revision of a Currently Approved Collection.

Affected Public: Individuals and businesses.

Estimated Number of Respondents: 150,000.

Estimated Time per Response: 65 minutes per vehicle.

Estimated Total Annual Burden Hours: 162,500.

Estimated Total Annual Cost to Public: $0 (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131 and 182 authorize the collection of VIUS data. Sections 221, 224 and 225 of Title 13 U.S.C. make reporting mandatory for all respondents, including both individuals and businesses.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a)

Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–08148 Filed 4–14–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–821–837]

Sodium Nitrite From the Russian Federation: Preliminary Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of sodium nitrite from the Russian Federation (Russia). The period of investigation is January 1, 2021, through December 31, 2021. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable April 15, 2022

FOR FURTHER INFORMATION CONTACT: Melissa Kinter, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1413.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on February 8, 2022.[1] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[2] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The product covered by this investigation is sodium nitrite from Russia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[3] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.,* scope).[4] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.*

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[5]

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.[6] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

Pursuant to section 705(c)(5)(A)(ii) of the Act, if the individual estimated countervailable subsidy rates established for all exporters and producers individually examined are zero, *de minimis,* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated subsidy rate for all other producers or exporters. Commerce has preliminarily determined the individually estimated subsidy rate for the individually examined respondent under section 776 of the Act. Consequently, pursuant to section 705(c)(5)(A)(ii) of the Act, we established the all-others rate by applying the countervailable subsidy rate assigned to the mandatory respondent.[7] For a full description of the methodology underlying Commerce's analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

[1] *See Sodium Nitrite from India and the Russian Federation: Initiation of Countervailing Duty Investigations,* 87 FR 7108 (February 8, 2022) (*Initiation Notice*).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Sodium Nitrite from the Russian Federation,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

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

[4] *See Initiation Notice.*

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[6] *See* sections 776(a) and (b) of the Act.

[7] *See, e.g., Freight Rail Coupler Systems and Certain Components Thereof: Preliminary Affirmative Countervailing Duty Determination,* 87 FR 12662 (March 7, 2022); and *Dried Tart Cherries from the Republic of Turkey: Final Affirmative Countervailing Duty Determination,* 84 FR 67430 (December 10, 2019).

Company	Subsidy rate (percent)
UralChem, JSC	386.24
All Others	386.24

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of the public announcement or, where there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to the individually examined company, UralChem JSC, in this investigation in accordance with section 776 of the Act, there are no calculations to disclose.

Verification

Because the examined respondents in this investigation did not provide information requested by Commerce and Commerce preliminarily determines each of the examined respondents to have been uncooperative, Commerce will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs after the deadline date for case briefs.[8] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: April 8, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The product covered by this investigation is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. Sodium nitrite's chemical composition is $NaNO_2$, and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name ''sodium nitrite'' to sodium nitrite. The CAS registry number is 7632–00–0. For purposes of the scope of this investigation, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name, which are provided for convenience and customs purposes.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Use of Facts Otherwise Available and Adverse Inferences
V. Analysis of Programs
VI. Recommendation

[FR Doc. 2022–08082 Filed 4–14–22; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB941]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public online meeting.

SUMMARY: The Coastal Pelagic Species (CPS) Subcommittee of the Pacific Fishery Management Council's (Pacific Council's) Scientific and Statistical Committee (SSC) will hold a meeting to review proposed revisions to the Terms of Reference for the CPS Stock Assessment Review Process for 2023 and 2024. The meeting is open to the public.

DATES: The SSC CPS Subcommittee's online meeting will be held Thursday, May 5, 2022, beginning at 9 a.m. and continuing until 12 p.m., Pacific Time or until business for the day has been completed.

ADDRESSES: The SSC's CPS Subcommittee's meeting will be an online meeting. Specific meeting information, including directions on how to join the meeting and system requirements, will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Ms. Jessi Doerpinghaus, Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2415.

SUPPLEMENTARY INFORMATION: The purpose of the SSC CPS Subcommittee's meeting is to review proposed changes to the Terms of Reference for CPS Stock Assessment Reviews that will inform the process of conducting and reviewing CPS assessments in 2023 and 2024. Members of the Pacific Council's CPS advisory bodies are encouraged to attend. The Pacific Council is scheduled to adopt a public review draft Terms of Reference at their June meeting in Vancouver, WA.

No management actions will be decided by the SSC's CPS Subcommittee. The SSC CPS Subcommittee members' role will be development of recommendations and reports for consideration by the SSC and Pacific Council at the June meeting in Vancouver, WA.

Although nonemergency issues not contained in the meeting agendas may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the SSC CPS Subcommittee to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: April 12, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–08104 Filed 4–14–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB959]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Monkfish Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Wednesday, May 4, 2022, at 9 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/6997867963997754.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel will discuss recent monkfish fishery performance and develop a fishery performance report in collaboration with the Plan Development Team. They will develop recommendations for Framework Adjustment 13 to the Monkfish Fishery Management Plan, an action that is likely considering: 2023–25 monkfish fishery specifications other management measures (requiring 12-inch minimum mesh size for monkfish gillnets, requiring use of the Vessel Monitoring System across the federal fishery, measures to reduce discards in the Southern Fishery Management Area). The Advisory Panel will recommend updates for the *2022–26 NEFMC Research Priorities and Data Needs* relative to monkfish. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: April 12, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–08105 Filed 4–14–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB891]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to BNSF Railway Bridge Heavy Maintenance Project in King County, Washington

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

ACTION: Notice; issuance of two incidental harassment authorizations.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued two consecutive IHAs to the BNSF Railway (BNSF) to incidentally harass, by Level a and Level B harassment, marine mammals over 2 years during construction associated with the Railway Bridge Heavy Maintenance Project in King County, Washington.

DATES: The Year 1 Authorization is effective from July 16, 2022 to July 15, 2023. The Year 2 Authorization is effective from July 16, 2023 to July 15, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental harassment authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

Summary of Request

On August 17, 2021, NMFS received a request from BNSF Railway (BNSF) for two consecutive IHAs allowing the take of marine mammals incidental to construction associated with the Railway Bridge 0050–0006.3 (Bridge 6.3) Heavy Maintenance Project in King County, Washington. The application was deemed adequate and complete on November 22, 2021. BNSF's request is for take of a small number of seven species of marine mammal by Level B harassment and Level A harassment. Neither BNSF nor NMFS expects serious injury or mortality to result from this activity and, therefore, IHAs are appropriate.

Description of Planned Activity

Overview

The purpose of this project is to extend the service life of the existing structure by replacing several components of the existing movable span including replacing the existing counterweight, counterweight trunnion bearings, and rocker frame system of the existing movable span. This work would occur over 2 years, requiring the issuance of two consecutive IHAs. BNSF is planning to engage in maintenance activities at Bridge 6.3, a bridge with a movable deck to allow vessels to pass. In-water activities that could result in take of marine mammals include impact pile driving of 36-inch temporary steel piles (which will be removed via cutting with Broco Rod which is not likely to cause take), vibratory installation and extraction of 14-inch H-piles, vibratory installation and extraction of 12-inch timber piles, hydraulic clipper cutting and extraction of 12-inch timber piles, drilling of 48-inch diameter shafts using oscillator rotator equipment, and removing the pile created by filling the drilled shaft and steel casing with concrete and removing the casing with a diamond wire saw. BSNF estimates that the project will requires approximately 122 days of in-water work over 24 months. The IHAs would be effective from July 16, 2022 to July 15, 2023 for Year 1, which would include 113 days of in-water activities and July 16, 2023 to July 15, 2024 for Year 2, which would include 9 days of in-water activities. Table 1 provides a summary of the pile driving activities.

A detailed description of the planned testing activities is provided in the **Federal Register** notice of the proposed IHAs (87 FR 4844; January 31, 2022). Since that time, no changes have been made to the project activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specified activities.

TABLE 1—SUMMARY OF PILE DRIVING ACTIVITIES AND USER SPREADSHEET INPUTS

Pile size	Pile type	Construction method	Piles/shafts per day	Minutes/strikes per pile	Length of activity (days)
36 inch	Steel pipe	Impact	6	1,000	20
14 inch	H-pile	Vibratory	8	30	6
12 inch	Timber Pile	Vibratory	10	15	8
12 inch	Timber Pile	Hydraulic Pile Clipper	20	4	4
48-inch	Steel Shaft	Oscillator	0.25	1,920	88
48-inch	Steel-encased Concrete Shaft	Diamond bladed wire saw	4	60	6

Comments and Responses

A notice of NMFS's proposal to issue IHAs to DAF was published in the **Federal Register** on January 31, 2022 (87 FR 4844). That proposed notice described, in detail, BNSF's activities, the marine mammal species that may be affected by the activities and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received no public comments or comments from the Marine Mammal Commission.

Changes From the Proposed IHAs to Final IHAs

No changes have been made from the notice of proposed IHAs.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2021).

PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. SARs (*e.g.,* Carretta *et al.,* 2021a). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2020 U.S. Pacific SARs (Carretta *et al.,* 2021a) and 2021 draft Pacific and Alaska SARs (Carretta *et al.,* 2021b, Muto *et al.,* 2021) available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports.*

TABLE 2—SPECIES AUTHORIZED FOR TAKE

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [a]	Stock abundance (CV, N_{min}, most recent abundance survey) [b]	PBR	Annual M/SI [c]
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Balaenopteridae (rorquals):						
Minke whale	*Balaenoptera acutorostrata*	California/Oregon/Washington	-, -, N	915 (0.792, 509, 2018)	4.1	≥0.59
Family Delphinidae:						
Common Bottlenose Dolphin.	*Tursiops truncatus*	California/Oregon/Washington offshore.	-, -, N	3,477 (0.696, 2,048, 2018)	19.70	0.82
Long-beaked Common Dolphin.	*Delphinus capensis*	California	-, -, N	83,379 (0.216, 69,636, 2018)	668	≥29.7
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Washington Inland Waters	-, -, N	11,233 (0.37, 8,308, 2015)	66	≥7.2
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	*Zalophus californianus*	United States	-, -, N	257,606 (N/A, 233,515, 2014)	14,011	>320
Steller sea lion	*Eumetopias jubatus monteriensis.*	Eastern U.S	-, -, N	43,201 [e] (see SAR, 43,201, 2017).	2,592	113
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	Washington Northern Inland Waters.	-, -, N	1,088 (0.15, UNK, 1999) [f]	NA	10.6

[a] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[b] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[c] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual mortality/serious injury (M/SI) often cannot be determined precisely and is in some cases presented as a minimum value or range.

[d] Based on counts of individual animals identified from photo-identification catalogues. Surveys for abundance estimates of these stocks are conducted infrequently.

[e] Best estimate of pup and non-pup counts, which have not been corrected to account for animals at sea during abundance surveys.

[f] The abundance estimate for this stock is greater than eight years old and is therefore not considered current. PBR is considered undetermined for this stock, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates, as these represent the best available information for use in this document.

A detailed description of the species likely to be affected by BNSF's activities, including brief information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (87 FR 4844; January 31, 2022). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for those descriptions. Please also refer to NMFS's website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of testing activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the study area. The **Federal Register** notice for the proposed IHAs (87 FR 4844; January 31, 2022) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat, therefore that information is not repeated here; please refer to the **Federal Register** notice (87 FR 4844; January 31, 2022) for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment);

or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources for pile installation and extraction has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for harbor seals, because predicted auditory injury zones are large. Auditory injury is unlikely to occur for low-frequency cetaceans, mid-frequency cetaceans, high-frequency cetaceans, and otariids. The planned mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

BNSF's planned activity includes the use of continuous (vibratory pile driving and removal, oscillator rotator equipment, wire saw cutting, clipping) and impulsive (impact pile driving) equipment, and therefore both the 120- and 160-dB re 1 μPa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). BNSF's planned activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

These thresholds are provided in Table 3 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The following pile sizes and installation/extraction methods were analyzed:

- 36-inch steel pipe pile, impact installation, with 5 dB bubble curtain source level reduction under two installation scenarios (1 pile driver or 2 concurrent pile drivers);
- 48-inch steel pipe pile, oscillator installation (drilled shaft);
- 48-inch steel pipe pile, diamond wire saw cutting;
- 14-inch steel H-pile, vibratory installation/extraction;
- 12-inch timber pile, vibratory installation/extraction; and
- 12-inch timber pile, pile clipper extraction.

Impact pile driver installation of 36-inch steel pipe piles analyzed a worst-case scenario consisting of two crews driving 36-inch steel pipe piles simultaneously (Scenario 2) in order to provide maximum flexibility should multiple crews become necessary during construction. It is likely, however, that only one crew will operate at one time (Scenario 1). Based on NMFS guidance, decibel addition is not considered in the 36-inch steel pipe pile impact analysis since during impact hammering or other impulsive sources, it is unlikely that the two hammers would strike at the same exact instant (or within the 0.1 second average pulse duration). Therefore, the sound source levels will not be adjusted regardless of the distance between the hammers and each source will be analyzed separately.

Vibratory pile driving of 14-inch H-piles, and vibratory and pile clipper extraction of 12-inch timber piles (residential structures demolition) were analyzed in the event these methods become necessary (if, for instance, crane weight alone cannot seat the 14-inch H-piles for the turbidity screen installation or crane torque alone cannot extract timber piles by direct pulling/twisting).

This analysis uses in-water source sound levels for vibratory and impact pile driving from Washington State Department of Transportation Biological Assessment Manual (WDSOT 2020), and California Department of Transportation Division (Caltrans 2015). Analysis of drilled shaft installation used sound source data came from (*HDR, 2011.* Diamond wire saw cutting and hydraulic pile clipper cutting came from the Navy (2019). Source sound levels for each analysis were measured at 10m from the source and based on other projects with the same pile type and size, installation/extraction technique, and similar substrate if no project site-specific information is available.

In cases where multiple sources were provided from the above references, the following methodology was used to select in-water source sound levels to generate a proxy:

1. Select first by corresponding pile size and type;
2. Eliminate those that do not have substrates similar to the project site substrate (*i.e.,* sandy silt intermixed with gravels and riprap); and
3. Of the remaining, select highest source sound level to be conservative.

All piles driven and/or proofed with an impact hammer would use a bubble curtain. It is estimated that use of a bubble curtain would result in a minimum of a 5-dB reduction in underwater sound levels during 36-inch pipe pile driving, and this reduction has been included in the estimate to account for a reasonably achievable reduction in sound during underwater construction activity. Source sound levels are summarized in Table 4.

TABLE 4—IN-WATER SOUND SOURCE LEVELS

Pile size	Pile type	Source	Construction method	dB peak	dB RMS	dB single-strike SEL
36 inch	Steel pipe	Caltrans, 2015. 36-inch steel pipe pile Table I.2–1	Impact	208	190	180
14 inch	H-pile	Caltrans, 2015. 12-inch steel H-pile proxy Table I.2–2	Vibratory		150	
12 inch	Timber Pile	Greenbusch Group, 2018. 12-inch timber pile	Vibratory		152	
12 inch	Timber Pile	NAVFAC SW 2020 Compendium. 13-inch round polycarbonate pile.	Hydraulic Pile Clipper		154	
48-inch	Steel Shaft	HDR Alaska, Inc., 2011. 144-inch steel shaft proxy	Oscillator		143.8	
48-inch	Steel-encased Concrete Shaft.	NAVFAC SW 2020 Compendium. 66-inch steel encased concrete-filled caisson proxy.	Diamond bladed wire saw		161.5	

Transmission loss (TL), expressed as decibels, is the reduction in a specified level between two specified points R_1, R_2 that are within an underwater acoustic field. By convention, R_1 is chosen to be closer to the source of sound than R_2, such that transmission loss is usually a positive quantity. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * Log_{10} (R_2/R_1),$$

Where

TL = transmission loss in dB

B = transmission loss coefficient

R_1 = distance from source to distance at which the level is estimated (typically 10-m for pile driving)

R_2 = distance from source to the isopleth associated with the applicable acoustic threshold

Absent site-specific acoustical monitoring with differing measured transmission loss, a practical spreading value of 15 is used as the transmission loss coefficient in the above formula. Site-specific transmission loss data for BNSF bridge site is not available, therefore the default coefficient of 15 is used to determine the distances to the Level A and Level B harassment thresholds.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet are shown in Table 5 and the resulting isopleths are reported below in Table 6.

TABLE 5—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

	36-inch steel (scenario 1)	36-inch steel—2 concurrent (scenario 2)	14-inch steel H-pile vibratory install	12-inch timber vibratory extraction	48-inch steel oscillator	48-inch wire saw cutting	12-inch timber clipper cutting
Spreadsheet Tab Used.	(E.1) Impact pile driving.	(E.1) Impact pile driving.	(A.1) Vibratory pile driving.	(A.1) Vibratory pile driving.	(A) stationary source (non-impulsive, continuous).	(A) stationary source (non-impulsive, continuous).	(A) stationary source (non-impulsive, continuous).
Source Level (Single Strike/shot SEL) and Peak or RMS.	175 SEL/203 Peak.	175 SEL/203 Peak.	150 RMS	152 RMS	143.8 RMS	161.5 RMS	154 RMS.
Weighting Factor Adjustment (kHz).	2	2	2.5	2.5	2.5	2.5	2.5.
(a) Number of strikes per pile.	1000	1000.					
Number piles or shafts per day.	6	12	8	10	0.25	4	20.
Duration for single pile (min).			30	15	1920	60	4.

Note: Transmission loss coefficient for all sources is 15 and all source level values quoted are at 10m distance.

TABLE 6—CALCULATED DISTANCES TO LEVEL A AND LEVEL B HARASSMENT ISOPLETHS

Pile type, size, and pile driving method	Level A zone (meters)					Level B harassment zone (meters)
	LF cetacean	MF cetacean	HF cetacean	Phocid	Otariid	
Scenario 1. 36-inch Steel Pipe Impact Drive (Year 1)	966	34	1,150	517	38	464
Scenario 2. 36-inch Steel Pipe Impact Drive (Year 1)	1,533	55	1,826	820	60	464
14-inch H-Pile Vibratory (Year 1, Year 2)	3	1	5	2	1	1,000
12-inch Timber Vibratory (Year 1)	3	1	5	2	1	1,359
48-inch Drilled Shaft Oscillatory Installation (Year 1)	0.2	0	0.2	0.1	0	386
48-inch Concrete-lined Steel Shaft Diamond Wire Saw Removal (Year 2)	1.9	0.2	2.7	1.1	0.1	5,843
12-inch Timber Pile Clipper (Year 1)	0.6	0	0.6	0.3	0	1,848

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals and how it is brought together to produce a quantitative take estimate.

Take estimates were calculated using a combination of best available data. Best available density data was for the most part from the U.S. Department of the Navy's Marine Species Density Database Phase III for the Northwest Training and Testing Study Area (Navy 2019) which includes seasonal density estimates: Winter (Dec–Feb), Spring (Mar–May), Summer (Jun–Aug), Fall (Sep–Nov). The project will not work in-water in the Spring as that season is outside the July 16–February 15 in-water work season. The most conservative (highest density) seasonal estimate from the remaining three seasons was used where seasonal overlap exists and densities differ across seasons. Estimated take was calculated using density estimates multiplied by the area of each Level B harassment zone for each pile type multiplied by the number of days of in-water activity for each pile type. In some instances and where noted, observation-based data from WSDOT's Seattle Multimodal Project at Colman Dock Season Three Marine Mammal Monitoring Report (WSDOT 2020a) or other observational data was used instead of U.S. Navy data when Navy density data was zero or extremely low.

BNSF plans to work in-water for 113 days in Year 1 and 9 days in Year 2, or approximately 5.5 months assuming a 5-day work week for 23 weeks in Year 1 and a half a month assuming a 5-day work week for 2 weeks in Year 2,

Minke Whale

The estimated take was calculated as described above using the Navy's density data which resulted in zero takes of minke whale for both Year 1 and Year 2 as shown in Table 7. Therefore, as described above, we looked at other observational data. The WSDOT Seattle Multimodal Project at Colman Dock Year 3 IHA Monitoring Report observed minke whale presence indicates sightings of a single minke whale over 7 months (WSDOT 2020a). Given this information, BNSF and NMFS conservatively assumed that up to one whale per month could be taken by harassment.

A shutdown zone at the full distance of the level A harassment isopleths (≤ 1533 m) will be applied to avoid take by Level A harassment.

The 113 days of work in Year 1 and 9 days in Year 2, equates to 5.5 months × 1 minke whale/month = 6 encounters with minke whales in Year 1 and 0.5 months x 1 Minke whale/month = 1 whale in Year 2. Therefore, BNSF has requested and NMFS has authorized 6 takes by Level B harassment in Year 1 and 1 take by Level B harassment in year in Year 2.

TABLE 7—CALCULATED TAKE OF MINKE WHALE

Activity	Species density (animals/km^2)	Level A area (km^2)	Level B area (km^2)	Length of activity (days)	Year 1 estimated take A	Year 1 estimated take B	Year 2 estimated take A	Year 2 estimated take B
Impact 36-inch Steel Pipe Pile (2 Concurrent Drivers)	0.0000054	0.376	0.183	10 (Yr 1)	0	0		
Vibratory 14-inch H-Pile	0.0000054	0.005	0.235	6 (3 Yr 1, 3 Yr 2)	0	0	0	0
Vibratory 12-inch Timber Pile	0.0000054	0.005	0.286	8 (Yr 1)	0	0		

TABLE 7—CALCULATED TAKE OF MINKE WHALE—Continued

Activity	Species density (animals/km²)	Level A area (km²)	Level B area (km²)	Length of activity (days)	Year 1 estimated take A	Year 1 estimated take B	Year 2 estimated take A	Year 2 estimated take B
Oscillator Install of 4-foot Drilled Shaft	0.0000054	0.000	0.169	88 (Yr 1)	0	0		
Diamond Wire Saw Removal of 48-inch Drilled Shaft	0.0000054	0.000	2.290	6 (Yr 2)			0	0
24-inch Pile Clipper Removal of 12-inch Timber Pile	0.0000054	0.000	0.381	4 (Yr 1)	0	0		

Common Bottlenose Dolphin

Estimated take using the Navy's density estimates for common bottlenose dolphins as described above resulted in zero take in both Year 1 and Year 2 as shown in Table 8. Therefore, as described above, we looked at other observational data. Common bottlenose dolphins have been rare visitors to Puget Sound. However, the WSDOT Seattle Multimodal Project at Colman Dock Year 3 IHA monitoring report observed common bottlenose dolphin at a rate of 6 per month (WSDOT 2020a). In-water work will occur for 113 days in Year 1 and 9 days in Year 2, which would equate to 33 dolphin takes in Year 1 (5.5 months × 6 dolphins/month) and 3 dolphin takes in Year 2 (0.5 months × 3 dolphins/month). A shutdown zone at the full distance of the level A harassment isopleths (≤55m) can be effectively applied to avoid Level A take. Therefore, BNSF has requested and NMFS has authorized 33 takes by Level B harassment in Year 1 and 3 takes by Level B harassment in year in Year 2.

TABLE 8—CALCULATED TAKE OF BOTTLENOSE DOLPHIN

Activity	Species density (animals/km²)	Level A area (km²)	Level B area (km²)	Length of activity (days)	Year 1 estimated take A	Year 1 estimated take B	Year 2 estimated take A	Year 2 estimated take B
Impact 36-inch Steel Pipe Pile (2 Concurrent Drivers)	0.0000054	0.376	0.183	10 (Yr 1)	0	0		
Vibratory 14-inch H-Pile	0.0000054	0.005	0.235	6 (3 Yr 1, 3 Yr 2)	0	0	0	0
Vibratory 12-inch Timber Pile	0.0000054	0.005	0.286	8 (Yr 1)	0	0		
Oscillator Install of 4-foot Drilled Shaft	0.0000054	0.000	0.169	88 (Yr 1)	0	0		
Diamond Wire Saw Removal of 48-inch Drilled Shaft	0.0000054	0.000	2.290	6 (Yr 2)			0	0
24-inch Pile Clipper Removal of 12-inch Timber Pile	0.0000054	0.000	0.381	4 (Yr 1)	0	0		
Total				122	0	0	0	0

Long-Beaked Common Dolphin

Using the Navy's density data, which was zero, estimated take of common dolphins was calculated to be zero in Year 1 and Year 2. Therefore, as described above, we looked at other observational data. Sightings of live dolphins throughout inside waters and Southern Puget Sound have been recorded in 2003, 2011–12, and 2016–17. Group size ranged from 2 (in 2003 and 2011–12) to 5–12 (in 2016–2017) (Shuster *et al.* 2017). Since June 2016, several common dolphins have remained in Puget Sound, group sizes of 5–20 individuals are often reported and some of these groups stayed in the region for several months. Sightings of these animals mostly began in summer and early fall sometimes extending into winter months. (Shuster *et al.,* 2018). We conservatively predict that a group of 20 individuals will be taken on a monthly basis. The Level A harassment shutdown zone for mid-frequency hearing group will be implemented to minimize the severity of any Level A harassment that could occur. The in-water work would occur for 113 days in Year 1 and 9 days in Year 2, which would result in 110 takes (5.5 months × 20 dolphins/month) in Year 1 and 20 takes (1 month × 20 dolphins/month) in Year 2 by Level B harassment. BNSF has requested and NMFS has authorized 110 takes of long-beaked common dolphin by Level B harassment in Year 1 and 10 takes by Level B harassment in year in Year 2.

Harbor Porpoise

Harbor porpoise density estimates based on the Navy's data were used to calculate requested and authorized take as shown in Table 9. Analysis of the size of the level A harassment zones multiplied by density associated with harbor porpoise predicted that two porpoises could be taken by Level A harassment during the 10 days that concurrent driving of 36-in steel piles occurs during year 1. However, take by Level A harassment is unlikely given that the threshold and associated PTS isopleth is based on the acoustic energy accrued over a specified time period and it is unlikely that a highly mobile animal such as the harbor porpoise would spend the that amount if time in the Level A harassment zone. However, given the larger size of the zone and the cryptic nature of harbor porpoises, we have precautionarily authorized 2 takes by Level A harassment for Year 1. The Level A harassment shut down zone for high frequency hearing group will be implemented to minimize severity of any Level A harassment takes that do occur. Since there will be no impact driving during Year 2, the size of the Level A harassment zone will not exceed 5 m and, therefore, no take by Level A harassment was requested and none has been authorized. BNSF has requested and NMFS has authorized 12 takes of harbor porpoise by Level B harassment in Year 1 and 8 takes by Level B harassment in year in Year 2.

TABLE 9—CALCULATED TAKE OF HARBOR PORPOISE

Activity	Species density (animals/km²)	Level A area (km²)	Level B area (km²)	Length of activity (days)	Year 1 estimated take A	Year 1 estimated take B	Year 2 estimated take A	Year 2 estimated take B
Impact 36-inch Steel Pipe Pile (2 Concurrent Drivers)	0.54	0.376	0.183	10 (Yr 1)	2	1		

TABLE 9—CALCULATED TAKE OF HARBOR PORPOISE—Continued

Activity	Species density (animals/km²)	Level A area (km²)	Level B area (km²)	Length of activity (days)	Year 1 estimated take A	Year 1 estimated take B	Year 2 estimated take A	Year 2 estimated take B
Vibratory 14-inch H-Pile	0.54	0.005	0.235	6 (3 Yr 1, 3 Yr 2)	0	1	0	1
Vibratory 12-inch Timber Pile	0.54	0.005	0.286	8 (Yr 1)	0	1		
Oscillator Install of 4-foot Drilled Shaft	0.54	0.000	0.169	88 (Yr 1)	0	8		
Diamond Wire Saw Removal of 48-inch Drilled Shaft	0.54	0.000	2.290	6 (Yr 2)			0	7
24-inch Pile Clipper Removal of 12-inch Timber Pile	0.54	0.000	0.381	4 (Yr 1)	0	1		
Total				122	2	12	0	8

Harbor Seal

Harbor seal density estimates based on data from the Navy were initially used to calculate requested and authorized take (Table 10). These estimates, however, do not account for numerous seals feeding on migrating salmonids at Ballard Locks, especially during.summer (June–September) months. A new acoustic deterrent device was tested over two years to keep seals away from the Locks (Bogaard, Pers. Comm, 2022). A study report is currently being developed for publication. Study observers were primarily focused on behavioral effects of the deterrent on seals and monitored seal behavioral reactions during 30 minute observation periods up to eight times per day. Actual seal abundance was not recorded. However, observers noted that groups of 5–6 harbor seals were very common from late June through September during the salmon run, although smaller numbers were present throughout the year. It is likely that many of the same animals were observed multiple times across daily observation periods. The in-water work window runs from July 16, 2022 through February 15, 2023. Given this information, NMFS assumed for Year 1 that during the 54 in-water work days between July 16, 2022 and September 30, 2022, 5 harbor seals would be taken per day (270 takes). For the remaining 59 in-water work days between October 1, 2022 and February 15, 2023, a single harbor seal would be taken per day (59) for a total of 329 takes. There are 10 in-water work days that include concurrent impact driving of 36-inch piles when the Level A harassment isopleth is relatively large (1,826 m) (and also exceeds the Level B harassment isopleth (464 m)) so it is possible that Level A harassment could occur in some animals. Also, note that the constrained design of the lock system means that seals would likely spend extended periods in the confined area while feeding. NMFS conservatively assumes that all of these 10 in-water work days would occur during salmon migration (February 15–Sept 30) and that up to one-third of seals taken per day (2) could be exposed to sound energy levels resulting in some degree of Level A harassment (20). The estimated takes by Level A harassment is subtracted from the Level B harassment take to avoid double-counting. Since a smaller number of seals expected to be present during non-migratory period and the seals would have little incentive to congregate near the locks in the absence of salmon, NMFS does not expect any Level A harassment of seals to occur. Therefore, NMFS is proposing during Year 1 to authorize 20 takes by Level A harassment and 309 takes by Level B harassment (329–20).

For Year 2, NMFS assumed that all 9 in-water work days would occur during salmon migration between July 16, 2023 and September 30, 2024 with up to 6 harbor seals taken per day (54). No Level A take harassment is authorized during Year 2 since the largest Level A isopleth for all planned activities is 2 m. However, the density-based estimate was 57 takes as shown in Table 10. Therefore, NMFS is proposing 57 takes of harbor seal by Level B harassment during Year 2.

TABLE 10—CALCULATED TAKE OF HARBOR SEAL

Activity	Species density (animals/km²)	Level A area (km²)	Level B area (km²)	Length of Activity (days)	Year 1 estimated take A	Year 1 estimated take B	Year 2 estimated take A	Year 2 estimated take B
Impact 36-inch Steel Pipe Pile (2 Concurrent Drivers)	3.91	0.215	0.183	10 (Yr 1)	8	7		
Vibratory 14-inch H-Pile	3.91	0.005	0.235	6 (3 Yr 1, 3 Yr 2)	0	3	0	3
Vibratory 12-inch Timber Pile	3.91	0.005	0.286	8 (Yr 1)	0	9		
Oscillator Install of 4-foot Drilled Shaft	3.91	0.005	0.169	88 (Yr 1)	0	58		
Diamond Wire Saw Removal of 48-inch Drilled Shaft	3.91	0.005	2.290	6 (Yr 2)			0	54
24-inch Pile Clipper Removal of 12-inch Timber Pile	3.91	0.005	0.381	4 (Yr 1)	0	6		
Total				122	8	83	0	57

California Sea Lion

BNSF initially considered California sea lion density estimates to calculate requested take, which resulted in relatively low estimates (4 takes in Year 1 and 3 takes in Year 2 by Level B harassment) as shown in Table 11. However, California sea lions are known to frequent the Ballard Locks to feed on migrating salmon (KUOW, 2020). While no formal research studies have recorded individual numbers of California sea lions at Ballard Locks, news articles reported accounts of California sea lion sightings which ranged from a few to many more (Hakai Magazine, 2018; King 5 News, 2021). Observers associated with the acoustic deterrent device study described above, reported that California sea lions were less numerous than harbor seals, having been seen at a rate of 2–3 per day during peak salmonid migration (Bogaard, Pers. Comm. 2022). They were less common during non-migratory seasons. Given this information, NMFS assumed for Year 1 that during the 54 in-water work days between July 16, 2022 and September 30, 2022, 2 California sea lions would be taken per day (108). For the remaining 59 in-water work days between October 1, 2022 and February 15, 2023, a single California sea lion

would be taken very third day (20). Take by Level A harassment is possible, but unlikely, given that the largest Level A harassment isopleth is 60 m (with a 10 m shutdown zone for otariids) but only during 10 in-water work days which would include impact driving during Year 1. The Level A harassment zone during all other in-water work days in both Year 1 and Year 2 is 1 m or less. A California sea lion would not be expected to remain within the injury zone long enough (5.4 hours) to accrue the amount energy that would result in take Level A harassment. As such, NMFS is proposing during Year 1 to authorize 128 takes by Level B harassment. No takes by Level A harassment are authorized.

For Year 2, NMFS assumed that all 9 in-water work days would occur during peak salmon migration between July 16, 2023 and September 30, 2024 with up to 2 California sea lions taken per day (18). NMFS is proposing to authorize 18 takes of California sea lion by Level B harassment. No Level A take harassment is authorized.

TABLE 11—CALCULATED TAKE OF CALIFORNIA SEA LIONS BY LEVEL B HARASSMENT

Activity	Species density (animals /km²)	Level A area (km²)	Level B area (km²)	Length of activity (days)	Year 1 estimated take A	Year 1 estimated take B	Year 2 estimated take A	Year 2 estimated take B
Impact 36-inch Steel Pipe Pile (2 Concurrent Drivers)	0.2211	0.023	0.183	10 (Yr 1)	0	0		
Vibratory 14-inch H-Pile	0.2211	0.004	0.235	6 (3 Yr 1, 3 Yr 2)	0	0	0	0
Vibratory 12-inch Timber Pile	0.2211	0.004	0.286	8 (Yr 1)	0	1		
Oscillator Install of 4-foot Drilled Shaft	0.2211	0.000	0.169	88 (Yr 1)	0	3		
Diamond Wire Saw Removal of 48-inch Drilled Shaft	0.2211	0.000	2.290	6 (Yr 2)			0	3
24-inch Pile Clipper Removal of 12-inch Timber Pile	0.2211	0.000	0.381	4 (Yr 1)	0	0		
Total						4		3

Stellar Sea Lion

Stellar sea lion density estimates were initially used to calculate requested take as shown in Table 12. Based on the density data, BNSF has requested a single take for both Year 1 and Year 2. Given the large number of in-water work days in Year 1, NMFS has precautionarily increased the authorized Level B harassment to 5 takes while maintaining the 1 authorized by Level B harassment as calculated by density estimates in Year 2. Monitors with the acoustic deterrent study did not observe any Steller sea lions during the two years that the study was underway (Bogaard, Pers. Comm, 2022).

TABLE 12—CALCULATED TAKE OF STELLER SEA LIONS BY LEVEL B HARASSMENT

Activity	Species density (animals /km²)	Level A area (km²)	Level B area (km²)	Length of activity (days)	Year 1 estimated take A	Year 1 estimated take B	Year 2 estimated take A	Year 2 estimated take B
Impact 36-inch Steel Pipe Pile (2 Concurrent Drivers)	0.0478	0.023	0.183	10 (Yr 1)	0	0		
Vibratory 14-inch H-Pile	0.0478	0.004	0.235	6 (3 Yr 1, 3 Yr 2)	0	0	0	1
Vibratory 12-inch Timber Pile	0.0478	0.004	0.286	8 (Yr 1)	0	0		
Oscillator Install of 4-foot Drilled Shaft	0.0478	0.000	0.169	88 (Yr 1)	0	1		
Diamond Wire Saw Removal of 48-inch Drilled Shaft	0.0478	0.000	2.290	6 (Yr 2)			0	0
24-inch Pile Clipper Removal of 12-inch Timber Pile	0.0478	0.000	0.381	4 (Yr 1)	0	0		
Total						1		1

The estimated take by Level A and Level B harassment for all authorized species and stocks by year, and percentage take by stock is shown in Table 13.

TABLE 13—ESTIMATED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES, STOCK AND YEAR, AND PERCENTAGE TAKE BY STOCK

Common name	Stock	Abundance	IHA Year 1		Total take as percentage of stock	IHA Year 2		Total take as percentage of stock
			Take A request	Take B request		Take A request	Take B request	
Minke Whale	California/Oregon/Washington	915		6	0.66		1	0.11
Common Bottlenose Dolphin	California/Oregon/Washington offshore	3,477		33	0.95		3	0.09
Long-beaked Common Dolphin	California	83,379		110	0.13		20	0.01
Harbor Porpoise	Washington Inland Waters	11,233		12	0.11		8	0.07
Harbor Seal	Washington Northern Inland Waters	1,088	20	309	32.6		57	5.2
California Sea Lion	United States	257,606		108	0.04		20	<0.01
Stellar Sea Lion	Eastern U.S.	43,201		5	0.01		1	<0.01

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds,

and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In addition to the measures described later in this section, BNSF will employ the following mitigation measures:

- BNSF must ensure that construction supervisors and crews, the monitoring team, and relevant BNSF staff are trained prior to the start of activities subject to these IHAs, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work;
- Monitoring must take place from 30 minutes prior to initiation of pile driving activity (*i.e.,* pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity;
- If a marine mammal is observed entering or within the shutdown zones indicated in Table 14, pile driving activity must be delayed or halted;
- Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone (as shown in Table 14); and
- BNSF, construction supervisors and crews, Protected Species Observers (PSOs), and relevant BNSF staff must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 meters of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.

The following mitigation measures apply to BNSF's in-water construction activities:

- *Establishment of Shutdown Zones*—BNSF will establish shutdown zones for all pile driving and removal activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type and marine mammal hearing group. In addition to the shutdown zones listed in Table 14, BNSF will shut down construction activity if a humpback or southern resident killer whale is observed approaching or within the specified Level B harassment zone.
- *Protected Species Observers*—The placement of PSOs during all pile driving and removal activities (described in detail in the Monitoring and Reporting section) will ensure that the entire shutdown zone is visible during pile driving and removal. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), drilling, cutting, clipping, pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

TABLE 14—SHUTDOWN ZONES FOR EACH HEARING GROUP AND LEVEL B HARASSMENT ZONES DURING PILE INSTALLATION AND REMOVAL

[meters]

Pile type, size, and pile driving method	LF	MF	HF	Phocid	Otariid	Level B harassment zone
Scenario 1. Single 36-inch Pipe	1,000	40	1,200	10	10	500
Scenario 2. 2 Concurrent 36-inch Pipe	1,600	60	1,900	10	10	500
14-inch H-Pile	10	10	10	10	10	1,000
12-inch Timber Vibratory	10	10	10	10	10	1,400
48-inch Drilled Shaft Oscillatory Installation	10	10	10	10	10	400
48-inch Concrete-lined Steel Shaft Diamond Wire Saw Removal	10	10	10	10	10	5,900
12-inch Timber Pile Clipper	10	10	10	10	10	1,900

- *Monitoring for Level A and Level B Harassment*—BNSF will monitor the Level B harassment zones to the extent practicable and the entire Level A harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cessation of activity should the animal enter the shutdown zone. At least three PSOs would monitor harassment zones during all in-water construction activities. PSO monitoring stations are described below in the Monitoring and Reporting section.
- *Pre-activity Monitoring*—Prior to the start of daily in-water construction activity, or whenever a break in drilling, clipping, cutting, pile driving/removal

of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If the entire Level B harassment zone is not visible at the start of construction, pile driving activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones will commence.

• *Soft Start*—Soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period. This procedure will be conducted three times before impact pile driving begins. Soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

• *Bubble Curtain*—BNSF will use a marine pile-driving energy attenuator (*i.e.,* air bubble curtain system) during impact pile driving. The use of sound attenuation will reduce SPLs and the size of the zones of influence for Level A harassment and Level B harassment. Bubble curtains will meet the following requirements:

○ The bubble curtain must distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column;

○ The lowest bubble ring must be in contact with the substrate for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent substrate contact. No parts of the ring or other objects shall prevent full substrate contact; and

○ Air flow to the bubblers must be balanced around the circumference of the pile.

Based on our evaluation of BNSF's planned measures, NMFS has determined that the required mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

• Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the Marine Mammal Monitoring Plan found in Appendix E in the application. Marine mammal monitoring during drilling, clipping, cutting, pile driving and removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

• Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods must be used;

• At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;

• Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization; and

• PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

PSOs must have the following additional qualifications:

• Ability to conduct field observations and collect data according to assigned protocols;

• Experience or training in the field identification of marine mammals, including the identification of behaviors;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary;

A minimum of three PSOs located at positions designated in Figure 1 and Figure 2 of the Marine Mammal Monitoring Plan found in Appendix E of the Application must monitor harassment zones during all in-water construction activities. One PSO would be stationed in close proximity to the construction site. A second PSO would be stationed at Bay Terrace Road which is located east of the Bridge 6.3 on the

southern side of the Ship Canal. This location would provide views of ensonified areas radiating into Shilshole Bay as well as waters east of the mouth of the Ship Canal. A third PSO would be located on the north side of the Ship Canal at the Northwest 60th Street Viewpoint west of Bridge 6.3. This location provides views westward towards the mouth of the Ship Canal. A fourth PSO must be on a boat positioned in Puget Sound when a wire saw is being utilized to monitor the extended Level B harassment zone associated with this equipment. A wire saw would be employed on approximately 6 in-water work days. If hydroacoustic monitoring results of diamond wire saw cutting activities show that the entirety of the Level B harassment zone may be viewed by from land-based PSOs, then the PSO on the boat may not be deployed. All results from hydroacoustic monitoring, described in the next section, must be submitted to NMFS. NMFS must approve the removal of the boat-based PSO and modification of the new harassment isopleth.

Monitoring will be conducted 30 minutes before, during, and 30 minutes after drilling, clipping, cutting, pile driving/removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Drilling, clipping, cutting, Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the drilling, clipping, cutting, pile driving equipment is no more than 30 minutes.

Hydroacoustic Monitoring

Hydroacoustic monitoring will be conducted during in-water pile-driving and wire saw activities and recorded source levels will be compared to the reported sound levels employed as part of this application to determine harassment isopleths modeled in this application. Information about methods, data collection, and reporting are described in the Acoustic Monitoring Plan in Appendix F of the Application. The following representative subsets will be measured:

- A minimum of 15, 36-inch impact driven piles for the Project in the following subsets:
  1. A minimum of 5 piles towards the beginning of pile driving activity;
  2. A minimum of 5 piles towards the middle of pile driving activity;
  3. A minimum of 5 piles towards the latter pile driving activity.
- A minimum of 4, 48-inch drilled shafts oscillated for the Project in the following subsets:
  1. A minimum of 2 drilled shafts towards the beginning of the activity;
  2. A minimum of 2 drilled shafts towards the end of the activity.
- A minimum of 2 48-inch drilled shafts will be monitored when cut with a wire saw.

Reporting

BNSF must submit its draft reports on all monitoring conducted under the IHAs within 90 calendar days of the completion of monitoring or 60 calendar days prior to the requested issuance of any subsequent IHA for construction activity at the same location, whichever comes first. A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are received from NMFS within 30 calendar days of receipt of the draft report, the report shall be considered. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method: Drilling, cutting, clipping, impact driving, and vibratory driving and removal ; duration of driving time for each pile (vibratory) and number of strikes per pile (impact driving);
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
- Time of sighting;
- Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
- Distance and location of each observed marine mammal relative to the pile being driven for each sighting;
- Estimated number of animals (min/max/best estimate);
- Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.);
- Animal's closest point of approach and estimated time spent within the harassment zone;
- Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Number of marine mammals detected within the harassment zones, by species; and
- Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

The acoustic monitoring report must contain the informational elements described in the Acoustic Monitoring Plan and, at minimum, must include:

- *Hydrophone equipment and methods:* recording device, sampling rate, distance (m) from the pile where recordings were made; depth of water and recording device(s);
- Type and size of pile being driven or cut, substrate type, method of driving or cutting during recordings (*e.g.,* hammer model and energy), and total pile driving or cutting duration;
- Whether a sound attenuation device is used and, if so, a detailed description of the device used and the duration of its use per pile;
- *For impact pile driving (per pile)*: Number of strikes; depth of substrate to penetrate; pulse duration and mean, median, and maximum sound levels (dB re: 1 μPa): Root mean square sound pressure level (SPLrms); cumulative sound exposure level (SELcum), peak sound pressure level (SPLpeak), and single-strike sound exposure level (SELs-s);
- *For wire saw cutting (per pile):* Duration of driving per pile; mean, median, and maximum sound levels (dB re: 1 μPa): Root mean square sound pressure level (SPLrms), cumulative sound exposure level (SELcum) (and timeframe over which the sound is averaged); and
- One-third octave band spectrum and power spectral density plot.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder shall report the incident to the Office of Protected Resources (OPR) (301–427–8401), NMFS and to the West Coast Region Stranding Hotline (866–

767–6114) as soon as feasible. If the death or injury was clearly caused by the specified activity, the IHA-holder must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS.

The report must include the following information:

i. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

ii. Species identification (if known) or description of the animal(s) involved;

iii. Condition of the animal(s) (including carcass condition if the animal is dead);

iv. Observed behaviors of the animal(s), if alive;

v. If available, photographs or video footage of the animal(s); and

vi. General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, this introductory discussion of our analyses applies to all of the species listed in Table 13, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below, such as for the potential repeated and prolonged exposure of habituated harbor seals that feed on salmonids traversing through the lock system. The analysis below applies to both the Year 1 and Year 2 authorized IHAs, except where noted otherwise.

Drilling, clipping, cutting, Pile driving and removal activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated by drilling, clipping, cutting, pile driving and removal. Potential takes could occur if marine mammals are present in zones ensonified above the thresholds for Level A or Level B harassment, identified above, while activities are underway.

The nature of the drilling, clipping, cutting, pile driving project precludes the likelihood of serious injury or mortality. The mitigation is expected to ensure that no Level A harassment occurs to any species except harbor seal. The nature of the estimated takes anticipated to occur are similar among all species and similar in Year 1 and Year 2, other than the potential Level A harassment take of harbor seal in Year 1, described further below and the likely comparatively higher number of repeated takes of some small number of harbor seals by Level B harassment during both Year 1 and Year 2.

For all species other than harbor seal, take would be limited to Level B harassment (behavioral disturbance and TTS) only. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely include reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Marine mammals present in the vicinity of the action area and taken by Level B harassment are most likely to move away from and avoid the area of elevated noise levels during in-water construction activities. The project site itself is located along a highly developed waterfront with high amounts of vessel traffic and, therefore, we expect that most animals disturbed by project sound would simply avoid the area and use more-preferred habitats. These short-term behavioral effects are not expected to affect marine mammals' fitness, survival, and reproduction due to the limited geographic area that would be affected in comparison to the much larger habitat for marine mammals in the Puget Sound. Harbor seals that are habituated to in-water construction noise could be exposed for 5.4 hours per day for up to 10 consecutive days during impact driving activities in Year 1 only. These animals would likely remain in close proximity to the locks and may be exposed to enough accumulated energy to result in TTS or PTS (described below). Longer duration exposure could result in TTS in some cases if exposures occur within the Level B TTS zone. As discussed earlier in this document, TTS is a temporary loss of hearing sensitivity when exposed to loud sound, and the hearing threshold is expected to recover completely within minutes to hours. Any behavioral effects of repeated or long duration exposures are not expected to negatively impact survival or reproductive success of any individuals. Similarly, given that the exposure to these individuals is not expected to exceed 10 consecutive days for 5.4 or fewer hours at a time for any individual, any limited energetic impacts from the interruption of foraging or other important behaviors are not expected to affect the reproductive success of any individual harbor seals.

In addition to the expected effects resulting from authorized Level B harassment, we anticipate that a limited number of habituated harbor seals (20) may sustain some Level A harassment in the form of auditory injury during 10 days of impact driving planned for Year 1 only. However, any animals that experience PTS would likely only receive slight PTS, *i.e.* minor degradation of hearing capabilities within regions of hearing that align most completely with the frequency range of the energy produced by pile driving (*i.e.,* the low-frequency region below 2kHz), not severe hearing impairment or impairment in the reigns of greatest hearing sensitivity. If hearing impairment does occur, it is most likely that the affected animal would lose a

few dBs in its hearing sensitivity, which in most cases, is not likely to meaningfully affect its ability to forage and communicate with conspecifics. These takes by Level A harassment (*i.e.,* a small degree of PTS) of habituated harbor seals are not expected to accrue in a manner that would affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock. As described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities will not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Portions of the southern resident killer whale range are within the project area and the entire Puget Sound is designated as critical habitat for these whales under the ESA. However, BNSF would be required to shut down and suspend pile driving or pile removal activities when this stock is detected in the vicinity of the project area. We anticipate that take of southern resident killer whale would be avoided. There are no other known important areas for other marine mammals, such as feeding or pupping, areas.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized.
- For all species except harbor seal and only during Year 1, no Level A harassment is anticipated or authorized.
- The Level A harassment exposures to habituated harbor seals in Year 1 only are anticipated to result in slight PTS, within the lower frequencies associated with impact pile driving.
- Though a small number of habituated harbor seals will accrue Level B harassment in the form of TTS from repeated days of exposure, hearing thresholds are expected to completely recover within minutes to hours.
- Anticipated effects of Level B harassment in the form of behavioral modification would be temporary.
- Although a small portion of the southern resident killer whale critical habitat is within the project area, strict mitigation measures such as implementing shutdown measures and suspending pile driving are expected to avoid take of this stock. No other important habitat for marine mammals exist in the vicinity of the project area.
- We do not expect significant or long-term negative effects to marine mammal habitat.

Year 1 IHA—Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from BNSF's construction activities will have a negligible impact on all affected marine mammal species or stocks.

Year 2 IHA—Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from BNSF's construction activities will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS has authorized is below one third of the estimated stock abundance for all species during both Year 1 and Year 2. The authorized take of individuals during Year 1 is less than 32.6 percent for harbor seals and less than 1 percent for all other authorized species. During year 2 the authorized take of individuals is less than 5.2 percent of the abundance of the affected species or stock as shown in Table 13. Note that harbor seal take during Year 1 likely includes multiple repeated takes of some small group of individuals. Similarly, for all other authorized species, the authorized take numbers probably represent conservative estimates because they assume all takes are of different individual animals, which is unlikely to be the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

Year 1 IHA—Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks in Year 1 of the project.

Year 2 IHA—Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks in Year 2 of the project.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to

result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHAs qualifies to be categorically excluded from further NEPA review

Authorizations

As a result of these determinations, NMFS has issued two distinct and consecutive one-year IHAs to BNSF for construction associated with the Railway Bridge 0050–0006.3 Heavy Maintenance Project in King County, Washington from July 16, 2022 to July 15, 2023 (Year 1) and from July 16, 2023 to July 15, 2024 (Year 2) provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: April 12, 2022.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–08135 Filed 4–14–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB904]

Fisheries of the South Atlantic, Gulf of Mexico, and Caribbean; Southeast Data, Assessment, and Review (SEDAR) Public Meeting

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

ACTION: Notice of the SEDAR steering committee meeting.

SUMMARY: The SEDAR Steering Committee will meet via webinar to discuss the SEDAR stock assessment process and assessment schedule. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR Steering Committee will meet Monday, May 9, 2022, from 9 a.m. to 5 p.m. Eastern, via webinar. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the SEDAR process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie Neer (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Program Manager, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The SEDAR Steering Committee provides guidance and oversight of the SEDAR stock assessment program and manages assessment scheduling. The items of discussion for this meeting are as follows:

SEDAR Projects Update
SEDAR Projects Schedule
SEDAR Process Review and Discussions
Other Business

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SEDAR office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: April 12, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–08103 Filed 4–14–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

[RTID 0648–XB960]

National Oceanic and Atmospheric Administration Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its Pacific Pelagic Fishery Ecosystem Plan (FEP) Plan Team (PT) meeting to discuss fishery management issues and develop recommendations to the Council for future management of pelagic fisheries in the Western Pacific region.

DATES: The Pelagic PT meeting will be held between May 3 and May 5, 2022. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held by web conference via Webex. Web conference access information will also be posted on the Council's website at *www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 522–8220.

Audio and visual portions of the web conference can be accessed at: *https://wprfmc.webex.com/wprfmc/j.php?MTID=m35b9b3a400f5a703fec6285db2bb958f.* Event number (if prompted): 2455 435 6040. Event password (if prompted): PPT0503mtg.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The Pelagic PT meeting will be held on May 3–5, 2022, and run each day from 1 p.m. to 5 p.m. Hawaii Standard Time (HST) (12 p.m. to 4 p.m. Samoa Standard Time (SST); 9 a.m. to 1 p.m. on May 4–6, 2022, Chamorro Standard Time (ChST)). Public comment periods will be provided in the agenda. The order in

which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Agenda for the Pelagic Plan Team Meeting

Tuesday, May 3, 2022, 1 p.m. to 5 p.m. HST (12 p.m. to 4 p.m. SST; Wednesday, May 4, 2022, 9 a.m. to 1 p.m. ChST)

1. Welcome and Introductions
2. Approval of draft agenda
3. Review 2021 Annual SAFE Report Modules
   A. Fishery Data Modules
   i. American Samoa
   ii. CNMI
   iii. Guam
   iv. Hawaii
   v. International
   vi. Recreational/Non-Commercial Fisheries
   vii. Fishery Observations
4. Plan Team Working Group on Bycatch Reporting Update
5. Public Comment

Wednesday, May 4, 2022, 1 p.m. to 5 p.m. HST (12 p.m. to 4 p.m. SST; Thursday, May 5, 2022, 9 a.m. to 1 p.m. ChST)

6. Continued: Review 2021 Annual SAFE Report Modules
   B. Ecosystem Chapter
   i. Environmental & Climate Variables
   ii. Habitat section
   iii. Marine Planning section
   iv. Socioeconomics section
   v. Protected Species
7. False Killer Whale Interaction and Depredation Patterns
8. SAFE Report Discussion
   A. 2021 Report Region Wide Improvements & Recommendations
   B. Other SAFE Report Matters

Thursday, May 5, 2022, 1 p.m. to 5 p.m. HST (12 p.m. to 4 p.m. SST; Friday, May 6, 2022, 9 a.m. to 1 p.m. ChST)

9. Pelagic Plan Team Action Items
   A. Aquaculture Management Framework Alternatives (Action Item)
   B. Alternatives for NWHI Fishing Regulations (Action Item)
10. Plan Team Discussion on Declining Trends for Some PMUS
   A. Timeline of Notable Management Actions & Fishery Changes
   B. Discussion on Data and Analyses to Inform Trends
11. Forage Fish Act Discussion
12. Public Comment
13. Pelagic Plan Team Recommendations
14. Other Business

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: April 12, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–08106 Filed 4–14–22; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a product to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete a service previously furnished by such agencies.

DATES: Comments must be received on or before: May 15, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) and service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product is proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product(s)

NSN(s)—Product Name(s): MR 10826—Cordless Work Light, Includes Shipper 20826

Designated Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC

Contracting Activity: Military Resale-Defense Commissary Agency

Distribution: C-List

Mandatory for: The requirements of military commissaries and exchanges in accordance with the 41 CFR 51–6.4

Deletions

The following service is proposed for deletion from the Procurement List:

Service(s)

Service Type: Administrative/General Support Services

Mandatory for: Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Cumberland, MD

Designated Source of Supply: Columbia Lighthouse for the Blind, Washington, DC

Contracting Activity: FEDERAL PRISON SYSTEM, TERMINAL ISLAND, FCI

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–08097 Filed 4–14–22; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Record of Decision for the Final Construction and Demonstration of a Prototype Mobile Microreactor Environmental Impact Statement

AGENCY: Strategic Capabilities Office (SCO), Office of the Secretary, Department of Defense (DoD).

ACTION: Record of decision.

SUMMARY: The DoD, acting through the Strategic Capabilities Office (SCO), is issuing this Record of Decision (ROD) for the Final Construction and Demonstration of a Prototype Mobile Microreactor Environmental Impact Statement (Final EIS). SCO has decided to implement the Proposed Action (the preferred alternative) as described in the Final EIS. The Proposed Action is to fabricate the prototype mobile microreactor and reactor fuel at existing off-site commercial facilities and demonstrate the microreactor at the Department of Energy's (DOE's) Idaho National Laboratory (INL) Site. The analysis in the EIS demonstrates that implementing the Proposed Action would have small environmental consequences that would not require mitigation outside of practices required by regulations, permits, or agreements.

FOR FURTHER INFORMATION CONTACT: For information regarding the prototype

mobile microreactor (Project Pele), the Final EIS, or the ROD, visit *https://www.mobilemicroreactoreis.com;* or contact Dr. Jeff Waksman, Program Manager; Phone: 703–812–1980; Mail: Strategic Capabilities Office, 1155 Defense Pentagon, Washington, DC 20301–1155; Email: *PELE_NEPA@sco.mil.*

SUPPLEMENTARY INFORMATION:

Background

Inherent dangers, logistical complexities, and costs of sustaining power demands using diesel generators at U.S. Military Forward Operating Bases, Remote Operating Bases, and Expeditionary Bases constrain operations and fundamental strategic planning. Technologies under development, such as unmanned aerial vehicles, new radar systems, new weapon systems, and electrifying the non-tactical vehicle fleet, will require even greater energy demands. A Defense Science Board study recommended further engineering development and prototyping of very small modular reactors with an output of less than 10 megawatts of electrical power. Before this technology can be deployed, a prototype mobile microreactor must be tested to ensure it can meet DoD specifications and requirements.

Proposed Action

The Proposed Action fabricates, at off-site commercial facilities, a small, advanced gas-cooled microreactor capable of producing 1 to 5 megawatts of electrical power. Reactor fuel would be produced from DOE stockpiles of highly enriched uranium (HEU) located at the Y–12 National Security Complex in Oak Ridge, Tennessee, that would be converted from a metal to an oxide at the Nuclear Fuel Services (a subsidiary of BWX Technologies, Inc. [BWXT]) facility in Erwin, Tennessee, and down blended to high-assay low-enriched uranium (HALEU) and fabricated into tristructural isotropic (TRISO) reactor fuel at the BWXT facility in Lynchburg, Virginia. The Proposed Action would use DOE technical expertise and facilities at the INL Site to demonstrate the mobile microreactor capabilities.

Demonstration Activities at the INL Site

The proposed activities on the INL Site involve demonstrating that the proposed mobile microreactor can produce reliable electric power for an electrical grid that is separate from the public utility grid and that the mobile microreactor can be safely disassembled and transported. Activities at the INL Site include: Receiving the mobile microreactor and reactor fuel at the Materials and Fuels Complex (MFC); fueling the mobile microreactor at the Transient Reactor Test Facility (TREAT) or Hot Fuel Examination Facility (HFEF); startup testing the mobile microreactor at MFC or the Critical Infrastructure Test Range Complex (CITRC); disassembling and transporting the mobile microreactor from MFC to CITRC or at CITRC; assembling, operating, and disassembling the mobile microreactor at CITRC; transporting the disassembled mobile microreactor to temporary storage and temporarily placing it in storage at the Radioactive Scrap and Waste Facility (RSWF) or Outdoor Radioactive Storage Area (ORSA); and potentially conducting mobile microreactor and spent nuclear fuel post-irradiation examination (PIE) and disposition. Section 2.3 of the Final EIS details the evaluated activities.

Alternatives

The EIS evaluated a Proposed Action (the preferred alternative) and a No Action Alternative, which serves as a basis for comparison with the Proposed Action. The INL Site was identified as the preferred location based on siting requirements for the demonstration of the mobile microreactor. Other sites, including the Oak Ridge National Laboratory (ORNL), did not meet the required siting criteria. Specifically, other sites lacked sufficient supporting infrastructure. In particular, the ORNL site does not have an independent electrical distribution system that can be isolated from the commercial power grid. The demonstration requires an independent, isolable electrical distribution system. The program for demonstration of the mobile microreactor is intended to demonstrate its operation under a wide variety of operational conditions. Demonstration of all these capabilities in a controlled environment requires the ability to receive power from an existing electric grid, as well as dispatch mobile microreactor-generated power to an isolated and locally controlled distribution system. Therefore, ORNL was not considered for further analysis.

NEPA Process

The EIS and this ROD were prepared in accordance with the National Environmental Policy Act of 1969 (NEPA) and Council on Environmental Quality (CEQ) NEPA regulations (Title 40 of the Code of Federal Regulations [CFR] Parts 1500–1508). The DOE participated as a cooperating agency in preparing the EIS.

A Notice of Intent (NOI) to prepare an EIS was published in the **Federal Register** on March 2, 2020 (85 FR 12274). The public scoping period started with publication of the NOI in the **Federal Register** and was extended to April 30, 2020. All scoping comments were considered during development of the Draft EIS.

On September 24, 2021, the U.S. Environmental Protection Agency (EPA) published a Notice of Availability (NOA) in the **Federal Register** (86 FR 53054) announcing the availability of the Draft EIS and the start of a comment period with an end date of November 9, 2021. During the public comment period, Federal agencies, state and local governmental entities, Native American tribes, and members of the public were invited to submit comments via the project website, U.S. mail, or email. Additionally, SCO held two public hearings on October 20, 2021, at the Shoshone-Bannock Hotel and Event Center in Fort Hall, Idaho. The public hearings were webcast to offer more opportunities for public participation. In total, SCO received 43 comment documents containing 197 comments. All comments were considered during development of the Final EIS. On February 25, 2022, the EPA published an NOA in the **Federal Register** (87 FR 10784) announcing the availability of the Final EIS.

Potential Environmental Impacts

As described in the Final EIS, implementing the Proposed Action at the INL Site is expected to have small environmental consequences that would not substantially contribute to cumulative impacts. Except for the construction of two concrete pads and fencing, no land disturbing construction activities would be required for the Proposed Action. Therefore, the Proposed Action would have little or no impact on land resources, visual resources, noise, geology and soils, ecological resources, and cultural and paleontological resources. The analyses showed that there would be no significant impacts on air quality, water resources, socioeconomics, public and occupational health and safety, environmental justice, and transportation. The analysis showed that radiological and nonradiological hazard risks, as well as the associated exposures to workers and the public, would be low and well within regulatory limits and guidelines established by the DOE and the EPA. Broadly, workers and members of the public are protected from exposure to radioactive material and hazardous chemicals by facility design and administrative procedures. The construction modifications to existing facilities at the INL Site would have no

radiological impact on members of the public or workers. There are three phases of Project Pele demonstration that could result in radiological emissions: Startup testing, operational testing, and post-irradiation examination prior to disposition of the mobile microreactor. The analysis showed that the annual radiological air emissions from the mobile microreactor during these phases are expected to be no more than the quantities emitted during normal INL Site operations, which, as stated previously, are well within regulatory and guidelines. As described in the Final EIS, the analysis of impacts is applicable to (*i.e.,* bounds) whichever of the two candidate mobile microreactor designs is selected.

Environmentally Preferable Alternative

The environmentally preferable alternative is the No Action Alternative. Under the No Action Alternative, prototype mobile microreactor construction and demonstration would not occur, resulting in fewer impacts than under the Proposed Action. However, the No Action Alternative would not meet the purpose and need for construction and demonstration of a prototype mobile microreactor.

Comments on the Final Construction and Demonstration of a Prototype Mobile Reactor EIS

SCO posted the Final EIS and Comment Response Document on the project website *https://www.mobilemicroreactoreis.com* and EPA published a Notice of Availability in the **Federal Register** (87 FR 10784, February 25, 2022). In response to these Notices, SCO received seven (7) comments related to the Final EIS, including comments wanting to know more about the project, requests from individuals wanting to be added to the mailing list, and comments expressing concerns with the potential impacts of the action. SCO considered all of these comments during the preparation of this ROD. SCO has concluded that none of the comments identified a need for further NEPA analysis.

Decision

Subject to the availability of appropriations, SCO's decision is to implement the Proposed Action (the preferred alternative) as described in the Final EIS. The final design determination by SCO is being made through a competitive down-select review process between the two designs and will be announced publicly through other official channels. As described in the Final EIS, the analysis of impacts is applicable to (*i.e.,* bounds) whichever one of the two candidate mobile microreactor designs is selected. All facility options considered at the INL Site are reasonable and have similar environmental impacts; therefore, SCO is not making decisions related to the INL Site facilities options to be used to (1) conduct mobile microreactor core fueling and final assembly (HFEF or TREAT); (2) conduct mobile microreactor startup testing (MFC or CITRC); and (3) temporarily store the mobile microreactor (RSWF or ORSA). These facility options are all encompassed within the preferred alternative decision and were fully evaluated in the Final EIS. Selection of facility options will not substantially change the findings discussed in this ROD. As bounded by the applicable analysis of impacts within the Final EIS, SCO's selection of facilities for the demonstration will be informed by the final design determination.

Basis for the Decision

The Final EIS provided the SCO decision-maker with important information regarding potential environmental impacts of alternatives and options for satisfying the purpose and need. In addition to environmental information, SCO also considered public comments, statutory responsibilities, strategic objectives, technology needs, safeguards and security, cost, and schedule in its decision making.

Mitigation Measures

No potential adverse impacts were identified that would require additional mitigation measures beyond those required by regulations, permits, and agreements or achieved through design features or best management practices. However, if mitigation measures above and beyond those required by regulations, permits, and agreements are identified to reduce impacts during implementation, they would be developed, documented, and executed.

Signing Authority

This document of the DoD was signed on April 5, 2022, by Jay E. Dryer, Director, Strategic Capabilities Office, pursuant to delegated authority from the Secretary of Defense. The document with the original signature and date is maintained by DoD. For administrative purposes only, and in compliance with the requirements of the Office of the Federal Register, the undersigned DoD Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication as an official document of the DoD. The administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Dated: April 8, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–08039 Filed 4–14–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0052]

Agency Information Collection Activities; Comment Request; Supporting Excellence in Adult Education

AGENCY: Office of Career, Technical, and Adult Education (OCTAE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before June 14, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0052. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Corinne Sauri, 202–245–6412.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in

accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Supporting Excellence in Adult Education.

OMB Control Number: 1830–0579.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 20.

Total Estimated Number of Annual Burden Hours: 120.

Abstract: The purpose of this information collection request is to identify and document innovative practices in adult education and literacy that are associated with positive outcomes for adult learners so that they may be disseminated to adult education programs. The U.S. Department of Education will analyze the information that is collected about adult education programs and the outcomes they achieve to identify innovative practices that merit dissemination to the field.

Dated: April 12, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–08134 Filed 4–14–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person/virtual hybrid open meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, May 18, 2022; 4:00 p.m.–7:40 p.m.

The opportunity for public comment is at 4:10 p.m. PT.

This time is subject to change; please contact the Nevada Site Specific Advisory Board (NSSAB) Administrator (below) for confirmation of time prior to the meeting.

ADDRESSES: This meeting will be open to the public in-person at the Molasky Corporate Center (address below) or virtually via Microsoft Teams. To attend virtually, please contact Barbara Ulmer, NSSAB Administrator, by email *nssab@emcbc.doe.gov* or phone (702) 523–0894, no later than 4:00 p.m. PT on Monday, May 16, 2022.

Board members, Department of Energy (DOE) representatives, agency liaisons, and support staff will participate in-person, strictly following COVID–19 precautionary measures, at: Molasky Corporate Center, 15th Floor Conference Room, 100 North City Parkway, Las Vegas, NV 89106.

FOR FURTHER INFORMATION CONTACT: Barbara Ulmer, NSSAB Administrator, by phone: (702) 523–0894 or email: *nssab@emcbc.doe.gov* or visit the Board's internet homepage at *www.nnss.gov/NSSAB/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Follow-up to Optimization of Hybrid Meeting Approach (Work Plan Item #2)
2. Nevada National Security Site Waste Acceptance Criteria Update
3. Briefing for Post Closure Observation and Evaluation (Work Plan Item #4)

Public Participation: The in-person/online virtual hybrid meeting is open to the public either in-person at the Molasky Corporate Center or via Microsoft Teams. To sign-up for public comment, please contact the NSSAB Administrator (above) no later than 4:00 p.m. PT on Monday, May 16, 2022. In addition to participation in the live public comment session identified above, written statements may be filed with the Board either before or within seven days after the meeting by sending them to the NSSAB Administrator at the aforementioned email address. Written public comment received prior to the meeting will be read into the record. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments can do so in 2-minute segments for the 15 minutes allotted for public comments.

Minutes: Minutes will be available by writing or calling Barbara Ulmer, NSSAB Administrator, U.S. Department of Energy, EM Nevada Program, 100 North City Parkway, Suite 1750, Las Vegas, NV 89106; Phone: (702) 523–0894. Minutes will also be available at the following website: *http://www.nnss.gov/nssab/pages/MM_FY22.html.*

Signed in Washington, DC, on April 11, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–08055 Filed 4–14–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–12–000]

Commission Information Collection Activities (Ferc–729); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–729 (Electric Transmission Facilities).

DATES: Comments on the collection of information are due June 14, 2022.

ADDRESSES: You may submit your comments (identified by Docket No. IC22–12–000) by one of the following methods:

Electronic filing through *http://www.ferc.gov,* is preferred.

• *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

• For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at: *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at: (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–729, Electric Transmission Facilities.

OMB Control No.: 1902–0238.

Type of Request: Three year extension of the existing information collection.

Abstract: This information collection consists of the filing requirements for entities seeking to construct electric transmission facilities pursuant to the Commission's authority under section 216 of the Federal Power Act (FPA). Specifically, section 216(b) of the FPA authorizes the Commission, under certain circumstances, to issue permits for the construction of electric transmission facilities within national interest electric transmission corridors designated by the Secretary of Energy.

The purpose of the Commission's part 50 regulations (18 CFR part 50) is to provide for efficient and timely review of requests for permits for the siting of proposed electric transmission facilities under section 216 of the FPA. The regulations include filing requirements associated with the Commission's pre-filing and application review processes. For the Commission's pre-filing process, the regulations require applicants to file a pre-filing request (50.5(c)) and subsequent information after the commencement of the pre-filing process (50.5(e)), including a finalized Project Participation Plan, a summary of project alternatives, draft resource reports, and monthly status reports. After the conclusion of the pre-filing process, the regulations require applicants to file an application consisting of general project information (50.6) and ten exhibits (50.7), including project maps, an environmental report, engineering data, and system analysis data.

Type of Respondent: Entities proposing to construct electric transmission facilities pursuant to the Commission's authority under section 216 of the FPA.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden [1] for the information collection as:

FERC–729 (OMB CONTROL NO. 1902–0238): ELECTRIC TRANSMISSION FACILITIES

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response [2] (4)	Total annual burden hours & total annual cost (3) * (4) = (5)
Electric Transmission Facilities	1	1	1	9,600, $835,200	9,600, $835,200.

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

Dated: April 11, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08124 Filed 4–14–22; 8:45 am]

BILLING CODE 6717–01–P

[1] "Burden" is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[2] FERC staff estimates that industry costs for salary plus benefits are similar to Commission costs. The cost figure is the FY2021 FERC average annual salary plus benefits ($180,702/year or $87/hour).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI22–2–000]

Saranac Hydro Energy, LLC; Notice of Declaration of Intention and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI22–2–000.

c. *Date Filed:* December 20, 2021.

d. *Applicant:* Saranac Hydro Energy LLC.

e. *Name of Project:* 1925 Leffel Hydroelectric Restoration Project.

f. *Location:* The proposed 1925 Leffel Hydroelectric Restoration Project would be located on the Saranac River near the City of Plattsburgh, in Clinton County, New York.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Saranac Hydro Energy LLC; P.O. Box 224, Rhinebeck, NY, 12572; telephone: (917) 244–3607; email: *joel@currenthydro.com.*

i. *FERC Contact:* Jennifer Polardino, (202) 502–6437, or *Jennifer.Polardino@ferc.gov.*

j. *Deadline for filing comments, protests, and motions to intervene is:* May 9, 2022.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling at *http://www.ferc.gov/docs-filing/efiling.asp.*

Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number DI22–2–000. Comments emailed to Commission staff are not considered part of the Commission record.

k. *Description of Project:* The proposed 1925 Leffel Hydroelectric Restoration Project would consist of: (1) A 26-foot-high, 715-foot-long concrete and earth gravity dam forming an 84 acre reservoir with a normal storage capacity of 830 acre-feet; (2) a powerhouse containing one 200 kilowatt (kW) and one 400 kW turbine-generator units for a total installed capacity of 600 kW; (3) a 600-foot-long transmission line to a hydrogen production plant; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', and ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–08034 Filed 4–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–3–000]

Review of Cost Submittals by Other Federal Agencies for Administering Part I of the Federal Power Act; Notice Requesting Questions and Comments on Fiscal Year 2021 Other Federal Agency Cost Submissions

In its *Order On Rehearing Consolidating Administrative Annual Charges Bill Appeals And Modifying Annual Charges Billing Procedures,* 109 FERC ¶ 61,040 (2004) (October 8 Order), the Commission set forth an annual process for Other Federal Agencies (OFAs) to submit their costs related to Administering Part I of the Federal Power Act. Pursuant to the established process, the Chief of Financial Operations, Financial Management Division, Office of the Executive Director, on October 25, 2021, issued a letter requesting the OFAs to submit their costs by December 31, 2021 using the OFA Cost Submission Form.

Upon receipt of the agency submissions, the Commission posted the information in eLibrary, and issued, on March 10, 2022, a notice announcing the date for a technical conference to review the submitted costs. On March 24, 2022 the Commission held the technical conference. Technical conference transcripts, submitted cost forms, and detailed supporting documents are all available for review under Docket No. AD22–3. These documents are accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and are available for review in the Commission's Public Reference Room in Washington, DC.

Interested parties may file specific questions and comments on the FY 2021 OFA cost submissions with the Commission under Docket No. AD22–3, no later than May 2, 2022. Once filed, the Commission will forward the questions and comments to the OFAs for response.

Anyone with questions pertaining to the technical conference or this notice should contact Raven A. Rodriguez at (202) 502–6276 (via email at *raven.rodriguez@ferc.gov*).

Dated: April 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–08035 Filed 4–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP22–138–000]

Northern Natural Gas Company; Notice of Applications and Establishing Intervention Deadline

Take notice that on March 28, 2022, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA), in Docket No. CP22–138–000, for authorization to construct and operate construct facilities associated with, and to own, and operate six segments of pipeline facilities totaling 9.38 miles, with appurtenances in Minnesota and Wisconsin to expand the capacity of the Northern Market. (''Northern Lights 2023 expansion''). The new

construction of the pipeline will provide firm winter service up to 44,222 dekatherms per day (Dth/day) for residential, commercial, and industrial customer markets and 6,667 (Dth/day) of firm service for a local distribution company. Northern estimates the cost of the project to be $48,695,000 all as more fully set forth in the request which is on file with the Commission and open to public inspection with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding Northern application may be directed to Michael T. Loeffler, Senior Director Certificates and External Affairs, Northern Natural Gas Company, P.O. Box 3330, Omaha, Nebraska 68103, by telephone at (402) 398–7376 or by email at *mike.loeffler@nngco.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: You can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on May 2, 2022. How to file comments and motions to intervene is explained below.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before May 2, 2022. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[2] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[3] and the regulations under the NGA[4] by the intervention deadline for the project, which is May 2, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. [For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene.] For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

How To File Comments and Interventions

There are two ways to submit your comments and motions to intervene to the Commission. In all instances, please reference the Project docket number CP22–138–000 in your submission. The Commission encourages electronic filing of submissions.

(1) You may file your comments or motions to intervene electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing'' or ''Intervention''; or

(2) You can file a paper copy of your comments by mailing them to the following address below. Your written comments must reference the Project docket numbers (CP22–138–000).

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Motions to intervene must be served on the applicants either by mail or email (with a link to the document) at: Northern 1111 South 103rd Street,

[1] 18 CFR (Code of Federal Regulations) 157.9.

[2] 18 CFR 385.102(d).

[3] 18 CFR 385.214.

[4] 18 CFR 157.10.

Omaha, Nebraska 68124 or at *mike.loeffler@nngco.com.* Any subsequent submissions by an intervenor must be served on the applicants and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [5] motions to intervene are automatically granted by operation of Rule 214(c)(1).[6] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[7] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the projects will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on May 2, 2022.

Dated: April 11, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08125 Filed 4–14–22; 8:45 am]

BILLING CODE 6717–01–P

[5] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[6] 18 CFR 385.214(c)(1).

[7] 18 CFR 385.214(b)(3) and (d).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2420–059]

PacifiCorp; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Relicensing and Deadline for Submission ff Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2420–059.

c. *Date Filed:* March 28, 2022.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Cutler Hydroelectric Project.

f. *Location:* The existing project is located on the Bear River in Box Elder and Cache Counties, Utah. The project does not occupy any federal land or tribal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Eve Davies, Cutler Relicensing Project Manager, PacifiCorp, 1407 West North Temple, Suite 210, Salt Lake City, UT 84116; (801) 220–2245.

i. *FERC Contact:* Khatoon Melick, (202) 502–8433 or *khatoon.melick@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *The Cutler Hydroelectric Project consists of:* (1) A concrete gravity arch dam with a total length of 545 feet and a structural height of 126 feet with an approximately 30-foot-long gated-overflow spillway with crest elevation at 4,394.5 feet; (2) a 2,476-acre reservoir with a gross storage volume of 8,563 acre-feet and a normal maximum operating elevation of 4,407.5 feet above mean sea level (USGS); (2)(3) a 1,157-foot-long, 18-foot-diameter steel flowline; (4) an 81-foot-high, 45-foot-diameter Johnson Differential surge tank; (5) two 118-foot-long, 14-foot-diameter steel penstocks that bifurcate from the surge tank into the powerhouse; (6) a 74-foot by 130-foot brick powerhouse; (7) two General Electric 15,000 kilowatt generators with a total installed capacity of 30 megawatts; (8) two 300-foot-long, 7.2- and 6.9-kilovolt transmission lines that extend from the powerhouse's bus bar to step-up transformers located in the Cutler substation; and (9) appurtenant facilities. The estimated normal gross head of the project is 127.5 feet. The estimate average annual generation of the project from 1991 to 2020 is 75,052 megawatt-hours.

The project is the furthest downstream of the five PacifiCorp hydroelectric developments on the Bear River system. The Bear River system is collectively operated by PacifiCorp and is a coordinated operation of storage reservoirs, diversion dams, canals, and hydroelectric plants located within a 3,500-square-mile area of the lower Bear River Basin in Idaho and Utah. Water is diverted from the Bear River into Bear Lake, which is a natural lake via the Rainbow Canal. Outside of the irrigation season, Bear Lake flood control releases, along with winter and spring Bear River drainage natural water flows, create the base for generation at the Cutler Project. In southern Cache Valley, there are local drainage basins that also contribute significant inflows to the project. From mid-June to mid-October, nearly all the natural flow from the Bear River is diverted for irrigation. Supplemental flow comes from water stored in Bear Lake. Given that during the irrigation season most of the inflow into the project is sent to the irrigation canals and the reservoir must maintain certain elevations, generation at the powerhouse is virtually nonexistent from approximately mid-May to the end of September, unless water is available in higher flow years.

PacifiCorp proposes to continue to operate the project in a run-of-river mode and maintain the current upper operating limit elevation on the reservoir, with a modest expansion to the tolerance. PacifiCorp also proposes expanding the range of the lower operating limit outside the irrigation season, both to increase operational flexibility. Increasing the operating range is to support variable (*e.g.,* wind and solar) energy generation needs and would not increase the volume of water available for energy generation.

l. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document (P–2420). For assistance, contact *FERCOnlineSupport@ferc.gov,* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

m. 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. *Procedural Schedule:* The application will be processed according

to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary).	April 2022.
Request Additional Information (if necessary).	June 2022.
Notice of Acceptance/Notice of Ready for Environmental Analysis.	September 2022.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: April 11, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08128 Filed 4–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP22–815–000.
Applicants: Northwest Pipeline LLC.
Description: § 4(d) Rate Filing: Non-Conforming Service Agreement—TransAlta Contract Termination to be effective 5/9/2022.
Filed Date: 4/8/22.
Accession Number: 20220408–5104.
Comment Date: 5 p.m. ET 4/20/22.

Docket Numbers: RP22–816–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Leidy South—Clermont—NFGS Fuel Retention to be effective 12/1/2021.
Filed Date: 4/8/22.
Accession Number: 20220408–5206.
Comment Date: 5 p.m. ET 4/20/22.

Docket Numbers: PR22–33–000.
Applicants: The East Ohio Gas Company.
Description: § 284.123 Rate Filing: Operating Statement of The East Ohio Gas Company 3/1/2022 to be effective 3/1/2022.
Filed Date: 4/8/22.
Accession Number: 20220408–5101.
Comment Date: 5 p.m. ET 4/29/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP21–564–002.
Applicants: High Island Offshore System, L.L.C.
Description: Compliance filing: Settlement Compliance Filing to be effective 4/1/2021.
Filed Date: 4/11/22.
Accession Number: 20220411–5041.
Comment Date: 5 p.m. ET 4/25/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at:*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: April 11, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08126 Filed 4–14–22; 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 corporate filings:

Docket Numbers: EC22–46–000.
Applicants: AltaGas Brush Energy, Inc., Clarion Energy LLC.
Description: Supplement to March 9, 2022 Application for Authorization Under Section 203 of the Federal Power Act of AltaGas Brush Energy, Inc.
Filed Date: 4/7/22.
Accession Number: 20220407–5185.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: EC22–50–000.
Applicants: AEP Generation Resources Inc.
Description: Application for Authorization Under Section 203 of the Federal Power Act of AEP Generation Resources Inc.
Filed Date: 4/7/22.
Accession Number: 20220407–5241.
Comment Date: 5 p.m. ET 4/28/22.

Docket Numbers: EC22–51–000.
Applicants: Ford County Wind Farm LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Ford County Wind Farm LLC.
Filed Date: 4/8/22.
Accession Number: 20220408–5231.
Comment Date: 5 p.m. ET 4/29/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–91–000.
Applicants: Greeley Energy Facility, LLC.
Description: Greeley Energy Facility, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 4/8/22.
Accession Number: 20220408–5259.
Comment Date: 5 p.m. ET 4/29/22.

Docket Numbers: EG22–92–000.
Applicants: Hallador Power Company, LLC.
Description: Hallador Power Company, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 4/11/22.
Accession Number: 20220411–5071.
Comment Date: 5 p.m. ET 5/2/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1527–001.
Applicants: SmartestEnergy US LLC.
Description: Triennial Market Power Analysis Northeast Region of SmartestEnergy US LLC.
Filed Date: 4/8/22.
Accession Number: 20220408–5236.
Comment Date: 5 p.m. ET 6/7/22.

Docket Numbers: ER20–1720–007.
Applicants: Southern California Edison Company.
Description: Compliance filing: Refile Order 864 ADIT Compliance Filing to be effective 1/27/2020.
Filed Date: 4/11/22.
Accession Number: 20220411–5096.
Comment Date: 5 p.m. ET 5/2/22.

Docket Numbers: ER22–495–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2022–04–08_Deficiency Reponse to Seasonal Construct and Availability to be effective 9/1/2022.
Filed Date: 4/8/22.
Accession Number: 20220408–5195.
Comment Date: 5 p.m. ET 4/29/22.

Docket Numbers: ER22–965–001.
Applicants: Covanta Delaware Valley, L.P.

Description: Tariff Amendment: Response to Deficiency Notice to be effective 3/1/2022.
Filed Date: 4/11/22.
Accession Number: 20220411–5134.
Comment Date: 5 p.m. ET 5/2/22.

Docket Numbers: ER22–966–001.
Applicants: Covanta Essex Company.
Description: Tariff Amendment: Response to Deficiency Notice to be effective 3/1/2022.
Filed Date: 4/11/22.
Accession Number: 20220411–5136.
Comment Date: 5 p.m. ET 5/2/22.

Docket Numbers: ER22–967–001.
Applicants: Covanta Fairfax, LLC.
Description: Tariff Amendment: Response to Deficiency Notice to be effective 3/1/2022.
Filed Date: 4/11/22.
Accession Number: 20220411–5138.
Comment Date: 5 p.m. ET 5/2/22.

Docket Numbers: ER22–968–001.
Applicants: Covanta Plymouth Renewable Energy, LLC.
Description: Tariff Amendment: Response to Deficiency Notice to be effective 3/1/2022.
Filed Date: 4/11/22.
Accession Number: 20220411–5141.
Comment Date: 5 p.m. ET 5/2/22.

Docket Numbers: ER22–1606–000.
Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: PPL Electric Utilities Corporation submits tariff filing per 35.13(a)(2)(iii): PJM TOs revisions to OATT, Schedule 12 regarding DFAX Methodology to be effective 6/11/2022.
Filed Date: 4/11/22.
Accession Number: 20220411–5100.
Comment Date: 5 p.m. ET 5/2/22.

Docket Numbers: ER22–1607–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 5869; Queue No. AE2–126 (amend) to be effective 12/3/2020.
Filed Date: 4/11/22.
Accession Number: 20220411–5104.
Comment Date: 5 p.m. ET 5/2/22.

Docket Numbers: ER22–1608–000.
Applicants: Hallador Power Company, LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 6/3/2022.
Filed Date: 4/11/22.
Accession Number: 20220411–5116.
Comment Date: 5 p.m. ET 5/2/22.

Docket Numbers: ER22–1609–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 3322; X2–011 to be effective 6/11/2022.
Filed Date: 4/11/22.
Accession Number: 20220411–5131.
Comment Date: 5 p.m. ET 5/2/22.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES22–34–000.
Applicants: Louisville Gas and Electric Company.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Louisville Gas and Electric Company.
Filed Date: 4/7/22.
Accession Number: 20220407–5238.
Comment Date: 5 p.m. ET 4/28/22.

Docket Numbers: ES22–35–000.
Applicants: Kentucky Utilities Company.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Kentucky Utilities Company.
Filed Date: 4/7/22.
Accession Number: 20220407–5239.
Comment Date: 5 p.m. ET 4/28/22.

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: April 11, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08127 Filed 4–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI22–4–000]

Oquirrh Energy Storage, LLC; Notice of Declaration of Intention and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.
b. *Docket No:* DI22–4–000.
c. *Date Filed:* January 26, 2022.
d. *Applicant:* Oquirrh Energy Storage, LLC.
e. *Name of Project:* Oquirrh Pumped Storage Project.
f. *Location:* The proposed Oquirrh Pumped Storage Project would be located near the towns of Magna and Kearns, in Salt Lake County, Utah.
g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).
h. *Applicant Contact:* Oquirrh Energy Storage, LLC; 201 S Main Street, Ste. 2100, Salt Lake City, ID 83702; telephone: (208) 246–9925; email: *mshapiro@rplushydro.com;* Agent Contact: Matthew Shapiro, CEO, Oquirrh Energy Storage, LLC; 201 S Main St., Ste. 2100, Salt Lake City, UT 84111.
i. *FERC Contact:* Jennifer Polardino, (202) 502–6437, or *Jennifer.Polardino@ferc.gov.*
j. *Deadline for filing comments, protests, and motions to intervene is:* May 9, 2022.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number DI22–4–000. Comments emailed to Commission staff are not considered part of the Commission record.

k. *Description of Project:* The proposed closed-loop Oquirrh Pumped Storage Project would consist of: (1) A 120-foot-high, 4,400-foot-long roller-

compacted concrete (rcc) dam forming a 29-acre upper reservoir with a storage capacity of 3,400 acre-feet; (2) a 220-foot-high, 850-foot-long rcc dam forming a 55-acre lower reservoir with a storage capacity of 3,600 acre-feet; (3) underground tunnels connecting the upper and lower reservoirs consisting of: (a) Three, 10-foot diameter parallel fiberglass reinforced plastic or steel pipes with a length of 3,300-feet each; (b) three 10-foot diameter, 1,300-foot-high vertical shafts; (c) a 21.9-foot-diameter, 3,150-foot-long tailrace tunnel; (4) a powerhouse containing three 166.6 megawatt (MW) reversible pump-turbines/motor generators for a total installed capacity of 500 MW; (5) an 11-mile-long transmission line connecting to the Rock Mountain Power's Oquirrh substation; and (6) appurtenant facilities. The proposed project would have an estimated average annual generation of 876,000 megawatt-hours.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) would be located on a non-navigable stream over which Congress has Commerce Clause jurisdiction and would be constructed or enlarged after 1935.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', and ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–08033 Filed 4–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN12–17–000]

Total Gas & Power North America, Aaron Hall and Therese Tran; Updated Notice of Designation of Commission Staff as Non-Decisional

With respect to an order issued by the Commission on April 28, 2016 in the above-captioned docket,[1] with the exceptions noted below, the staff of the Office of Enforcement are designated as non-decisional in deliberations by the Commission in this docket. Accordingly, pursuant to 18 CFR 385.2202 (2021), they will not serve as advisors to the Commission or take part in the Commission's review of any offer of settlement. Likewise, as non-decisional staff, pursuant to 18 CFR 385.2201 (2021), they are prohibited from communicating with advisory staff concerning any deliberations in this docket.

Exceptions to this designation as non-decisional are:

Ruedi Aebersold
Jeffrey Fang
Martin Lawera
Eric Primosch
Felice Richter
Derek Shiau
Nicholas Stavlas
Damon Taaffe
Ambrea Watts
Mehrdad Barikbin
David Zlotnick
Sheryl Caro
Serrita Hill

Dated: April 11, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08123 Filed 4–14–22; 8:45 am]

BILLING CODE 6717–01–P

[1] *Total Gas & Power North America, Aaron Hall and Therese Tran,* 155 FERC ¶ 61,105 (2016).

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–012]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed April 4, 2022 10 a.m. EST Through April 11, 2022 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20220049, Final, FHWA, NY, Interstate 81 Viaduct Project, *Review Period Ends:* 05/16/2022, *Contact:* Richard J. Marquis 518–431–4127.

EIS No. 20220050, Final, FERC, LA, Hackberry Storage Project, *Review Period Ends:* 05/16/2022, *Contact:* Office of External Affairs 866–208–3372.

EIS No. 20220051, Draft Supplement, USACE, LA, West Shore Lake Pontchartrain Hurricane and Storm Damage Risk Reduction Study, *Comment Period Ends:* 05/31/2022, *Contact:* Landon D. Parr 504–862–1908.

EIS No. 20220052, Draft, FHWA, IN, Mid-States Corridor Tier 1, *Comment Period Ends:* 05/31/2022, *Contact:* Michelle Allen 317–226–7344.

EIS No. 20220053, Final, MARAD, CA, Port of Long Beach Pier B On-Dock Rail Support Project, *Contact:* Alan J. Finio 202–366–8024.

Under 49 U.S.C. 304a(b), MARAD has issued a single document that consists of a final environmental impact statement (FEIS) and record of decision (ROD). Therefore, the 30-day wait/review period under NEPA does not apply to this action.

Amended Notice

EIS No. 20220021, Draft, USFS, AK, Mendenhall Glacier Visitor Facility Improvements, *Comment Period Ends:* 05/09/2022, *Contact:* Monique Nelson 907–209–4090. Revision to FR Notice Published 03/04/2022; Extending the Comment Period from 04/18/2022 to 05/09/2022.

EIS No. 20220035, Draft, NOAA, OR, Western Oregon State Forests Habitat Conservation Plan, *Comment Period Ends:* 06/01/2022, *Contact:* Michelle McMullin 541–957–3378. Revision to FR Notice Published 03/18/2022; Extending the Comment Period from 05/17/2022 to 06/01/2022.

Dated: April 11, 2022.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–08096 Filed 4–14–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than May 16, 2022.

A. Federal Reserve Bank of Richmond (Brent B. Hassell, Assistant Vice President) P.O. Box 27622, Richmond, Virginia 23261. Comments can also be sent electronically to *Comments.applications@rich.frb.org:*

1. *Piedmont Financial Holding Company, Winston-Salem, North Carolina;* to become a mutual savings and loan holding company upon the conversion of Piedmont Federal Savings Bank, Winston-Salem, North Carolina, from federal mutual savings bank to a federal stock savings bank.

Board of Governors of the Federal Reserve System, April 11, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–08044 Filed 4–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Information: AHRQ's Proposed Patient-Centered Outcomes Research Trust Fund Strategic Framework; Extension of Comment Period

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Request for information; notice of extension of comment period.

SUMMARY: In the **Federal Register** of February 18, 2022, the Agency for Healthcare Research and Quality (AHRQ) announced that it was seeking input from the public on its proposed strategic framework for AHRQ's Patient-Centered Outcomes Research Trust Fund investments. This notice extends the comment period 35 days from April 19, 2022 to May 24, 2022. The subject matter content remains unchanged from the original notice.

DATES: Comments on this notice must be received by May 24, 2022. AHRQ will not respond individually to responders but will consider all comments submitted by the deadline.

ADDRESSES: Please submit all responses via email to: *PCORTF@ahrq.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Karin Rhodes, MD, Chief Implementation Officer, Email: *PCORTF@ahrq.hhs.gov,* Telephone: 301–427–1364 or 240–463–0872.

SUPPLEMENTARY INFORMATION: AHRQ is authorized under 42 U.S.C. 299b–37 to broadly disseminate patient-centered outcomes research (PCOR) findings, including incorporation of PCOR findings into health information technology focused on clinical decision support, and to train researchers in the methods used to conduct PCOR. PCOR compares the impact of two or more preventive, diagnostic, treatment, or healthcare delivery approaches on health outcomes, including those that are meaningful to patients.

AHRQ's work under 42 U.S.C. 299b–37 is funded by the Patient-Centered Outcomes Research Trust Fund (PCORTF), 26 U.S.C. 9511, which was established in 2010 and reauthorized in 2019. To learn more about the PCORTF, please visit: *https://www.ahrq.gov/pcor/potential-of-the-pcortf/index.html.*

In response to the reauthorization of the PCORTF, AHRQ has developed a proposed strategic framework to guide future planning and evaluation of AHRQ's PCORTF investments (the strategic framework). The strategic framework is consistent with AHRQ's broader goal of improving the quality, safety, equity, and value of healthcare delivery.

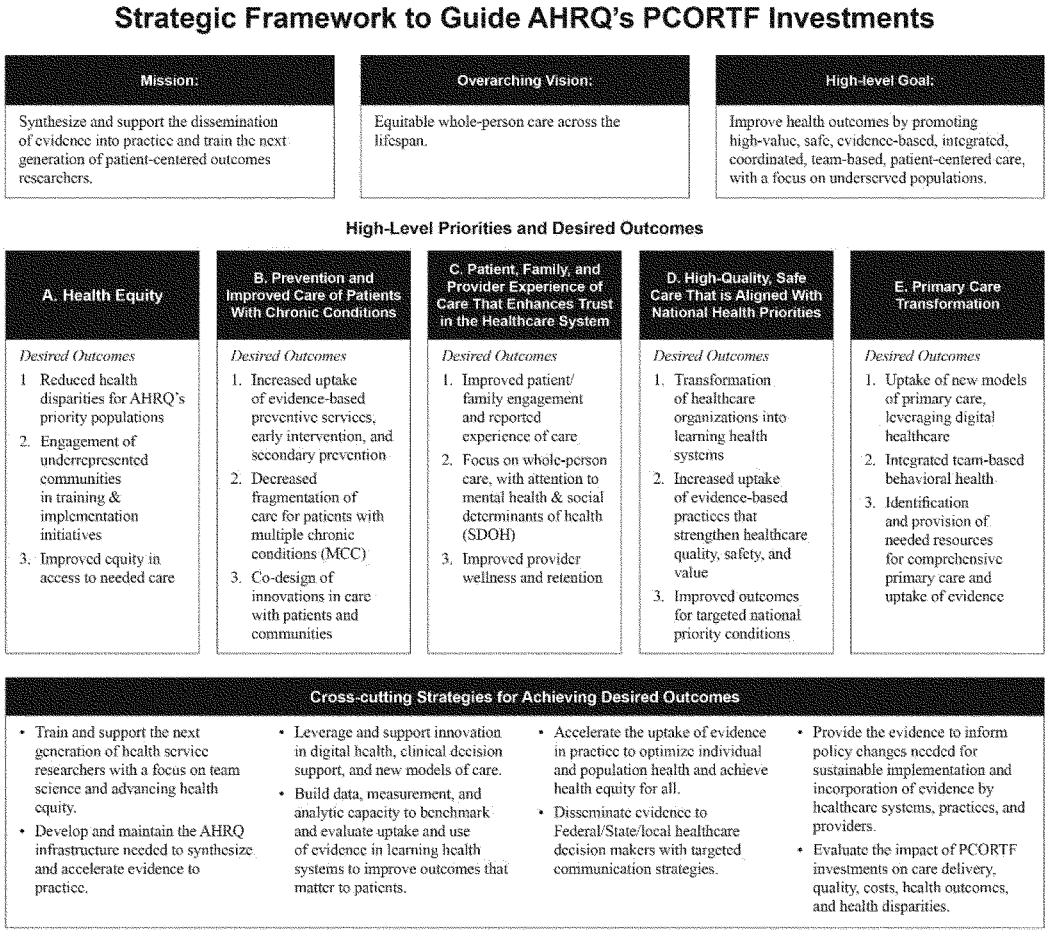
The proposed strategic framework identifies five priorities for improving healthcare delivery that are aligned with AHRQ's mission and that have the potential to improve outcomes that patients care about. These priorities are interrelated, and all contribute to achieving the proposed strategic framework's overall vision of *equitable whole-person care across the lifespan.* The proposed strategic framework is consistent with AHRQ's Congressional authorization for investments from the PCORTF and is aligned with national health priorities.

The AHRQ PCORTF strategic framework includes a mission, vision, high-level priorities, desired outcomes, and cross-cutting strategies for advancing the desired outcomes. This framework is expected to describe and inform the portfolio of AHRQ PCORTF investments. AHRQ will use this broad framework to guide long-range planning and to guide the development of projects and investments.

AHRQ PCORTF-funded projects will be connected to components and sub-components of the strategic framework. Use of the strategic framework is intended to ensure that AHRQ's investments are coherently connected and advance the overall vision of advancing *equitable whole-person care across the lifespan.* The final strategic framework will also provide a basis for creating an evaluation framework, measuring the success of individual projects, and identifying the overall impact of AHRQ's PCORTF investments.

AHRQ is seeking public comment on the proposed strategic framework for AHRQ's PCORTF investments.

BILLING CODE 4160–90–P



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AHRQ hopes to receive feedback from patients, healthcare professionals, community groups, employers, health services researchers, dissemination and implementation scientists, communications experts, representatives from health systems, public and private payers, and other stakeholders.

The input received from this public comment period will be used in refining and finalizing the strategic framework. Based on the final strategic framework, AHRQ intends to develop an operational plan, which will include specific short- and long-term objectives and a formative and summative evaluation. The overall goal of AHRQ's planning process is to identify investments consistent with its PCORTF authorization that will have the greatest positive impact on health and healthcare.

AHRQ is requesting information from the public regarding the following broad questions:

1. AHRQ would like overall reactions to the strategic framework; is there any aspect of the framework that:

a. Does not promote the vision of advancing equitable whole-person care across the lifespan?

b. Does not address major challenges faced by the U.S. healthcare system?

c. Could be improved (and if so, how)?

2. AHRQ would like input on our (non-ranked) high-level priority areas:

a. Do our proposed high-level priorities miss any areas of critical importance?

b. Are any of the high-level priorities more important than others?

3. AHRQ would like input on how to target investments within high-priority areas. For example, should AHRQ focus on:

a. Specific ages/stages or apply AHRQ's investments equally across the lifespan?

b. Transitions in care?

4. AHRQ would also appreciate suggestions for applying the strategic framework. For example:

a. How can AHRQ improve the dissemination of patient-centered outcomes research evidence to decision-makers at the local, State, and Federal levels?

b. What targeted investments could AHRQ make to sustain progress towards the strategic framework's desired outcomes?

c. What AHRQ PCORTF investments could help improve healthcare provider trust, well-being, and retention?

5. How can AHRQ have the greatest impact and success at achieving the vision and mission of the strategic framework?

a. What is the most effective way to ensure the *sustainability* of initiatives that seek to enhance the integration of patient-centered outcomes research findings into practice?

b. What complementary partnerships and collaborations (both public and private) would increase the impact of AHRQ's PCORTF investments?

c. What will be the best way of measuring progress and the overall impact of AHRQ's PCORTF investments?

6. Is there anything else you would like to share regarding the strategic framework?

AHRQ is interested in all of the questions listed above, but respondents are welcome to address as many or as few as they choose and to address additional areas of interest not listed. It is helpful to identify which question a particular answer is a response to.

This RFI is for planning purposes only and should not be construed as a policy, solicitation for applications, or as an obligation on the part of the Government to provide support for any ideas identified in response to it. AHRQ will use the information submitted in response to this RFI at its discretion and will not provide comments to any responder's submission. However, responses to the RFI may be reflected in future solicitation(s) or policies. The information provided will be analyzed and may appear in reports. Respondents will not be identified in any published reports. Respondents are advised that the Government is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted. No proprietary, classified, confidential, or sensitive information should be included in your response. The contents of all submissions will be made available to the public upon request. Materials submitted must be publicly available or able to be made public.

Dated: April 11, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–08038 Filed 4–14–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–OH–20–002, Commercial Fishing Occupational Safety Research Cooperative Agreement; and RFA–OH–20–003, Commercial Fishing Occupational Safety Training Project Grants.

Date: May 18, 2022.

Time: 12:00 p.m.–3:00 p.m., EDT.

Place: Video-Assisted Meeting.

Agenda: To review and evaluate grant applications.

FOR FURTHER INFORMATION CONTACT: Michael Goldcamp, Ph.D., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26505, Telephone: (304) 285–5951; Email: *MGoldcamp@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–08051 Filed 4–14–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3423–N]

Announcement of the Re-Approval of the American Society of Histocompatibility and Immunogenetics (ASHI) as an Accreditation Organization Under the Clinical Laboratory Improvement Amendments of 1988

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the application of the American Society for Histocompatibility and Immunogenetics (ASHI) for approval as an accreditation organization for clinical laboratories under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) program for the following specialty and subspecialty areas: General Immunology; Histocompatibility; and ABO/Rh typing. We have determined that the ASHI meets or exceeds the applicable CLIA requirements. In this notice, we announce the approval and grant the ASHI deeming authority for a period of 6 years.

DATES: This notice is effective from April 15, 2022 to April 15, 2028.

FOR FURTHER INFORMATION CONTACT: Penny Keller, (410) 786–2035.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

On October 31, 1988, the Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (Pub. L. 100–578). CLIA amended section 353 of the Public Health Service Act. We issued a final rule implementing the accreditation provisions of CLIA on July 31, 1992 (57 FR 33992). Under those provisions, CMS may grant deeming authority to an accreditation organization if its requirements for laboratories accredited under its program are equal to or more stringent than the applicable CLIA program requirements in 42 CFR part 493 (Laboratory Requirements). Subpart E of part 493 (Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program) specifies the requirements an accreditation organization must meet to be approved by CMS as an accreditation organization under CLIA.

II. Notice of Approval of ASHI as an Accreditation Organization

In this notice, we approve the American Society for Histocompatibility and Immunogenetics (ASHI) as an organization that may accredit laboratories for purposes of establishing their compliance with CLIA requirements for the subspecialty of General Immunology, the specialty of Histocompatibility, and the subspecialty of ABO/Rh typing. We have examined the initial ASHI application and all subsequent submissions to determine its accreditation program's equivalency with the requirements for approval of an accreditation organization under subpart E of part 493. We have determined that the ASHI meets or exceeds the applicable CLIA requirements. We have also determined that the ASHI will ensure that its accredited laboratories will meet or exceed the applicable requirements in subparts H, I, J, K, M, Q, and the applicable sections of R. Therefore, we grant the ASHI approval as an accreditation organization under subpart E of part 493, for the period stated in the **DATES** section of this notice for the subspecialty of General Immunology, the specialty of Histocompatibility, and the subspecialty of ABO/Rh typing. As a result of this determination, any laboratory that is accredited by the ASHI during the time period stated in the **DATES** section of this notice will be deemed to meet the CLIA requirements for the listed subspecialties and specialties, and therefore, will generally not be subject to routine inspections by a State survey agency to determine its compliance with CLIA requirements. The accredited laboratory, however, is subject to validation and complaint investigation surveys performed by CMS, or its agent(s).

III. Evaluation of the ASHI Request for Approval as an Accreditation Organization Under CLIA

The following describes the process used to determine that the ASHI accreditation program meets the necessary requirements to be approved by CMS and that, as such, CMS may approve ASHI as an accreditation program with deeming authority under the CLIA program. The ASHI formally applied to CMS for approval as an accreditation organization under CLIA for the subspecialty of General Immunology, the specialty of Histocompatibility, and the subspecialty of ABO/Rh typing. In reviewing these materials, we reached the following determinations for each applicable part of the CLIA regulations:

A. Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

The ASHI submitted a description of its mechanism for monitoring compliance with all requirements equivalent to condition-level requirements; a list of all its current laboratories and the expiration date of their accreditation; and a detailed comparison of the individual accreditation requirements with the comparable condition-level requirements. We have determined that the ASHI policies and procedures for oversight of laboratories performing laboratory testing for the subspecialty of General Immunology, the specialty of Histocompatibility, and the subspecialty of ABO/Rh typing are equivalent to those of CLIA in the matters of inspection, monitoring proficiency testing (PT) performance, investigating complaints, and making PT information available. ASHI's requirements for monitoring and inspecting laboratories are the same as those previously approved by CMS for laboratories in the areas of accreditation organization, data management, the inspection process, procedures for removal or withdrawal of accreditation, notification requirements, and accreditation organization resources. We have determined that the requirements of the accreditation program submitted for approval are equal to or more stringent than the requirements of the CLIA regulations.

B. Subpart H—Participation in Proficiency Testing for Laboratories Performing Nonwaived Testing

We have determined that the ASHI's requirements are equal to or more stringent than the CLIA requirements at §§ 493.801 through 493.865.

For the specialty of Histocompatibility, ASHI requires participation in at least one external PT program, if available, in histocompatibility testing with an 80 percent score required for successful participation and enhanced PT for laboratories that fail an event. The CLIA regulations do not contain a requirement for external PT for the specialty of Histocompatibility. For the subspecialty of General Immunology, and the subspecialty of ABO/Rh typing, ASHI's requirements are equal to the CLIA requirements.

C. Subpart J—Facility Administration for Nonwaived Testing

The ASHI's requirements for the submitted subspecialties and specialties are equal to or more stringent than the CLIA requirements at §§ 493.1100 through 493.1105.

D. Subpart K—Quality System for Nonwaived Testing

We have determined that the ASHI requirements for the submitted subspecialties and specialties are equal to or more stringent than the CLIA requirements at §§ 493.1200 through 493.1299. For instance, ASHI's control procedure requirements for the test procedures Nucleic Acid Testing and Flow Cytometry are more specific and detailed than the CLIA language for requirements for control procedures. Sections 493.1256(c)(1) and (c)(2) require control procedures that will detect immediate errors that occur due to test system failure, adverse environmental conditions and operator performance, and monitor accuracy and precision of test performance that may be influenced by changes in test system performance and environmental conditions and variance in operator performance, respectively. ASHI standards provide detailed, specific requirements for the control materials to be used to meet these CLIA requirements.

E. Subpart M—Personnel for Nonwaived Testing

We have determined that the ASHI requirements for the submitted subspecialties and specialties are equal to or more stringent than the CLIA requirements at §§ 493.1403 through 493.1495 for laboratories that perform moderate and high complexity testing. Experience requirements for Director, Technical Supervisor, and General Supervisor exceed CLIA's personnel experience requirements in the specialty of Histocompatibility.

F. Subpart Q—Inspections

We have determined that the ASHI requirements for the submitted subspecialties and specialties are equal to or more stringent than the CLIA requirements at §§ 493.1771 through 493.1780. The ASHI inspections are more frequent than CLIA requires. ASHI performs an onsite inspection every 2 years and requires submission of a self-evaluation inspection in the intervening years. If the self-evaluation inspection indicates that an onsite inspection is warranted, ASHI conducts an additional onsite review.

G. Subpart R—Enforcement Procedures

We have determined that the ASHI meets the requirements of subpart R to the extent that it applies to accreditation organizations. The ASHI policy sets forth the actions the organization takes when laboratories it accredits do not comply with its requirements and standards for accreditation. When appropriate, the ASHI will deny, suspend, or revoke accreditation in a laboratory accredited by the ASHI and report that action to us within 30 days. The ASHI also provides an appeals process for laboratories that have had accreditation denied, suspended, or revoked.

We have determined that the ASHI's laboratory enforcement and appeal policies are equal to or more stringent than the requirements of part 493 subpart R as they apply to accreditation organizations.

IV. Federal Validation Inspections and Continuing Oversight

The Federal validation inspections of laboratories accredited by the ASHI may be conducted on a representative sample basis or in response to substantial allegations of noncompliance (that is, complaint inspections). The outcome of those validation inspections, performed by CMS or our agents, or the State survey agencies, will be our principal means for verifying that the laboratories accredited by the ASHI remain in compliance with CLIA requirements. This Federal monitoring is an ongoing process.

V. Removal of Approval as an Accrediting Organization

CLIA regulations at § 493.575 provide that we may rescind the approval of an accreditation organization, such as that of the ASHI, before the end of the effective date of approval in certain circumstances. For example, If we determine that the ASHI has failed to adopt, maintain and enforce requirements that are equal to, or more stringent than, the CLIA requirements, or that systemic problems exist in its monitoring, inspection or enforcement processes, we may impose a probationary period, not to exceed 1 year, in which the ASHI would be allowed to address any identified issues. Should the ASHI be unable to address the identified issues within that timeframe, CMS may, in accordance with the applicable regulations, revoke the ASHI's deeming authority under CLIA.

Should circumstances result in our withdrawal of the ASHI's approval, we will publish a notice in the **Federal Register** explaining the basis for removing its approval.

VI. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. Chapter 35). The requirements associated with the accreditation process for clinical laboratories under the CLIA program, codified in 42 CFR part 493 subpart E, are currently approved by OMB under OMB approval number 0938–0686.

VII. Executive Order 12866 Statement

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: April 12, 2022.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2022–08153 Filed 4–14–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–1238]

Celiac Disease: Developing Drugs for Adjunctive Treatment to a Gluten-Free Diet; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Celiac Disease: Developing Drugs for Adjunctive Treatment to a Gluten-Free Diet.'' This draft guidance addresses FDA's recommendations regarding clinical trials for drugs being developed for the treatment of celiac disease as an adjunct to a gluten-free diet in adults.

DATES: Submit either electronic or written comments on the draft guidance by June 14, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2021–D–1238 for ''Celiac Disease: Developing Drugs for Adjunctive Treatment to a Gluten-Free Diet.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the

Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Richard Whitehead, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 3362, Silver Spring, MD 20993–0002, 301–796–4945; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7268, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Celiac Disease: Developing Drugs for Adjunctive Treatment to a Gluten-Free Diet.'' This guidance addresses FDA's current recommendations on clinical trials for drugs being developed for the treatment of celiac disease as an adjunct to a gluten-free diet in adults, including recommendations for eligibility criteria, trial design features, efficacy evaluations, clinical outcome assessments, and safety assessments.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Celiac Disease: Developing Drugs for Adjunctive Treatment to a Gluten-Free Diet.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR parts 50 and 58, 21 CFR parts 312 and 314, and 21 CFR part 601 have been approved under OMB control numbers 0910–0130, 0910–0014, 0910–0001, and 0910–0338 respectively.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics, or https://www.regulations.gov.*

Dated: April 11, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–08116 Filed 4–14–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–4367]

Bioavailability Studies Submitted in NDAs or INDs—General Considerations; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Bioavailability Studies Submitted in NDAs or INDs—General Considerations.'' This guidance provides recommendations to sponsors planning to include bioavailability (BA) information for drug products in investigational new drug applications (INDs), new drug applications (NDAs), and NDA supplements. This guidance finalizes the draft guidance of the same title issued on February 26, 2019. This guidance also replaces the draft guidance entitled ''Bioavailability and Bioequivalence Studies Submitted in NDAs or INDs—General Considerations'' issued March 2014.

DATES: The announcement of the guidance is published in the **Federal Register** on April 15, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your

comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–4367 for ''Bioavailability Studies Submitted in NDAs or INDs—General Considerations.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Dakshina Chilukuri, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1515, *Dakshina.Chilukuri@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Bioavailability Studies Submitted in NDAs or INDs—General Considerations.'' Determining the BA of formulations is critical during the life cycle of drug products and aids in the FDA's evaluation of the safety and effectiveness of a product in INDs, NDAs, or NDA supplements. This guidance provides recommendations to sponsors and applicants planning to include BA information for drug products in INDs, NDAs, and NDA supplements. This guidance contains recommendations on how to meet the BA requirements set forth in part 320 (21 CFR part 320) as they apply to dosage forms intended for oral administration. The guidance is also applicable to non-orally administered drug products when it is appropriate to rely on systemic exposure measures to determine the BA of a drug (*e.g.,* transdermal delivery systems and certain rectal and nasal drug products). The guidance provides recommendations on conducting relative BA studies during the investigational period for an NDA and bioequivalence (BE) studies during the postapproval period for certain changes to drug products with an approved NDA.

This guidance finalizes the draft guidance entitled ''Bioavailability Studies in NDAs or INDs—General Considerations'' issued on February 26, 2019 (84 FR 6148) (the 2019 draft guidance). When FDA issued the 2019 draft guidance, FDA explained that the 2019 draft guidance revised and replaced the draft guidance entitled ''Bioavailability and Bioequivalence Studies Submitted in NDAs or INDs—General Considerations'' issued on March 2014 (the 2014 draft guidance) (84 FR 6148). FDA considered comments received on the 2014 draft guidance in preparing the 2019 draft guidance. FDA likewise considered comments received on the 2019 draft guidance as this guidance was finalized. Changes from the 2019 draft guidance to the final guidance include the following: (1) Specifying that individual pharmacokinetic profiles will be considered for products with complex release characteristics; (2) clarifying that if the drug labeling specifies the drug to be taken with food but does not elaborate on the fed conditions, the sponsor should use a high-fat meal as the fed condition; (3) adding statistical approaches for dissolution; (4) clarifying that enzymes can be added to the dissolution medium to better understand the effect of over-encapsulation on drug release; and (5) removing the 10 percent alcohol level for dose-dumping studies. In addition, editorial changes were made to improve clarity.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Bioavailability Studies in NDAs or INDs—General Considerations.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA.

The collections of information in 21 CFR part 314 relating to the submission of new drug applications, abbreviated new drug applications, and supplemental applications and the submission of requests to waive in vivo BA and BE requirements have been approved under OMB control number 0910–0001.

The collections of information in 21 CFR part 312 relating to the submission of investigational new drug applications and BA/BE studies or pharmacogenomic data and the collections of information in part 320 for drug safety reporting have been approved under OMB control numbers 0910–0014 and 0910–0291.

The collections of information in 21 CFR parts 50 and 56 relating to the protection of human subjects and investigational review boards have been approved under OMB control number 0910–0130.

The collections of information in 21 CFR 201.56 and 201.57 for the Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products have been approved under OMB control number 0910–0572.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs*, *https://www.regulations.gov*, or *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.*

Dated: April 11, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–08114 Filed 4–14–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Heritable Disorders in Newborns and Children

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces a public meeting of the Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC or Committee), authorized under section 1111(g) of the Public Health Service Act, and the Federal Advisory Committee Act, on Thursday, May 12, 2022, and Friday, May 13, 2022. Information about the ACHDNC and the agenda for this meeting can be found on the ACHDNC website at *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.*

DATES: Thursday, May 12, 2022, from 10:00 a.m. to 3:20 p.m. Eastern Time (ET) and Friday, May 13, 2022, from 10:00 a.m. to 12:40 p.m. ET.

ADDRESSES: This meeting will be held via webinar. While this meeting is open to the public, advance registration is required.

Please register online at *https://www.achdncmeetings.org/registration/* by the deadline of 12:00 p.m. ET on May 11, 2022. Instructions on how to access the meeting via webcast will be provided upon registration.

FOR FURTHER INFORMATION CONTACT: Alaina Harris, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18W66, Rockville, Maryland 20857; 301–443–0721; or *ACHDNC@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACHDNC provides advice and recommendations to the Secretary of Health and Human Services (Secretary) on the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. ACHDNC reviews and reports regularly on newborn and childhood screening practices, recommends improvements in the national newborn and childhood screening programs, and fulfills requirements stated in the authorizing legislation. In addition, ACHDNC's recommendations regarding inclusion of additional conditions for screening on the Recommended Uniform Screening Panel (RUSP), following adoption by the Secretary, are evidence-informed preventive health services provided for in the comprehensive guidelines supported by HRSA pursuant to section 2713 of the Public Health Service Act (42 U.S.C. 300gg–13). Under this provision, non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance are required to provide insurance coverage without cost-sharing (a co-payment, co-insurance, or deductible) for preventive services for plan years (*i.e.,* policy years) beginning on or after the date that is one year from the Secretary's adoption of the condition for screening.

During the May 12–13, 2022, meeting, ACHDNC will hear from experts in the fields of public health, medicine, heritable disorders, rare disorders, and newborn screening. Agenda items include the following:

(1) Final evidence-based review report on the guanidinoacetate methyltransferase (GAMT) deficiency condition nomination for possible inclusion on the RUSP. Following this report, the ACHDNC expects to vote on whether to recommend the Secretary add GAMT deficiency to the RUSP;

(2) An update on the Krabbe disease condition nomination;

(3) A possible vote on whether to move Krabbe disease forward to full evidence-based review;

(4) A presentation on homocystinuria newborn screening status; and

(5) A presentation on the Newborn Screening Family Education Program.

The agenda for this meeting includes a potential vote which may lead to a decision to recommend a nominated condition (GAMT deficiency) to the RUSP. In addition, as noted in the agenda items, the Committee may hold a vote on whether or not to recommend a nominated condition (Krabbe disease) to full evidence-based review, which may lead to a recommendation to add or not add a condition/conditions to the RUSP at a future time.

Agenda items are subject to change as priorities dictate. Information about the ACHDNC, including a roster of members and past meeting summaries, is also available on the ACHDNC website listed above.

Members of the public will have the opportunity to provide comments. Public participants may request to provide general oral comments and may submit written statements in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time allows. Subject to change: Members of the public registered to submit oral

public comments on GAMT deficiency are tentatively scheduled to provide their statements on Thursday, May 12, 2022. Members of the public registered to provide statements on all other newborn screening related topics are tentatively scheduled for Friday, May 13, 2022. Requests to provide a written statement or make oral comments to the ACHDNC must be submitted via the registration website by 12:00 p.m. ET on Friday, May 6, 2022.

Individuals who need special assistance or another reasonable accommodation should notify Alaina Harris at the address and phone number listed above at least 10 business days prior to the meeting.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–08053 Filed 4–14–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Comments on Scientific Questions To Be Examined To Support the Development of the Dietary Guidelines for Americans, 2025–2030

AGENCY: Department of Health and Human Services (HHS), Office of the Secretary, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion; Department of Agriculture (USDA), Food, Nutrition, and Consumer Services.

ACTION: Notice.

SUMMARY: The Departments of Health and Human Services and Agriculture solicit written comments on the scientific questions to be examined in the review of evidence supporting the development of the *Dietary Guidelines for Americans, 2025–2030.*

DATES: The scientific questions are available for review and public comment. Electronic or written/paper comments will be accepted through midnight Eastern Time on May 16, 2022.

ADDRESSES: The scientific questions are available on the internet at *www.DietaryGuidelines.gov.* Comments and attachments submitted electronically or by paper will be posted to the *www.regulations.gov* docket. You may submit comments as follows:

- *Electronic submissions:* Follow the instructions for submitting comments at *www.regulations.gov.*
- *Written/paper submissions:* Mail/courier to Janet M. de Jesus, MS, RD, Office of Disease Prevention and Health Promotion (ODPHP) Office of the Assistant Secretary for Health (OASH), HHS; 1101 Wootton Parkway, Suite 420; Rockville, MD 20852.

SUPPLEMENTARY INFORMATION: Section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341) requires the Secretaries of HHS and USDA to publish the *Dietary Guidelines for Americans* (*Dietary Guidelines*) jointly at least every five years. The most recent edition of the Dietary Guidelines (2020–2025) provided guidance on the entire life span, from birth to older adulthood, including pregnancy and lactation. The *Dietary Guidelines for Americans, 2025–2030* will continue to address what to eat and drink across the entire lifespan to meet nutrient needs, promote health, and reduce the risk of chronic disease.

The Departments are identifying scientific questions to be considered in the review of evidence to support the development of the *Dietary Guidelines for Americans, 2025–2030.* Given the prevalence of chronic diseases in the United States, scientific questions will continue to examine the relationship between diet and health outcomes, and a special emphasis will be placed on questions that address food-based strategies that can be used to help individuals implement the *Dietary Guidelines* and prevent or manage overweight and obesity. In establishing this list of scientific questions, the Departments are considering the following criteria for prioritization: relevance to the *Dietary Guidelines,* importance to public health, potential impact to federal programs, avoiding duplication with other federal efforts, and research availability. The list of questions, more information on the criteria for prioritization, and background on the process for developing the questions is available at *www.dietaryguidelines.gov.*

- *Electronic or Written Public Comments:* Comments will be accepted through 11:59 p.m. Eastern Time May 16, 2022 at *www.regulations.gov.* Comments received by mail/courier will be considered if they are postmarked on or before May 16, 2022. Written comments via mail/courier will be uploaded into *www.regulations.gov* and are under the same limitations as for those submitted electronically to *www.regulations.gov:* 5,000 (with spaces) character limit for text box, and a maximum number of ten attached files and maximum size (10 MB) of each attached file. Please make note of copyright issues on your attachments. A link to the *www.regulations.gov* electronic filing system will also be available at *www.DietaryGuidelines.gov.*

HHS and USDA request comments on the list of scientific questions to be examined in the review of evidence supporting the development of the *Dietary Guidelines for Americans, 2025–2030.* Specifically, HHS and USDA request comments in support of or opposition to the proposed scientific questions. If a new scientific question is suggested, provide a brief summary of the topic, including information pertaining to the prioritization criteria listed above. It is requested that comments be limited to one page per topic. HHS and USDA will consider all relevant comments in finalizing the list of topics and questions to be examined in the development of the *Dietary Guidelines, 2025–2030.*

Contact Person for Additional Information: Janet de Jesus, MS, RD, Nutrition Advisor, telephone 240–453–8266, Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services, *DietaryGuidelines@hhs.gov.*

Dated: April 11, 2022.

Rachel L. Levine,

Assistant Secretary for Health, U.S. Public Health Service.

[FR Doc. 2022–08043 Filed 4–14–22; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; 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 Human Genome Research Institute Special Emphasis Panel; Novel Synthetic NA Technology Development.

Date: May 9, 2022.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D., National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300 Bethesda, MD 20892, (301) 594–4280 *mckenneyk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: April 12, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08109 Filed 4–14–22; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Synthesis and Distribution of Drugs of Abuse and Related Compounds.

Date: May 9, 2022.

Time: 1:00 p.m. to 2:00 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: Marisa Srivareerat, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 435–1258, *marisa.srivareerat@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: April 11, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08086 Filed 4–14–22; 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; NIAID SBIR Phase II Clinical Trial Implementation Cooperative Agreement (U44 Clinical Trial Required).

Date: May 25, 2022.

Time: 12:00 p.m. to 2:00 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 4F52, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Lindsey M. Pujanandez, 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 4F52, Rockville, MD 20852, (240) 627–3206, *lindsey.pujanandez@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: April 11, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08087 Filed 4–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0159]

National Maritime Security Advisory Committee; May 2022 Teleconference

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee teleconference meeting.

SUMMARY: The National Maritime Security Advisory Committee (Committee) will meet via teleconference, to review and discuss on matters relating to national maritime security, including on enhancing the sharing of information related to cybersecurity risks that may cause a transportation security incident, between relevant Federal agencies and (a) state, local, and tribal governments, (b) relevant public safety and emergency response agencies, (c) relevant law enforcement and security organizations, (d) maritime industry, (e) port owners and operators, and, (f) terminal owners and operators. This teleconference will be open to the public.

DATES:

Meetings: The Committee will meet by teleconference on Tuesday, May 3, 2022 from 1 p.m. until 5 p.m. Eastern Daylight Time (EDT) and on Wednesday, May 4, 2022 from 9 a.m. to noon. This teleconference may close early if all business is finished.

Comments and supporting documentation: To ensure your comments are received by Committee members before the teleconference, submit your written comments no later than April 22, 2022.

ADDRESSES: To join the teleconference or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. EDT on April 22, 2022, to obtain the needed information. The number of teleconference lines are limited and will be available on a first-come, first-served basis.

Instructions: You are free to submit comments at any time, including orally at the teleconference as time permits, but if you want Committee members to review your comment before the teleconference, please submit your comments no later than April 22, 2022. We are particularly interested in comments on the issues in the ''Agenda'' section below. We encourage you to submit comments through Federal eRulemaking Portal at *https://regulations.gov.* If your material cannot

be submitted using *https://regulations.gov,* call or email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number [USCG–2022–0159]. Comments received will be posted without alteration at *https://www.regulations.gov* including any personal information provided. For more about the privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov,* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, Alternate Designated Federal Officer of the National Maritime Security Advisory Committee, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593, Stop 7581, Washington, DC 20593–7581; telephone 202–302–6565 or email *ryan.f.owens@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act,* (5 U.S.C. appendix). The Committee was established on December 4, 2018, by § 602 of the *Frank LoBiondo Coast Guard Authorization Act of 2018,* Public Law 115–282, 132 Stat. 4192 and is codified in 46 U.S.C. 70112. The Committee operates under the provisions of the *Federal Advisory Committee Act,* (5 U.S.C. appendix), and 46 U.S.C. 15109. The National Maritime Security Advisory Committee provides advice, consults with, and makes recommendations to the Secretary of Homeland Security, via the Commandant of the Coast Guard, on matters relating to national maritime security.

Agenda

Day 1

The agenda for the National Maritime Security Advisory Committee is as follows:

Tuesday, May 3, 2022

(1) Call to Order.

(2) Introduction.

(3) Designated Federal Official Remarks.

(4) Roll call of Committee members and determination of quorum.

(5) Remarks from U.S. Coast Guard Senior Leadership.

(6) Remarks from Committee Leadership.

(7) Final Report and Discussion of Tasks. The Committee will provide a final report and discussion on the following tasks:

a. Task T–2021–1: Provide feedback on cyber vulnerability assessments that are being conducted within the industry.

b. Task T–2021–2: Provide input to support further development of the Maritime Cyber Risk Assessment Model.

c. Task T–2021–3: Recommendations on Cybersecurity Information Sharing.

(8) Public comment period.

(9) Closing Remarks/plans for next meeting.

(10) Adjournment of meeting.

Day 2

Wednesday, May 4, 2022

(1) Call to Order.

(2) Introduction.

(3) Designated Federal Official Remarks.

(4) Committee Chair Remarks.

(5) NMSAC Sector Report. NMSAC members will provide an update on related efforts within their sector and will provide items of future interest for the Committee to consider.

(6) Public Comments.

(7) Closing Remarks.

(8) Meeting Adjourned.

A copy of all meeting documentation will be available at *https://homeport.uscg.mil/NMSAC* by April 25, 2022. Alternatively, you may contact Mr. Ryan Owens as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

There will be a public comment period at the end of the meeting. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the period allotted, following the last call for comments. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

Dated: April 11, 2022.

Wayne R. Arguin, Jr.,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2022–08102 Filed 4–14–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0110]

Visa Waiver Program Carrier Agreement (Form I–775)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension with change of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted no later than May 16, 2022 to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice 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: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (86 FR 72611) on December 22, 2021, allowing for a 60-

day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Visa Waiver Program Carrier Agreement.

OMB Number: 1651–0110.

Form Number: Form I–775.

Current Actions: Extension with change of an existing collection of information.

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: Section 233(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1223(a)) provides for the necessity of a transportation contract. The statute provides that the Attorney General may enter into contracts with transportation lines for the inspection and admission of noncitizens coming into the United States from a foreign territory or from adjacent islands. No such transportation line shall be allowed to land any such noncitizen in the United States until and unless it has entered into any such contracts which may be required by the Attorney General. Pursuant to the Homeland Security Act of 2002, this authority was transferred to the Secretary of Homeland Security.

The Visa Waiver Program Carrier Agreement (CBP Form I–775) is used by carriers to request acceptance by CBP into the Visa Waiver Program (VWP). This form is an agreement whereby carriers agree to the terms of the VWP as delineated in Section 217(e) of the INA (8 U.S.C. 1187(e)). Once participation is granted, CBP Form I–775 serves to hold carriers liable for certain transportation costs, to ensure the completion of required forms, and to require sharing passenger data, among other requirements. Regulations are promulgated at 8 CFR 217.6, Carrier Agreements. A fillable copy of CBP Form I–775 is accessible at: *https://www.cbp.gov/sites/default/files/assets/documents/2019-Aug/CBP%20Form%20I-775.pdf.*

Proposed Change: The requirement of submitting original documents bearing original signatures of company representatives, has been modified to include electronic wire transfer of CBP Form I–775. This temporary transfer of information will be lifted upon notification from the CDC that COVID–19 restrictions have changed.

Type of Information Collection: Form I–775.

Estimated Number of Respondents: 98.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 98.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 49.

Dated: April 12, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–08113 Filed 4–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2204]

Proposed Flood Hazard Determinations for Chesterfield County, Virginia (All Jurisdictions)

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed notice concerning proposed flood hazard determinations, which may include the addition or modification of any Base Flood Elevation, base flood depth, Special Flood Hazard Area boundary or zone designation, or regulatory floodway (herein after referred to as proposed flood hazard determinations) on the Flood Insurance Rate Maps and, where applicable, in the supporting Flood Insurance Study reports for Chesterfield County, Virginia (All Jurisdictions).

DATES: This withdrawal is effective April 15, 2022.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–2204 to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: On January 27, 2022, FEMA published a proposed notice at 87 FR 4273, proposing flood hazard determinations for Chesterfield County, Virginia (All Jurisdictions). FEMA is withdrawing the proposed notice.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2022–08138 Filed 4–14–22; 8:45 am]

BILLING CODE 911–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2231]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and

where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Alabama:						
Morgan	Town of Priceville (22–04–1537X).	The Honorable Sam Heflin, Mayor, Town of Priceville, 242 Marco Drive, Priceville, AL 35603.	Planning Department, 242 Marco Drive, Priceville, AL 35603.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 5, 2022	010448
Morgan	Unincorporated areas of Morgan County (22–04–1537X).	The Honorable Ray Long, Chairman, Morgan County Commission, 302 Lee Street Northeast, Decatur, AL 35601.	Morgan County Engineer's Office, 580 Shull Road, Hartselle, AL 35640.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 5, 2022	010175
Florida:						
Bay	City of Lynn Haven (20–04–4506P).	Ms. Vickie Gainer, Manager, City of Lynn Haven, 825 Ohio Avenue, Lynn Haven, FL 32444.	Building Department, 817 Ohio Avenue, Lynn Haven, FL 32444.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 27, 2022	120009
Bay	City of Panama City (20–04–4506P).	The Honorable Greg Brudnicki, Mayor, City of Panama City, 501 Harrison Avenue, Panama City, FL 32401.	Public Works Department, Engineering Division, 501 Harrison Avenue, Panama City, FL 32401.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 27, 2022	120012
Bay	Unincorporated areas of Bay County (20–04–4506P).	The Honorable Robert Carroll, Chairman, Bay County Board of Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning Department, 840 West 11th Street, Panama City, FL 32401.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 27, 2022	120004

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Lake	City of Leesburg (21–04–3589P).	Mr. Al Minner, Manager, City of Leesburg, P.O. Box 490630, Leesburg, FL 34749.	Planning and Zoning Department, 204 North 5th Street, Leesburg, FL 34748.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 27, 2022	120136
Lake	City of Leesburg (22–04–1150P).	Mr. Al Minner, Manager, City of Leesburg, P.O. Box 490630, Leesburg, FL 34749.	Planning and Zoning Department, 204 North 5th Street, Leesburg, FL 34748.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 13, 2022	120136
Lake	Unincorporated areas of Lake County (21–04–3589P).	Ms. Jennifer Barker, Lake County Interim Manager, P.O. Box 7800, Tavares, FL 32778.	Lake County Public Works Department, 323 North Sinclair Avenue, Tavares, FL 32778.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 27, 2022	120421
Lake	Unincorporated areas of Lake County (22–04–1150P).	Ms. Jennifer Barker, Lake County Interim Manager, P.O. Box 7800, Tavares, FL 32778.	Lake County Public Works Department, 323 North Sinclair Avenue, Tavares, FL 32778.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 13, 2022	120421
Manatee	Unincorporated areas of Manatee County (21–04–0488P).	The Honorable Kevin Van Ostenbridge, Chairman, Manatee County Board of Commissioners, 1112 Manatee Avenue West, Bradenton, FL 34205.	Manatee County Building and Development Services Department, 1112 Manatee Avenue West, Bradenton, FL 34205.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 12, 2022	120153
Marion	City of Ocala (21–04–4034P).	Ms. Sandra R. Wilson, Manager, City of Ocala, 110 Southeast Watula Avenue, Ocala, FL 34471.	Stormwater Engineering Department, 1805 Northeast 30th Avenue, Building 300, Ocala, FL 34470.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 7, 2022	120330
Monroe	Unincorporated areas of Monroe County (22–04–1070P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 11, 2022	125129
Orange	City of Orlando (21–04–3916P).	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32801.	Engineering Services Division, 400 South Orange Avenue, Orlando, FL 32801.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 19, 2022	120186
Walton	Unincorporated areas of Walton County (20–04–4412P).	The Honorable Michael Barker, Chairman, Walton County Board of Commissioners, 552 Walton Road, DeFuniak Springs, FL 32433.	Walton County Administration Building, 76 North 6th Street, DeFuniak Springs, FL 32433.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 12, 2022	120317
Maine: York	Town of Kennebunk (21–01–1064P).	Mr. Michael W. Pardue, Manager, Town of Kennebunk, 1 Summer Street, Kennebunk, ME 04043.	Town Hall, 1 Summer Street, Kennebunk, ME 04043.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 11, 2022	230151
New Mexico:						
San Juan	City of Aztec (21–06–1857P).	The Honorable Michael A. Padilla, Sr., Mayor, City of Aztec, 201 West Chaco Street, Aztec, NM 87410.	City Hall, 201 West Chaco Street, Aztec, NM 87410.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 5, 2022	350065
San Juan	Unincorporated areas of San Juan County (21–06–1857P).	Mr. Mike Stark, San Juan County Manager, 100 South Oliver Drive, Aztec, NM 87410.	San Juan County Fire Operations Building, 209 South Oliver Drive, Aztec, NM 87410.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 5, 2022	350064
North Carolina: Mecklenburg.	Town of Mint Hill (21–04–4211P)	The Honorable Brad Simmons, Mayor, Town of Mint Hill, 4430 Mint Hill Village Lane, Mint Hill, NC 28227.	Town Hall, 4430 Mint Hill Village Lane, Mint Hill, NC 28227.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 13, 2022	370539
North Dakota: Burleigh.	City of Bismarck (21–08–1104P).	The Honorable Steven Bakken, Mayor, City of Bismarck, P.O. Box 5503, Bismarck, ND 58506.	Community Development Department, 221 North 5th Street, Bismarck, ND 58501.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 13, 2022	380149
Pennsylvania:						
Montgomery	Municipality of Norristown (21–03–1308P).	Mr. Crandall O. Jones, Administrator, Municipality of Norristown, 235 East Airy Street, Norristown, PA 19401.	Municipality Hall, 235 East Airy Street, Norristown, PA 19401.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 27, 2022	425386

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Montgomery ...	Township of Upper Merion (21–03–1308P).	Mr. Anthony T. Hamaday, Manager, Township of Upper Merion, 175 West Valley Forge Road, King of Prussia, PA 19406.	Township Hall, 175 West Valley Forge Road, King of Prussia, PA 19406.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 27, 2022	420957
Montgomery ...	Township of West Norriton (21–03–1308P).	Mr. Jason Bobst, Manager, Township of West Norriton, 1630 West Marshall Street, Jeffersonville, PA 19403.	Township Hall, 1630 West Marshall Street, Jeffersonville, PA 19403.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 27, 2022	420711
Texas:						
Bexar	City of San Antonio (21–06–2681P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capitol Improvements Department, Storm Water Division, 114 West Commerce Street, 7th Floor, San Antonio, TX 78205.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 27, 2022	480045
Dallas	City of Dallas (21–06–1960P).	The Honorable Eric Johnson, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	Oak Cliff Municipal Center, 320 East Jefferson Boulevard, Room 312, Dallas, TX 75203.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 5, 2022	480171
McLennan	City of Hewitt (21–06–1238P).	The Honorable Steve Fortenberry, Mayor, City of Hewitt, 200 Patriot Court, Hewitt, TX 76643.	Community Services Department, 103 North Hewitt Drive, Hewitt, TX 76643.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 12, 2022	480458
McLennan	City of Waco (21–06–1238P).	The Honorable Dillon Meek, Mayor, City of Waco, 300 Austin Avenue, Waco, TX 76702.	City Hall, 300 Austin Avenue, Waco, TX 76702.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 12, 2022	480461
Montgomery ...	City of Conroe (21–06–1436P).	The Honorable Jody Czajkoski, Mayor, City of Conroe, 300 West Davis Street, Conroe, TX 77301.	Engineering Department, 700 Metcalf Street, Conroe, TX 77301.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 1, 2022	480484
Montgomery ...	Unincorporated areas of Montgomery County (21–06–1567P).	The Honorable Mark J. Keough, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301.	Montgomery County Engineering Department, 501 North Thompson Street, Suite 103, Conroe, TX 77301.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 27, 2022	480483
Randall	City of Amarillo (22–06–0467P).	The Honorable Ginger Nelson, Mayor, City of Amarillo, P.O. Box 1971, Amarillo, TX 79105.	City Hall, 509 Southeast 7th Avenue, Amarillo, TX 79105.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 19, 2022	480529
Randall	Unincorporated areas of Randall County (22–06–0467P).	The Honorable Christy Dyer, Randall County Judge, 501 16th Street, Suite 303, Canyon, TX 79015.	Randall County Road and Bridge Department, 301 West Highway 60, Canyon, TX 79015.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 19, 2022	480532
Tarrant	City of Fort Worth (21–06–1533P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 11, 2022	480596
Williamson	Unincorporated areas of Williamson County (21–06–2883P).	The Honorable Bill Gravell, Jr., Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626.	Williamson County Engineering Department, 3151 Southeast Inner Loop, Georgetown, TX 78626.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 7, 2022	481079
Virginia: Albemarle	Unincorporated areas of Albemarle County (21–03–1458P).	Mr. Jeff Richardson, Albemarle County Executive, 401 McIntire Road, Suite 228, Charlottesville, VA 22902.	Albemarle County Community Development Department, 401 McIntire Road, Charlottesville, VA 22902.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 13, 2022	510006

[FR Doc. 2022–08146 Filed 4–14–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2230]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						
Maricopa	City of Surprise (21–09–1333P).	The Honorable Skip Hall, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Public Works Department, Engineering Development Services, 16000 North Civic Center Plaza, Surprise, AZ 85374.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 8, 2022	040053
Maricopa	Unincorporated Areas of Maricopa County (21–09–1333P).	The Honorable Bill Gates, Chairman, Board of Surpervisors, Maricopa County, 301 West Jefferson Street, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 8, 2022	040037
California:						
Placer	City of Lincoln (21–09–1152P).	The Honorable Alyssa Silhi, Mayor, City of Lincoln, 600 6th Street, Lincoln, CA 95648.	Community Development Department, 600 6th Street, Lincoln, CA 95648.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 24, 2022	060241

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
San Diego	City of San Diego (21–09–1601P).	The Honorable Todd Gloria, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101.	Development Services Department, 1222 1st Avenue, MS 301, San Diego, CA 92101.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 1, 2022	060295
Florida:						
Walton	Unincorporated Areas of Bay County (21–04–1447P).	Mr. Robert Carroll, Chair, Commissioner District 2, Bay County, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning, 707 Jenks Avenue, Suite B, Panama City, FL 32401.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 23, 2022	120004
Walton	Unincorporated Areas of Walton County (21–04–1447P).	Mr. Trey Nick, Chair, Commissioner District 4, Walton County, 263 Chaffin Avenue, DeFuniak Springs, FL 32433.	Walton County Planning and Development Services Department, 31 Coastal Centre Boulevard, Santa Rosa Beach, FL 32459.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 23, 2022	120317
Michigan:						
Saginaw	City of Frankenmuth (21–05–3420P).	The Honorable Mary Anne Ackerman, Mayor, City of Frankenmuth, City and Township Government Center, 240 West Genesee Street, Frankenmuth, MI 48734.	City and Township Government Center, 240 West Genesee Street, Frankenmuth, MI 48734.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 7, 2022	260188
Saginaw	Township of Frankenmuth (21–05–3420P).	Mr. Tim Hildner, Township Supervisor, Township of Frankenmuth, P.O. Box 245, Frankenmuth, MI 48734.	City and Township Government Center, 240 West Genesee Street, Frankenmuth, MI 48734.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 7, 2022	260895
Missouri: Jackson	City of Kansas City (21–07–1040P).	The Honorable Quinton Lucas, Mayor, City of Kansas City, City Hall, 414 East 12th Street, Kansas City, MO 64106.	Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 6, 2022	290173
Ohio:						
Lorain	City of Avon (21–05–4651P).	The Honorable Bryan K. Jensen, Mayor, City of Avon, 36080 Chester Road, Avon, OH 44011.	City Hall, Planning Department, 36080 Chester Road, Avon, OH 44011.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 8, 2022	390348
Lorain	City of North Ridgeville (21–05–4651P).	The Honorable Kevin Corcoran, Mayor, City of North Ridgeville, 7307 Avon Belden Road, North Ridgeville, OH 44039.	City Hall, 7307 Avon Belden Road, North Ridgeville, OH 44039.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 8, 2022	390352
Summit	Unincorporated Areas of Summit County (21–05–3486P).	Ms. Ilene Shapiro, County Executive, Summit County, 175 South Main Street, 8th Floor, Akron, OH 44308.	Summit County Building Standards Department, 1030 East Tallmadge Avenue, Akron, OH 44310.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 9, 2022	390781
Summit	Village of Reminderville (21–05–3486P).	The Honorable Sam Alonso, Mayor, Village of Reminderville, 3382 Glenwood Boulevard, Reminderville, OH 44202.	Village Hall, 3382 Glenwood Boulevard, Reminderville, OH 44202.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 9, 2022	390855
Texas: Dallas	City of Grand Prairie (21–06–2282P).	The Honorable Ron Jensen, Mayor, City of Grand Prairie, 300 West Main Street, Grand Prairie, TX 75050.	City Development Center, 205 West Church Street, Grand Prairie, TX 75050.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 11, 2022	485472
Wisconsin: Kenosha.	Village of Salem Lakes (21–05–3136P).	Ms. Diann Tesar, Village Board President, Village of Salem Lakes, P.O. Box 443, Salem, WI 53168.	Village Hall, 9814 Antioch Road, Salem, WI 53168.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 16, 2022	550505

[FR Doc. 2022–08143 Filed 4–14–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of August 2, 2022 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Jefferson County, Colorado and Incorporated Areas Docket No.: FEMA–B–2124	
City of Edgewater	Civic Center, 1800 Harlan Street, Edgewater, CO 80214.
City of Lakewood	Civic Center, Public Works, 470 South Allison Parkway, Lakewood, CO 80226.
City of Wheat Ridge	Community Development Department, 7500 West 29th Avenue, Wheat Ridge, CO 80033.
Unincorporated Areas of Jefferson County	Jefferson County Planning and Zoning Division, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419.
Liberty County, Florida and Unincorporated Areas Docket No.: FEMA–B–2115	
City of Bristol	City Clerk's Office, 12444 Northwest Virginia G. Weaver Street, Bristol, FL32321.
Unincorporated Areas of Liberty County	Liberty County Building Department, 10818 Northwest State Road 20, Bristol, FL 32321.
Wakulla County, Florida and Unincorporated Areas Docket No.: FEMA–B–2115	
Unincorporated Areas of Wakulla County	Wakulla County Planning and Community Development, 3093 Crawfordville Highway, Crawfordville, FL 32327.
Sioux County, Iowa and Incorporated Areas Docket No.: FEMA–B–2107	
City of Alton	City Hall, 905 3rd Avenue, Alton, IA 51003.
City of Boyden	City Hall, 609 East Webb Street, Boyden, IA 51234.
City of Chatsworth	Community Center, 225 North Street, Chatsworth, IA 51011.
City of Granville	City Hall, 740 Broad Street, Granville, IA 51022.
City of Hawarden	City Offices, 1150 Central Avenue, Hawarden, IA 51023.
City of Hospers	City Hall, 100 3rd Avenue South, Hospers, IA 51238.
City of Hull	City Offices, 1133 Maple Street, Hull, IA 51239.
City of Ireton	City Offices, 502 4th Street, Ireton, IA 51027.

Community	Community map repository address
City of Matlock	Fire Department, 555 Main Street, Matlock, IA 51244.
City of Maurice	City Offices, 315 Pine Street, Maurice, IA 51036.
City of Orange City	City Hall, 125 Central Avenue Southeast, Orange City, IA 51041.
City of Rock Valley	City Office, 1303 10th Street, Rock Valley, IA 51247.
City of Sioux Center	City Offices, 335 1st Avenue Northwest, Sioux Center, IA 51250.
Unincorporated Areas of Sioux County	Sioux County Courthouse, 210 Central Avenue Southwest, Orange City, IA 51041.

[FR Doc. 2022–08139 Filed 4–14–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of August 16, 2022 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Rankin County, Mississippi and Incorporated Areas Docket Nos.: FEMA–B–1936 and FEMA–B–2121	
City of Brandon	City Hall, 1000 Municipal Drive, Brandon, MS 39042.
City of Florence	City Hall, 203 College Street, Florence, MS 39073.
City of Flowood	City Hall, 2101 Airport Road, Flowood, MS 39232.
City of Jackson	Department of Public Works, Warren Hood Building, 200 South President Street, 5th Floor, Jackson, MS 39201.
City of Pearl	City Hall, 2420 Old Brandon Road, Pearl, MS 39208.
City of Richland	City Hall, 380 Scarbrough Street, Richland, MS 39218.
Pearl River Valley Water Supply District	Pearl River Valley Water Supply District, Building Department, 100 Reservoir Park Road, Brandon, MS 39047.
Unincorporated Areas of Rankin County	Rankin County Old Courthouse, 117 North Timber Street, Brandon, MS 39042.
Washington County, Mississippi and Incorporated Areas Docket No.: FEMA–B–2131	
City of Greenville	City Hall, Planning Department, 340 Main Street, Greenville, MS 38701.

Community	Community map repository address
Unincorporated Areas of Washington County	Washington County Planning Department, 900 Washington Avenue, Greenville, MS 38701.
Van Wert County, Ohio and Incorporated Areas Docket No.: FEMA–B–2122	
City of Van Wert	Municipal Building, 515 East Main Street, Van Wert, OH 45891.
Unincorporated Areas of Van Wert County	Van Wert County Annex, 114 East Main, Van Wert, OH 45891.
Village of Middle Point	Municipal Building, 103 North Adams Street, Middle Point, OH 45863.
Village of Willshire	Van Wert County Annex, 114 East Main, Van Wert, OH 45891.
Montour County, Pennsylvania (All Jurisdictions) Docket Nos.: FEMA–B–1968 and B–2129	
Borough of Danville	Municipal Building, 463 Mill Street, Danville, PA 17821.
Township of Cooper	Cooper Township Municipal Building, 59 Steltz Road, Danville, PA 17821.
Township of Mahoning	Mahoning Township Municipal Building, 849 Bloom Road, Danville, PA 17821.
Town of Mayberry	Mayberry Township Municipal Building, 162 High Road, Catawissa, PA 17820.

[FR Doc. 2022–08136 Filed 4–14–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2229]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before July 14, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2229, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where

applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Monterey County, California and Incorporated Areas Project: 18–09–0046S Preliminary Date: October 21, 2021	
City of Gonzales	Public Works Department, 147 Fourth Street, Gonzales, CA 93926.
City of Salinas	Public Works Department, Development Engineering Division, 200 Lincoln Avenue, Salinas, CA 93901.
City of Soledad	Public Works Department, 248 Main Street, Soledad, CA 93960.
Monterey County Unincorporated Areas	Monterey County Government Center, Public Works, Facilities, and Parks Department, 2nd Floor, 1441 Schilling Place, Salinas, CA 93901.

[FR Doc. 2022–08137 Filed 4–14–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2004–17131]

Extension of Agency Information Collection Activity Under OMB Review: Aircraft Repair Station Security

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0060, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves recordkeeping requirements and petitions for reconsideration for certain aircraft repair stations.

DATES: Send your comments by May 16, 2022. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov*.

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on December 20, 2021, 86 FR 71905.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

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

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Aircraft Repair Station Security.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0060.

Forms(s): NA.

Affected Public: Aircraft Repair Stations.

Abstract: In accordance with TSA's authority and responsibility over aviation security, TSA conducts reviews and audits of aircraft repair stations with a 145-certificate issued by the FAA, located within and outside of the United States to ensure compliance with the requirements of 49 CFR part 1554. This includes the collection of information relating to recordkeeping of employment history records, petitions for reconsideration, and compliance with the recordkeeping requirements of Security Directives.

Number of Respondents: 4,900.

Estimated Annual Burden Hours: An estimated 412 hours annually.

Dated: April 8, 2022.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2022–08094 Filed 4–14–22; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAKC001030/A0A501010.999900]

Indian Child Welfare Act; Designated Tribal Agents for Service of Notice

AGENCY: Bureau of Indians Affairs, Interior.

ACTION: Notice.

SUMMARY: The regulations implementing the Indian Child Welfare Act provide that Federally recognized Indian Tribes may designate an agent other than the Tribal Chairman for service of notice of proceedings under the Act. This notice includes the current list of designated Tribal agents for service of notice.

FOR FURTHER INFORMATION CONTACT: Bureau of Indian Affairs, Evangeline M. Campbell, Chief, Division of Human Services, Office of Indian Services, 1849 C Street NW, Mail Stop 3641–MIB, Washington, DC 20240; Phone: (202) 513–7621; Email: *Evangeline.campbell@bia.gov.*

SUPPLEMENTARY INFORMATION: The regulations implementing the Indian Child Welfare Act, 25 U.S.C. 1901 *et seq.,* provide that Federally Recognized Tribes may designate an agent other than the Tribal Chairman for service of notice of proceedings under the Act. See 25 CFR 23.12. The Secretary of the Interior is required to update and publish in the **Federal Register** as necessary the names and addresses of the designated Tribal agents. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

In any involuntary proceeding in a State court where the court knows or has reason to know that an Indian child is involved, and where the identity and location of the child's parent or Indian custodian or Tribe is known, the party seeking the foster-care placement of, or termination of parental rights to, an Indian child must directly notify the parents, the Indian custodians, and the child's Tribe by registered or certified mail with return receipt requested, of the pending child-custody proceedings and their right of intervention. Copies of these notices must be sent to the appropriate Bureau of Indian Affairs (BIA) Regional Director (see *www.bia.gov*) by registered or certified mail with return receipt requested or by personal delivery. See 25 CFR 23.11. No notices are required to be sent to the Secretary's office or the BIA Central Office, except for final adoption decrees. Final adoption decrees are required to be sent to the BIA Central Office in Washington, DC.

If the identity or location of the child's parents, the child's Indian custodian, or the Federally Recognized Tribe(s) in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to know the child is an Indian child, notice of the child-custody proceeding must be sent to the appropriate BIA Regional Director. See 25 CFR 23.111.

1. Alaska Region
2. Eastern Region
3. Eastern Oklahoma Region
4. Great Plains Region
5. Midwest Region
6. Navajo Region
7. Northwest Region
8. Pacific Region
9. Rocky Mountain Region
10. Southern Plains Region
11. Southwest Region
12. Western Region

This notice presents the names and addresses of current designated Tribal agents for service of notice and includes each designated Tribal agent received by the Secretary of the Interior prior to the date of this publication. Part A, published in this notice, lists designated Tribal agents by BIA Region and alphabetically by Tribe within each of the 12 BIA Regions. Part A is also available electronically at: *https://www.bia.gov/bia/ois.*

In between the BIA's annual **Federal Register** publication, the ICWA Designated Agent List will also be available on the Indian *Affairs.gov* website, the link location is found at: *https://www.bia.gov/bia/ois/dhs/icwa.* ICWA Designated agents will be updated every three months on the website link to assist the public.

A. List of Designated Tribal Agents by BIA Region

1. Alaska Region

Alaska Regional Director, Bureau of Indian Affairs, Human Services, 3601 C Street, Ste. 1200 MC–403, Anchorage, Alaska 99503; Telephone Number: (907) 271–4111; Fax Number: (907) 271–4083.

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Agdaagux Tribe of King Cove	Amanda McAdoo, Family Services Coordinator.	Aleutian Pribilof Islands Association Inc., 1131 East International Airport Road, Anchorage, AK 99518.	(907) 276–2700	(907) 222–9735	*amandam@apiai.org*
Akiachak Native Community	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Akiak Native Community	Olinka Jones, ICWA Director	P.O. Box 52127, Akiak, AK 99552.	(907) 765–7112	(907) 765–7512	*ojones@aikiakira-nsn.gov*
Alatna Village	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Algaaciq Native Village (St. Mary's).	Sven Paulkan, Tribal Administrator.	P.O. Box 48, St. Mary's, AK 99658.	(907) 438–2932	(907) 438–2227	*algaaciqtribe@gmail.com*
Allakaket Village	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Alutiiq Tribe of Old Harbor (previously listed as Native Village of Old Habor).	Julie Kaiser or Amanda Holden, ICWA Case Manager/ICWA Specialist.	Kodiak Area Native Association, 3449 E Rezanof Drive, Kodiak, AK 99615.	(907) 486–1395	(907) 486–1329	*Julie.Kaiser@kodiakhealthcare.org*
Angoon Community Association	Marlene Zuboff, ICWA Worker	P.O. Box 328, Angoon, AK 99820.	(907) 788–3411	(907) 788–3412	*mzuboff.agntribe10@gmail.com*
Anvik Village	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 9970.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Arctic Village	Tonya Garnett, Tribal Administrator.	P.O. Box 22069, Arctic Village, AK 99722.	(907) 587–5523	(907) 587–5128	*avc.robertsam@gmail.com*
Asa'carsarmiut Tribe	Evelyn Darlene Peterson and Madeline Long, Director of Social Services & Education I/II.	P.O. Box 32107, Mountain Village, AK 99632.	(907) 591–2428	(907) 591–2934	*atcicwa@gic.net*
Beaver Village	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Birch Creek Tribe	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Central Council of the Tlingit & Haida Indian Tribes.	Will Kronick, Family Services Administrator.	P.O. Box 25500, Juneau, AK 99802.	(907) 463–7168	(907) 885–0032	*wkronick@ccthita-nsn.gov*
Chalkyitsik Village	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Cheesh-Na Tribe	Agnes Denny, Tribal Administrator.	HC01 Box 217, Gakona, AK 99586.	(907) 822–3503	(907) 822–5179	*agnesadenny@gmail.com*
Chevak Native Village	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Chickaloon Native Village	Vera Spence, ICWA Case Manager.	P.O. Box 1105, Chickaloon, AK 99674.	(907) 745–0794	(907) 745–0750	*vmspence@chickaloon-nsn.gov*
Chignik Bay Tribal Council	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
Chignik Lake Village	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
Chilkat Indian Village (Klukwan)	Carrie-Ann Durr, ICWA Case Worker.	HC 60 Box 2207, Haines, AK 99827.	(907) 767–5505	(907) 767–5408	*cdurr@chilkat-nsn.gov*
Chilkoot Indian Association (Haines).	Will Kronick, Family Services Administrator.	Central Council of the Tlingit and Haida Indian Tribes, P.O. Box 25500, Juneau, AK 99802.	(907) 463–7168	(907) 885–0032	*wkronick@ccthita-nsn.gov*
Chinik Eskimo Community (Golovin).	Heather Payenna, CFS Manager.	Kawerak Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443–4261	(907) 443–4601	*hpayenna@kawerak.org*
Chuloonawick Native Village	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*SSolesbee@avcp.org*
Circle Native Community	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Craig Tribal Association (previously listed as Craig Community Assocation).	Will Kronick, Family Services Administrator.	Central Council of the Tlingit and Haida Indian Tribes, P.O. Box 25500, Juneau, AK 99802.	(907) 463–7168	(907) 885–0032	*wkronick@ccthita-nsn.gov*
Curyung Tribal Council	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
Douglas Indian Association	Alyssa Cadiente-Laiti-Blattner, ICWA Social Services Program Coordinator.	811 W 12th Street, Juneau, AK 99801.	(907) 364–2916	(907) 364–2917	*ablattner@diataku.com*
Egegik Village	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
Eklutna Native Village	Dawn Harris, ICWA Worker	P.O. Box 670666, Chugiak, AK 99567.	(907) 688–6020	(907) 688–6021	*dharris@eklutna.org*
Emmonak Village	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Evansville Village (aka Bettles Field).	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Galena Village (aka Louden Village).	Shay H. McEwen, Acting Tribal Administrator.	P.O. Box 244, Galena, AK 99741.	(907) 656–1711	(907) 656–2491	*shay.mcewen@loudentribe.com*
Gulkana Village Council	Rachel Stratton Morse, ICWA Worker.	P.O. Box 254, Gakona, AK 99586.	(907) 822–5363		*icwa@gulkanacouncil.org*
Healy Lake Village	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Holy Cross Tribe (previously listed as Holy Cross Village).	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Hoonah Indian Association	Akasha Moulton, Human Development Division Director.	P.O. Box 602, Hoonah, AK 99829.	(907) 945–3545	(907) 945–3140	*Akasha.Moulton@hiatribe.org*
Hughes Village	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Huslia Village	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Hydaburg Cooperative Association.	Dorinda Sanderson, Tribal Administrator.	P.O. Box 349, Hydaburg, AK 99922.	(907) 285–3666	(907) 285–3541	*hca_administrator@hcatribe.org*
Igiugig Village	Alicia Tinney, ICWA Worker	P.O. Box 4008, Igiugig, AK 99613.	(907) 533–3211	(907) 533–3217	*alicia.s.zackar@gmail.com*
Inupiat Community of the Arctic Slope.	Marie H. Ahsoak, Social Services Director.	P.O. Box 934, Barrow, AK 99723.	(907) 852–5923	(907) 852–5924	*marie.ahsoak@inupiatgov.com*

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Iqugmiut Traditional Council	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Ivanof Bay Tribe (previously listed as Ivanoff Bay Tribe).	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
Kaguyak Village	Alyssa Brenteson, Tribal Manager.	P.O. Box 5078, Akhiok, AK 99615.	(907) 836–2231		*kaguyak.tribal.council@gmail.com*
Kaktovik Village (aka Barter Island).	Courtney Yemiola, Social Services Director.	Arctic Slope Native Association, P.O. Box 1232, Barrow, AK 99723.	(907) 852–9374	(907) 852–2761	*Courtney.Yemiola2@arcticslope.org*
Kasigluk Traditional Elders Council.	Lena Keene, ICWA Worker	P.O. Box 19, Kasigluk, AK 99609.	(907) 477–6418	(907) 477–6412	*kasigluktribalicwa@gmail.com*
Kenaitze Indian Tribe	Josie Oliva, ICWA Tribal Representative.	P.O. Box 988, Kenai, AK 99611	(907) 335–7611	(907) 202–8359	*JOliva@kenaitze.org*
Ketchikan Indian Community	Douglas J. Gass, Case Management Supervisor.	201 Deermount Street, Ketchikan, AK 99901.	(907) 228–9327	(800) 378–0469	*dgass@kictribe.org*
King Island Native Community	Heather Payenna, CFS Manager.	Kawerak Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443–4261	(907) 443–4601	*hpayenna@kawerak.org*
King Salmon Tribe	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
Klawock Cooperative Association.	Will Kronick, Family Services Administrator.	Central Council of the Tlingit and Haida Indian Tribes, P.O. Box 25500, Juneau, AK 99802.	(907) 463–7168	(907) 885–0032	*wkronick@ccthita-nsn.gov*
Knik Tribe	Geraldine Nicoli-Ayonayon, ICWA Manager.	P.O. Box 871565, Wasilla, AK 99687.	(907) 373–7938	(907) 373–2153	*gnayonayon@kniktribe.org*
Kokhanok Village	Mary Andrew, ICWA Worker	P.O. Box 1007, Kokhanok, AK 99606.	(907) 282–2224	(907) 282–2264	*kokhanokicwa@gmail.com*
Koyukuk Native Village	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Levelock Village	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
Lime Village	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Manley Hot Springs Village	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Manokotak Village	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
McGrath Native Village	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Mentasta Traditional Council	Shyanne McCullough, ICWA Caseworker.	P.O. Box 6019, Mentasta Lake, AK 99780–6019.	(907) 291–2319	(907) 291–2305	*mentasta.icwa@gmail.com*
Metlakatla Indian Community, Annette Island Reserve.	Jacqueline Wilson, Craig White, ICWA Social Worker, Social Services Director.	P.O. Box 8, Metlkatla, AK 99926.	(907) 886–6914	(907) 886–6913	*jwilson@metlakatla.com*
Naknek Native Village	Linda Halverson, Tribal President.	P.O. Box 210, Naknek, AK 99633.	(907) 246–4210	(907) 246–3563	*nnvcpresident@gmail.com*
Native Village of Afognak	Denise Malutin, ICWA Program Manager.	115 Mill Bay Road, Kodiak, AK 99615.	(907) 486–6357	(907) 486–6529	*denise@afognak.org*
Native Village of Akhiok	Julie Kaiser or Amanda Holden, ICWA Case Manager/ICWA Specialist.	Kodiak Area Native Association, 3449 E Rezanof Drive, Kodiak, AK 99615.	(907) 486–1395	(907) 486–1329	*Julie.kaiser@kodiakhealthcare.org*
Native Village of Akutan	Amanda McAdoo, Family Services Coordinator.	Aleutian Pribilof Islands Association Inc., 1131 E International Airport Road, Anchorage, AK 99518.	(907) 276–2700	(907) 222–9735	*amandam@apiai.org*
Native Village of Aleknagik	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
Native Village of Ambler	Jackie Hill, Director	Maniilaq Association Family Services, P.O. Box 256, Kotzebue, AK 99752.	(907) 442–7879	(907) 442–7885	*jackie.hill@maniilaq.org*
Native Village of Atka	Amanda McAdoo, Family Services Coordinator.	Aleutian Pribilof Islands Association Inc., 1131 E International Airport Road, Anchorage, AK 99518.	(907) 276–2700	(907) 222–9735	*amandam@apiai.org*
Native Village of Atqasuk (previously listed as Atqasuk Village (Atkasook).	Courtney Yemiola, Social Services Director.	Arctic Slope Native Association, P.O. Box 1232, Utqiagvik, AK 99723.	(907) 852–9374	(907) 852–2761	*Courtney.Yemiola2@arcticslope.org*
Native Village of Barrow Inupiat Traditional Government.	Shelley Kaleak, Social Services Director.	P.O. Box 1130, Barrow, AK 99723.	(907) 947–5358	(907) 852–8844	*Shelley.kaleak@nvb-nsn.gov*

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Native Village of Belkofski	Amanda McAdoo, Family Services Coordinator.	Aleutian Pribilof Islands Association Inc., 1131 E International Airport Road, Anchorage, AK 99518.	(907) 276–2700	(907) 222–9735	*amandam@apiai.org*
Native Village of Brevig Mission	Heather Payenna, Children & Family Services Manager.	Kawerak Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443–4261	(907) 443–4601	*hpayenna@kawerak.org*
Native Village of Buckland	Rebecca Hadley or Percy Ballot Sr., ICWA Coordinators.	P.O. Box 67, Buckland, AK 99727.	(907) 494–2169	(907) 494–2192	*icwa@nunachiak.org*
Native Village of Cantwell	Arleen Lenard, ICWA Advocate	P.O. Box H, Copper Center, AK 99573.	(907) 822–5241	(888) 959–2389	*alenard@crnative.org*
Native Village of Chenega (aka Chanega).	Buell Russell, General Manager	3000 C Street, Suite 200, Anchorage, AK 99503.	(907) 230–3036	(907) 569–6939	*brussell@chenegaira.com*
Native Village of Chignik Lagoon.	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
Native Village of Chitina	Precious Billum, Tribal Administrator.	P.O. Box 31, Chitina, AK 99566	(907) 823–2215	(907) 823–2285	*chitima_icwa@outlook.com*
Native Village of Chuathbaluk (Russian Mission, Kuskokwim).	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Native Village of Council	Heather Payenna, CFS Manager.	Kawerak Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443–4261	(907) 443–4601	*hpayenna@kawerak.org*
Native Village of Deering	Pearl Moto, ICWA Coordinator	P.O. Box 36089, Deering, AK 99736.	(907) 363–2229	(907) 363–2195	*icwa@ipnatchiaq.org*
Native Village of Diomede (aka Inalik).	Heather Payenna, CFS Manager.	Kawerak Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443–4261	(907) 443–4601	*hpayenna@kawerak.org*
Native Village of Eagle	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Native Village of Eek	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Native Village of Ekuk	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
Native Village of Ekwok	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
Native Village of Elim	Heather Payenna, CFS Manager.	Kawerak Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443–4261	(907) 443–4601	*hpayenna@kawerak.org*
Native Village of Eyak (Cordova).	Linda Powell, ICWA Coordinator.	P.O. Box 1388, Cordova, AK 99574.	(907) 424–2227	(907) 424–7809	*Linda.powell@eyak-nsn.gov*
Native Village of False Pass	Amanda McAdoo, Family Services Coordinator.	Aleutian Pribilof Islands Association Inc., 1131 E International Airport Road, Anchorage, AK 99518.	(907) 276–2700	(907) 222–9735	*amandam@apiai.org*
Native Village of Fort Yukon	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Native Village of Gakona	Lisa Nicolia, ICWA Worker	P.O. Box 102, Gakona, AK 99586.	(907) 822–5777	(907) 822–5997	*gakonaprojects@gmail.com*
Native Village of Gambell	Heather Payenna, CFS Manager.	Kawerak Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443–4261	(907) 443–4601	*hpayenna@kawerak.org*
Native Village of Georgetown	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*SSolesbee@avcp.org*
Native Village of Goodnews Bay	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Native Village of Hamilton	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Native Village of Hooper Bay	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Native Village of Kanatak	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
Native Village of Karluk	Kristeen Reft, ICWA Worker	P.O. Box 22, Karluk, AK 99608	(907) 241–2238		*programassistant@karluktribal.org*
Native Village of Kiana	Jackie Hill	Maniilaq Association Family Services, P.O. Box 256, Kotzebue, AK 99752.	(907) 442–7879	(907) 442–7885	*jackie.hill@maniilaq.org*
Native Village of Kipnuk	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Native Village of Kivalina	Millie Hawley, Tribal Administrator.	P.O. Box 50051, Kivalina, AK 99750.	(907) 645–2153	(907) 645–2193	*tribeadmin@kivaliniq.org*

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Native Village of Kluti Kaah (aka Copper Center).	Willard E. Hand, Tribal Administrator.	P.O. Box 68, Copper Center, AK 99573.	(907) 822–5541	(907) 822–5130	*nvkkgov@klutikaah.com*
Native Village of Kobuk	Jackie Hill, Director	Maniilaq Association Family Services, P.O. Box 256, Kotzebue, AK 99752.	(907) 442–7879	(907) 442–7885	*jackie.hill@maniilaq.org*
Native Village of Kotzebue	Bibianna Scott, Tribal Family Services Director.	P.O. Box 296, Kotzebue, AK 99752.	(907) 442–3467		*bibianna.scott@qira.org*
Native Village of Koyuk	Heather Payenna, CFS Manager.	Kawerak Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443–4261	(907) 443–4601	*hpayenna@kawerak.org*
Native Village of Kwigillingok	Andrew Beaver, ICWA Program Director.	P.O. Box 90, Kwigillingok, AK 99622.	(907) 588–8114	(907) 588–8429	*icwa@kwigtribe.org*
Native Village of Kwinhagak (aka Quinhagak).	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Native Village of Larsen Bay	Julie Kaiser or Amanda Holden, ICWA Case Manager/ICWA Specialist.	Kodiak Area Native Association, 3449 E Rezanof Drive, Kodiak, AK 99615.	(907) 486–1395	(907) 486–1329	*Julie.kaiser@kodiakhealthcare.org*
Native Village of Marshall (aka Fortuna Ledge).	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Native Village of Mary's Igloo	Heather Payenna, CFS Manager.	Kawerak Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443–4261	(907) 443–4601	*hpayenna@kawerak.org*
Native Village of Mekoryuk	Melanie Shavings, ICWA Coordinator.	P.O. Box 66, Mekoryuk, AK 99630.	(907) 827–8827	(907) 827–8133	*melanie.s@mekoryuktc.org*
Native Village of Minto	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251		*miriam.titus@tananachiefs.org*
Native Village of Nanwalek (aka English Bay).	Katrina Berestoff, ICWA Coordinator.	P.O. Box 8028, Nanwalek, AK 99603.	(907) 281–2284		*kberestoff@gmail.com*
Native Village of Napaimute	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Native Village of Napakiak	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Native Village of Napaskiak	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Native Village of Nelson Lagoon	Amanda McAdoo, Family Services Coordinator.	Aleutian Pribilof Islands Association Inc., 1131 E International Airport Road, Anchorage, AK 99518.	(907) 276–2700	(907) 222–9735	*amandam@apiai.org*
Native Village of Nightmute	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Native Village of Nikolski	Amanda McAdoo, Family Services Coordinator.	Aleutian Pribilof Islands Association Inc., 1131 E International Airport Road, Anchorage, AK 99518.	(907) 276–2700	(907) 222–9735	*amandam@apiai.org*
Native Village of Noatak	Benjamin P. Arnold, ICWA Coordinator.	P.O. Box 89, Noatak, AK 99761	(907) 485–2030	(907) 485–2137	*icwa@nautaaq.org*
Native Village of Nuiqsut (aka Nooiksut).	Courtney Yemiola, Social Services Director.	Arctic Slope Native Association, P.O. Box 1232, Utqiagvik, AK 99723.	(907) 852–9374	(907) 852–2761	*Courtney.Yemiola2@arcticslope.org*
Native Village of Nunam Iqua	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Native Village of Nunapitchuk	Aldine Frederick, ICWA Worker	P.O. Box 104, Nunapitchuk, AK 99641.	(907) 527–5731	(907) 527–5740	*nunap.icwa@gmail.com*
Native Village of Ouzinkie	Julie Kaiser or Amanda Holden, ICWA Case Manager/ICWA Specialist.	Kodiak Area Native Association, 3449 E Rezanof Drive, Kodiak, AK 99615.	(907) 486–1395	(907) 486–1329	*Julie.Kaiser@kodiakhealthcare.org*
Native Village of Paimiut	Colleen Timmer, Tribal Administrator.	P.O. Box 240084, Anchorage, AK 99524.	(907) 561–0304	(907) 561–0305	*colleent@nvptc.org*
Native Village of Perryville	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
Native Village of Pilot Point	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
Native Village of Point Hope	Janelle Tingook, Family/ICWA Case Worker.	P.O. Box 109, Point Hope, AK 99766.	(907) 368–3122	(907) 368–2332	*family.caseworker@tikigaq.com*
Native Village of Point Lay	Marie Ahsoak, Social Services Director.	Inupiat Community of the Arctic Slope, P.O. Box 934, Barrow, AK 99723.	(907) 852–5923	(907) 852–5924	*marie.ahsoak@icas-nsn.gov*
Native Village of Port Graham	Patrick Norman, Chief & ICWA Worker.	ICWA Program, P.O. Box 5510, Port Graham, AK 99603.	(907) 284–2227	(907) 284–2222	*pat@portgraham.org*
Native Village of Port Heiden	Amber Christensen-Fox, ICWA Worker.	2200 James Street, Port Heiden, AK 99549.	(907) 837–2296	(907) 837–2297	*amber@portheidenalaska.com*
Native Village of Port Lions	Willie Nelson, Family Services Coordinator.	P.O. Box 69, Port Lions, AK 99550.	(907) 454–2234	(907) 454–2434	*familyservices@portlionstribe.org*

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Native Village of Ruby	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Native Village of Saint Michael	Heather Payenna, CFS Manager.	Kawerak Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443–4261	(907) 443–4601	*hpayenna@kawerak.org*
Native Village of Savoonga	Heather Payenna, CFS Manager.	Kawerak Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443–4261	(907) 443–4601	*hpayenna@kawerak.org*
Native Village of Scammon Bay	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Native Village of Selawik	Jackie Hill, Director	Maniilaq Association Family Services, P.O. Box 256, Kotzebue, AK 99752.	(907) 442–7879	(907) 442–7885	*jackie.hill@maniilaq.org*
Native Village of Shaktoolik	Heather Payenna, CFS Manager.	Kawerak Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443–4261	(907) 443–4601	*hpayenna@kawerak.org*
Native Village of Shishmaref	Heather Payenna, CFS Manager.	Kawerak Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443–4261	(907) 443–4601	*hpayenna@kawerak.org*
Native Village of Shungnak	Jackie Hill, Director	Maniilaq Association Family Services, P.O. Box 256, Kotzebue, AK 99752.	(907) 442–7879	(907) 442–7885	*jackie.hill@maniilaq.org*
Native Village of Stevens	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Native Village of Tanacross	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Native Village of Tanana	Donna May Folger, ICWA Manager.	P.O. Box 130, Tanana, AK 99777.	(907) 336–1025	(907) 366–7246	*Tanana.TFYS@gmail.com*
Native Village of Tatitlek	Gwen Vlasoff, ICWA Worker	P.O. Box 171, Tatitlek, AK 99677.	(907) 325–2311	(907) 325–2289	*gwen.tatitlekira@gmail.com*
Native Village of Tazlina	Donna Renard, ICWA Coordinator.	P.O. Box 466, Glennallen, AK 99588.	(907) 822–4375	(907) 822–5865	*Asst.tazlina@cvinternet.net*
Native Village of Teller	Heather Payenna, CFS Manager.	Kawerak Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443–4261	(907) 443–4601	*hpayenna@kawerak.org*
Native Village of Tetlin	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Native Village of Tuntutuliak	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Native Village of Tununak	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Native Village of Tyonek	Johann Bartels, President	P.O. Box 82009, Tyonek, AK 99682.	(907) 583–2111	(907) 583–2219	*nvtyonekpresident@gmail.com*
Native Village of Unalakleet	Christy Schuneman, ICWA Caseworker.	P.O. Box 357, Unalakleet, AK 99684.	(907) 624–3622	(907) 624–5104	*tfc.unk@unkira.org*
Native Village of Unga	Amanda McAdoo, Family Services Coordinator.	Aleutian Pribilof Islands Association Inc., 1131 E International Airport Road, Anchorage, AK 99518.	(907) 276–2700	(907) 222–9735	*amandam@apiai.org*
Native Village of Wales	Heather Payenna, CFS Manager.	Kawerak Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443–4261	(907) 443–4601	*hpayenna@kawerak.org*
Native Village of White Mountain.	Heather Payenna, CFS Manager.	Kawerak Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443–4261	(907) 443–4601	*hpayenna@kawerak.org*
Nenana Native Association	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
New Koliganek Village Council	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
New Stuyahok Village	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
Newhalen Village	Maxine Wassillie, ICWA Worker	P.O. Box 207, Newhalen, AK 99606.	(907) 571–1410	(907) 571–1537	*maxinewassillie@newhalentribal.com*
Newtok Village	Andrew John, Tribal Administrator.	P.O. Box 5596, Newtok, AK 99559.	(907) 237–2202	(907) 237–2210	*wwt10nnc@gmail.com*
Nikolai Village	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Ninilchik Village	Christina Pinnow, Tribal Services Director.	P.O. Box 39444, Ninilchik, AK 9963.	(907) 567–3313	(907) 567–3354	*cpinnow@ninilchiktribe-nsn.gov*
Nome Eskimo Community	Lola Tobuk, Director of Family Services.	101 W Benson Blvd., Suite 203, Anchorage, AK 99503.	(907) 339–1540	(907) 222–2996	*lola.tobuk@necalaska.org*

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Nondalton Village	Tia Hobson, Social Services/ ICWA Worker.	P.O. Box 49, Nondalton, AK 99640.	(907) 294–2257	(907) 294–2271	*ntcssicwa@gmail.com*
Noorvik Native Community	Jackie Hill, Director	Maniilaq Association Family Services, P.O. Box 256, Kotzebue, AK 99752.	(907) 442–7879	(907) 442–7885	*jackie.hill@maniilaq.org*
Northway Village	Tasha Demit, ICWA Worker	P.O. Box 516, Northway, AK 99764.	(907) 778–2311	(907) 778–2220	*icwa@aptalaska.net*
Nulato Village	Sharon Agnes, Director of Human Services.	P.O. Box 65090, Nulato, AK 99765.	(907) 898–2236	(907) 898–2238	*Sharon.tfys@outlook.com*
Nunakauyarmiut Tribe	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Organized Village of Grayling (aka Holikachuk).	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Organized Village of Kake	Nathalie Austin, Social Services Director.	P.O. Box 316, Kake, AK 99830	(907) 785–6471	(907) 785–4902	*icwa@kake-nsn.gov*
Organized Village of Kasaan	Will Kronick, Family Services Administrator.	Central Council of the Tlingit and Haida Indian Tribes, P.O. Box 25500, Juneau, AK 99802.	(907) 463–7168	(907) 885–0032	*wkronick@ccthita-nsn.gov*
Organized Village of Kwethluk	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*SSolesbee@avcp.org*
Organized Village of Saxman	Will Kronick, Family Services Administrator.	Central Council of the Tlingit and Haida Indian Tribes, P.O. Box 25500, Juneau, AK 99802.	(907) 463–7168	(907) 885–0032	*wkronick@ccthita-nsn.gov*
Orutsararmiut Traditional Native Council.	Deborah Michael, Social Services Director.	P.O. Box 927, Bethel, AK 99559.	(907) 543–2608	(907) 543–2639	*dmichael@nativecouncil.org*
Oscarville Traditional Village	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Pauloff Harbor Village	Amanda McAdoo, Family Services Coordinator.	Aleutian Pribilof Islands Association Inc., 1131 E International Airport Road, Anchorage, AK 99518.	(907) 276–2700	(907) 222–9735	*amandam@apiai.org*
Pedro Bay Village	Verna Kolyaha, Program Services.	P.O. Box 47020, Pedro Bay, AK 99647.	(907) 850–2341	(907) 850–2232	*vjkolyaha@pedrobay.com*
Petersburg Indian Association	Kara Wesebaum, ICWA/Social Services.	P.O. Box 1418, Petersburg, AK 99833.	(907) 772–3636	(907) 772–3686	*icwa@piatribal.org*
Pilot Station Traditional Village	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Pitka's Point Traditional Council	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Platinum Traditional Village	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–7461	(907) 543–7644	*icwa2@avcp.org*
Portage Creek Village (aka Ohgsenakale).	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
Qagan Tayagungin Tribe of Sand Point.	Amanda McAdoo, Family Services Coordinator.	Aleutian Pribilof Islands Association Inc., 1131 E International Airport Road, Anchorage, AK 99518.	(907) 276–2700	(907) 222–9735	*amandam@apiai.org*
Qawalangin Tribe of Unalaska	Amanda McAdoo, Family Services Coordinator.	Aleutian Pribilof Islands Association Inc., 1131 E International Airport Road, Anchorage, AK 99518.	(907) 276–2700	(907) 222–9735	*amandam@apiai.org*
Rampart Village	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Saint George Island	Amanda McAdoo, Family Services Coordinator.	Aleutian Pribilof Islands Association Inc., 1131 E International Airport Road, Anchorage, AK 99518.	(907) 276–2700	(907) 222–9735	*amandam@apiai.org*
Saint Paul Island	Sheridan DesGranges, ICWA Worker.	P.O. Box 86, St. Paul Island, AK 99660.	(907) 257–2639	(907) 931–2648	*icwa@aleut.com*
Salamatof Tribe	Maria Guerra, Family and Social Services Director.	Kenaitze Indian Tribe, P.O. Box 988, Kenai, AK 99611.	(907) 335–7611	(907) 202–8359	*MGuerra@kenaitze.org*
Seldovia Village Tribe	Shannon Custer, Youth & Family Services Director.	P.O. Drawer L, Seldovia, AK 99663.	(907) 234–7898	(907) 234–7865	*scuster@svt.org*
Shageluk Native Village	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Sitka Tribe of Alaska	Melonie Boord, Social Services Director.	456 Katlian Street, Sitka, AK 99835.	(907) 747–7359	(907) 747–4915	*melonie.boord@sitkatribe-nsn.gov*
Skagway Village	Kathryn Klug, ICWA Worker	P.O. Box 1157, Skagway, AK 99840.	(907) 983–4068	(907) 983–3068	*Kathryn@skagwaytraditional.org*

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
South Naknek Village	Lorianne Zimin, ICWA Coordinator.	2521 E Mountain Village Dr., Ste. B PMB 388, Wasilla, AK 99654.	(907) 631–3648	(907) 631–0949	
Stebbins Community Association.	Heather Payenna, CFS Manager.	Kawerak Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443–4261	(907) 443–4601	*hpayenna@kawerak.org*
Sun'aq Tribe of Kodiak	Linda Resoff, Social Services Director.	312 West Marine Way, Kodiak, AK 99615.	(907) 486–0260	(907) 486–0264	*socialservices@sunaq.org*
Takotna Village	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Tangirnaq Native Village	Shelly Peterson, Tribal Administrator.	3449 Rezanof Drive East, Kodiak, AK 99615.	(907) 486–9872	(907) 486–4829	*info@woodyisland.com*
Telida Village	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Traditional Village of Togiak	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
Tuluksak Native Community	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Twin Hills Village	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 842–4139	(907) 842–4106	*BBICWA@bbna.com*
Ugashik Village	Steven Alvarez, Tribal Administrator.	2525 Blueberry Road, Suite 205, Anchorage, AK 99503.	(907) 338–7611	(907) 338–7659	*manager@ugashikvillage.com*
Umkumiut Native Village	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Village of Alakanuk	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Village of Anaktuvuk Pass	Courtney Yemiola, Social Services Director.	Arctic Slope Native Association, P.O. Box 1232, Utqiagvik, AK 99723.	(907) 852–9374	(907) 852–2761	*Courtney.Yemiola2@arcticslope.org*
Village of Aniak	Mary L. Kvamme, ICWA Coordinator.	P.O. Box 232, Aniak, AK 99557	(907) 675–4349	(907) 675–4513	*mkvamme61@gmail.com*
Village of Atmautluak	Pauline Waska, Council President.	P.O. Box 6568, Atmautluak, AK 99559.	(907) 553–5510	(907) 553–5612	*Icwa617@gmail.com*
Village of Bill Moore's Slough	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Village of Chefornak	Edward Kinegak, ICWA Specialist.	P.O. Box 110, Chefornak, AK 99561.	(907) 867–8808	(907) 867–8711	*suckaq@gmail.com*
Village of Clarks Point	Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576.	(907) 542–4139	(907) 842–4106	*BBICWA@bbna.com*
Village of Crooked Creek	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Village of Dot Lake	Tracy Charles-Smith, President	P.O. Box 70494, Fairbanks, AK 99707.	(907) 882–2695		*ridge@gci.net*
Village of Iliamna	Louise Anelon, Administrator/ICWA Worker.	P.O. Box 286, Iliamna, AK 99606.	(907) 571–1246	(907) 571–3539	*louise.anelon@iliamnavc.org*
Village of Kalskag	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Village of Kaltag	Miriam A. Titus, Acting Tribal Social Services Manager.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	*miriam.titus@tananachiefs.org*
Village of Kotlik	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*SSolesbee@avcp.org*
Village of Lower Kalskag	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Village of Ohogamiut	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Village of Red Devil	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 57, Red Devil, AK 99656.	(907) 543–8691	(907) 543–7644	*SSolebee@avcp.org*
Village of Sleetmute	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*
Village of Solomon	Elizabeth Johnson	P.O. Box 2053, Nome, AK 99762.	(907) 443–4985	(907) 443–5189	*tc.sol@kawerak.org*
Village of Stony River	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	*icwa2@avcp.org*

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Village of Venetie	Miriam A. Titus, Acting Tribal Social Services Manager, Artic Village and Village of Venetie.	Tanana Chiefs Conference, 122 First Ave., Ste. 600, Fairbanks, AK 99701.	(907) 452–8251	(907) 459–3984	miriam.titus@tananachiefs.org
	Sierra Fields, Venetie Tribal Court, Village of Venetie.	P.O. Box 81109, Venetie, AK 99781.	(907) 849–8537	(907) 849–8546	Fieldssierra49@gmail.com
Village of Wainwright	Courtney Yemiola, Social Services Director.	Arctic Slope Native Association, P.O. Box 1232, Utqiagvik, AK 99723.	(907) 852–9374	(907) 852–2761	Courtney.Yemiola2@arcticslope.org
Wrangell Cooperative Association.	Will Kronick, Family Services Administrator.	Central Council of the Tlingit and Haida Indian Tribes, P.O. Box 25500, Juneau, AK 99802.	(907) 463–7168	(907) 885–0032	wkronick@ccthita-nsn.gov
Yakutit Tlingit Tribe	Marry Knustsen, ICWA Advocate.	P.O. Box 418, Yakutat, AK 99689.	(907) 784–3268	(907) 784–3595	mknutsen@yttribe.org
Yupiit of Andreafski	Serena Solesbee, ICWA Program Manager.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543–8691	(907) 543–7644	SSolesbee@avcp.org

2. Eastern Region

Eastern Regional Director, 545 Marriot Drive, Ste. 700, Nashville, TN 37214; Telephone Number: (615) 564–6500; Fax Number: (615) 564–6701.

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Catawba Indian Nation	Keri Wallace, ICWA Coordinator	Catawba Indian Nation, 996 Avenue of Nations, Rock Hill, SC 29730.	(803) 992–6293	(803) 325–1242	keri.wallace@catawbaindian.com
Cayuga Nation	Sharon Leroy, Executor	P.O. Box 803, Seneca Falls, NY 13148.	(315) 568–0750	(315) 568–0752	sharon.leroy@nsncayuganation-nsn.gov
Chickahominy Indian Tribe	Martha N. Adkins, ICWA Coordinator.	8200 Lott Cary Road, Providence Forge, VA 23140.	(804) 829–2027		martha.adkins@chickahominytribe.org
Chickahominy Indian Tribe—Eastern Division.	Doris Ann Austin, ICWA Coordinator.	2895 Mt. Pleasant Road, Providence Forge, VA 23140.	(804) 966–7815	(804) 506–3017	doris.austin@cited.org
Chitimacha Tribe of Louisiana	Karen Matthews, Director of Health and Human Services.	P.O. Box 520, Charenton, LA 70523.	(337) 923–7000	(337) 923–2475	karen@chitimacha.gov
Coushatta Tribe of Louisiana	Rayne Langley, ICWA Coordinator.	1984 CC Bel RD, Elton, LA 70532.	(337) 584–1437		rlangley@coushatta.org
Eastern Band of Cherokee Indians.	Jenny Bean, Family Safety Supervisor.	P.O. Box 666, Cherokee, NC 28719.	(828) 359–6149	(828) 359–6149	jennbean@ebci-nsn.gov
Houlton Band of Maliseet Indians	Lori Jewell, ICWA Coordinator	88 Bell Road, Littleton, ME 04730.	(207) 532–3800	(207) 532–7287	ljewell@maliseets.com
Jena Band of Choctaw Indians	Mona Maxwell, Social Services Director.	P.O. Box 14, Jena, LA 71342	(318) 992–0136	(318) 992–4162	mmaxwell@jenachoctaw.org
Mashantucket Pequot Indian Tribe.	Valerie Burgess, Director Child Protective Services.	102 Muhshee Mahchaq, P.O. Box 3313, Mashantucket, CT 06338.	(860) 396–2007	(860) 396–2144	vburgess@mptn-nsn.gov
Mashpee Wampanoag Tribe	Maria Turner, ICWA Director	483 Great Neck Road—South, Mashpee, MA 02649.	(508) 477–0208	(774) 361–6034	maria.turner@mwtribe-nsn.gov
Miccosukee Tribe of Indians	Martha Vega, Director of Social Services.	P.O. Box 440021, Tamiami Station, Miami, FL 33144.	(305) 223–8380	(305) 894–5232	marthav@miccosukeetribe.com
Mi'kmaq Nation	Norma Saulis, ICWA Coordinator.	7 Northern Road, Presque Isle, ME 04769.	(207) 764–1972	(207) 764–7667	nsaulis@micmac-nsn.gov
Mississippi Band of Choctaw Indians.	Jessica Martinez, ICWA Coordinator.	P.O. Box 6258, Choctaw, MS 39350.	(601) 656–4507	(601) 656–1357	icwa@choctaw.org
Mohegan Tribe of Indians of Connecticut.	Connie Hilbert, Executive Director of Health & Human Services.	13 Crow Hill Road, Uncasville, CT 06832.	(860) 862–6147	(860) 862–6884	chilbert@moheganmail.com
Monacan Indian Nation	Matthew & Sally Latimer, ICWA Coordinators.	111 Highview Drive, Madison Heights, VA 24572.	(434) 363–4864		mattjlatimer@aol.com
Nansemond Indian Nation	Chief Keith Anderson	1001 Pembroke Lane, Suffolk, VA 23434.	(757) 619–0670		chief@nansemond.org
Narragansett Indian Tribe	Anemone Mars, ICWA Program Manager.	4375B South County Trail, P.O. Box 268, Charlestown, RI 02813.	(401) 364–9500	(401) 364–1104	Wenonah.harris@gmail.com
Oneida Indian Nation	Kim Jacobs, Nation Clerk	Box 1, Vernon, NY 13476	(315) 829–8337	(315) 366–9231	kjacobs@oneida-nation.org
Onondaga Nation	Onondaga Family Services	104 West Conklin Ave., Nedrow, NY 13120.	(315) 469–9196	(315) 469–3250	ononfs@gmail.com
Pamunkey Indian Tribe	Allyson Gray, ICWA/Enrollment Coordinator.	1054 Pocahontas Trail, King William, VA 23086.	(804) 843–2372	(866) 422–3387	allyson.gray@pamunkey.org
Passamaquoddy Tribe	Tene Downing, Director of Child Welfare, (Indian Township).	P.O. Box 301, Princeton, ME 04668.	(207) 796–6134		tdowning.itcw@gmail.com
	Julie Mitchell, Director, (Pleasant Point).	P.O. Box 343, Perry, ME 04667	(207) 853–5111	(207) 853–9618	shsdirector@wabanaki.com
Penobscot Nation	Michael Augustine, Director of Social Services.	1 Down Street, Indian Island, ME 04468.	(207) 817–7336	(207) 817–3166	Michael.Augustine@penobscotnation.org

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Poarch Band of Creek Indians	Synethia K. Thomas, ICWA Director.	5811 Jack Springs Road, Atmore, AL 36502.	(251) 368–9136		*sthomas@pci-nsn.gov*
Rappahannock Tribe, Inc	G. Anne Richardson, ICWA Coordinator.	5036 Indian Neck Road, Indian Neck, VA 23148.	(804) 769–0260		*info@rappahannocktribe.org*
Saint Regis Mohawk Tribe	Jean Square, ICWA Program Manager.	71 Margaret Terrance Memorial Way, Akwesasne, NY 13655.	(518) 358–2360	(518) 358–9107	*jean.square@smrt-nsn.gov*
Seminole Tribe of Florida	Shamika Beasley, Advocacy Administrator.	111 W Coral Way, Hollywood, FL 33021.	(954) 965–1338	(954) 985–2339	*shamikabeasley@semtribe.com*
Seneca Nation of Indians	Tammie DeYoe, Director of Child & Family Services.	987 RC Hoag Drive, Salamanca, NY 14799.	(716) 532–8223	(716) 945–7881	*tdeyoe@senecahealth.org*
Shinnecock Indian Nation	Paula Collins, ICWA Coordinator.	P.O. Box 1268, South Hampton, NY 11969.	(631) 287–6476		*paulacollins@shinnecock.org*
Tonawanda Band of Seneca	Chief Roger Hill	7027 Meadville Road, Basom, NY 14013.	(716) 542–4244	(716) 542–4008	*tonseneca@aol.com*
Tunica-Biloxi Indian Tribe	Evelyn Cass, Social Service Department.	P.O. Box 493, Marksville, LA 71351.	(318) 240–6444	(318) 500–3011	*ecass@tunica.org*
Tuscarora Nation	Chief Tom Jonathan	5226 Walmore Road, Lewistown, NY 14092.	(716) 264–6007		*tuscnationhouse@gmail.com*
Upper Mattaponi Tribe	Wilma Hicks, Assistant Tribal Administrator.	13476 King William Road, King William, VA 23086.	(804) 535–0557		*assistantadmin@umitribe.org*
Wampanoag Tribe of Gay Head (Aquinnah).	Ambika Datta, ICWA Coordinator.	20 Black Brook Road, Aquinnah, MA 02535.	(508) 645–9265	(508) 645–2755	*chairwoman@wampanoagtribe.net*

3. Eastern Oklahoma Region

Eastern Oklahoma Regional Director, P.O. Box 8002, Muskogee, OK 74402; Telephone Number: (918) 781–4600; Fax Number (918) 781–4604.

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Alabama—Quassarte Tribal Town	Samuel Deere, ICW Director	P.O. Box 187, Wetumka, OK 74883.	(405) 452–3659	(405) 452–3435	*sdeere@alabama-quassarete.org*
Cherokee Nation	Cherokee Nation Indian Child Welfare.	P.O. Box 948, Tahlequah, OK 74465.	(918) 458–6900	(918) 458–6146	*lou-stretch@cherokee.org*
Delaware Tribe of Indians	Aimee Turner, Department of Family and Children Services.	5100 Tuxedo Blvd., Ste. C, Bartlesville, OK 74006.	(918) 337–6510	(918) 337–6518	*aturner@delawaretribe.org*
Eastern Shawnee Tribe of Oklahoma.	Tamara Gibson, Child and Family Services Coordinator.	10100 S Bluejacket Road, Suite 3, Wyandotte, OK 74370.	(918) 666–7710	(888) 971–3908	*tgibson@estoo.net*
Kialegee Tribal Town	Jennie Lillard, ICW Coordinator	P.O. Box 332, Wetumka, OK 74883.	(405) 452–5388	(405) 452–3413	*Jennie.lillard@kialegeetribe.net*
Miami Tribe of Oklahoma	Corinna Campbell-Green, ICW Coordinator.	P.O. Box 1326, Miami, OK 74355.	(918) 541–1381	(918) 542–6448	*Ccampbell-green@miamination.com*
Modoc Nation	Amy Maze-Crowder, Youth Services Coordinator.	625 6th SE, Miami, OK 74354	(918) 325–3643	(918) 542–7878	*amy.maze-crowder@modochealinghouse.com*
Ottawa Tribe of Oklahoma	Jonathan Jacobs, Director of Child Welfare.	P.O. Box 110, Miami, OK 74355	(918) 540–1536	(918) 542–3214	*JDJacobs.OTO@gmail.com*
Peoria Tribe of Indians of Oklahoma.	Tracy Coach, Indian Child Welfare Director.	P.O. Box 1527, Miami, OK 74355.	(918) 540–2535	(918) 540–2538	*tcoach@peoriatribe.com*
Quapaw Nation	Mandy Dement, Family Services	P.O. Box 765, Quapaw, OK 74363.	(918) 238–3152	(918) 674–2581	*mdement@quapawtribe.com*
Seneca-Cayuga Nation	Dana Giles, Family Service Manager.	23701 South 655, Grove, OK 74344.	(918) 786–3508	(918) 787–5521	*dgiles@sctribe.com*
Shawnee Tribe	Sean Graham, ICW Representative.	P.O. Box 189, Miami, OK 74355	(918) 542–7232		*sean@shawnee-tribe.com*
The Chickasaw Nation	Michelle Price, Director	810 Colony Drive, Ada, OK 74820.	(580) 272–5550	(580) 272–5553	*michelle.price@chickasaw.net*
The Choctaw Nation of Oklahoma.	Amanda Robinson, ICW Director.	1802 Chukka Hina Dr., P.O. Box 1210, Durant, OK 74702.	(580) 924–8280	(580) 920–3197	*cfsreferrals@choctawnation.com*
The Muscogee (Creek) Nation	Ann Davis, Director of Child and Family Services.	P.O. Box 580, Okmulgee, OK 74447.	(918) 732–7859	(918) 732–7855	*edavis@muscogeenation.com*
The Osage Nation	Ladonna Shadlow, Social Services Director.	255 Senior Drive, Pawhuska, OK 74056.	(918) 287–5243	(918) 287–5231	*lshadlow@osagenation-nsn.gov*
The Seminole Nation of Oklahoma.	Stephanie Haney Brown, Director.	P.O. Box 1498, Wewoka, OK 74884.	(405) 257–9038	(405) 257–9036	*haneybrown.s@sno-nsn.gov*
Thlopthlocco Tribal Town	Yvonda Fixico, Social Service Director.	P.O. Box 188, Okemah, OK 74859.	(918) 560–6121	(918) 623–3023	*yfixico@tttown.org*
United Keetoowah Band of Cherokee Indians in Oklahoma.	Roxana Wilden, ICW Advocate	P.O. Box 746, Tahlequah, OK 74465.	(918) 871–2839	(918) 431–0152	*rwilden@ukb-nsn.gov*
Wyandotte Nation	Tara Gragg, Social Worker	64700 E Hwy. 60, Wyandotte, OK 74370.	(918) 678–6355	(918) 678–3087	*tgragg@wyandotte-nation.org*

4. Great Plains Region

Great Plains Regional Director, 115 4th Avenue SE, Ste. 400, Aberdeen, SD 57401; Telephone Number: (605) 226–7343; Fax Number: (605) 226–7446.

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota.	Diane Garreau, ICWA Program Director.	100 Main Teton Mall, P.O. Box 590, Eagle Butte, SD 57625.	(605) 964–6460	(605) 964–6463	*Dgarreau61@hotmail.com*
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota.	Wendelin R. Janis, CCST ICWA Director.	147 Red Horse Road, P.O. Box 247, Ft. Thompson, SD 57339.	(605) 245–2581	(605) 245–2401	*wendelinj.cct.icwa@gmail.com*
Flandreau Santee Sioux Tribe of South Dakota.	Jessica Morson, ICWA Administrator.	603 W Broad Ave., P.O. Box 283, Flandreau, SD 57028.	(605) 997–5055	(605) 997–3694	*jessica.morson@fsst.org*
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota.	Jera Brouse-Koster, Designated Tribal Agent-ICWA.	187 Oyate Circle, Lower Brule, SD 57548.	(605) 473–5561	(605) 473–0119	*jerabrouse@lowerbrule.net*
Oglala Sioux Tribe	David Red Cloud, ICWA Specialist.	East Hwy. 18, IHS Compound, P.O. Box 604, Pine Ridge, SD 57770.	(605) 867–5752	(605) 867–5941	*davidrc@oglala.org*
Omaha Tribe of Nebraska	Mary Webster, ICWA Director	P.O. Box 368, Macy, NE 68039	(402) 837–5331	(402) 837–5362	*maryt.webster@theomahatribe.com*
Ponca Tribe of Nebraska	Lynn Schultz, ICWA Specialist	1800 Syracuse Avenue, Norfolk, NE 68701.	(402) 371–8834	(402) 371–7564	*lschultz@poncatribe-ne.org*
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota.	Shirley J. Bad Wound, ICWA Specialist.	East Hwy. 18, P.O. Box 609, Mission, SD 57555.	(605) 856–5270	(605) 856–5268	*rsticwa9@gwtc.net*
Santee Sioux Nation, Nebraska	Renae Wolf, ICWA Specialist	425 Frazier Ave. N, Suite 2, RR 302—P.O. Box 5191, Niobrara, NE 68760.	(402) 857–2342	(402) 857–2361	*renae.wolf@nebraska.gov*
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota.	Evelyn Pilcher, ICWA Director	12554 BIA Route 701, P.O. Box 509, Agency Village, SD 57262.	(605) 698–3992	(605) 698–3999	*evelyn.pilcher@state.sd.us*
Spirit Lake Tribe, North Dakota	Marie Martin, ICWA Coordinator	7184 Highway 57, P.O. Box 356, Fort Totten, ND 58335.	(701) 766–4404	(701) 766–4722	*slticwadir@spiritlakenation.com*
Standing Rock Sioux Tribe of North & South Dakota.	Rebecca Greybull, ICWA Coordinator.	Bldg. 1 Standing Rock Ave., P.O. Box 770, Fort Yates, ND 58538.	(701) 854–3095	(701) 854–5575	*rgreybull@standingrock.org*
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.	Bobbie Johnson, ICWA Specialist.	Three Affiliated Tribes Social Services, 404 Frontage Road, New Town, ND 58763.	(701) 627–8199		*bjohnson@mhanation.com*
Turtle Mountain Band of Chippewa Indians of North Dakota.	Marilyn Poitra, ICWA Coordinator.	4051 Hwy. 281, P.O. Box 900, Belcourt, ND 58316.	(701) 477–5688	(701) 477–5797	*marilynp@tmcwfs.net*
Winnebago Tribe of Nebraska	Elexa Mollet, ICWA Specialist	912 Mission Drive, P.O. Box 723, Winnebago, NE 68071.	(402) 878–2379	(402) 878–2228	*elexa.mollet@winnebagotribe.com*
Yankton Sioux Tribe of South Dakota.	Melissa Sanchez, ICWA Director.	108 East Ave. SE, P.O. Box 1153, Wagner, SD 57380.	(605) 384–5712	(605) 384–5014	*yst_icwa@outlook.com*

5. Midwest Region

Midwest Regional Director, 5600 West American Blvd., Ste. 500, Pointe II Building, Bloomington, MN 55437; Telephone Number: (612) 725–4500; Fax Number: (612) 713–4401.

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin.	Gina Secord, Abinoojiyag Resource Center Program Manager.	P.O. Box 55, Odanah, WI 54861	(715) 682–7127	(715) 682–7887	*ARCMgr@badriver-nsn.gov*
Bay Mills Indian Community, Michigan.	Phyllis Kinney, Tribal Court Administrator.	12449 West Lakeshore Drive, Brimley, MI 49715.	(906) 248–3241	(906) 248–8811	*phyllisk@baymills.org*
Forest County Potawatomi Community, Wisconsin.	Maline Enders, ICWA Supervisor.	5415 Everybody's Road, Crandon, WI 54520.	(715) 478–7471	(715) 478–7442	*Maline.Enders@fcp-nsn.gov*
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan.	Helen Cook, Anishinaabek Family Services Supervisor.	2605 N West Bayshore Drive, Peshawbestown, MI 49682.	(231) 534–7681	(231) 534–7706	*helen.cook@gtbindians.com*
Hannahville Indian Community, Michigan.	Wendy Lanaville, ICWA Worker	N15019 Hannahville B1 Road, Wilson, MI 49896.	(906) 723–2512	(906) 466–7397	*wendy.lanaville@hichealth.org*
Ho-Chunk Nation of Wisconsin	Valerie Blackdeer, CFS Director	808 Red Iron Road, Black River Falls, WI 54615.	(715) 284–7749	(715) 284–0097	*valerie.blackdeer@ho-chunk.com*
Keweenaw Bay Indian Community, Michigan.	Corey Pietila, ICWA Designated Agent.	16429 Bear Town Road, Baraga, MI 49908.	(906) 353–4201	(906) 353–8171	*cpietila@kbic-nsn.gov*
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin.	Tibissum Rice, Indian Child Welfare Director.	13394 W Trepania Road, Hayward, WI 54843.	(715) 558–7457	(715) 634–2981	*Tibissum.Rice@lco-nsn.gov*
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin.	Kristin Allen, ICW Director	P.O. Box 216, Lac du Flambeau, WI 54538.	(715) 588–4275	(715) 588–3855	*ldficw@ldftribe.com*
Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan.	Dee Dee McGeshick, Social Services Director and Marisa Vanzile.	P.O. Box 249, Watersmeet, MI 49969.	(906) 358–4940	(906) 358–9920	*dee.mcgeshick@lvdtribal.com*
Little River Band of Ottawa Indians, Michigan.	Marissa Kist, Paralegal	3031 Domres Road, Manistee, MI 49660.	(231) 398–3384	(231) 398–3387	*marissakist@lrboi-nsn.gov*
Little Traverse Bay Bands of Odawa Indians, Michigan.	Heather Boening, Human Services Director.	7500 Odawa Circle, Attn: DHS, Harbor Springs, MI 49740.	(231) 242–1620	(231) 242–1635	*hboening@ltbbodawa-nsn.gov*

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Lower Sioux Indian Community in the State of Minnesota.	Holly Schmitt, Lower Sioux Family Services Supervisor.	39458 Reservation Highway 1, Morton, MN 56270.	(507) 697–8680	(507) 697–6198	*lsfsintake@lowersioux.com*
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan.	Dominique Ambriz, ICWA Representative.	2880 Mission Dr., Shelbyville, MI 49344.	(269) 397–1760	(269) 397–1761	*Dominique.Ambriz@hhs.glt-nsn.gov*
Menominee Indian Tribe of Wisconsin.	Carol Corn, Director of Social Services.	P.O. Box 520, Keshena, WI 54135.	(715) 799–5161	(715) 799–6061	*MenomineeFamilyServices@mitw.org*
Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band).	Angela Wright, Indian Child Welfare Supervisor or Dr. Evelyn Campbell, Human Services Director Bois Forte Band (Nett Lake).	13071 Nett Lake Road, Suite A, Nett Lake, MN 55771.	(218) 757–3295 (218) 335–8586	(218) 757–3335 (218) 335–8080	*amwright@boisforte-nsn.gov; ecampbell@mnchippewatribe.org*
	Janelle Barney, ICWA Lead, Fond du Lac Band.	927 Trettel lane, ATTN: Social Services, Cloquet, MN 55720.	(218) 878–2142 (218) 335–8586	(218) 878–2198 (218) 335–8080	*icwanotices@fdlrez.com; ecampbell@mnchippewatribe.org*
	Jacki Kozlowski, Human Service Director or Dr. Evelyn Campbell, Human Services Director, Grand Portage Band.	P.O. Box 428, Grand Portage, MN 55605.	(218) 475–2453 (218) 335–8586	(218) 475–2455 (218) 335–8080	*jkozlowski@grandportage.com; ecampbell@mnchippewatribe.org*
	Justina Farris, Intake Coordinator or Dr. Evelyn Campbell, Human Services Director, Leech Lake Band.	190 Sailstar Dr. NE, P.O. Box 967, Cass Lake, MN 56633.	(218) 335–8328 (218) 335–8586	(218) 335–7234 (218) 335–8080	*justina.farris@llojibwe.net; ecampbell@mnchippewatribe.org*
	Mishelle Ballinger, Health and Human Services-Family Services Intake and Referral Specialist or Dr. Evelyn Campbell, Human Services Director, Mille Lacs Band.	18562 Minobimaadizi Loop, Onamia, MN 56359.	(320) 532–1725 (218) 335–8586	(320) 532–4569 (218)335–8080	*Mlbo.fsintake@hhs.millelacsband-nsn.gov; ecampbell@mnchippewatribe.org*
	Roberta Roy, Program Director or Dr. Evelyn Campbell, Human Services Director White Earth Band.	White Earth Indian Child Welfare, P.O. Box 358, White Earth, MN 56591.	(218) 983–4647 (218) 335–8586	(218) 983–3712 (218) 335–8080	*Roberta.Roy@whiteearth-nsn.gov; ecampbell@mnchippewatribe.org*
Nottawaseppi Huron Band of the Potawatomi, Michigan.	Meg Fairchild, Social Services Director.	1485 Mno Bmadzewen Way, Fulton, MI 49052.	(269) 704–8341	(269) 729–5920	*meg.fairchild@nhbp-nsn.gov*
Oneida Nation	Jennifer Berg-Hargrove, Family Services Director.	Attn: Oneida Family Services, ICW Department, P.O. Box 365, Oneida, WI 54155.	(920) 490–3700	(920) 490–3820	*icw@oneidanation.org*
Pokagon Band of Potawatomi Indians, Michigan & Indiana.	Mark Pompey, Social Services Director.	58620 Sink Road, Dowagiac, MI 49047.	(269) 462–4277	(269) 782–4295	*mark.pompey@pokagonband-nsn.gov*
Prairie Island Indian Community in the State of Minnesota.	Randi Jo Taylor, Enrollment Office.	5636 Sturgeon Lake Road, Welch, MN 55089.	(651) 385–4126	(651) 385–4180	*randijo.taylor@piic.org*
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin.	Rebecca Benton, Family & Human Services Division Administrator.	88455 Pike Rd., Bayfield, WI 54814.	(715) 779–3706	(715) 779–3783	*rbenton@redcliff-nsn.gov*
Red Lake Band of Chippewa Indians, Minnesota.	Red Lake Nation ICWA, Team Lead/Social Worker ICWA Unit.	200 Aldrich Ave. S, Minneapolis, MN 55405.	(218) 407–5844	.....	*ICWA@redlakenation.org*
Sac and Fox Tribe of the Mississippi in Iowa.	Mylene Wanatee, Director of Family Services.	P.O. Box 245, Tama, IA 52339	(641) 484–4444	(641) 484–2103	*mylene.wanatee@meskwaki-nsn.gov*
Saginaw Chippewa Indian Tribe of Michigan.	Patrick Nahgahgwon, ICWA Contact.	7500 E Soaring Eagle Blvd., Mt. Pleasant, MI 48858.	(989) 775–4921	(989) 775–4912	*icwa@sagchip.org*
Sault Ste. Marie Tribe of Chippewa Indians, Michigan.	Melissa VanLuven, ICWA Program Director.	2218 Shunk Rd., Sault Ste. Marie, MI 49783.	(906) 632–5250	(906) 632–5266	*ICWA-MIFPA-Contacts@saulttribe.net*
Shakopee Mdewakanton Sioux Community of Minnesota.	Christine Wilken, ICWA Contact	2330 Sioux Trail NW, Prior Lake, MN 55372.	(952) 496–6188	.....	*ICWA@shakopeedakota.org*
Sokaogon Chippewa Community, Wisconsin.	Nick Vanzile, Director Indian Child Welfare.	10808 Sokaogon Drive, Crandon, WI 54520.	(715) 478–6437	(715) 478–0692	*nick.vanzile@scc-nsn.gov*
St. Croix Chippewa Indians of Wisconsin.	Elizabeth Lowe, Indian Child Welfare Director.	4404 State Road 70, Webster, WI 54893.	(715) 214–2940	(715) 349–8665	*elizabethl@stcroixojibwe-nsn.gov*
Stockbridge Munsee Community, Wisconsin.	Teresa Juga, ICWA Manager	Stockbridge Munsee Health and Wellness Center, W12802 County A, Bowler, WI 54416.	(715) 793–4580	(715) 793–1312	*teresa.juga@mohican.com*
Upper Sioux Community, Minnesota.	Jamie Preuss, ICWA Representative.	P.O. Box 147, 5744 Hwy. 67, Granite Falls, MN 56241.	(320) 564–6319	(320) 564–2550	*jamiep@uppersiouxcommunity-nsn.gov*

6. Navajo Region

Navajo Regional Director, Navajo Regional Office, P.O. Box 1060, Gallup, NM 87305; Telephone Number: (505) 863–8314, Fax Number: (505) 863–8324.

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Navajo Nation, Arizona, New Mexico & Utah.	Mary Deschenny-Reyna, ICWA Program Manager.	Navajo Indian Child Welfare Act Program, P.O. Box 769, Saint Michaels, AZ 86511.	(928) 871–7006	(928) 871–7604	*mdreyna@navajo-nsn.gov*

7. Northwest Region Northwest Regional Director, 911 NE 11th Ave., Portland, OR 97232; Telephone Number: (503) 231–6702; Fax Number (503) 231–2201.

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Burns Paiute Tribe	Karen Hunsucker, ICWA Specialist.	100 Pasigo Street, Burns, OR 97720.	(541) 573–8004	(541) 573–4217	*Karen.Hunsucker@burnspaiute-nsn.gov*
Coeur D'Alene Tribe	Marlene Sproul, ICW Program Manager.	P.O. Box 408, 1120 B St., Plummer, ID 83851.	(208) 686–0675	(208) 686–2059	*msproul@cdatribe-nsn.gov*
Confederated Salish and Kootenai Tribes of the Flathead Reservation.	Elizabeth Talbert, ICWA Caseworker.	P.O. Box 278, 42487 Complex Blvd., Pablo, MT 59821.	(406) 675–2700		*elizabeth.talbert@cskt.org*
Confederated Tribes and Bands of the Yakama Nation.	Jessica Rammelsberg, Assistant Prosecutor.	P.O. Box 151, 401 Fort Rd., Toppenish, WA 98948.	(509) 865–5121		*Jessica_Rammelsberg@yakama.com*
Confederated Tribes of Siletz Indians of Oregon.	Anita Bailor, Programs Manager 1.	P.O. Box 549, Siletz, OR 97380	(541) 444–8220	(541) 444–2307	*anitab@ctsi.nsn.us*
Confederated Tribes of the Chehalis Reservation.	Frances Pickernell, Director of Social Services.	P.O. Box 536, 420 Howanut Rd., Oakville, WA 98568.	(360) 709–1754	(360) 273–5207	*fpickernell@chehalistribe.org*
Confederated Tribes of the Colville Reservation.	Buffy Nicholson, Children and Family Services Director.	P.O. Box 150, 21 Colville St., Nespelem, WA 99155.	(509) 634–2764	(509) 634–2633	*buffy.nicholson@colvilletribes.com*
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians.	Shayne Platz and Iliana Montiel, Lead ICWA Case Mgr and Interim Director of Health and Human Services.	1245 Fulton Ave., Coos Bay, OR 97420.	(541) 297–3450	(541) 304–2180	*splatz@ctclusi.org*
Confederated Tribes of the Grand Ronde Community of Oregon.	Donna Johnson, ICWA Intake	9615 Grand Ronde Road, Grand Ronde, OR 97347.	(503) 879–4529	(503) 879–2142	*donna.johnson@grandronde.org*
Confederated Tribes of the Umatilla Indian Reservation.	M. Brent Leonhard, Attorney	46411 Timine Way, Pendleton, OR 97801.	(541) 429–7406		*brentleonhard@ctuir.org*
Confederated Tribes of the Warm Springs Reservation of Oregon.	Lisa Lomas and Cecelia Collins, Chief Judge and CPS Director.	P.O. Box 850, Warm Springs, OR 97761.	(541) 553–3278	(541) 553–3281	*lisa.lomas@wstribes.org*
Coquille Indian Tribe	Roni Jackson, ICWA Caseworker.	600 Miluk Drive, P.O. Box 3190, Coos Bay, OR 97420.	(541) 888–9494	(541) 888–0673	*ronijackson@coquilletribe.org*
Cow Creek Band of Umpqua Tribe of Indians.	Michele Moore, Human Services Director.	2371 NE Stephens Street, Suite 100, Roseburg, OR 97470.	(541) 643–8241	(541) 677–5565	*mmoore@cowcreek-nsn.gov*
Cowlitz Indian Tribe	Cowlitz Indian Tribe Attn: Tribal Attorney.	P.O. Box 996, Ridgefield, WA 98642.	(360) 957–8876		*sbagheri@cowlitz.org*
Hoh Indian Tribe	Kristina Currie	P.O. Box 2196, Forks, WA 98331.	(360) 374–6502	(360) 374–5426	*kristina.currie@hohtribe-nsn.org*
Jamestown S'Klallam Tribe	Tanya Pankowski, ICW Case Manager.	Social and Community Services, 1033 Old Blyn Hwy., Sequim, WA 98382.	(360) 681–4639	(360) 681–3402	*tpankowski@jamestowntribe.org*
Kalispel Indian Community of the Kalispel Reservation.	Shawna Brady, MSW	934 S Garfield Road, Airway Heights, WA 99001.	(509) 789–7630	(509) 789–7675	*sbrady@camashealth.com*
Klamath Tribes	Lisa Ruiz, Children & Family Service Program Manager.	P.O. Box 436, Chiloquin, OR 97624.	(541) 783–2219	(541) 783–7783	*Lisa.ruiz@klamathtribes.com*
Kootenai Tribe of Idaho	Desire Aitken, Treasurer	P.O. Box 1269, Bonners Ferry, ID 83805.	(208) 267–3519	(208) 267–2960	*desire@kootenai.org*
Lower Elwha Tribal Community	Vashti White, ICW Program Manager.	3080 Lower Elwha Road, Port Angeles, WA 98363.	(360) 912–4210	(866) 277–3141	*elwhaicw@elwha.org*
Lummi Tribe of the Lummi Reservation.	Denise Jefferson, ICWA Manager.	P.O. Box 1024, Ferndale, WA 98248.	(360) 384–2324	(360) 384–2341	*denisej@lummi-nsn.gov*
Makah Indian Tribe of the Makah Indian Reservation.	Crysandra Sones, Lead Caseworker.	P.O. Box 115, Neah Bay, WA 98357.	(360) 645–3270	(360) 645–2806	*crysandra.sones@makah.com*
Muckleshoot Indian Tribe	Alexandria Cruz-James, Director of Human Services.	39015 172nd Avenue SE, Auburn, WA 98092.	(253) 876–3261	(253) 876–3061	*alex.cruz@muckleshoot.nsn.us*
Nez Perce Tribe	Rebecca Lehman/Jackie McArthur, Director of Indian Child Welfare/Social Services Manager.	326 Agency Rd., P.O. Box 365, Lapwai, ID 83540.	(208) 621–4666	(208) 843–9401	*rebeccal@nezperce.org*
Nisqually Indian Tribe	Norine Wells, Social Services Director.	4820 She- Nah-Num Drive SE, Olympia, WA 98513.	(360) 456–5221	(360) 486–9555	*wells.norine@nisqually-nsn.gov*
Nooksack Indian Tribe	Katrice Rodriguez, Youth & Family Services Director.	P.O. Box 157, Deming, WA 98244.	(360) 306–5090	(360) 592–0167	*krodriguez@nooksack-nsn.gov*
Northwestern Band of the Shoshone Nation.	Patty Timbimboo-Madsen, ICWA Manager.	Enrollment Department, 2575 Commerce Way, Odgen, UT 84401.	(435) 734–2286		*ptimbimboo@nwbshoshone.com*
Port Gamble S'Klallam Tribe	Cheryl Miller, Children and Family Services Director.	31912 Little Boston Road NE, Kingston, WA 98346.	(360) 297–9665	(360) 297–9666	*cmiller@pgst.nsn.us*
Puyallup Tribe of the Puyallup Reservation.	Sandra Cooper and Marriah Betschart, ICW Tribal/State Liaison/ICWA Liaison.	3009 E Portland Avenue, Tacoma, WA 98404.	(253) 405–7544	(253) 680–5998	
Quileute Tribe of the Quileute Reservation.	Charlene Meneely, ICW Program Manager.	P.O. Box 279, LaPush, WA 98350.	(360) 640–2428		*charlene.meneely@quileutetribe.com*
Quinault Indian Nation	Amelia DeLaCruz, Social Services Manager.	P.O. Box 189, Taholah, WA 98587.	(360) 276–8215	(360) 276–4152	*icw@quinault.org*

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Samish Indian Nation	Caritina Gonzalez, Social Services Director.	Samish Nation Social Services, 715 Seafarer's Way, Suite 103, Anacortes, WA 98221.	(360) 298–6431	(360) 299–4357	*cgonzalez@samishtribe.nsn.us*
Sauk-Suiattle Indian Tribe	April McConnaughy, ICW Family Services Specialist.	5318 Chief Brown Lane, Darrington, WA 98241.	(360) 436–2204		*icw@sauk-suiattle.com*
Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation.	Kathirine Horne, Director	P.O. Box 130, Tokeland, WA 98590.	(360) 267–8134	(360) 267–0247	*khorne@shoalwaterbay-nsn.gov*
Shoshone-Bannock Tribes of the Fort Hall Reservation.	Malissa Poog/Cheri Outcelt, Shoshone-Bannock Tribal Social Services Child Welfare Program.	P.O. Box 306, Fort Hall, ID 83203.	(208) 478–3731	(208) 237–9736	*Malissa.poog@sb-thhs.com*
Skokomish Indian Tribe	Shawna Hill, ICW Supervisor	100 N Tribal Center Road, Skokomish, WA 98584.	(360) 426–5755	(360) 877–2399	*shawna@skokomish.org*
Snoqualmie Indian Tribe	Carlee Gorman, Snoqualmie Indian Child Welfare Program Manager.	P.O. Box 969, Snoqualmie, WA 98065.	(425) 368–9571	(425) 689–1272	*carlee@snoqualmietribe.us*
Spokane Tribe of the Spokane Reservation.	Ricki Peone & Tawhnee Colvin, Health & Human Services Director, Health & Human Services Assistant Director.	P.O. Box 540, 6228 E Old School Road, Wellpinit, WA 99040.	(509) 258–7502	(509) 258–4480	*ricki.peone@spokanetribe.com*
Squaxin Island Tribe of the Squaxin Island Reservation.	Charlene Abrahamson and Lyssa Wier, Family Services Director and ICW Manager.	10 SE Squaxin Lane, Shelton, WA 98584.	(360) 432–3914	(360) 427–2652	*cabrahamson@squaxin.us*
Stillaguamish Tribe of Indians of Washington.	Virginia Smith, Enrollment Clerk	P.O. Box 277, 17014 59th Ave. NE, Arlington, WA 98223.	(360) 652–7362	(877) 493–3074	*icw@stillaguamish.com*
Suquamish Indian Tribe of the Port Madison Reservation.	Nehreen Ayub, Interim Tribal Child Welfare Director.	P.O. Box 498, Suquamish, WA 98392.	(360) 394–8479	(360) 697–6774	*nayub@suquamish.nsn.us*
Swinomish Indian Tribal Community.	Tracy Parker, Swinomish Family Services Coordinator.	17337 Reservation Rd., LaConner, WA 98257.	(360) 466–7222	(360) 466–1632	*tparker@swinomish.nsn.us*
Tulalip Tribes of Washington	Natasha Fryberg & Sara Fitzpatrick, Manager and Lead ICW Worker.	2828 Mission Hill Road, Tulalip, WA 98271.	(360) 716–4059	(360) 716–0750	*nfryberg@tulaliptribes-nsn.gov*
Upper Skagit Indian Tribe	Felice Keegahn, Indian Child Welfare Coordinator.	25944 Community Plaza Way, Sedro Woolley, WA 98284.	(360) 854–7077	(360) 854–7125	*felicek@upperskagit.com*

8. Pacific Region

Pacific Regional Director, BIA, Federal Building, 2800 Cottage Way, Room W–2820, Sacramento, CA 95825; Telephone Number: (916) 978–6000; Fax Number: (916) 978–6055.

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California.	Jeff Grubbe, Chairman	5401 Dinah Shore Drive, Palm Springs, CA 92264.	(760) 699–6919	(760) 699–6863	*jplata@aguacaliente.net*
Alturas Indian Rancheria, California.	Phillip Del Rosa	P.O. Box 340, Alturas, CA 96101.	(541) 941–2324	(530) 223–4165	*air530@yahoo.com*
Augustine Band of Cahuilla Indians, California.	Heather Haines, Tribal Operations Manager.	P.O. Box 846, Coachella, CA 92236.	(760) 398–4722	(760) 368–4252	*hhaines@augustinetribe.com*
Bear River Band of the Rohnerville Rancheria, California.	Josefina Cortez, Chairwoman	266 Keisner Rd., Loleta, CA 95551.	(707) 502–8731	(707) 875–7229	*josefinacortez@brb-nsn.gov*
Berry Creek Rancheria of Maidu Indians of California.	Maria Ramirez, ICWA Director & Tribal Representative.	5 Tyme Way, Oroville, CA 95966.	(530) 534–3859	(530) 534–0343	*mramirez@berrycreekrancheria.com*
Big Lagoon Rancheria, California	Virgil Moorehead, Chairperson	P.O. Box 3060, Trinidad, CA 95570.	(707) 826–2079	(707) 826–0495	*vmoorehead@earthlink.net*
Big Pine Paiute Tribe of the Owens Valley.	Cheryl Levine, Tribal Administrator.	P.O. Box 700, 825 S Main St., Big Pine, CA 93513.	(760) 938–2003	(760) 938–2942	*c.levine@bigpinepaiute.org*
Big Sandy Rancheria of Western Mono Indians of California.	Tamara Hiebert, ICWA Representative.	P.O. Box 337, Auberry, CA 93602.	(559) 374–0066		*bsricwa@bsrnation.com*
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California.	ICWA Representative	ICWA, 2726 Mission Rancheria Road, Lakeport, CA 95453.	(707) 263–3924	(707) 533–2941	*resparza@big-valley.net*
Bishop Paiute Tribe	Tammy Andrade, ICWA Specialist.	50 TuSu Lane, Bishop, CA 93514.	(760) 873–7799	(760) 873–3529	*tammy.andrade@bishoppaiute.org*
Blue Lake Rancheria, California	Claudia Brundin, Chairperson	P.O. Box 428, Blue Lake, CA 95525.	(707) 668–5101	(707) 668–4272	*lalbright@bluelakerancheria-nsn.gov*
Bridgeport Indian Colony	John Glazier, Tribal Chair	355 Sage Brush Drive, Bridgeport, CA 93517.	(760) 932–7083	(760) 932–7846	*chair@bridgeportindiancolony.com*
Buena Vista Rancheria of Me-Wuk Indians of California.	Christina Pimental, Receptionist	1418 20th Street, Suite 200, Sacramento, CA 95811.	(916) 491–0011	(916) 491–0012	*christina@BuenaVistaTribe.com*
Cabazon Band of Mission Indians, California.	Doug Welmas, Chairman	84–245 Indio Springs Parkway, Indio, CA 92203.	(760) 342–2593	(760) 347–7880	*nmarkwardt@cabazonindians-nsn.gov*

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California.	Yvonne Page, Counselor	3730 Highway 45, Colusa, CA 95932.	(530) 458–6571	(530) 458–8061	*ypage@colusa-nsn.gov*
Cahto Tribe of the Laytonville Rancheria.	Mary J. Norris, Chairperson	P.O. Box 1239, Laytonville, CA 95454.	(707) 984–6197	(707) 984–6201	*chairman@cahto.org*
Cahuilla Band of Indians	Lisa Mariano, Social Worker	52701 Hwy. 371, Anza, CA 92539.	(951) 795–8672	(951) 763–2808	*Socialworker@cahuilla.net*
California Valley Miwok Tribe, California.	DOI/Bureau of Indian Affairs	Pacific Regional Office, 2800 Cottage Way, Rm. W–2820, Sacramento, CA 95825.	(916) 978–6000	(916) 978–6099	
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California.	Indian Child Social Services Director, Indian Child Social Services Director.	4058 Willow Road, Alpine, CA 91901.	(619) 445–1188	(619) 659–3144	
Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Barona Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California).	Southern Indian Health Council	4058 Willow Road, Alpine, CA 91901.	(619) 445–1188	(619) 659–9782	*gsutton@sihc.org*
Cedarville Rancheria, California	Richard Lash, Chairperson	300 West 1st Street, Alturas, CA 96101.	(530) 233–3969	(530) 233–4776	*cr.munholand@gmail.com*
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California.	Angela Sundberg, Social Services Director.	P.O. Box 630, Trinidad, CA 95570.	(707) 677–0211	(707) 677–3921	*asundberg@trinidadrancheria.com*
Chicken Ranch Rancheria of Me-Wuk Indians of California.	Lloyd Mathiesen, Chairman	P.O. Box 1159, Jamestown, CA 95327.	(209) 984–9066	(209) 984–5606	*chixrnch@mlode.com*
Cloverdale Rancheria of Pomo Indians of California.	Patricia Mermosillo, Chairperson	555 S Cloverdale Blvd., Cloverdale, CA 95425.	(707) 894–5775	(707) 894–5727	
Cold Springs Rancheria of Mono Indians of California.	Helena Alarcon, Chairperson	P.O. Box 209, Tollhouse, CA 93667.	(559) 855–5043	(559) 855–4445	
Coyote Valley Band of Pomo Indians of California.	Liz Elgin DeRouen, Executive Director.	2525 Cleveland Ave., Suite H, Santa Rosa, CA 95403.	(707) 463–2644	(707) 463–8956	*liz@icfpp.net*
Dry Creek Rancheria Band of Pomo Indians, California.	Liz Elgin DeRouen, Executive Director.	2525 Cleveland Avenue, Suite H, Santa Rosa, CA 95403.	(707) 463–2644	(707) 463–8956	*liz@icfppp.net*
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California.	Augustin Garcia, Chairperson	P.O. Box 757, Lower Lake, CA 95457.	(707) 994–3400	(707) 994–3408	*a.garcia@elemindiancolony.org*
Elk Valley Rancheria, California	Dale Miller, Chairman	2332 Howland Hill Rd., Crescent City, CA 95531.	(707) 464–4680	(707) 464–4519	*swoods@elk-valley.com*
Enterprise Rancheria of Maidu Indians of California.	Shari Ghalayini, ICWA Representative.	2133 Montevista Ave, Oroville, CA 95966.	(530) 532–9214	(530) 532–1768	*sharig@enterpriserancheria.org*
Ewiiaapaayp Band of Kumeyaay Indians, California.	Indian Child Social Services Director.	Southern Indian Health Council, Inc., 4058 Willows Road, Alpine, CA 91901.	(619) 445–1188	(619) 659–3144	
Federated Indians of Graton Rancheria, California.	Greg Sarris, Chairman	6400 Redwood Drive—Suite 300, Rohnert Park, CA 94928.	(707) 566–2288	(707) 566–2291	
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California.	Kevin Dean Townsend, Chairman.	P.O. Box 129, Fort Bidwell, CA 96112.	(530) 279–6310	(530) 279–2233	*liz.zendejas@fbicc.com*
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California.	Norman Wilder, Chairperson	P.O. Box 67 or 131 North Hwy. 395, Independence, CA 93526.	(760) 878–5160	(760) 878–2311	*receptionist@fortindependence.com*
Greenville Rancheria	Patty Allen, ICWA Coordinator	P.O. Box 279, Greenville, CA 95947.	(530) 284–7990	(530) 284–7299	*pallen@greenvillerancheria.com*
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California.	Ronald Kirk, Chairman	ICWA, P.O. Box 63, Elk Creek, CA 95939.	(530) 968–5365	(530) 968–5366	*girrancheria@yahoo.com*
Guidiville Rancheria of California	Merlene Sanchez, Tribal Chairperson.	P.O. Box 339, Talmage, CA 95481.	(707) 462–3682	(707) 462–9183	*admin@guidiville.net*
Habematolel Pomo of Upper Lake, California.	Sherry Treppa, Chairperson	375 E Hwy. 20—Suite I, P.O. Box 516, Upper Lake, CA 95485.	(707) 275–0737	(707) 275–0757	*aarroyosr@hpultribe-nsn.gov*
Hoopa Valley Tribe, California	Joe Davis, Chairperson	P.O. Box 1348, Hoopa, CA 95546.	(530) 625–4211	(530) 625–4594	*hoopa.receptionist@gmail.com*
Hopland Band of Pomo Indians, California.	Josephine Loomis, ICWA Social Case Manager.	3000 Shanel Rd., Hopland, CA 95449.	(707) 472–2100	(707) 744–8643	*jloomis@hoplandtribe.com*
Iipay Nation of Santa Ysabel, California.	Social Services Director	Santa Ysabel Social Services Dept., P.O. Box 701, Santa Ysabel, CA 92070.	(760) 765–1106	(760) 765–0312	*lipayinfo@yahoo.com*
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California.	Social Services Manager	Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061.	(760) 749–1410	(760) 749–5518	*kkolb@indianhealth.com*
Ione Band of Miwok Indians of California.	Sara A. Dutschke, Chairperson	P.O. Box 699, Plymouth, CA 95669.	(209) 245–5800	(209) 245–6377	

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Jackson Band of Miwuk Indians	Adam Dalton, Chairperson	P.O. Box 1090, Jackson, CA 95642.	(209) 223–1935	(209) 223–5366	*mmorla@jacksoncasino.com*
Jamul Indian Village of California	Indian Child Social Services Director.	Southern Indian Health Council, Inc., 4058 Willow Rd., Alpine, CA 91901.	(619) 445–1188	(619) 659–3144	
Karuk Tribe	Joseph E. Snapp, MSW, LCSW, Karuk Child Welfare Administrator.	P.O. Box 1207, 1519 S Oregon Street, Yreka, CA 96097.	(530) 841–3141	(503) 841–7107	*joesnapp@karuk.us*
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California.	Liz Elgin DeRouen, Executive Director.	2525 Cleveland Avenue, Suite H, Santa Rosa, CA 95403.	(707) 463–2644	(707) 463–8956	*liz@icfpp.net*
Kletsel Dehe Band of Wintun Indians.	Charlie Wright, Chairperson	P.O. Box 1630, Williams, CA 95987.	(530) 473–3274	(530) 473–3301	*cww281@gmail.com*
Koi Nation of Northern California	Darin Beltran, Chairperson	P.O. Box 3162, Santa Rosa, CA 95402.	(707) 575–5586	(707) 575–5506	
La Jolla Band of Luiseno Indians, California.	Social Services Manager	Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061.	(760) 749–5518	(707) 749–5518	*kkolb@indianhealth.com*
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California.	Indian Child Social Services Director.	Southern Indian Health Council Inc., 4058 Willow Rd., Alpine, CA 91901.	(619) 445–1188	(619) 659–3144	
Lone Pine Paiute-Shoshone Tribe	Richard Button & Kathy Brancroft, Chairperson & Enrollment Committee Chairperson.	P.O. Box 747, Lone Pine, CA 93545.	(760) 876–1034	(760) 876–4500	*chair@lppsr.org*
Los Coyotes Band of Cahuilla and Cupeno Indians, California.	Social Services Manager	Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061.	(760) 749–1410	(760) 749–5518	*kkolb@indianhealth.com*
Lytton Rancheria of California	Liz Elgin DeRouen, Executive Director.	2525 Cleveland Avenue, Suite H, Santa Rosa, CA 95403.	(707) 463–2644	(707) 463–8956	*liz@icfpp.net*
Manchester Band of Pomo Indians of the Manchester Rancheria, California.	Liz Elgin DeRouen, Executive Director.	2525 Cleveland Avenue, Suite H, Santa Rosa, CA 95403.	(707) 463–2644	(707) 463–8956	*liz@icfpp.net*
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California.	Angela Elliott-Santos, Chairperson.	P.O. Box 1302, Boulevard, CA 91905.	(619) 766–4930	(619) 766–4957	*ljbirdsinger@aol.com*
Mechoopda Indian Tribe of Chico Rancheria, California.	Dennis Ramirez, Chairman	125 Mission Ranch Boulevard, Chico, CA 95926.	(530) 899–8922	(530) 899–8517	*mit@mechoopda-nsn.gov*
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California.	Social Services Manager	Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061.	(760) 749–1410	(760) 749–5518	*kkolb@indianhealth.com*
Middletown Rancheria of Pomo Indians of California.	Marty Comito, ICWA Director	P.O. Box 1035, Middletown, CA 95461.	(707) 987–8288	(707) 987–9091	*mcomito@middletownrancheria.com*
Mooretown Rancheria of Maidu Indians of California.	Benjamin Clark, Chairman	1 Alverda Drive, Oroville, CA 95966.	(530) 533–3625	(530) 533–3680	*lwinner@mooretown.org*
Morongo Band of Mission Indians, California.	Legal Department	12700 Pumarra Road, Banning, CA 92220.	(951) 572–6016	(951) 572–6108	*legal@morongo-nsn.gov*
Northfork Rancheria of Mono Indians of California.	Elaine Bethel Fink & Tawanish Lavell, Chairperson & ICWA Representative.	P.O. Box 929, North Fork, CA 93643.	(559) 877–2461	(559) 877–2467	*nfrancheria@northforkrancheria-nsn.gov*
Pala Band of Mission Indians	Robert Smith, Chairman	35008 Pala-Temecula Road—PMB–50, Pala, CA 92059.	(760) 891–3500	(760) 891–3587	*morozco@palatribe.com*
Paskenta Band of Nomlaki Indians of California.	Natasha Magana, Tribal Member at Large.	P.O. Box 709, Corning, CA 96021.	(530) 528–3538	(530) 528–3553	*office@paskenta.org*
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California.	Social Services Manager	Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061.	(760) 749–1410	(760) 749–5518	*kkolb@indianhealth.com*
Pechanga Band of Indians	Mark Macarro, Chairman	P.O. Box 1477, Temecula, CA 92593.	(951) 770–6105	(951) 695–1778	*cfs@pechanga-nsn.gov*
Picayune Rancheria of Chukchansi Indians of California.	Orianna C. Walker, ICWA Coordinator.	P.O. Box 2146, Oakhurst, CA 93644.	(559) 412–5590	(559) 440–6494	*orianna.walker@chukchansi.net*
Pinoleville Pomo Nation, California.	Clayton Freeman, ICWA Coordinator.	500 B Pinoleville Drive, Ukiah, CA 95482.	(707) 463–1454	(707) 463–6601	*claytonf@pinoleville-nsn.gov*
Pit River Tribe, California	Percy Tejada, ICWA Coordinator.	36970 Park Avenue, Burney, CA 96013.	(530) 335–5421	(530) 335–3140	*icwa@pitrivertribe.org*
Potter Valley Tribe, California	Salvador Rosales, Chairman	2251 South State Street, Ukiah, CA 95482.	(707) 462–1213	(707) 462–1240	*pottervalleytribe@pottervalleytribe.com*
Quartz Valley Indian Community of the Quartz Valley Reservation of California.	Conrad Croy, ICWA Director	13601 Quartz Valley Rd., Fort Jones, CA 96032.	(530) 468–5907	(530) 468–5908	*Conrad.Croy@qvir-nsn.gov*
Ramona Band of Cahuilla, California.	Joseph Hamilton, Chairman	P.O. Box 391670, Anza, CA 92539.	(951) 763–4105	(951) 763–4325	
Redding Rancheria, California	Jack Potter, Jr., Chairman	2000 Redding Rancheria Road, Redding, CA 96001.	(530) 225–8979		*hopew@redding-rancheria.com*
Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California.	Chris Piekarski, ICWA Coordinator.	3250 Road I "B" Building, Redwood Valley, CA 95470.	(707) 485–0361	(707) 485–5726	*icwa@rvrpomo.net*

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Resighini Rancheria, California	Fawn Murphy, Chairperson	P.O. Box 529, Klamath, CA 95548.	(707) 482–2431	(707) 482–3425	fawn.murphy@resighinirancheria.com
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California.	Social Services Manager	Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061.	(760) 749–1410	(760) 749–5518	kkolb@indianhealth.com
Robinson Rancheria	Marsha Lee, ICWA Coordinator	P.O. Box 4015, Nice, CA 95464	(707) 900–1456	(707) 275–0235	
Round Valley Indian Tribes, Round Valley Reservation, California.	James Russ, President	77826 Covelo Road, Covelo, CA 95428.	(707) 983–6126	(707) 983–6128	president@council.rvit.org
San Pasqual Band of Diegueno Mission Indians of California.	Social Services Manager	Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061.	(760) 749–1410	(760) 749–5518	kkolb@indianhealth.com
Santa Rosa Band of Cahuilla Indians, California.	Steven Estrada, Chairperson	P.O. Box 391820, Anza, CA 92539.	(951) 659–2700	(951) 689–2228	srtribaloffice@aol.com
Santa Rosa Indian Community of the Santa Rosa Rancheria, California.	Luz M. Rodrigues (Primary) and Leo Sisco (Secondary), Tribal Social Services Director/Tribal Chairman.	P.O. Box 8, 16835 Alkali Drive, Lemoore, CA 93245.	(559) 924–1278	(559) 925–2947	lrodrigues@tachi-yokut-nsn.gov
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.	Caren Romero, ICWA	90 Via Juana Lane, Santa Ynez, CA 93460.	(805) 688–7997	(805) 686–9578	cromero@sythc.org
Scotts Valley Band of Pomo Indians of California.	Kathy Russ, ICWA Advocate	1005 Parallel Drive, Lakeport, CA 95453.	(707) 263–4220	(707) 263–4345	
Sherwood Valley Rancheria of Pomo Indians of California.	Melanie Rafanan and Travis Wright, Tribal Chairperson and ICWA Advocate.	190 Sherwood Hill Drive, Willits, CA 95490.	(707) 459–9690	(707) 459–6936	mrafanan@sherwoodband.com
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California.	Regina Cuellar, Chairwoman	P.O. Box 1340, Shingle Springs, CA 95682.	(530) 698–1400	(530) 384–8064	tribalchairperson@ssband.org
Soboba Band of Luiseno Indians, California.	Alicia Golchuk, Director of Soboba Tribal Family Services.	Soboba Tribal Family Services Dept., P.O. Box 487, San Jacinto, CA 92581.	(951) 487–0283	(951) 487–1738	agolchuk@soboba-nsn.gov
Susanville Indian Rancheria, California.	Arian Hart, Tribal Chairwoman	745 Joaquin St., Susanville, CA 96130.	(530) 257–6264	(530) 257–7986	ahart@sir-nsn.gov
Sycuan Band of the Kumeyaay Nation.	Cody Martinez, Chairman	1 Kwaaypaay Court, El Cajon, CA 92019.	(619) 445–2613	(619) 445–1927	
Table Mountain Rancheria	Leanne Walker-Grant, Chairperson.	P.O. Box 410, Friant, CA 93626	(559) 822–2587	(559) 822–2693	
Tejon Indian Tribe	Octavio Escobedo, Chairperson	1731 Hasti Acres, Suite 108, Bakersfield, CA 93309.	(661) 834–8566	(661) 834–8564	office@tejontribe.net
Timbisha Shoshone Tribe	Wallace Eddy, ICWA Representative.	621 West Line Street, Suite 109, Bishop, CA 93514.	(760) 872–3614	(760) 872–3670	icwa@timbisha.com
Tolowa Dee-ni' Nation	Dorothy Wait, CFS Director	Community & Family Services, 16299 HWY 101N, Smith River, CA 95567.	(707) 487–9255	(707) 487–0137	dwait@tolowa.com
Torres Martinez Desert Cahuilla Indians, California.	Thomas Tortez, Chairman	TMDCI 66–725 Martinez Rd., P.O. Box 1160, Thermal, CA 92274.	(760) 397–0300	(760) 397–8300	thomas.tortez@torresmartinez-nsn.gov
Tule River Indian Tribe of the Tule River Reservation, California.	Neil Peyron, Chairman	340 North Reservation Road, P.O. Box 589, Porterville, CA 93258.	(559) 781–4271	(559) 781–4610	Neil.Peyron@tulerivertribe-nsn.gov
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.	Diane Carpenter, LMFT, ICWA Representative/Supervisor, Social Services Department.	P.O. Box 699, Tuolumne, CA 95379.	(209) 928–5327	(209) 928–1552	diana@mewuk.com
Twenty-Nine Palms Band of Mission Indians of California.	Darrel Mike, Spokesman	46–200 Harrison Place, P.O. Box 2269, Coachella, CA 92236.	(760) 863–2444	(760) 863–2449	
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California.	Shane Salque, Chairman	25669 Hwy. 6, PMB 1, Benton, CA 93512.	(760) 933–2321	(760) 933–2412	shanesalque@hotmail.com
United Auburn Indian Community of the Auburn Rancheria of California.	Gene Whitehouse, Chairman	10720 Indian Hill Road, Auburn, CA 95603.	(530) 883–2390	(530) 833–2380	jbeck@auburnrancheria.com
Wilton Rancheria, California	Vanessa Pady, Director	ICWA, 9728 Kent Street, Elk Grove, CA 95624.	(916) 683–6000	(916) 683–6015	vpady@wiltonrancheria-nsn.gov
Wiyot Tribe, California	Theodore Hernandez, Chairperson.	1000 Wiyot Drive, Loleta, CA 95551.	(707) 733–5055	(707) 733–5601	michelle@wiyot.us
Yocha Dehe Wintun Nation, California.	James Kinter, Tribal Council Secretary.	P.O. Box 18, Brooks, CA 95606	(530) 796–3400	(530) 796–2143	djones@yochadehe-nsn.gov
Yuhaaviatam of San Manuel Nation.	Tribal Secretary	26569 Community Center Drive, Highland, CA 92346.	(909) 864–8933	(909) 864–0890	broberson@sanmanual-nsn.gov
Yurok Tribe of the Yurok Reservation, California.	Jessica Fawn Canez, Child and Family Indian Child Welfare Director.	P.O. Box 1027, Klamath, CA 95548.	(707) 482–1350	(707) 482–1368	YurokICWA@yuroktribe.nsn.us

9. Rocky Mountain Region — Rocky Mountain Regional Director, 2021 4th Ave. N, Billings, MT 59101; Telephone Number: (406) 247–7943; Fax Number: (406) 247–7976.

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana.	Ingrid Firemoon, ICWA Coordinator.	P.O. Box 1027, Poplar, MT 59255.	(406) 768–2308	(406) 768–5658	*ifiremoon@fortpecktribes.net*
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.	Kathy Calf Boss Ribs, ICWA Coordinator.	P.O. Box 588, Browning, MT 59417.	(406) 338–5171	(406) 338–7726	*kathybossribs@yahoo.com*
Chippewa Cree Indians of the Rocky Boy's Reservation, Montana.	Shaneen Raining Bird Hammond, ICWA Case Manager.	96 Clinic Road No., Box Elder, MT 59521.	(406) 395–5506	.....	*icwa@chippewa-cree.org*
Crow Tribe of Montana	Rebecca Buffalo, ICWA Contact	P.O. Box 340, Crow Agency, MT 59022.	(406) 679–2950	.....	*Rebecca.buffalo@crow-nsn.gov*
Eastern Shoshone Tribe of the Wind River Reservation, Wyoming.	Sara Robinson, ICWA Director ..	P.O. Box 538, Fort Washakie, WY 82514.	(307) 335–2013	(307) 332–0280	*srobinson@easternshoshone.org*
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana.	Myron L. Trottier, ICWA Case Manager.	656 Agency Main Street, Harlem, MT 59526.	(406) 353–8328	(406) 353–4634	*mtrottier@ftbelknap.org*
Little Shell Tribe of Chippewa Indians of Montana.	Donna Woodward, ICWA Attorney.	511 Central Ave. West, Great Falls, MT 59404.	(406) 315–2400	(406) 315–2400	*d.woodward@lstribe.org*
Northern Arapaho Tribe of the Wind River Reservation, Wyoming.	Shelley Mbonu, ICWA Director ..	P.O. Box 951, Riverton, WY 82501.	(307) 335–3957	(307) 240–2256	*shelley.mbonu@northernarapaho.com*
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.	Michelle Little Wolf, ICWA Coordinator I.	P.O. Box 128, Lame Deer, MT 59043.	(406) 477–4830	(406) 477–8333	*michelle.littlewolf@cheyennenation.com*

10. Southern Plains Region — Southern Plains Regional Director, P.O. Box 368, Anadarko, OK 73005; Telephone Number: (405) 247–6673 Ext. 217; Fax Number (405) 247–5611.

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Absentee-Shawnee Tribe of Indians of Oklahoma.	Melissa Hill, ICW Director	2025 S Gordon Cooper Drive, Shawnee, OK 74801.	(405) 395–4492	(405) 395–4495	*mhill@astribe.com*
Alabama-Coushatta Tribe of Texas.	Melissa Celestine, ICW Director	571 State Park Road, #56, Livingston, Texas 77351.	(936) 563–1253	(936) 563–1254	*celestine.melissa@actribe.org*
Apache Tribe of Oklahoma	ICW Director, Apache ICW Worker.	P.O. Box 9, Carnegie, Oklahoma 73015.	(580) 654–6340	.....	*icw@kiowatribe.org*
Caddo Nation of Oklahoma	Kalina Youngman, ICW Caseworker.	P.O. Box 729, Anadarko, OK 73005.	(405) 247–8624	.....	*kalina.youngman@wichitatribe.com*
Cheyenne and Arapaho Tribes, Oklahoma.	Ephram Kelly, ICW Coordinator	P.O. Box 27, Concho, OK 73022.	(405) 422–7557	(405) 422–8249	*rfelter@c-a-tribes.org*
Citizen Potawatomi Nation, Oklahoma.	Ashley May, ICW Director	1601 S Gordon Cooper Drive, Shawnee, OK 74801.	(405) 878–4831	(405) 878–4659	*amay@potawatomi.org*
Comanche Nation, Oklahoma	Evelyn Mithlo-Turner, ICW Director.	P.O. Box 908, Lawton, OK 73502.	(580) 280–4751	(580) 280–4751	*carolm@comanchenation.com*
Delaware Nation, Oklahoma	Cassandra Acuna, ICW Director	P.O. Box 825, Anadarko, OK 73005.	(405) 247–2448	(405) 247–5942	*cacuna@delawarenation.com*
Fort Sill Apache Tribe of Oklahoma.	ICWA Coordinator	43187 US Highway 281, Apache, OK 73006.	(580) 588–2298	(580) 588–3133	*brian.wahnee@fortsillapache-nsn.gov*
Iowa Tribe of Kansas and Nebraska.	Native American Family Services, Inc.	3303 B. Thrasher Rd., White Cloud, KS 66094.	(785) 595–3260	.....	
Iowa Tribe of Oklahoma	Tamera Hudgins, ICW Director	Rt. 1, Box 721, Perkins, OK 74059.	(405) 547–2402	(405) 547–1060	*thudgins@iowanation.org*
Kaw Nation, Oklahoma	Lebrandia Lamley, ICW Director	Drawer 50, Kaw City, Oklahoma 74641.	(580) 269–2003	(580) 269–2113	*llemley@kawnation.com*
Kickapoo Traditional Tribe of Texas.	ICWA Director, ICW Director	2212 Rosita Valley Road, Eagle Pass, Texas 78852.	(830) 421–6300		
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas.	ICWA	824 111th Dr., Horton, KS 66439.	(785) 486–2131		
Kickapoo Tribe of Oklahoma	Nathie Wallace, Indian Child Welfare Director.	P.O. Box 469, McLoud, OK 74851.	(405) 964–5426	(405) 964–5431	
Kiowa Indian Tribe of Oklahoma	Davetta Geimausaddle, ICW Director.	P.O. Box 369, Carnegie, Oklahoma 73015.	(580) 654–2439	(580) 654–2363	*ICW@kiowatribe.org*
Otoe-Missouria Tribe of Indians, Oklahoma.	Andrea Kihega, Social Services Director.	8151 Highway 177, Red Rock, OK 74651.	(580) 723–4466	(580) 723–1016	*akihega@omtribe.org*
Pawnee Nation of Oklahoma	Amanda Farren, ICWA Director	P.O. Box 470, Pawnee, OK 74058.	(918) 762–3261	(918) 762–6449	*afarren@pawneenation.org*
Ponca Tribe of Indians of Oklahoma.	Stephanie Ruminer, ICW Director.	20 White Eagle Drive, Ponca City, OK 74601.	(580) 463–0133	(580) 763–0134	*ptoicw@gmail.com*
Prairie Band Potawatomi Nation	Julia Alfers, ICW Director	16281 Q. Road, Mayetta, KS 66509.	(785) 966–8325	(785) 966–290	
Sac and Fox Nation of Missouri in Kansas and Nebraska.	Chasity Davis, ICW Director	305 N Main Street, Reserve, KS 66434.	(785) 742–4708	(785) 288–1163	*cdavis@sacandfoxcasino.com*
Sac and Fox Nation, Oklahoma ..	Karen Hamilton, ICW Director ...	215 North Harrison, Box 246, Shawnee, OK 74801.	(918) 968–3526	(405) 395–0858	*karen.hamilton@sacandfoxnation-nsn.gov*
Tonkawa Tribe of Indians of Oklahoma.	Christi Gonzalez, ICW Director	P.O. Box 70, Tonkawa, OK 74653.	(580) 628–7025	(580) 628–7025	*cgonzalez@tonkwatribe.com*

Tribe	ICWA POC	Mailing Address	Telephone No.	Fax No.	Email address
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.	Joan Williams, ICW Director	P.O. Box 729, Anadarko, OK 73005.	(405) 247–8627	(405) 247–3256	*joan.williams@wichitatribe.com*

11. Southwest Region

Southwest Regional Director, 1001 Indian School Road NW, Albuquerque, NM 87104; Telephone Number: (505) 563–3103; Fax Number: (505) 563–3101.

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Jicarilla Apache Nation, New Mexico.	Gina Keeswood, ICWA Specialist.	P.O. Box 120, Dulce, NM 87528	(575) 759–1712	(575) 759–3757	*gkeeswood@jbhd.org*
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico.	Augusta Williams, ICWA Case Manager.	107 Sunset Loop, Box 228, Mescalero, NM 88340.	(575) 464–4334	(575) 464–4331	*awilliams@mescaleroapachetribe.com*
Ohkay Owingeh	Rochelle Thompson, ICWA Manager.	P.O. Box 1187, 220 Popay Avenue, Ohkay Owingeh, NM 87566.	(575) 852–6108	(505) 692–0333	*rochelle.thompson@ohkay.org*
Pueblo of Acoma, New Mexico ...	Marsha Vallo, Child Welfare Specialist.	P.O. Box 354, Acoma, NM 87034.	(505) 552–5162	(505) 552–0903	*MLVallo@poamail.org*
Pueblo of Cochiti, New Mexico ...	Tanya Devon Torres, ICWA Specialist.	P.O. Box 70, Cochiti Pueblo, NM 87072.	(505) 465–3139	(505) 465–3173	*tanya_torres@pueblodecochiti.org*
Pueblo of Isleta, New Mexico	Jacqueline Yalch, Social Services Director.	P.O. Box 1270, Isleta, NM 87022.	(505) 869–2772	(505) 869–7575	*Jacqueline.Yalch@isletapueblo.com*
Pueblo of Jemez, New Mexico	Annette Gachupin, Child Advocate.	P.O. Box 340, Jemez Pueblo, NM 87024.	(575) 834–7117	(575) 834–7103	*agachupin@jemezpueblo.us*
Pueblo of Laguna, New Mexico ..	Tracy Zamora, Social Service Program Manager.	Social Services Department, P.O. Box 194, Laguna, NM 87026.	(505) 552–6513	(505) 552–6387	*tzamora@pol-nsn.gov*
Pueblo of Nambe, New Mexico ...	Julie Bird, ICWA Manager	15A NP 102 West, Santa Fe, NM 87506.	(505) 445–4446	(505) 455–4449	*ICWA@nambepueblo.org*
Pueblo of Picuris, New Mexico ...	Darcy Focke, ICWA Specialist ..	P.O. Box 127, Penasco, NM 87553.	(575) 587–2519	(575) 587–1003	*icwa@picurispueblo.org*
Pueblo of Pojoaque, New Mexico	Arthur Malone, Case Manager/ICWA Specialist.	58 Cities of Gold Road, Suite 5, Santa Fe, NM 87506.	(505) 455–0238	(505) 455–2363	*amalone@pojoaque.org*
Pueblo of San Felipe, New Mexico.	Darlene J. Valencia, Family Services Director/ICWA Representative.	P.O. Box 4339, San Felipe Pueblo, NM 87001.	(505) 771–9900	(505) 771–9978	*dvalencia@sfpueblo.com*
Pueblo of San Ildefonso, New Mexico.	PrettyWater Duran, ICWA Manager/Family Advocate.	02 Tunyo Po, Santa Fe, NM 87506.	(505) 455–4164	(505) 455–7351	*icwamanager@sanipueblo.org*
Pueblo of Sandia, New Mexico ...	Bree Kerr, Tribal Court Administrator.	481 Sandia Loop, Bernalillo, NM 87004.	(505) 771–5005	(505) 867–7099	*akerr@sandiapueblo.nsn.us*
Pueblo of Santa Ana, New Mexico.	Edward Ackron, LMSW, Social Services Director.	02 Dove Road, Santa Ana Pueblo, NM 87004.	(505) 771–6765	(505) 771–6537	*edward.Ackron@santaana-nsn.gov*
Pueblo of Santa Clara, New Mexico.	Dennis Silva, Director of Social Services.	P.O. Box 580, Espanola, NM 87532.	(505) 753–0419	(505) 753–0420	*dsilva@santaclarapueblo.org*
Pueblo of Taos, New Mexico	Ezra Bayles, Director	P.O. Box 1846, Taos, NM 87571.	(575) 758–7824	(575) 758–3346	*ebayles@taospueblo.com*
Pueblo of Tesuque, New Mexico	Donna Quintana, ICWA Coordinator.	Box 360, T Route 42, Santa Fe, NM 87506.	(505) 469–0173	(505) 820–7780	*donna.quintana@pueblooftesuque.org*
Pueblo of Zia, New Mexico	Wiyanna Chavez, Social Services Director.	135 Capital Square Drive, Zia Pueblo, NM 87053.	(505) 401–8142	(505) 867–3308	*wiyanna.chavez@ziapueblo.org*
Santo Domingo Pueblo	Virginia Tenorio & Doris Mina, Family Services Director & ICWA Representative.	P.O. Box 129, Santo Domingo, NM 87052.	(505) 465–0630	(505) 465–2554	*virgina.tenorio@kewa-nsn.us*
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado.	Julianne Begay, Social Services Attorney.	MS 53 P.O. Box 737, Ignacio, CO 81137.	(970) 563–0100	(970) 563–4854	*jbegay@southemute-nsn.gov*
Ute Mountain Ute Tribe	Tywana Billie Lopez, UMU Social Services Director.	P.O. Box 309, Towaoc, CO 81334.	(970) 564–5307	.....	*tbillie@utemountain.org*
Ysleta del Sur Pueblo	Leah Lopez, LMSW, Social Services Coordinator.	9314 Juanchido Ln., El Paso, TX 79907.	(915) 860–6170	(915) 242–6556	*lopezl@ydsp-nsn.gov*
Zuni Tribe of the Zuni Reservation, New Mexico.	Ron Reid, Social Services Director.	P.O. Box 339, Zuni, NM 87327	(505) 782–7166	(505) 782–7221	*ron.reid@ashiwi.org*

12. Western

Western Regional Director, 2600 North Central Avenue, 4th Floor Mailroom, Phoenix, AZ 85004; Telephone: (602) 379–6600; Fax Number: (602) 379–4413.

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Ak-Chin Indian Community	Dorissa Garcia, Enrollment Coordinator.	42507 West Peters & Nall Road, Maricopa, AZ 85138.	(520) 568–1074	(520) 568–1079	*dgarcia@ak-chin.nsn.us*
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California.	Sierra Pencille, Temp, Chair of Tribe.	P.O. Box 1976, Havasu Lake, CA 92363.	(760) 858–4291	(760) 858–5400	*chairman@cit-nsn.gov*

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Cocopah Tribe of Arizona	Rafael D. Morales, Jr., ICWA Worker.	14515 South Veterans Drive, Somerton, AZ 85350.	(928) 627–3729	(928) 627–3316	*moralesr@cocopah.com*
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California.	Rebecca Loudbear, Attorney General.	26600 Mohave Road, Parker, AZ 85344.	(928) 669–1271	(928) 669–5675	*rloudbear@critdoj.com*
Confederated Tribes of the Goshute Reservation, Nevada and Utah.	Jeanine Hooper, Social Services/ICWA Director.	HC61 Box 6104, Ibapah, UT 84034.	(833) 228–6509	(435) 234–1219	*jeanine.hooper@ctgr.us*
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada.	Debra O'Neil, Social Services Director.	P.O. Box 140087, Duckwater, NV 89314.	(775) 863–0222	(775) 863–0142	*debbie.oneil@ihs.gov*
Ely Shoshone Tribe of Nevada	Georgia Valdez, Social Services Worker.	250B Heritage Drive, Ely, NV 89301.	(775) 289–4133	(775) 289–3237	*dorda123@yahoo.com*
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon.	Elena Dave, ICWA Advocate	111 North Road, P.O. Box 457, McDermitt, NV 89421.	(775) 532–8259	(775) 532–8060	*alenadave83@gmail.com*
Fort McDowell Yavapai Nation, Arizona.	Janel Shepherd, CPS/ICWA Coordinator.	P.O. Box 17779, Fountain Hills, AZ 85269.	(480) 789–7990	(480) 837–4809	*jshepherd@fmyn.org*
Fort Mojave Indian Tribe of Arizona, California & Nevada.	Melvin Lewis Sr., Social Services Department Director.	500 Merriman Avenue, Needles, CA 92363.	(928) 346–1550	(928) 346–1552	*ssdir@ftmojave.com*
Gila River Indian Community of the Gila River Indian Reservation, Arizona.	Antoinette Enos, ICWA Case Manager.	P.O. Box 427, Sacaton, AZ 85147.	(520) 562–3396	(520) 562–3633	*antoinette.enos@gric.nsn.gov*
Havasupai Tribe of the Havasupai Reservation, Arizona.	Rita Uqualla, ICWA Coordinator	P.O. Box 10, Supai, AZ 86435	(928) 433–8153	(928) 433–8119	*ruqualla@yahoo.com*
Hopi Tribe of Arizona	Lorene Vicente, ICWA Coordinator.	P.O. Box 123, Kykotsmovi, AZ 86039.	(928) 734–3392	(928) 734–1158	*LVicente@hopi.nsn.us*
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona.	Idella Keluche, ICWA Worker	P.O. Box 480, Peach Springs, AZ 86434.	(928) 769–2269	(928) 769–2659	*ikeluche@hualapai-nsn.gov*
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona.	Jennie K. Kalauli, Social Services Director.	HC 65 Box 2, Fredonia, AZ 86022.	(928) 643–8320	(888) 422–4037	*jkalauli@kaibabpaiute-nsn.gov*
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada.	Fabian Solis, Health & Human Service Director.	1257 Paiute Circle, Las Vegas, NV 89106.	(702) 382–0784	(702) 384–5272	*fsolis@lvpaiute.com*
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada.	Maribel Morales, ICWA—GA Case Worker.	201 Bowean Street, Lovelock, NV 89419.	(775) 217–0461	(775) 273–3802	*icwa@lovelocktribe.com*
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada.	Debrah Rocco, Social Services Director.	P.O. BOX 308, Moapa, NV 89025.	(702) 865–2708	(702) 864–0408	*socialservices@moapabandofpaiute-s.org*
Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes).	Tyler Goddard, Health Director	440 North Paiute Drive, Cedar City, UT 84721.	(435) 586–1112	(435) 238–4262	*tgoddard@fourpointshealth.org*
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada.	Jennifer Pishion, ICWA Representative.	1007 Rio Vista Drive, Fallon, NV 89406.	(775) 423–1215	(775) 423–8960	*yfsmanager@fpst.org*
Pascua Yaqui Tribe of Arizona	Tara Hubbard, ICWA Supervising Attorney.	Office of the Attorney General, 7777 S Camino Huivism—Bldg. C, Tucson, AZ 85757.	(480) 755–2506	(520) 883–5084	*tara.hubbard@pascuayaqui-nsn.gov*
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada.	Nathan Dunn, Caseworker	P.O. Box 256, Nixon, NV 89424	(775) 574–1047	(775) 574–1052	*caseworker@plpt.nsn.us*
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona.	Rena Escalanti-GoForth, ICWA Specialist.	P.O. Box 1899, Yuma, AZ 85366.	(760) 572–0201	(760) 572–2099	*ICWAspecialist@quechantribe.com*
Reno-Sparks Indian Colony, Nevada.	Carrie Brown, Human Services Manager.	405 Golden Lane, Reno, NV 89502.	(775) 329–5071	(775) 785–8758	*cbrown@rsic.org*
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona.	Allison Miller, ICWA Manager	SRPMIC Social Services/ICWA Unit, 10,005 East Osborn Road, Scottsdale, AZ 85256.	(480) 362–7533	(480) 362–5574	*Allison.Miller@srpmic-nsn.gov*
San Carlos Apache Tribe of the San Carlos Reservation, Arizona.	Aaron Begay, ICWA Coordinator	P.O. Box 0, San Carlos, AZ 85550.	(928) 475–2313	(928) 475–2342	*abegay09@tss.scat-nsn.gov*
San Juan Southern Paiute Tribe of Arizona.	Mary Lou Boone, Enrollment Officer.	505 South Main Street, Suite 101, P.O. Box 2950, Tuba City, AZ 86045.	(928) 212–9794	(928) 233–8948	*m.boone@sanjuanpaiute-nsn.gov*
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada.	Tamara Ashley, Social Worker	P.O. Box 219, Owyhee, NV 89832.	(775) 757–2921	(775) 757–2910	*ashley.tamara@shopai.org*
Skull Valley Band of Goshute Indians of Utah.	Candace Bear, Chairperson	407 Skull Valley Road, Skull Valley, UT 84029.	(435) 830–4526		
Summit Lake Paiute Tribe of Nevada.	Randi Lone Eagle, Chairwoman	2255 Green Vista Drive, Suite 402, Sparks, NV 89431.	(775) 827–9670	(775) 827–9678	*randi.loneeagle@summitlaketribe.org*

Tribe	ICWA POC	Mailing address	Telephone No.	Fax No.	Email address
Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band; and Wells Band).	Donna Hill, Acting Social Services Director/ICWA Coordinator, Battle Mountain Band.	37 Mountain View Drive, Battle Mountain, NV 89820.	(775) 635–2004	(775) 635–8528	*bmbssd2018@outlook.com*
	Amanda Gettings, Social Services Director/ICWA Coordinator, South Fork Band.	21 Lee Unit #13, Spring Creek, NV 89815.	(775) 744–4273	(775) 744–4523	*sftribalservices@gmail.com*
	Ortencia M. Puhuyaoma, Acting Social Service Director, Elko Band.	1745 Silver Eagle Drive, Elko Band Council SS/ICWA, Elko, NV 89801.	(775) 738–9310	(775) 778–3397	*icwa@elkoband.org*
	Alicia Aguilar, Administrator, Wells Band.	P.O. Box 809, Wells, NV 89835	(775) 260–2610	(775) 752–2179	*amber@gmail.com*
Tohono O'odham Nation of Arizona.	Joshua Rees, Acting Attorney General.	P.O. Box 830, Sells, AZ 85634	(520) 383–3410	(520) 383–2689	*joshua.rees@tonation-nsn.gov*
Tonto Apache Tribe of Arizona ...	Christine Zuber, Tribal Council Secretary/Social Services Director.	Tonto Apache Reservation #30, Payson, AZ 85541.	(928) 474–5000	(928) 474–9125	*czuber@tontoapache.org*
Ute Indian Tribe of the Uintah & Ouray, Reservation, Utah.	Ramalda Guzman, Assistant Director.	P.O. Box 190, Fort Duchesne, UT 84052.	(435) 725–4054	(435) 722–5072	*ramadlag@utetribe.com*
Walker River Paiute Tribe of the Walker River Reservation, Nevada.	Miranda J. Quintero, Social Services Director.	Social Services Department, P.O. Box 146, Schurz, NV 89427.	(775) 773–2058	(775) 773–2096	*mquintero@wrpt.org*
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches).	Stacy L. Stahl, Social Services Director.	919 US Highway 395 North, Gardnerville, NV 89410.	(775) 265–8691	(775) 265–4593	*Stacy.Stahl@washoetribe.us*
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.	Cora Hinton, ICWA Representative/CPS Supervisor.	P.O. Box 1870, Whiteriver, AZ 85941.	(928) 338–4164	(928) 338–1469	*chinton@wmat.us*
Winnemucca Indian Colony of Nevada.	Judy Rojo, Tribal Chairperson ...	433 West Plumb Lane, Reno, NV 89509.	(775) 329–5800	(775) 329–5819	*admin.wic@winnemuccaindiancolony.org*
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.	Melissa Stevens, ICWA Coordinator.	2400 West Datsi Street, Camp Verde, AZ 86322.	(928) 649–7108	(928) 567–6832	*mstevens@yan-tribe.org*
Yavapai-Prescott Indian Tribe	Darcy Razo, Family Support Supervisor.	530 East Merritt, Prescott, AZ 86301.	(928) 515–7352	(928) 515–7352	*drazo@ypit.com*
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada.	Nathaniel Landa, Human Services Director.	171 Campbell Lane, Yerington, NV 89447.	(775) 783–0200	(775) 463–5929	*nlanda@ypt-nsn.gov*
Yomba Shoshone Tribe of the Yomba Reservation, Nevada.	Belinda Hooper, Social Services Eligibility Worker.	HC 61 Box 6275 (Reese River Valley), Austin, NV 89310.	(775) 964–1021	(775) 993–2483	*socialservices@yombatribe.org*

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–08077 Filed 4–14–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2231A2100DD/AAKC001030/A0A501010.999900]

Indian Gaming; Extension of Tribal-State Class III Gaming Compact (Rosebud Sioux Tribe and the State of South Dakota)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the extension of the Class III gaming compact between the Rosebud Sioux Tribe of the Rosebud Indian Reservation and the State of South Dakota.

DATES: The extension takes effect on April 15, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: An extension to an existing Tribal-State Class III gaming compact does not require approval by the Secretary if the extension does not modify any other terms of the compact. 25 CFR 293.5. The Rosebud Sioux Tribe of the Rosebud Indian Reservation and the State of South Dakota have reached an agreement to extend the expiration date of their existing Tribal-State Class III gaming compact to October 15, 2022. This publication provides notice of the new expiration date of the compact.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–08078 Filed 4–14–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORB07000.L17110000.AL0000.LXSSH1060000.22X.HAG 22–0015]

Subcommittee Meeting for the Steens Mountain Advisory Council, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Steens Mountain Advisory Council (SMAC) Recreation and Visitor Use Subcomittee will meet as follows.

DATES: The SMAC will hold a virtual meeting via the Zoom for Government platform on Thursday, June 9, 2022, from 10 a.m. to 2:15 p.m. Pacific Time.

ADDRESSES: The final meeting agenda and contact information regarding Zoom

meeting details will be published on the SMAC web page at least 10 days in advance at *https://go.usa.gov/xzkD8.*

FOR FURTHER INFORMATION CONTACT: Tara Thissell, Public Affairs Specialist, BLM Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738; telephone: (541) 573–4519; email: *tthissell@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 SMAC was established August 14, 2001, pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Steens Act) (Pub. L. 106–399). The SMAC provides recommendations to the BLM regarding new and unique approaches to management of the land within the bounds of the Steens Mountain Cooperative Management and Protection Area (CMPA), recommends cooperative programs and incentives for landscape management that meet human needs, and advises the BLM on potential maintenance and improvement of the ecological and economic integrity of the area.

The SMAC's Recreation and Visitor Use Subcommittee was established in 2019 and serves to gather information, conduct research, and analyze recreation and/or visitor use issues in the Steens Mountain CMPA. Issues could relate to parking, hiking, motorized or non-motorized use, camping, access, signage, interpretation, restrooms/sanitation, and trail development and maintenance. The Subcommittee reviews all aspects of any recreation issue, formulates suggestions for remedy, and proposes those solutions to the entire SMAC for further discussion and possible recommendation to the BLM. No decisions are made at the subcommittee level.

Agenda items for the June 9, 2022, virtual meeting include: A recreation program update; information sharing from the Designated Federal Official; reviewing alternatives for the Bridge Creek Allotment Management Plans Environmental Impact Statement; and an opportunity for Subcommittee members to share information from their constituents and present research. Any other matters that may reasonably come before the Subcommittee may also be included.

A public comment period is available at 1:15 p.m. Depending on the number of people wishing to comment and the time available, the amount of time for oral comments may be limited. Sessions may end early if all business items are accomplished ahead of schedule or may be extended if discussions warrant more time. All meetings, including virtual sessions, are open to the public in their entirety. Written public comments may be sent to the BLM Burns District Office listed in the **ADDRESSES** section of this notice or emailed to *tthissell@blm.gov.* All comments received at least 1 week in advance of the meeting will be provided to the Subcommittee.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comments, please 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.

Detailed minutes for the SMAC and Subcommittee meetings will be maintained in the BLM Burns District Office. Minutes will also be posted to the SMAC's web page at *https://go.usa.gov/xzkD8.*

(Authority: 43 CFR 1784.4–2)

Jeffrey Rose,

District Manager.

[FR Doc. 2022–08119 Filed 4–14–22; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033705; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Karshner Museum and Center for Culture & Arts, Puyallup, WA [Formerly the Karshner Museum] and the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Karshner Museum and Center for Culture & Arts (Karshner Center) and the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, have determined that the cultural items listed in this notice meet the definition of sacred objects, objects of cultural patrimony, or unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Karshner Center. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Karshner Center at the address in this notice by May 16, 2022.

FOR FURTHER INFORMATION CONTACT: Karen S. Higgins, Karshner Museum and Center for Culture & Arts, 309 4th Street NE, Puyallup, WA 98372, telephone (253) 841–8748, email *higginsks@puyallup.k12.wa.us.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Karshner Museum and Center for Culture & Arts, Puyallup, WA, and the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, that meet the definition of sacred objects, objects of cultural patrimony, or unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In or before 1930, 19 sacred objects were separated from the Coastal Salish people. The items are one spirit stick in the shape of a spear, one cedar bark dress, one cedar bark headdress, one glass bottle containing red ochre mixed with fat, one shirt, 13 bone wedges [one of which is currently missing], and one stone pipe. Dr. Warner M. Karshner acquired the spirit stick (1930.01.1–233) from an unidentified individual in La Connor, WA, on the Swinomish Reservation in Skagit County, and in

1930, he donated it to the Karshner Museum, which he had founded that year. Sometime between 1913 and 1930, Mrs. Joe Billy (nee Louise Cassimer) gifted the cedar bark dress (1935.01.1–47) to Charles L. Judd. In 1935, Mr. Judd sold the dress to Dr. Karshner, who in turn donated it to the Karshner Museum. Sometime between 1913 and 1930, Mr. Judd acquired the headdress (1935.01.1–149) from the Coastal Salish First Nations Community of Saanich on Vancouver Island, British Columbia. Subsequently—most likely in 1935—Mr. Judd sold the cedar bark headdress to Dr. Karshner. In 1935, Dr. Karshner donated the cedar bark headdress to the Karshner Museum. Sometime between 1913 and 1930, Mr. Judd acquired a glass bottle containing red ochre mixed with fat (1935.01.1–228) from an unidentified individual in La Connor, Washington, on the Swinomish Reservation in Skagit County. In 1935, Mr. Judd sold the glass bottle to Dr. Karshner, who in turn donated it to the Karshner Museum. Sometime between 1913 and 1930, Mr. Judd acquired the shirt (1935.01.1–231) from an unidentified individual in La Connor, Washington, on the Swinomish Reservation in Skagit County. In 1935, Mr. Judd sold the shirt to Dr. Karshner, who in turn donated it to the Karshner Museum. Sometime between 1913 and 1930, Mr. Judd acquired four bone wedges (1935.01.1–414) from an ''archaeological dig'' at Weaverling Spit on Fidalgo Island, San Juan Islands, Skagit County. In 1935, Mr. Judd sold the bone wedges to Dr. Karshner, who in turn donated them to the Karshner Museum. In or before 1935, Dr. Karshner obtained a stone pipe bowl from San Juan Island, Skagit County (1935.01.1–492). In 1935, he donated the pipe bowl to the Karshner Museum. In 1935, Dr. Karshner acquired nine bone wedges (1935.01.1–493) from San Juan Island, Skagit County, WA, and donated them to the Karshner Museum.

The 19 cultural items described above are used by the Coastal Salish people of the Swinomish Indian Tribal Community [*previously* listed as Swinomish Indians of the Swinomish Reservation of Washington] in Siown ceremonies.

In or before 1935, one object of cultural patrimony was separated from the Coastal Salish people. The item is a wild goat hair blanket (1935.01.1–237). Sometime between 1913 and 1930, Charles L. Judd acquired the blanket from an unidentified individual in La Connor, Washington, on the Swinomish Reservation in Skagit County. In 1935, Mr. Judd sold the blanket to Dr. Karshner, who in turn donated it to the Karshner Museum.

In or before 1936, four unassociated funerary objects were removed from a grave on the Swinomish Reservation located in Skagit County, WA. The items are four worked stones (1936.01.1–214). In 1936, Dr. and Mrs. Karshner donated them to the Karshner Museum.

Determinations Made by the Karshner Museum and Center for Culture & Arts and the U.S. Department of the Interior, Bureau of Indian Affairs

Officials of the Karshner Museum and Center for Culture & Arts and the U.S. Department of the Interior, Bureau of Indian Affairs have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the 19 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(3)(D), the one cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(3)(B), the four cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the cultural items and the Swinomish Indian Tribal Community [*previously* listed as Swinomish Indians of the Swinomish Reservation of Washington].

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Karen S. Higgins, Karshner Museum and Center for Culture & Arts, 309 4th Street NE, Puyallup, WA 98372, telephone (253) 841–8748, email *higginsks@puyallup.k12.wa.us,* by May 16, 2022. After that date, if no additional claimants have come forward, transfer of control of the sacred objects, object of cultural patrimony, and unassociated funerary objects to the Swinomish Indian Tribal Community [*previously* listed as Swinomish Indians of the Swinomish Reservation of Washington] may proceed.

The Karshner Museum and Center for Culture & Arts and the U.S. Department of the Interior, Bureau of Indian Affairs are responsible for notifying the Swinomish Indian Tribal Community [*previously* listed as Swinomish Indians of the Swinomish Reservation of Washington] that this notice has been published.

Dated: April 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–08122 Filed 4–14–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033703; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Channel Islands National Park, Ventura, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Channel Islands National Park 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 Channel Islands National Park. 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 Channel Islands National Park at the address in this notice by May 16, 2022.

FOR FURTHER INFORMATION CONTACT: Ethan McKinley, Superintendent, Channel Islands National Park, 1901 Spinnaker Drive, Ventura, CA 93001, telephone (805) 658–5700, email *ethan_mckinley@nps.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 under the control of the U.S. Department of the Interior, National Park Service, Channel Islands National Park, Ventura, CA, and in the physical custody of the Fowler Museum at the University of California Los Angeles, Los Angeles, CA. The human remains were removed from Anacapa Island, Ventura County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Channel Islands National Park.

Consultation

A detailed assessment of the human remains was made by Channel Islands National Park professional staff in consultation with representatives of the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

History and Description of the Remains

At an unknown date in the 1970s or 1980s, human remains representing, at minimum, one individual were removed from an unknown location on Anacapa Island in Ventura County, CA. An unknown individual illegally collected a human cranium and mandible and transferred them to Dr. Donald Weissman DDS, a member of the faculty of the UCLA School of Dentistry, Dental Radiology Department, in the 1970s and 1980s, for use as a teaching demonstration. The human remains were donated by the professor's son, Dr. Albert Weissman, DDS, MSD, to the Fowler Museum at the University of California Los Angeles in 2017. Based on osteological analysis by specialists at the Fowler Museum, the human remains were identified as Native American and appear to be those of a young adult female. No known individual was identified. No associated funerary objects are present.

Anacapa Island is 2.9 km^2 and has 27 known archeological sites, all of which are considered associated with the Chumash based on historic records, ethnographic place names, and material culture.

Determinations Made by the U.S. Department of the Interior, National Park Service, Channel Islands National Park

Officials of the U.S. Department of the Interior, National Park Service, Channel Islands National Park 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(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

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 Ethan McKinley, Superintendent, Channel Islands National Park, 1901 Spinnaker Drive, Ventura, CA 93001, telephone (805) 658–5700, email *ethan_mckinley@nps.gov,* by May 16, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California may proceed.

The U.S. Department of the Interior, National Park Service, Channel Islands National Park is responsible for notifying the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California that this notice has been published.

Dated: April 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–08120 Filed 4–14–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033704; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Big Hole National Battlefield, Wisdom, MT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Big Hole National Battlefield 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 Big Hole National Battlefield. 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 Big Hole National Battlefield at the address in this notice by May 16, 2022.

FOR FURTHER INFORMATION CONTACT: Stephen Thede, Superintendent, Big Hole National Battlefield, P.O. Box 237, Wisdom, MT 59761 or Nez Perce National Historical Park, 39063 US Hwy. 95, Lapwai, ID 83540, telephone (208) 843–7011, email *steve_thede@nps.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, National Park Service, Big Hole National Battlefield, Wisdom, MT, and in the physical custody of Nez Perce National Historical Park, Lapwai, ID. The human remains and associated funerary objects were removed from Big Hole National Battlefield, Beaverhead County, MT.

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 Superintendent, Big Hole National Battlefield.

Consultation

A detailed assessment of the human remains was made by National Park Service professional staff in consultation with representatives of the Confederated Tribes of the Colville Reservation; Confederated Tribes of the Umatilla Indian Reservation [*previously* listed as Confederated Tribes of the Umatilla Reservation, Oregon]; and the Nez Perce Tribe [*previously* listed as Nez Perce Tribe of Idaho] (hereafter referred to as ''The Tribes'').

History and Description of the Remains

At an unknown date between 1915 and 1923, human remains representing, at minimum, one individual were removed from Big Hole National Battlefield in Beaverhead County, MT, by Thomas C. Sherill, summer caretaker of the Battlefield. The human remains are a partial braid of human hair. When Mr. Sherrill passed away in 1927, the human remains were transferred to his nephew, Theodore E. Sherill. In 1966, they were purchased from Theodore Sherill by the National Park Service. No known individual was identified. The 60 associated funerary objects are 56 blue glass trade beads and four red glass trade beads.

At the time of acquisition park managers were under the belief that the human remains were those of a young Euro-American female who was allegedly living among the Nez Perce during the battle at Big Hole on August 9, 1877. This belief was based on a story perpetuated by Thomas C. Sherrill and his nephew of the presence of a young, blonde or light-brown haired female who perished during the battle at Big Hole and was intentionally buried by the Nez Perce.

National Park Service professional staff conducted a thorough and detailed analysis of the partial braid of hair and have determined that it is in fact dark brown to black in color, not light brown. It seems likely the lighter color is the result of eumelanin pigment in the hair breaking down over time, which is consistent with inhumation in the wet, oxidizing conditions found where the braid was collected. The texture of the hair in the interior portions of the braid is also very coarse. The dark color, taken in context with the very coarse and thick texture of the hair, make it very unlikely to be representative of a young, blonde-to-light-brown-haired female of Euro-American descent.

The first and only known reference to the presence of a young female of Euro-American descent at the Big Hole battle is from Thomas C. Sherrill himself. National Park Service professional staff have conducted a thorough and complete review of all known historical documentation (including first-hand accounts of both military and Nez Perce participants) relating to the battle at Big Hole and the larger Nez Perce War of 1877 and all archeological investigations conducted at Big Hole National Battlefield and has concluded that there is no credible evidence for the presence of a young female of Euro-American descent at the battle of Big Hole in 1877.

Based on the review of all known historical and archeological evidence, an analysis of the hair, the age and style of the beads found with the hair, and the provenance of the finds, the human remains are most likely that of an individual of Native American descent. The origin of the find, eroding out of the riverbank adjacent to the location of the 1877 Nez Perce encampment, is in keeping with the historical and archeological documentation. There are numerous historical accounts and Nez Perce oral tradition that the Nez Perce buried their dead along the riverbank following the battle.

Determinations Made by the U.S. Department of the Interior, National Park Service, Big Hole National Battlefield

Officials of the U.S. Department of the Interior, National Park Service, Big Hole National Battlefield 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 60 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 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 and associated funerary objects should submit a written request with information in support of the request to Stephen Thede, Superintendent, Big Hole National Battlefield, P.O. Box 237, Wisdom, MT 59761 or Nez Perce National Historical Park, 39063 US Hwy. 95, Lapwai, ID 83540, telephone (208) 843–7011, email *steve_thede@nps.gov,* by May 16, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The U.S. Department of the Interior, National Park Service, Big Hole National Battlefield is responsible for notifying The Tribes that this notice has been published.

Dated: April 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–08121 Filed 4–14–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–457 (A–D) (Fifth Review)]

Heavy Forged Hand Tools From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on heavy forged hand tools from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: March 7, 2022.

FOR FURTHER INFORMATION CONTACT: Peter Stebbins (202–205–2039), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On March 7, 2022, the Commission determined that the domestic interested party group response to its notice of institution (86

FR 68275, December 1, 2021) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the review has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for this review on April 15, 2022. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determinations the Commission should reach in the review. Comments are due on or before April 22, 2022 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by April 22, 2022. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: April 11, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–08075 Filed 4–14–22; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the response to its notice of institution filed on behalf of Estwing Manufacturing Company, Inc., a domestic producer of each of the four heavy forged hand tools (''HFHT'') domestic like products: Axes and adzes, bars and wedges, hammers and sledges, and picks and mattocks, to be individually adequate for each HFHT domestic product. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Document Number NASA–22–024; Docket Number–NASA–2022–0002]

National Environmental Policy Act; Mars Sample Return Campaign

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent; notice of meetings; request for comments.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, and NASA's procedures for implementing NEPA, NASA will prepare a Programmatic Environmental Impact Statement (PEIS) for the Mars Sample Return (MSR) Campaign; cooperating agencies for this effort include the U.S. Air Force (in accordance with, *Environmental Impact Analysis Process*), U.S. Army, U.S. Department of Agriculture, and U.S. Department of Health and Human Services—Centers for Disease Control and Prevention. The PEIS will provide information related to the potential environmental impacts associated with the proposed return of Mars samples to Earth for scientific analysis. Potential impacts to be analyzed in the PEIS include those associated with ground disturbance from landing site preparation, and sample vehicle landing and recovery efforts with respect to natural, biological and cultural resources. NASA will also assess potential impacts to the human and natural environment associated with loss of containment of Mars sample materials. Additional information about the MSR Campaign may be found on the internet at: *http://www.jpl.nasa.gov/missions/mars-sample-return-msr.*

DATES: The public scoping period for this PEIS is for a period of 30 days from publication of this notice. Fact sheets and other information regarding the NEPA and scoping process for the MSR Campaign will be made available at the following website beginning on April 15, 2022: *www.nasa.gov/feature/nepa-mars-sample-return-campaign.*

NASA will hold two VIRTUAL public scoping meetings to solicit comments regarding the Proposed Action and the environmental issues which NASA should consider in the PEIS. The virtual meetings will be held on May 4, 2022; 1 p.m.–3 p.m. (Mountain) and May 5; 6 p.m.–8 p.m. (Mountain) at the following URL: *https://jpl.webex.com/meet/msr.* The call-in number for audio-only users is: +1–510–210–8882.

The meetings will begin with a brief welcome message followed by a 10-minute NASA presentation describing the purpose of the scoping meetings, project schedule, opportunities for public involvement, proposed action and alternatives summary, and programmatic approach. A 20-minute technical presentation regarding the MSR Campaign will then be provided. After the formal presentations will be a 30-minute virtual ''Open House'' and question and answer session where meeting participants can ask questions of the panel presenters. After the technical presentations and question and answer session, the official scoping comment submission portion of the meetings will begin. The scoping comment submission session will be 55-

minutes, where members of the public may provide up to a three-minute comment. The virtual public meetings may end later than the stated time depending on the number of persons who wish to submit a comment. At this time, NASA does not intend to provide English-language translation unless specifically requested at least one week prior to the meetings.

NASA expects to release a Draft PEIS for public and agency review and comment in Fall 2022, and a Record of Decision in Spring/Summer 2023.

ADDRESSES: Advance registration to attend or provide a comment at either of the virtual public meetings is not required. As noted above in **DATES**, public meeting attendees may submit comments during the public meeting, or by other means described below throughout the 30-day comment period. Please provide your comments no later than May15, 2022 to ensure consideration in the Draft PEIS.

Comments must be identified with Docket No. NASA–2022–0002 and may be sent to NASA as follows:

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Please note that NASA will post all comments on the internet without changes, including any personal information provided.
- By mail to Steve Slaten, NASA Jet Propulsion Laboratory, 4800 Oak Grove Drive, M/S: 200–119, Pasadena, California 91109–8099.

We encourage you to submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* If you submit your comments electronically, it is not necessary to also submit a hard copy. All comments received will be posted without change to *http://www.regulations.gov.* Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including any personal identifying information you provide—may be publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Slaten, National Aeronautics and Space Administration, by electronic mail at *Mars-sample-return-nepa@lists.nasa.gov* or by telephone at 202–358–0016. For questions regarding viewing the Docket, please call Docket Operations, telephone: 202–366–9317 or 202–366–9826.

SUPPLEMENTARY INFORMATION: NASA, in coordination with the European Space Agency (ESA), proposes to conduct a campaign to retrieve a scientifically selected set of samples (*i.e.,* Martian rocks, regolith, and atmosphere), acquired and cached on the surface of Mars by the Perseverance rover, and return them to Earth for scientific analysis and research. The proposed landing and recovery location for the Mars samples is the Utah Test and Training Range (UTTR), which is under the jurisdictional control of the United States Air Force. Additional Earth-based ground elements associated with sample transportation (utilizing over-the-road and/or aircraft to transport the samples off the UTTR) and sample management/research (otherwise referred to as ''curation'') involving the development and operation of a Sample Return Facility (SRF) are also part of the MSR Campaign mission architecture.

Virtual Public Meetings and Virtual Open House and Q&A

We encourage you to visit the informational website at *www.nasa.gov/feature/nepa-mars-sample-return-campaign* and attend one or both of the virtual public scoping meetings to learn about, and comment on, the proposed MSR Campaign. You will have the opportunity to verbally submit comments during the virtual public meetings on the scope and significance of the issues related to the proposed MSR Campaign that should be addressed in the PEIS.

In order to allow everyone a chance to speak at the virtual public meetings, we may limit speaker time, extend the meeting hours, or both. You must identify yourself, and any organization you represent, by name. Your remarks will be recorded and/or transcribed for inclusion in the public docket.

Public docket materials will be made available to the public on the Federal Docket Management System website (*www.regulations.gov*).

If you plan to attend one of the virtual public meetings and need special assistance such as sign language interpretation or closed captioning, non-English language translator services, or other reasonable accommodation, please notify the NASA representative identified above in the **FOR FURTHER INFORMATION CONTACT** section at least seven business days in advance of the virtual public meeting. Please include your contact information as well as information about your specific needs.

Request for Comments

We request public comment on this proposal. The comments may relate to, but are not limited to, the environmental impact of the proposed action. All comments will be accepted. The virtual public meetings are not the only opportunity you have to comment on the MSR Campaign proposed action. In addition to, or in place of, attending one of the virtual meetings, you may submit comments directly to the Federal Docket Management System during the public comment period (30 days from this notice). We will consider all comments and material received during the 30-day scoping period.

The material presented at the public meetings, received comments, and associated documentation, as well as the draft and Final PEISs (when published) are available for viewing at *www.nasa.gov/feature/nepa-mars-sample-return-campaign.*

Regardless of the method used for submitting comments, all submissions will be posted without change to the Federal Docket Management System website (*http://www.regulations.gov*) and may include any personal information you provide. Therefore, submitting this information to the docket makes it public. You may wish to read the Privacy and Use Notice that is available on the Federal Docket Management System website (*Regulations.gov—https://www.regulations.gov/user-notice*). You may view docket submissions at the Federal Docket Management System or electronically on the Federal Docket Management System website.

Background

Information about the MSR Campaign is available at: *http://www.jpl.nasa.gov/missions/mars-sample-return-msr.* Consideration of the proposed MSR Campaign includes review of the proposed action on the natural and human environment. For the proposed MSR Campaign, NASA is coordinating its review with a number of Cooperating Agencies that have jurisdiction by law over part of the proposed action or have special expertise with respect to environmental issues related to the proposed action. NASA is the lead Federal agency for determining the scope of this review, and in this case, it has been determined that review will include preparation of a PEIS. This NOI is required by 40 CFR 1501.9. It briefly describes the proposed action, possible alternatives, and our proposed scoping process. You can address any questions about the proposed action, the scoping process, or the PEIS to the NASA project

manager identified in the notice (see **FOR FURTHER INFORMATION CONTACT**).

Proposed Action and Alternatives

The proposed action requiring environmental review is NASA's proposed MSR Campaign (see below: Summary of the MSR Campaign). The alternative to undertaking the MSR Campaign is to not undertake the campaign, which for purposes of environmental review under NEPA, is the ''no-action'' alternative.

Scoping Process

Public scoping is an early and open process for identifying and determining the scope of issues to be addressed in the PEIS. Scoping begins with this notice and continues through the conclusion of the public comment period (see **DATES**). Once the scoping process is complete, NASA will prepare a draft PEIS. When complete, NASA will publish a **Federal Register** notice announcing public availability of the Draft PEIS. (If you want that notice to be sent to you, please contact the NASA project manager identified in **FOR FURTHER INFORMATION CONTACT**.) You will have an opportunity to review and comment on the Draft PEIS. NASA and other appropriate Cooperating Agencies will consider the received comments and prepare the Final PEIS. As with the Draft PEIS, we will announce the availability of the Final PEIS and give you an opportunity for review and comment before a Record of Decision is announced.

Summary of the MSR Campaign

Overall, the MSR Campaign spans six elements: Four flight elements, which include the Perseverance Rover, two Sample Retrieval Landers (''Landers''—a Sample Fetch Rover Lander and Mars Ascent Vehicle Lander) and their subcomponents, and the Earth Return Orbiter (the ''Orbiter''), its subcomponents and recovery of the samples; and two ground elements, which include sample transportation and an SRF. The following is an overall summary of the MSR Campaign.

The Perseverance Rover (previously addressed in the *Final Supplemental Environmental Impact Statement for the Mars 2020 Mission*) (see *https://www.nasa.gov/sites/default/files/atoms/files/20200115_mars_2020_seis_final_tagged.pdf*) is currently collecting Mars samples in environmentally sealed and rigorously engineered tubes and will eventually deposit select sets of tubes on the planet surface for later recovery. Specific Lander designs are still under consideration. NASA anticipates that the Lander payload mass and volume may result in the need for the equipment to be divided into two payloads, therefore requiring two separate Landers and launches. At this time, NASA has not confirmed if the use of Radioisotope Heater Units (RHUs) will be necessary to ensure that mission needs are met; the RHUs would generate heat, but no electricity, to support Lander function on the surface of Mars. If RHUs will be necessary, a payload of up to 20 RHUs may be included in the Lander designs.

The Landers are proposed for launch from either Cape Canaveral Space Force Station or Kennedy Space Center (depending on the launch vehicle yet to be selected). NASA anticipates launch of the Landers in of either 2026, 2028, or 2030 depending on the status of mission architecture and launch period availability. NASA anticipates Mars sample return to Earth approximately five years from launch of the Landers. The ESA Orbiter launch from French Guiana would then coincide with the NASA launch(es). All vehicles would transit to Mars. The Orbiter would enter Mars orbit, and the Landers would land directly on the Martian surface, similar to the recent Perseverance rover landing, in the vicinity of one or more sample tube sets. The samples would consist of approximately 35 tubes weighing about 25 grams each, for a total sample amount of approximately 525 grams (about 1 pound). Once on Mars, the Sample Fetch Rover would be deployed. The Sample Fetch Rover would then retrieve sample tubes left on the surface by Perseverance and deliver them to the Lander with the Mars Ascent Vehicle (MAV). If still operational, the Perseverance rover could also deliver sample tubes it retained on board directly to the Lander. A Sample Transfer Arm on the lander would be used to transfer samples from the Sample Fetch Rover and/or Perseverance rover into the Orbiting Sample container within the MAV.

The Mars Ascent Vehicle would be launched from the Martian surface into Mars orbit. Once in orbit, the Mars Ascent Vehicle would deploy the Orbiting Sample container to rendezvous with the Orbiter. Once at the Orbiter, the Orbiting Sample container would be captured by the Capture, Containment, and Return System module. When retrieved by the Capture, Containment, and Return System module, the Orbiting Sample container would be stored in redundant containment vessels and placed in the Earth Entry Vehicle, creating the Earth Entry System (EES). The Orbiter would then leave Mars orbit and navigate to a trajectory that would bring it close to Earth without placing itself on an impact trajectory. After a series of system health and navigation checks, the Orbiter would then fire its thrusters to achieve a short-lived Earth return trajectory. Once this trajectory is confirmed and the proper point is reached, the Capture, Containment, and Return System module would release the EES on a path to enter the Earth's atmosphere. The EES would then enter Earth's atmosphere and descend, reaching a velocity of approximately 35 to 45 meters per second (around 78 to 100 miles per hour) before landing at the UTTR. After EES release, the Orbiter would navigate to a trajectory that would avoid Earth for over 100 years, ensuring that residual Mars material, if any, associated with the Orbiter is not returned to Earth.

Prior to EES landing, recovery teams would be staged at strategic locations surrounding the proposed landing site; the objective being to contain and recover the EES as quickly as possible. Staging areas would include communications equipment and vehicles (land and/or air) and equipment for use in transport to and from the landing site. The primary staging area would have a mobile containment system (or ''vault''). Once the EES has landed, the recovery team would transit to the landing site and contain the EES. Because the samples should be treated as though potentially hazardous until demonstrated otherwise, the EES would be handled under the highest level of containment, handling, and transportation regulatory standards. Additionally, although release of Mars sample particles is considered an off-nominal event, recovery teams would handle the landing event as though a release has occurred, thereby ensuring proper containment and decontamination of the EES and landing site. After arrival of the recovery team, the landing site would be cordoned off, and a 100-square-meter (1,076-square-foot) tent would be erected over the EES. As a precautionary measure, the EES would then be decontaminated, placed in a protective biohazard plastic bag, and then inserted into a 2-meter by 2-meter (6.56-foot by 6.56-foot) sealed travel case. The exterior of the EES travel case would be decontaminated before leaving the tent, and the EES travel case would be placed on a vehicle and transported to the roadside staging area and into the vault for shipment to an SRF. After removal of the EES, the entire contents of the tent and the landing site would be decontaminated as a precautionary measure. Samples of the landing site/

impact area would also be taken for contamination knowledge/biological knowledge after the EES is removed but before decontamination of the area. These samples would be transported under containment with the EES to the SRF for analysis. Prior to, and in support of, EES landing the proposed landing area would be cleared of old target objects and other debris (*e.g.,* railroad ties) that pose an impact risk to the EES.

''Planetary protection'' is the discipline/practice of protecting solar system bodies (*e.g.,* a planet, planetary moon, or asteroid) from contamination by Earth life and, in the case of sample return missions, protecting Earth from potential hazards posed by extraterrestrial matter. For missions returning samples from planetary bodies considered to potentially harbor life, NASA is required to address Presidential Directive (PD)/National Security Council (NSC)–25, *Scientific or Technological Experiments with Possible Large-Scale Adverse Environmental Effects and Launch of Nuclear Systems into Space,* by presenting detailed information regarding the importance and potential environmental effects of the mission in the MSR Campaign's PEIS. NASA's planetary protection policies address missions involving samples returned from various solar system bodies as detailed in NASA Policy Directive 8020.7G. The NASA policies are guided by the planetary protection policies published by the international Committee on Space Research (COSPAR) in response to the United Nations Outer Space Treaty. NASA Procedural Requirement (NPR) 8715.24, *Planetary Protection Provisions for Robotic Extraterrestrial Missions,* provides guidelines for categorizing missions according to the destination and proposed activity. NPR 8715.24 also provides specific procedural requirements for certain mission categories. All missions returning samples from outside the Earth-Moon system are designated as Category V. Under Category V, there are two subcategories: Unrestricted Earth Return—sample return missions from solar system bodies deemed by scientific consensus to have no extraterrestrial life (*e.g.,* Earth's Moon and Venus); and Restricted Earth Return (RER)—sample return missions from solar system bodies deemed by scientific opinion to have a possibility of harboring indigenous life forms (*e.g.,* Mars or Europa). RER missions have requirements to break the chain of contact with the target body as well as isolate and robustly contain restricted samples during all mission phases through safe receipt and containment on Earth.

Due to the potential for past or present indigenous life forms on Mars, the sample return portion of the MSR Campaign is expected to be classified as a Category V Restricted Earth Return activity, which requires an environmental impact statement under 14 CFR 1216.306. The PEIS anticipates that this categorization will be established, and the PEIS' analysis provides for the most conservative approach. The general scientific consensus is that the Martian surface is too inhospitable for life to survive there today. It is a freezing landscape with no liquid water that is continually bombarded with harsh radiation. Scientists are interested in returning samples that may reveal what the Martian environment was like billions of years ago, when the planet was wetter and may have supported microbial life. There is no current evidence that the samples collected by the Mars 2020 mission from the first few inches of the Martian surface could contain microorganisms that would be harmful to Earth's environment. Nevertheless, out of an abundance of caution and in accordance with NASA policy and regulations, NASA would implement measures to ensure that the Mars samples are contained (with redundant layers of containment) so that they could not impact humans or Earth's environment, and the samples would remain contained until they are examined and confirmed safe for distribution to terrestrial science laboratories. NASA and its partners would use many of the basic principles that biological laboratories use today to contain, handle, and study materials that are known or suspected to be dangerous.

Due to the large scope of the MSR Campaign and uncertainty regarding the timing, location, and environmental impacts of actions associated with the ground elements, the NEPA analysis will be conducted in two ''tiers'' (or phases). This approach is endorsed under both 40 CFR 1501.11 and 14 CFR 1216.307. Tier I, the focus of the PEIS, will programmatically address the potential impacts associated with the potential for multiple Lander launches (with the potential for RHUs to be incorporated into the Landers' design architecture) from either Kennedy Space Center or Cape Canaveral Space Force Station in Florida, launch of the Orbiter from French Guiana, and return of the Orbiter and EES to include initial recovery, containment, and handling of the samples once they reach the Earth's surface (*i.e.,* at the UTTR landing site). Currently, definitive mission-related requirements associated with MSR Campaign ground elements for sample transportation and a SRF are still in the early planning stages of development, but each will be described to the maximum extent practicable in the PEIS. These aspects will be addressed programmatically in the Tier I PEIS, to the extent that information is available, and will be analyzed in more specific detail in subsequent Tier II NEPA analysis once this information is available. The Tier I analysis will also address the site-specific proposal to land the vehicle containing the samples (the EES) at the UTTR.

Joel Carney,

Assistant Administrator, Office of Strategic Infrastructure.

[FR Doc. 2022–08088 Filed 4–14–22; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

695th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232(b)), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on May 4–5, 2022. The Committee will be conducting meetings that will include some Members being physically present at the NRC while other Members participating remotely. Interested members of the public are encouraged to participate remotely in any open sessions via MSTeams or via phone at 301–576–2978, passcode 22229828#. A more detailed agenda including the MSTeams link may be found at the ACRS public website at *https://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/index.html*. If you would like the MSTeams link forwarded to you, please contact the Designated Federal Officer as follows: *Quynh.Nguyen@nrc.gov* or *Lawrence.Burkhart@nrc.gov*.

Wednesday, May 4, 2022

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–11:30 a.m.: Point Beach Subsequent License Renewal Application Committee Deliberation/ Commission Meeting Preparation

(Open/Closed) (MWS/KH)—The Committee will deliberate regarding the subject topic and Commission meeting preparation. [*Note:* Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

1:00 p.m.–2:30 p.m.: University Leadership Program Briefing (Open)—The Committee will have presentations and discussion with representatives from NRC staff regarding the subject topic.

2:30 p.m.–4:30 p.m.: Digital Twins Information Briefing (Open)—The Committee will have presentations and discussion with representatives from NRC staff, the Advanced Research Projects Agency-Energy, and the Electric Power Research Institute regarding the subject topic.

4:30 p.m.–6:00 p.m.: Preparation of Reports/Commission Meeting Preparation (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and Commission meeting preparation. [*Note:* Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.].

Thursday, May 5, 2022

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–11:30 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations/Preparation of Reports/Commission Meeting Preparation (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings, and/or proceed to preparation of reports as determined by the Chairman. [*Note:* Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]. [*Note:* Pursuant to 5 U.S.C. 552b(c)(2) and (6), a portion of this meeting may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

1:00 p.m.–6:00 p.m.: Preparation of Reports/Commission Meeting Preparation (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and Commission meeting preparation. [*Note:* Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on June 13, 2019 (84 FR 27662). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff and the Designated Federal Officer (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

An electronic copy of each presentation should be emailed to the Cognizant ACRS Staff at least one day before meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's Agencywide Documents Access and Management System (ADAMS), which is accessible from the NRC website at *https://www.nrc.gov/reading-rm/adams.html* or *https://www.nrc.gov/reading-rm/doc-collections/#ACRS/.*

Dated: April 12, 2022.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2022–08098 Filed 4–14–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0057]

Information Collection: NRCareers (Monster Government Solutions)

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on this proposed information collection. The information collection is entitled, ''NRCareers (Monster Government Solutions).''

DATES: Submit comments by June 14, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0057. 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.
- *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0057 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0057. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2022–0057 on this website.

• *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 supporting statement and screenshots are available in ADAMS under Accession Nos. ML22062B650 and ML22063A084.

• *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.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0057 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRCareers (Monster Government Solutions).
2. *OMB approval number:* An OMB control number has not yet been assigned to this proposed information collection.
3. *Type of submission:* New.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* Information is collected as needed.
6. *Who will be required or asked to respond:* NRC applicants and selectees for hiring.
7. *The estimated number of annual responses:* 311.
8. *The estimated number of annual respondents:* 311.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 466.
10. *Abstract:* The NRC relies on web-based software for human capital management, workforce development, and candidate recruitment. Relying entirely on paper-based recruitment and hiring systems would be error-prone, time consuming and inefficient. Instead, the following information is collected electronically: Name, education information (academic institutions, years of attendance, etc.), social security number, personal cellular telephone number, personal email address, home telephone number, employment information, military status/service, mailing/home address.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: April 12, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–08142 Filed 4–14–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0210]

Information Collection: Invoice Submissions by Contractors for NRC Contracts/Orders

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Invoice Submissions by Contractors for NRC Contracts/Orders.''

DATES: Submit comments by June 14, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

• *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0210. 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.

• *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0210 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0210. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2021–0210 on this website.
- *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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML19050A504. The supporting statement is available in ADAMS under Accession No. ML22014A075.
- *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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0210 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Invoice Submissions by Contractors for NRC Contracts/Orders.
2. *OMB approval number:* 3150–0109.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* On occasion.
6. *Who will be required or asked to respond:* Contractors.
7. *The estimated number of annual responses:* 710.
8. *The estimated number of annual respondents:* 36.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 1046.
10. *Abstract:* The Division of Acquisition Management in the Office of Administration at the NRC, provides contractors with an invoice template and instructions for how to properly prepare invoices, for all cost-reimbursement contracts/task orders, to complete via Invoicing Processing Platform.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: April 12, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–08145 Filed 4–14–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of April 18, 25, May 2, 9, 16, 23, 2022. All listed meeting times (see **MATTERS TO BE CONSIDERED**) are local to the meeting location. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: Multiple locations (see **MATTERS TO BE CONSIDERED**). The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public and Closed (see **MATTERS TO BE CONSIDERED**).

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC

20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Betty.Thweatt@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of April 18, 2022

Friday, April 22, 2022

2:30 p.m. Meeting with the Navajo Tribal Community Members of the Red Water Pond Road (Public) (Contact: Wesley Held: 301–287–3591)

Additional Information: The meeting will be held at the Red Water Pond Road Cha'a'oh (''Shade House''), New Mexico. The GPS coordinates for the meeting location are 35.68485338436599, –108.5433161361636. From Church Rock on State Route 566, head northeast for eleven miles. After driving past mile marker eleven and Pipeline Road, the road bends to the left. Shortly after, you will soon see the Red Water Pond Road sign. Take a right hand turn off State Route 566 onto Red Water Pond Road, which is an all-dirt road. The meeting location is about a quarter mile on the right. Pursuant to Navajo Public Health Order 2022–05, reopening status is currently set at ''yellow'' (moderate transmission of COVID–19) and the Red Water Pond Road Community Meeting facility will be allowed to seat up to 50 persons. The grounds surrounding the facility will be set up for additional participants in a ''drive-in'' setting where participants remain in their vehicles during the broadcast of the meeting via public address/sound system. In addition, all individuals 2 years of age and older shall wear masks while in public where the individual could come within 6 feet of someone who is not from the individual's household.

6:30 p.m. Discussion of the Ten-Year Plan to Address Impacts of Uranium Contamination on the Navajo Nation and Lessons Learned from the Remediation of Former Uranium Mill Sites (Public) (Contact: Wesley Held: 301–287–3591)

Additional Information: On April 1 and April 4, 2022, the Commission voted to approve changing the start time of the meeting from 6:00 p.m. to 6:30 p.m. The meeting will be held at the Hilton Garden Inn, 1530 W Maloney Ave., Gallup, New Mexico. The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/* or by teleconference (Dial-in number: 800–369–2047; Passcode: 6097034).

Week of April 25, 2022—Tentative

Tuesday, April 26, 2022

10:00 a.m. Briefing on the Annual Threat Environment (Closed Ex. 1)

Thursday, April 28, 2022

10:00 a.m. Executive Branch Briefing on NRC International Activities (Closed Ex. 1 & 9)

Week of May 2, 2022—Tentative

There are no meetings scheduled for the week of May 2, 2022.

Week of May 9, 2022—Tentative

Tuesday, May 10, 2022

9:00 a.m. Strategic Programmatic Overview of the Fuel Facilities and the Spent Fuel Storage and Transportation Business Lines (Public) (Contact: Jenny Weil: 301–415–1024)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/* .

Thursday, May 12, 2022

10:00 a.m. Briefing on Advanced Reactors Activities with Federal Partners (Public) (Contact: Caty Nolan: 301–287–1535)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/.*

Week of May 16, 2022—Tentative

There are no meetings scheduled for the week of May 16, 2022.

Week of May 23, 2022—Tentative

There are no meetings scheduled for the week of May 23, 2022.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: April 13, 2022.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2022–08231 Filed 4–13–22; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2022–51; Order No. 6149]

Mail Classification Schedule

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recent Postal Service filing concerning classification changes to the Mail Classification Schedule (MCS) related to Ancillary Services, along with corresponding minor revisions to other MCS entries. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 22, 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:

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I. Introduction
II. Summary of Changes
III. Notice of Commission Action
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I. Introduction

On April 6, 2022, the Postal Service filed a formal request to make a material modification to the product description of Ancillary Services on the Mail Classification Schedule (MCS), along with corresponding ''minor revisions'' to other MCS entries.[1] Specifically, the Postal Service seeks to strike the description of Special Handling in section 1505.18 of the MCS, as well as all other references to Special Handling. Request at 1. To support its Request, the Postal Service incorporated a statement of supporting justification required by 39 CFR 3040.180 and attached its proposed changes to the MCS.[2]

[1] United States Postal Service Request to Modify the Product Description of Ancillary Services on the Market Dominant Product List, April 6, 2022, at 1 (Request).

[2] The Postal Service asserts that, because the Commission has historically treated Ancillary Services as a ''product'' and the various services listed within as ''components'' or ''sub-components,'' and because the Postal Service intends to keep Ancillary Services on the market dominant product list, the elimination of Special

Continued

II. Summary of Changes

The Postal Service intends to discontinue the Special Handling service and seeks to remove all references to it from the MCS. Request at 1–2. It explains that Special Handling is an extra offering available for certain mailing and shipping services that allows mailers to request careful treatment of their items for a $12.15 fee. *See id.* at 2–3. According to the Postal Service, however, ''experience indicates that observance of [instructions to treat these items with care] is inconsistent'' and many items do not receive the label that should inform handlers of these instructions. *Id.* Moreover, the Postal Service states that ''[m]any types of sensitive goods for which mailers purchase Special Handling already require special packing, packaging, and labeling,'' thus compliance with those requirements signals that the handler is to give the item special attention and rendering the Special Handling designation superfluous. *Id.* at 3. The Postal Service contends that ''purchaser[s] of Special Handling may expect a level of service or sanctity from the Postal Service that is not fully contemplated or provided.'' *Id.*

Additionally, the Postal Service asserts that the proposed change will better align the value of the service with customer expectations. *Id.* According to the Postal Service, Special Handling does not correspond with market expectations because private companies do not offer their customers an expectation of special handling for fragile items that are packed by the customer (with or without a fee). *Id.* at 4. Instead, the Postal Service contends that throughout the parcel shipping industry, a customer preparing fragile items for shipping bears the burden ''to self-insure via adequate package-preparation practices, accepting the risk of damage or loss from any shortfalls.'' *Id.*

The Postal Service maintains that the proposed change ''is not inconsistent with the policies and applicable criteria of 39 U.S.C. Chapter 36 or any regulatory rules or directives.'' *Id.* The Postal Service further asserts that these provisions are inapplicable to the proposed change. *See id.* Nevertheless, ''to the extent that the Commission might deem such provisions to articulate general policies,'' the Postal Service contends that it has considered the factors set forth in 39 U.S.C. 3622(c) and the provisions appearing in 39 U.S.C. 101, 403, and 404. *See id.* at 4–5.

With respect to the impact of the proposed change, the Postal Service does not expect that customers will experience a material diminution in the services received. *Id.* at 5. According to the Postal Service, the proposed change will improve the customer experience by decreasing mailing costs and better aligning customer expectations with operational realities and industry practice. *Id.* at 5–6. Finally, the Postal Service expects that the proposed change will not impact competitors significantly ''because no commercial competitors offer a similar service.'' *Id.* at 6.

III. Notice of Commission Action

Pursuant to 39 CFR 3040.182, the Commission has posted the Request on its website and invites comments on whether the Postal Service's filings are consistent with 39 CFR 3040.180. Comments are due no later than April 22, 2022. The filing can be accessed via the Commission's website (*http://www.prc.gov*).

The Commission appoints Matthew Ashford to represent the interests of the general public (Public Representative) in this docket.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2022–51 to consider matters raised by this Notice.

2. Comments by interested persons are due by April 22, 2022.

3. Pursuant to 39 U.S.C. 505, Mathew Ashford is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this notice in the **Federal Register**.

By the Commission.

Jennie L. Jbara,

Alternate Certifying Officer.

[FR Doc. 2022–08095 Filed 4–14–22; 8:45 am]

BILLING CODE 7710–FW–P

Handling constitutes a material modification of a product description subject to 39 CFR part 3040, subpart E, rather than the removal of a product subject to Subpart B. *See* Request at 1 n.1.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94681; File No. SR–PEARL–2022–05]

Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Withdrawal of Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Remove Certain Credits and Increase Trading Permit Fees

April 11, 2022.

On February 15, 2022, MIAX PEARL LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the MIAX Pearl Options Fee Schedule to remove certain credits and increase the monthly Trading Permit fees.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] On February 25, 2022, the proposed rule change was published for comment in the **Federal Register** and, pursuant to Section 19(b)(3)(C) of the Act,[4] the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule change.[6] On March 30, 2022, the Exchange withdrew the proposed rule change (SR–PEARL–2022–05).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08061 Filed 4–14–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 94287 (February 18, 2022), 87 FR 10837.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94669; File Nos. SR–MIAX–2022–10, SR–EMERALD–2022–06]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC and MIAX Emerald, LLC; Notice of Withdrawal of Proposed Rule Changes To Establish Fees for the Exchanges' cToM Market Data Products

April 11, 2022.

On February 7, 2022, Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald'') (collectively, the ''Exchanges'') each 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 establish fees for, respectively, the MIAX Complex Top of Market (''cToM'') and the MIAX Emerald cToM market data products.

The proposed rule changes were immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] On February 22, 2022, the proposed rule changes were published for comment in the **Federal Register** and, pursuant to Section 19(b)(3)(C) of the Act,[4] the Commission: (1) Temporarily suspended the proposed rule changes; and (2) instituted proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule changes.[6] On March 30, 2022, the Exchanges withdrew the proposed rule changes (SR–MIAX–2022–10, SR–EMERALD–2022–06).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08066 Filed 4–14–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release Nos. 94262 (February 15, 2022), 87 FR 9733 (SR–MIAX–2022–10); and 94263 (February 15, 2022), 87 FR 9766 (SR–EMERALD–2022–06).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94680; File No. SR–PEARL–2022–04]

Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Withdrawal of Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase the Monthly Fees for MIAX Express Network Full Service Port

April 11, 2022.

On February 15, 2022, MIAX PEARL LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the MIAX Pearl Options Fee Schedule to increase the monthly fees for the MIAX Express Network Full Service (''MEO'') Ports.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] On February 25, 2022, the proposed rule change was published for comment in the **Federal Register** and, pursuant to Section 19(b)(3)(C) of the Act,[4] the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule change.[6] On March 30, 2022, the Exchange withdrew the proposed rule change (SR–PEARL–2022–04).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08060 Filed 4–14–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 94286 (February 18, 2022), 87 FR 10860.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94663; File No. SR–NYSEARCA–2022–18]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 10.9261 and 10.9830

April 11, 2022.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 29, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes extending the expiration date of the temporary amendments to Rules 10.9261 and 10.9830 as set forth in SR–NYSEArca–2020–85 from March 31, 2022, to July 31, 2022, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE Arca Rules 10.9261 and 10.9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes extending the expiration date of the temporary amendments as set forth in SR–NYSEArca–2020–85 [4] to Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) from March 31, 2022, to July 31, 2022, to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSEArca–2020–85 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID–19 pandemic. The proposed rule change would not make any changes to the text of Exchange Rules 10.9261 and 10.9830.[5]

Background

In 2019, NYSE Arca adopted disciplinary rules based on the text of the Rule 8000 and Rule 9000 Series of its affiliate NYSE American LLC (''NYSE American''), with certain changes. The NYSE American disciplinary rules are, in turn, substantially the same as the Rule 8000 Series and Rule 9000 Series of FINRA and the New York Stock Exchange LLC.[6] The NYSE Arca disciplinary rules were implemented on May 27, 2019.[7]

In adopting disciplinary rules modeled on FINRA's rules, NYSE Arca adopted the hearing and evidentiary processes set forth in Rule 10.9261 and in Rule 10.9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 10.9800 Series. As adopted, the text of Rule 10.9261 and Rule 10.9830 are substantially the same as the FINRA rules with certain modifications.[8]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[9]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 23, 2020, the Exchange filed to temporarily amend Rule 10.9261 and Rule 10.9830 to permit FINRA to conduct virtual hearings on its behalf.[10] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[11] On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to April 30, 2021.[12] On April 1, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–006, to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.[13] On April 20, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to August 31, 2021.[14] On August 13, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–019, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from August 31, 2021, to December 31, 2021.[15] On August 27, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to December 31, 2021.[16] On December 7, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–031, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from December 31, 2021, to March 31, 2022.[17] On December 27, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to March 31, 2022, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[18]

While there are material signs of improvement, FINRA has determined that uncertainty still remains for the coming months. The continued presence of COVID–19 variants, dissimilar vaccination rates throughout the United States, and the current medium to high COVID–19 community levels in many states indicate that COVID–19 remains an active and real public health concern.[19] Due to the uncertainty and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions,[20] FINRA believes that there is a continued need for temporary relief beyond March 31, 2022.[21] On March 7, 2022, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules,

[4] *See* Securities Exchange Act Release No. 90088 (October 5, 2020), 85 FR 64186 (October 9, 2020) (SR–NYSEArca–2020–85) (''SR–NYSEArca–2020–85'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond July 31, 2022 if the Exchange requires additional temporary relief from the rule requirements identified in SR–NYSEArca–2020–85. The amended NYSE Arca rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR–NYSEArca–2019–15) (''2019 Notice'').

[7] *See* NYSE Arca Equities RB–19–060 & NYSE Arca Options RB–19–02 (April 26, 2019).

[8] *See* 2019 Notice, 84 FR at 16365 & 16373–4.

[9] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (''SR–FINRA–2020–027'').

[10] *See* note 4, *supra*.

[11] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[12] *See* Securities Exchange Act Release No. 90820 (December 30, 2020), 86 FR 647 (January 6, 2021) (SR–NYSEArca–2020–116).

[13] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006).

[14] *See* Securities Exchange Act Release No. 91633 (April 22, 2021), 86 FR 22474 (April 28, 2021) (SR–NYSEArca–2021–27).

[15] *See* Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019).

[16] *See* Securities Exchange Act Release No. 92909 (September 9, 2021), 86 FR 51415 (September 15, 2021) (SR–NYSEArca–2021–76).

[17] *See* Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (SR–FINRA–2021–31).

[18] *See* Securities Exchange Act Release No. 93918 (January 6, 2022), 87 FR 1810 (January 12, 2022) (SR–NYSEArca–2021–107).

[19] *See* Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR–FINRA–2022–004) (''SR–FINRA–2022–004''). FINRA noted that, for example, on February 18, 2022, President Joe Biden continued the national emergency concerning COVID–19 beyond March 1, 2022, because COVID–19 ''continues to cause significant risk to the public health and safety'' of the United States. *See* Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID–19) Pandemic, 87 FR 10289 (February 23, 2022). *See* SR–FINRA–2022–004, 87 FR at 16262, n. 6.

[20] For instance, FINRA noted that the Centers for Disease Control and Prevention (''CDC'') recommends that people wear a mask in public indoor settings in areas with a high COVID–19 community level regardless of vaccination status or individual risk. *See https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html.* Furthermore, numerous states currently have COVID–19 restrictions in place. Hawaii requires most people to wear masks in indoor public places regardless of vaccination status and several other states have mask mandates in certain settings, such as healthcare and correctional facilities. *See* SR–FINRA–2022–004, 87 FR at 16262, n. 7.

[21] *See* SR–FINRA–2022–004, 87 FR at 16263.

FINRA Rule 9261 and 9830 from March 31, 2022, to July 31, 2022.[22]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE Arca Rules 10.9261 and 10.9830 as set forth in SR–NYSEArca–2020–85 from March 31, 2022, to July 31, 2022.

As set forth in SR–FINRA–2022–004, while there are material signs of improvement, uncertainty still remains for the coming months. The continued presence of COVID–19 variants, dissimilar vaccination rates throughout the United States, and the current medium to high COVID–19 community levels in many states indicate that COVID–19 remains an active and real public health concern.[23] Due to the uncertainty and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions,[24] FINRA believes that there is a continued need for temporary relief beyond March 31, 2022.[25] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from March 31, 2022, to July 31, 2022.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE Arca Rules 10.9261 and 10.9830 as set forth in SR–NYSEArca–2020–85 from March 31, 2022, to July 31, 2022. The Exchange agrees with FINRA that, while there are material signs of improvement, uncertainty still remains for the coming months. The Exchange also agrees that, due to the uncertainty and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions, for the reasons set forth in SR–FINRA–2022–004, there is a continued need for this temporary relief beyond March 31, 2022. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2022–004, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. Similarly, as noted in SR–FINRA–2022–004, in SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[26] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 10.9261 and 10.9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Section 6(b)(5),[28] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[29]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 as set forth in SR–FINRA–2022–004, will permit the Exchange to continue to effectively conduct hearings during the COVID–19 pandemic. Given the current and frequently changing COVID–19 conditions and the uncertainty around when those conditions will see meaningful, widespread and sustained improvement, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in the SR–NYSEArca–2020–85, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act[30] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR–NYSEArca–2020–85, provides only temporary relief. As proposed, the changes would be in place through July 31, 2022. As noted in SR–NYSEArca–

[22] *See* SR–FINRA–2022–004, 87 FR at 16263–4. As a further basis for extending the expiration date to July 31, 2022, FINRA noted that its Board has approved the submission of a rule proposal to the Commission to make permanent the temporary service and filing rules originally set forth in SR–FINRA–2020–015. *See https://www.finra.org/about/governance/finra-board-governors/meetings/update-finra-board-governors-meeting-december-2021.* FINRA represented that it is contemplating filing the rule proposal with the Commission in the near future and the extension of the temporary rule amendments would help to avoid the rules reverting to their original form before the permanent rules, if approved by the Commission, become effective. FINRA further noted that the proposal approved by its Board does not include the temporary rule amendments pertaining to video conference hearings originally set forth in SR–FINRA–2020–027.

[23] *See* note 19, *supra.*

[24] *See* note 20, *supra.*

[25] *See* SR–FINRA–2022–004, 87 FR at 16263.

[26] *See* SR–FINRA–2022–004, 87 FR at 16263, n. 15.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(7) & 78f(d).

[30] 15 U.S.C. 78f(b)(7) & 78f(d).

2020–85 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to provide continued temporary relief given the impacts of the COVID–19 pandemic and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on March 31, 2022.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [31] and Rule 19b–4(f)(6) thereunder.[32] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [33] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[34] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that the proposed rule change to extend the expiration date will continue to prevent unnecessary impediments to its critical adjudicatory processes, and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets, that would otherwise result if the temporary amendments were to expire on March 31, 2022.[35] Importantly, the Exchange has also stated that further extending the relief provided initially in SR–NYSEArca–2020–85 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of hearing participants.[36] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NYSEArca–2020–85.[37] As proposed, the changes would be in place through July 31, 2022 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[38] 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 designates the proposal operative upon filing.[39]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [40] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2022–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2022–18. 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.

[31] 15 U.S.C. 78s(b)(3)(A)(iii).

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6).

[34] 17 CFR 240.19b–4(f)(6)(iii).

[35] *See* supra Item II.

[36] *See* SR–FINRA–2022–004, 87 FR at 16264 (noting the same with respect to FINRA employees in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2022–004 would become operative immediately upon filing).

[37] *See* supra note 4.

[38] *See* supra note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond July 31, 2022 it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[39] 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).

[40] 15 U.S.C. 78s(b)(2)(B).

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2022–18 and should be submitted on or before May 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08063 Filed 4–14–22; 8:45 am]

BILLING CODE 8011–01–P

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94678; File No. SR–MIAX–2022–07]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Withdrawal of Proposed Rule Change To Amend the MIAX Fee Schedule To Adopt a Tiered-Pricing Structure for Certain Connectivity Fees

April 11, 2022.

On February 1, 2022, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Fee Schedule to adopt a tiered-pricing structure for certain connectivity fees.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] On February 22, 2022, the proposed rule change was published for comment in the **Federal Register** and, pursuant to Section 19(b)(3)(C) of the Act,[4] the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule change.[6] On March 30, 2022, the Exchange withdrew the proposed rule change (SR–MIAX–2022–07).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08072 Filed 4–14–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 94256 (February 15, 2022), 87 FR 9711.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94665; File No. SR–NYSEAMER–2022–16]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 9261 and 9830

April 11, 2022.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 30, 2022, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes extending the expiration date of the temporary amendments to Rules 9261 and 9830 as set forth in SR–NYSEAMER–2020–69 from March 31, 2022 to July 31, 2022, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE American Rules 9261 and 9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes extending the expiration date of the temporary amendments as set forth in SR–NYSEAMER–2020–69[4] to Rules 9261 (Evidence and Procedure in Hearing) and 9830 (Hearing) from March 31, 2022 to July 31, 2022, to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSEAMER–2020–69 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID–19 pandemic. The proposed rule change would not make any changes to the text of Exchange Rules 9261 and 9830.[5]

Background

In 2016, NYSE American (then known as NYSE MKT LLC) adopted disciplinary rules that are, with certain exceptions, substantially the same as the Rule 8000 Series and Rule 9000 Series of FINRA and its affiliate the New York Stock Exchange LLC (''NYSE''), and which set forth rules for conducting investigations and enforcement actions.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 90085 (October 2, 2020), 85 FR 63603 (October 8, 2020) (SR–NYSEAMER–2020–69) (''SR–NYSEAMER–2020–69'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond July 31, 2022 if the Exchange requires additional temporary relief from the rule requirements identified in SR–NYSEAMER–2020–69. The amended NYSE American rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR–NYSEMKT–2016–30) (''2016 Notice'').

The NYSE American disciplinary rules were implemented on April 15, 2016.[7]

In adopting disciplinary rules modeled on FINRA's rules, NYSE American adopted the hearing and evidentiary processes set forth in Rule 9261 and in Rule 9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 9261 and Rule 9830 are substantially the same as the FINRA rules with certain modifications.[8]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[9]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 15, 2020, the Exchange filed to temporarily amend Rule 9261 and Rule 9830 to permit FINRA to conduct virtual hearings on its behalf.[10] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[11] On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 9261 and Rule 9830 to April 30, 2021.[12] On April 1, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–006, to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.[13] On April 20, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to August 31, 2021.[14] On August 13, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–019, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from August 31, 2021, to December 31, 2021.[15] On August 27, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to December 31, 2021.[16] On December 7, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–031, to extend the expiration date of the temporary amendments in both SR–FINRA–2020–015 and SR–FINRA–2020–027 from December 31, 2021, to March 31, 2022.[17] On December 27, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to March 31, 2022, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[18]

While there are material signs of improvement, FINRA has determined that uncertainty still remains for the coming months. The continued presence of the COVID–19 variants, dissimilar vaccination rates throughout the United States, and the current medium to high COVID–19 community levels in many states indicate that COVID–19 remains an active and real public health concern.[19] Due to the uncertainty and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions,[20] FINRA believes that there is a continued need for temporary relief beyond March 31, 2022.[21] On March 7, 2022, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from March 31, 2022, to July 31, 2022.[22]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE American Rules 9261 and 9830 as set forth in SR–NYSEAMER–2020–69 from March 31, 2022, to July 31, 2022.

As set forth in SR–FINRA–2022–004, while there are material signs of improvement, uncertainty still remains for the coming months. The continued presence of COVID–19 variants, dissimilar vaccination rates throughout the United States, and the current medium to high COVID–19 community levels in many states indicate that COVID–19 remains an active and real public health concern.[23] Due to the uncertainty and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions,[24] FINRA believes that there is a continued need for temporary relief beyond March 31, 2022.[25] FINRA accordingly proposed to extend the expiration date of the

[7] *See* NYSE MKT Information Memorandum 16–02 (March 14, 2016).

[8] *See* 2016 Notice, 81 FR at 11327 & 11332.

[9] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (''SR–FINRA–2020–027'').

[10] *See* note 4, *supra*.

[11] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[12] *See* Securities Exchange Act Release No. 90823 (December 30, 2020), 86 FR 650 (January 6, 2021) (SR–NYSEAMER–2020–88).

[13] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006).

[14] *See* Securities Exchange Act Release No. 91631 (April 22, 2021), 86 FR 22471 (April 28, 2021) (SR–NYSEAMER–2021–23).

[15] *See* Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019).

[16] *See* Securities Exchange Act Release No. 92910 (September 9, 2021), 86 FR 51418 (September 15, 2021) (SR–NYSEAMER–2021–37).

[17] *See* Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (SR–FINRA–2021–31).

[18] See Securities Exchange Act Release No. 93917 (January 6, 2022), 87 FR 1825 (January 12, 2022) (SR–NYSEAMER–2021–49).

[19] *See* Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR–FINRA–2022–004) (''SR–FINRA–2022–004''). FINRA noted that, for example, on February 18, 2022, President Joe Biden continued the national emergency concerning COVID–19 beyond March 1, 2022, because COVID–19 ''continues to cause significant risk to the public health and safety'' of the United States. *See* Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID–19) Pandemic, 87 FR 10289 (February 23, 2022). *See* SR–FINRA–2022–004, 87 FR at 16262, n. 6.

[20] For instance, FINRA noted that the Centers for Disease Control and Prevention (''CDC'') recommends that people wear a mask in public indoor settings in areas with a high COVID–19 community level regardless of vaccination status or individual risk. *See https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html*. Furthermore, numerous states currently have COVID–19 restrictions in place. Hawaii requires most people to wear masks in indoor public places regardless of vaccination status and several other states have mask mandates in certain settings, such as healthcare and correctional facilities. *See* SR–FINRA–2022–004, 87 FR at 16262, n. 7.

[21] *See* SR–FINRA–2022–004, 87 FR at 16263.

[22] *See* SR–FINRA–2022–004, 87 FR at 16263–4. As a further basis for extending the expiration date to July 31, 2022, FINRA noted that its Board has approved the submission of a rule proposal to the Commission to make permanent the temporary service and filing rules originally set forth in SR–FINRA–2020–015. *See https://www.finra.org/about/governance/finra-board-governors/meetings/update-finra-board-governors-meeting-december-2021*. FINRA represented that it is contemplating filing the rule proposal with the Commission in the near future and the extension of the temporary rule amendments would help to avoid the rules reverting to their original form before the permanent rules, if approved by the Commission, become effective. FINRA further noted that the proposal approved by its Board does not include the temporary rule amendments pertaining to video conference hearings originally set forth in SR–FINRA–2020–027.

[23] *See* note 19, *supra*.

[24] *See* note 20, *supra*.

[25] *See* SR–FINRA–2022–004, 87 FR at 16263.

temporary rule amendments from March 31, 2022, to July 31, 2022.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE American Rules 9261 and 9830 as set forth in SR–NYSEAMER–2020–69 from March 31, 2022, to July 31, 2022. The Exchange agrees with FINRA that, while there are material signs of improvement, uncertainty still remains for the coming months. The Exchange also agrees that, due to the uncertainty and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions, for the reasons set forth in SR–FINRA–2022–004, there is a continued need for this temporary relief beyond March 31, 2022. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2022–004, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. Similarly, as noted in SR–FINRA–2022–004, in SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[26] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 9261 and 9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Section 6(b)(5),[28] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[29]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 as set forth in SR–FINRA–2022–004, will permit the Exchange to continue to effectively conduct hearings during the COVID–19 pandemic. Given the current and frequently changing COVID–19 conditions and the uncertainty around when those conditions will see meaningful, widespread and sustained improvement, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in the SR–NYSEAMER–2020–69, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act[30] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR–NYSEAMER–2020–69, provides only temporary relief. As proposed, the changes would be in place through July 31, 2022. As noted in SR–NYSEAMER–2020–69 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to provide continued temporary relief given the impacts of the COVID–19 pandemic and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on March 31, 2022.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[31] and Rule 19b–4(f)(6) thereunder.[32] Because the proposed rule change does not: (i)

[26] *See* SR–FINRA–2022–004, 87 FR at 16263, n. 15.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(7) & 78f(d).

[30] 15 U.S.C. 78f(b)(7) & 78f(d).

[31] 15 U.S.C. 78s(b)(3)(A)(iii).

[32] 17 CFR 240.19b–4(f)(6).

Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[33] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[34] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that the proposed rule change to extend the expiration date will continue to prevent unnecessary impediments to its critical adjudicatory processes, and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets, that would otherwise result if the temporary amendments were to expire on March 31, 2022.[35] Importantly, the Exchange has also stated that further extending the relief provided initially in SR–NYSEAMER–2020–69 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of hearing participants.[36] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NYSEAMER–2020–69.[37] As proposed, the changes would be in place through July 31, 2022 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[38] 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 designates the proposal operative upon filing.[39]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[40] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAMER–2022–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2022–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2022–16 and should be submitted on or before May 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08064 Filed 4–14–22; 8:45 am]

BILLING CODE 8011–01–P

[33] 17 CFR 240.19b–4(f)(6).

[34] 17 CFR 240.19b–4(f)(6)(iii).

[35] *See* supra Item II.

[36] *See* SR–FINRA–2022–004, 87 FR at 16264 (noting the same with respect to the health and safety of FINRA employees in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2022–004 would become operative immediately upon filing).

[37] *See* supra note 4.

[38] *See* supra note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond July 31, 2022 it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[39] 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).

[40] 15 U.S.C. 78s(b)(2)(B).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94670; File No. SR–CBOE–2022–017]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

April 11, 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 April 1, 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 in connection with certain LMM Incentive Programs, effective April 1, 2022.

The Exchange proposes to amend its Regular Trading Hours (''RTH'') SPESG LMM Incentive Program, MRUT LMM Incentive Program and MSCI LMM Incentive Program. All three LMM Incentive Programs provide a rebate to Trading Permit Holders (''TPHs'') with LMM appointments to the respective incentive program that meet certain quoting standards in the applicable series in a month. The Exchange notes that meeting or exceeding the quoting standards (both current and as proposed; described in further detail below) in each of the LMM Incentive Program products to receive the applicable rebate (both currently offered and as proposed; described in further detail below) is optional for an LMM appointed to a program. Rather, an LMM appointed to an incentive program is eligible to receive the corresponding rebate if it satisfies the applicable quoting standards, which the Exchange believes encourages appointed LMMs to provide liquidity in the applicable class and trading session (*i.e.,* RTH). The Exchange may consider other exceptions to the programs' quoting standards based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM appointed to an incentive program meets the applicable program's quoting standards each month, the Exchange excludes from the calculation in that month the business day in which the LMM missed meeting or exceeding the quoting standards in the highest number of the applicable series.

The proposed rule change amends the RTH SPESG LMM Incentive Program. Currently, the RTH SPESG LMM Incentive Program provides that if, for SPESG, the appointed LMM provides continuous electronic quotes during RTH that meet or exceed the above heightened quoting standards in at least 60% of SPESG series 90% of the time in a given month, the LMM will receive a rebate for that month in the amount of $20,000 (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month) for that month. The program additionally provides that, if the appointed LMM meets or exceeds the heightened quoting standards in a given month, the LMM will receive the monthly average daily volume (''ADV'') payment amount that corresponds to the level of ADV provided by the LMM in SPESG for that month per the SPESG Volume Incentive Pool program. The proposed rule change reduces the monthly rebate offered under the program from $20,000 to $10,000. The proposed rule change also amends certain quote sizes in the program's heightened quoting requirements. Specifically, the proposed rule change marginally decreases certain quote sizes, thus easing the heightened quoting standards in a manner that makes it easier for appointed LMMs to achieve such requirements. The program's current heightened quoting requirements are as follows:

Premium level	Expiring		Near term		Mid term		Long term	
	7 days or less		8 days to 60 days		61 days to 270 days		271 days or greater	
	Width	Size	Width	Size	Width	Size	Width	Size
$0.00–$5.00	$0.50	10	$0.40	25	$0.60	15	$1.00	10
$5.01–$15.00	2.00	7	1.60	18	2.40	11	4.00	7
$15.01–$50.00	5.00	5	4.00	13	6.00	8	10.00	5
$50.01–$100.00	10.00	3	8.00	8	12.00	5	20.00	3
$100.01–$200.00	20.00	2	16.00	5	24.00	3	40.00	2
Greater than $200.00	30.00	1	24.00	3	36.00	1	60.00	1

The proposed changes to the program's heightened quoting requirements are as follows (proposed sizes are denoted with an asterisk):

Premium level	Expiring		Near term		Mid term		Long term	
	7 days or less		8 days to 60 days		61 days to 270 days		271 days or greater	
	Width	Size	Width	Size	Width	Size	Width	Size
$0.00–$5.00	$0.50	10	$0.40	*15	$0.60	*10	$1.00	*5
$5.01–$15.00	2.00	*5	1.60	*10	2.40	*10	4.00	*5
$15.01–$50.00	5.00	5	4.00	*10	6.00	*5	10.00	5
$50.01–$100.00	10.00	*1	8.00	*5	12.00	5	20.00	*1
$100.01–$200.00	20.00	*1	16.00	*1	24.00	*1	40.00	*1

Premium level	Expiring		Near term		Mid term		Long term	
	7 days or less		8 days to 60 days		61 days to 270 days		271 days or greater	
	Width	Size	Width	Size	Width	Size	Width	Size
Greater than $200.00	30.00	1	24.00	*1	36.00	1	60.00	1

Lastly, regarding the RTH SPESG LMM Incentive Program, the proposed rule change amends the payments provided under the SPESG LMM Volume Incentive Pool. Currently, the incentive pool offers $5,000 where an LMM submits an ADV in SPESG of 1,000 to 4,999 contracts in a month, $15,000 for an ADV of 5,000 to 10,000 contracts in a month, and $20,000 for an ADV of greater than 10,000 contracts in a month. The proposed rule change increased the payments so that an LMM that submits an ADV in SPESG of 1,000 to 4,999 contracts in a month receives a payment of $10,000, an ADV of 5,000 to 10,000 contracts in a month, a payment of $20,000 and an ADV of greater than 10,000 contracts in a month, a payment of $25,000. The proposed rule change to increase the SPESG Volume Incentive Pool payments is designed to incentivize appointed LMMs to further increase the provision of liquidity in SPESG options to meet the same ADV thresholds in return for increased corresponding payments. Increased liquidity in SPESG options would, in turn, provide greater trading opportunities, added market transparency and enhanced price discovery for all market participants in SPESG.

The proposed rule change amends the MRUT LMM Incentive Program. Currently, the MRUT LMM Incentive Program provides that, for MRUT, if the appointed LMM provides continuous electronic quotes during RTH that meet or exceed the heightened quoting standards in at least 99% of the MRUT series 90% of the time in a given month, the LMM will receive a rebate for that month in the amount of $25,000 (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month). The proposed rule change reduces the monthly rebate provided under the program from $25,000 to $15,000. Additionally, the proposed rule change also slightly increases the quote width requirement under the near term expiration category (15 to 60 days) for the premium level of $1.01 to $3.00, from a quote width of $0.13 to $0.14. Thus, the proposed rule change makes the quote size requirement under this expiration and premium category slightly easier to achieve.

The proposed rule change amends the MSCI LMM Incentive Program. Currently, the MSCI LMM Incentive Program provides that, for MXEF and MXEA (*i.e.,* MSCI options), if the appointed LMM provides continuous electronic quotes during RTH that meet or exceed the heightened quoting standards in at least 90% of the MXEA and MXEF series 80% of the time in a given month, the LMM will receive a rebate for that month in the amount of $20,000 per class, per month (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month). The proposed rule change reduces the monthly rebate provided under the program from $25,000 to $15,000. The proposed rule change also amends a quote width and certain sizes in the program's heightened quoting requirements. Specifically, by marginally increasing a quote width and marginally decreases certain quote sizes, the proposed rule change eases the heightened quoting standards in a manner that makes it easier for appointed LMMs to achieve such requirements. The program's current heightened quoting requirements are as follows:

Premium level	Expiring		Near term		Mid term		Long term	
	6 days or less		7 days to 60 days		61 days to 270 days		271 days or greater	
	Width	Size	Width	Size	Width	Size	Width	Size
$0.00–$5.00	$2.50	5	$1.05	12	$2.50	10	$5.00	10
$5.01–$15.00	6.00	3	2.50	9	5.00	8	10.00	7
$15.01–$50.00	15.00	2	4.50	7	9.00	7	20.00	5
$50.01–$100.00	25.00	1	15.00	5	20.00	5	30.00	3
$100.01–$200.00	40.00	1	25.00	2	35.00	2	48.00	2
Greater than $200.00	60.00	1	40.00	1	50.00	1	72.00	1

The proposed changes to the program's heightened quoting requirements are as follows (proposed width and sizes are denoted with an asterisk):

Premium level	Expiring		Near term		Mid term		Long term	
	6 days or less		7 days to 60 days		61 days to 270 days		271 days or greater	
	Width	Size	Width	Size	Width	Size	Width	Size
$0.00–$5.00	$2.50	5	*$1.10	*10	$2.50	*5	$5.00	*5
$5.01–$15.00	6.00	3	2.50	*10	5.00	*5	10.00	*5
$15.01–$50.00	15.00	2	4.50	*5	9.00	*5	20.00	5
$50.01–$100.00	25.00	1	15.00	5	20.00	5	30.00	3
$100.01–$200.00	40.00	1	25.00	2	35.00	2	48.00	2
Greater than $200.00	60.00	1	40.00	1	50.00	1	72.00	1

The proposed rule change also adopts a performance payment under the MSCI LMM Incentive Program, which provides that, in addition to the above rebate, the LMM with the highest performance in satisfying the above heightened quoting standards, measured independently per class, in a month will receive a performance payment of $10,000 per class for that month. In order to be eligible to receive the performance payment in a month, an LMM must meet or exceed the above heightened quoting standards in that month. Highest performance is measured as the cumulative sum of series in which an LMM meets or exceeds the heightened quoting requirements by the total series each day (excluding the day in which an LMM missed meeting or exceeding the heightened quoting standard in the highest number of series). The proposed performance payment offered by the MSCI LMM Incentive Program is designed to incentivize LMMs appointed to the program to increase the provision of liquidity in MXEA and MXEF by encouraging appointed LMMs to compete each month to achieve the highest performance and receive the additional performance payment. Increased liquidity in MSCI options would, in turn, provide greater trading opportunities, added market transparency and enhanced price discovery for all market participants in MSCI options.

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.[3] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[4] 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,[5] 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.

Regarding the RTH SPESG, MRUT and MSCI LMM Incentive Programs generally, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to continue to offer these financial incentives, including as amended, to LMMs appointed to the programs, because it benefits all market participants trading in the corresponding products during RTH. These incentive programs encourage the LMMs appointed to such programs to satisfy the heightened quoting standards, which may increase liquidity and provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that these LMMs serve a crucial role in providing quotes and the opportunity for market participants to trade SPESG, MRUT, MXEA and MXEF options, as applicable, which can lead to increased volume, providing for robust markets. The Exchange ultimately offers the LMM Incentive Programs, as amended, to sufficiently incentivize LMMs appointed to each incentive program to provide key liquidity and active markets in the corresponding program products during the corresponding trading sessions, and believes that these incentive programs, as amended, will continue to encourage increased quoting to add liquidity in each of the corresponding program products, thereby protecting investors and the public interest. The Exchange also notes that an LMM appointed to an incentive program may undertake added costs each month to satisfy that heightened quoting standards (*e.g.,* having to purchase additional logical connectivity).

The Exchange believes that the proposed changes to the LMM Incentive Programs are reasonable. The proposed rule change to reduce the monthly rebate amounts offered under each of the RTH SPESG, MRUT and MSCI LMM Incentive Programs is reasonable as the proposed rebates remain within a comparable realm of the rebates currently offered across the Exchange's LMM Incentive Programs applicable to other exclusively-listed products,[6] and LMMs appointed to the respective programs will continue to receive a monthly rebate, albeit at a lower amount, for meeting or exceeding the applicable program's heighten quoting requirements, of which some standards are being eased in difficulty, as proposed. The Exchange believes it is reasonable to marginally decrease certain quote size requirements (across the three programs' heightened quoting requirements) and marginally increase a quote size requirement (in the MSCI LMM Incentive Program's heightened quoting requirements), as these changes are reasonably designed to slightly ease the difficulty in meeting the heightened quoting requirements offered under these programs (for which an appointed LMM receives the proposed respective rebates), which, in turn, provides increased incentive for LMMs appointed to these programs to provide significant liquidity in SPESG, MRUT and MSCI options during RTH. Further, the Exchange believes that increasing the SPESG Volume Incentive Pool payments is reasonably designed to incentivize LMMs appointed to the RTH SPESG LMM Incentive Program to provide the current levels of ADV in SPESG, thereby providing significant liquidity in SPESG options during RTH, in order to receive the proposed increased payments. The Exchange notes that the MRUT LMM Incentive Program also offers a volume incentive pool structured with comparable payments for corresponding ADV. Finally, the Exchange believes that the proposed performance payment offered under the MSCI LMM Incentive Program is reasonably designed to incentivize LMMs appointed to the program to increase the provision of liquidity in MXEA and MXEF options by encouraging appointed LMMs to compete each month to achieve the highest performance and receive the additional performance payment. Increased liquidity in MSCI options would, in turn, provide greater trading opportunities, added market transparency and enhanced price discovery to the benefit of all market participants in MSCI options.

The Exchange believes that the proposed changes to the LMM Incentive Programs are equitable and not unfairly discriminatory. The Exchange believes that it is equitable and not unfairly discriminatory to amend the month rebates offered under the RTH SPESG, MRUT and MSCI LMM Incentive Programs, amend certain quoting sizes and a quote width across the three programs, to amend the volume incentive pool payments for the RTH SPESG LMM Incentive Program and to adopt a performance payment under the

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(4).

[6] *See* Cboe Options Fees Schedule, ''NANOS LMM Incentive Program'', ''GTH1 VIX/VIXW LMM Incentive Program'', ''GTH2 VIX/VIXW LMM Incentive Program'', ''GTH1 SPX/SPXW LMM Incentive Program'', and ''GTH2 SPX/SPXW LMM Incentive Program'', all of which range by $5,000 increments.

MSCI LMM Incentive Program, because such rebates, quote sizes and width, volume pool program payments and performance payment will equally apply to any and all TPHs with LMM appointments to the RTH SPESG, MRUT and MSCI LMM Incentive Programs, as applicable, that seek to meet the programs' heightened quoting standards in order to receive the rebates (as proposed) offered under each respective program. The Exchange additionally notes that, if an LMM appointed to any of the LMM Incentive Programs does not satisfy the corresponding heightened quoting standard for any given month, then it simply will not receive the rebate offered by the respective program for that month.

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 the proposed changes to existing LMM Incentive Programs will apply to all LMMs appointed to the applicable program classes (*i.e.,* MRUT, MXEF, MXEA and SPESG) in a uniform manner. To the extent these LMMs appointed to an incentive program receive a benefit that other market participants do not, as stated, these LMMs in their role as Mark-Makers on the Exchange have different obligations and are held to different standards. For example, Market-Makers play a crucial role in providing active and liquid markets in their appointed products, thereby providing a robust market which benefits all market participants. Such Market-Makers also have obligations and regulatory requirements that other participants do not have. The Exchange also notes that an LMM appointed to an incentive program may undertake added costs each month to satisfy that heightened quoting standards (*e.g.,* having to purchase additional logical connectivity). The Exchange also notes that the incentive programs are designed to attract additional order flow to the Exchange, wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity.

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 because the proposed amendments to the LMM Incentive Programs apply only to products traded exclusively on Cboe Options. 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. Based on publicly available information, no single options exchange has more than 16% of the market share.[7] Therefore, no exchange possesses significant pricing power in the execution of option order flow. deed, participants can readily choose to send their orders to other exchange, and, additionally off-exchange venues, if they deem 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.'' [8] 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'. . . .''.[9] 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 [10] and paragraph (f) of Rule 19b–4 [11] 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–2022–017 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–CBOE–2022–017. 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/*

[7] *See* Cboe Global Markets U.S. Options Market Volume Summary, Month-to-Date (March 28, 2022), available at *https://www.cboe.com/us/options/market_statistics/.*

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[9] *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)).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

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–2022–017 and should be submitted on or before May 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08067 Filed 4–14–22; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94673; File No. SR–FINRA–2022–008]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Current Pilot Program Related to FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities)

April 11, 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 April 6, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend the current pilot program related to FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) (''Clearly Erroneous Transaction Pilot'' or ''Pilot'') until July 20, 2022.

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing a rule change to extend the current pilot program related to FINRA Rule 11892 governing clearly erroneous transactions in exchange-listed securities until the close of business on July 20, 2022. Extending the Pilot would provide FINRA and the national securities exchanges additional time to consider a permanent proposal for clearly erroneous transaction reviews.

On September 10, 2010, the Commission approved, on a pilot basis, changes to FINRA Rule 11892 that, among other things: (i) Provided for uniform treatment of clearly erroneous transaction reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of FINRA to deviate from the objective standards set forth in the rule.[4] In 2013, FINRA adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (''Plan'').[5] Finally, in 2014, FINRA adopted two additional provisions addressing (i) erroneous transactions that occur over one or more trading days that were based on the same fundamentally incorrect or grossly misinterpreted information resulting in a severe valuation error; and (ii) a disruption or malfunction in the operation of the facilities of a self-regulatory organization or responsible single plan processor in connection with the transmittal or receipt of a trading halt.[6]

On April 9, 2019, FINRA filed a proposed rule change to untie the effectiveness of the Clearly Erroneous Transaction Pilot from the effectiveness of the Plan, and to extend the Pilot's effectiveness to the close of business on October 18, 2019.[7] On October 10, 2019, FINRA filed a proposed rule change to extend the Pilot's effectiveness until April 20, 2020.[8] On March 18, 2020, FINRA filed a proposed rule change to extend the pilot's effectiveness until October 20, 2020.[9] On October 16, 2020, FINRA filed a proposed rule change to extend the Pilot's effectiveness until April 20, 2021.[10] On March 15, 2021, FINRA filed a proposed rule change to extend the Pilot's effectiveness until October 20, 2021.[11] On October 5, 2021, FINRA filed a proposed rule change to extend the Pilot's effectiveness until

[4] *See* Securities Exchange Act Release No. 62885 (September 10, 2010), 75 FR 56641 (September 16, 2010) (Order Approving File No. SR–FINRA–2010–032).

[5] *See* Securities Exchange Act Release No. 68808 (February 1, 2013), 78 FR 9083 (February 7, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2013–012).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (Order Approving File No. SR–FINRA–2014–021).

[7] *See* Securities Exchange Act Release No. 85612 (April 11, 2019), 84 FR 16107 (April 17, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2019–011).

[8] *See* Securities Exchange Act Release No. 87344 (October 18, 2019), 84 FR 57076 (October 24, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2019–025).

[9] *See* Securities Exchange Act Release No. 88495 (March 27, 2020), 85 FR 18608 (April 2, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–008).

[10] *See* Securities Exchange Act Release No. 90219 (October 19, 2020), 85 FR 67574 (October 23, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–036).

[11] *See* Securities Exchange Act Release No. 91373 (March 19, 2021), 86 FR 16003 (March 25, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–004).

April 20, 2022.[12] FINRA now is proposing to further extend the Pilot until July 20, 2022, so that market participants can continue to benefit from the more objective clearly erroneous transaction standards under the Pilot.[13] Extending the Pilot also would provide more time to permit FINRA and the other self-regulatory organizations to consider what changes, if any, to the clearly erroneous transaction rules are appropriate.[14]

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[15] 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 believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning the review of transactions as clearly erroneous. FINRA believes that extending the Pilot under FINRA Rule 11892, until July 20, 2022, would help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, FINRA believes the Clearly Erroneous Transaction Pilot should continue to be in effect while FINRA and the national securities exchanges consider a permanent proposal for clearly erroneous transaction reviews.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous transaction rules across the U.S. equities markets while FINRA and the national securities exchanges consider further amendments to these rules. FINRA understands that the national securities exchanges also will file similar proposals to extend their clearly erroneous execution pilot programs, as applicable. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17] Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would extend the protections provided by the current pilot program, without any changes, while FINRA and other self-regulatory organizations consider whether further amendments to these rules are appropriate. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–2022–008 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–2022–008. 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

[12] *See* Securities Exchange Act Release No. 93355 (October 15, 2021), 86 FR 58374 (October 21, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–026).

[13] If the pilot period is not either extended or approved as permanent, the version of Rule 11892 prior to SR–FINRA–2010–032 shall be in effect, and the amendments set forth in SR–FINRA–2014–021 and the provisions of Supplementary Material .03 of the rule shall be null and void.

[14] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving the Eighteenth Amendment to the National Market System Plan to Address Extraordinary Market Volatility).

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2022–008 and should be submitted on or before May 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08069 Filed 4–14–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94677; File No. SR–EMERALD–2022–05]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Withdrawal of Proposed Rule Change To Amend the MIAX Emerald Fee Schedule To Adopt a Tiered-Pricing Structure for Additional Limited Service MIAX Emerald Express Interface Ports

April 11, 2022.

On February 1, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Fee Schedule to adopt a tiered-pricing structure for additional limited service express interface ports.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] On February 22, 2022, the proposed rule change was published for comment in the **Federal Register** and, pursuant to Section 19(b)(3)(C) of the Act,[4] the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to approve or disapprove the proposed rule change.[6] On March 30, 2022, the Exchange withdrew the proposed rule change (SR–EMERALD–2022–05).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08071 Filed 4–14–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94662; File No. SR–NYSENAT–2022–03]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 10.9261 and 10.9830

April 11, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 29, 2022, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes extending the expiration date of the temporary amendments to Rules 10.9261 and 10.9830 as set forth in SR–NYSENAT–2020–31 from March 31, 2022, to July 31, 2022, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE National Rules 10.9261 and 10.9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes extending the expiration date of the temporary amendments as set forth in SR–NYSENAT–2020–31 [4] to Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) from March 31, 2022, to July 31, 2022 to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSENAT–2020–31 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID–19 pandemic. The proposed rule change would not make any changes to the text

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 94260 (February 15, 2022), 87 FR 9695.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 90137 (October 8, 2020), 85 FR 65087 (October 14, 2020) (SR–NYSENAT–2020–31) (''SR–NYSENAT–2020–31'').

of Exchange Rules 10.9261 and 10.9830.[5]

Background

In 2018, NYSE National adopted disciplinary rules that are, with certain exceptions, substantially the same as the disciplinary rules of its affiliate NYSE American LLC, which are in turn substantially similar to the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[6]

In adopting disciplinary rules modeled on FINRA's rules, NYSE National adopted the hearing and evidentiary processes set forth in Rule 10.9261 and in Rule 10.9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 10.9800 Series. As adopted, the text of Rule 10.9261 and Rule 10.9830 are substantially the same as the FINRA rules with certain modifications.[7]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[8]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 29, 2020, the Exchange filed to temporarily amend Rule 10.9261 and Rule 10.9830 to permit FINRA to conduct virtual hearings on its behalf.[9] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[10] On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to April 30, 2021.[11] On April 1, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–006, to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.[12] On April 20, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to August 31, 2021.[13] On August 13, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–019, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from August 31, 2021, to December 31, 2021.[14] On August 27, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to December 31, 2021.[15] On December 7, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–031, to extend the expiration date of the temporary amendments in both SR–FINRA–2020–015 and SR–FINRA–2020–027 from December 31, 2021, to March 31, 2022.[16] On December 27, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to March 31, 2022, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[17]

While there are material signs of improvement, FINRA has determined that uncertainty still remains for the coming months. The continued presence of COVID–19 variants, dissimilar vaccination rates throughout the United States, and the current medium to high COVID–19 community levels in many states indicate that COVID–19 remains an active and real public health concern.[18] Due to the uncertainty and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions,[19] FINRA believes that there is a continued need for temporary relief beyond March 31, 2022.[20] On March 7, 2022, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from March 31, 2022, to July 31, 2022.[21]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE National Rules 10.9261 and 10.9830 as set forth in SR–NYSENAT–2020–31 from March 31, 2022, to July 31, 2022.

As set forth in SR–FINRA–2022–004, while there are material signs of improvement, uncertainty still remains for the coming months. The continued presence of COVID–19 variants,

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond July 31, 2022 if the Exchange requires additional temporary relief from the rule requirements identified in SR–NYSENAT–2020–31. The amended NYSE National rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968, 23976 (May 23, 2018) (SR–NYSENAT–2018–02) (''2018 Approval Order'').

[7] *See id.*

[8] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (''SR–FINRA–2020–027'').

[9] *See* note 4, *supra.*

[10] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[11] *See* Securities Exchange Act Release No. 90822 (December 30, 2020), 86 FR 627 (January 6, 2021) (SR–NYSENAT–2020–39).

[12] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006).

[13] *See* Securities Exchange Act Release No. 91634 (April 22, 2021), 86 FR 22477 (April 28, 2021) (SR–NYSENAT–2021–11).

[14] *See* Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019).

[15] *See* Securities Exchange Act Release No. 92908 (September 9, 2021), 86 FR 51424 (September 15, 2021) (SR–NYSENAT–2021–16).

[16] *See* Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (SR–FINRA–2021–31).

[17] *See* Securities Exchange Act Release No. 93919 (January 6, 2022), 87 FR 1804 (January 12, 2022) (SR–NYSENAT–2021–25).

[18] *See* Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR–FINRA–2022–004) (''SR–FINRA–2022–004''). FINRA noted that, for example, on February 18, 2022, President Joe Biden continued the national emergency concerning COVID–19 beyond March 1, 2022, because COVID–19 ''continues to cause significant risk to the public health and safety'' of the United States. *See* Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID–19) Pandemic, 87 FR 10289 (February 23, 2022). *See* SR–FINRA–2022–004, 87 FR at 16262, n. 6.

[19] For instance, FINRA noted that the Centers for Disease Control and Prevention (''CDC'') recommends that people wear a mask in public indoor settings in areas with a high COVID–19 community level regardless of vaccination status or individual risk. *See https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html.* Furthermore, numerous states currently have COVID–19 restrictions in place. Hawaii requires most people to wear masks in indoor public places regardless of vaccination status and several other states have mask mandates in certain settings, such as healthcare and correctional facilities. *See* SR–FINRA–2022–004, 87 FR at 16262, n. 7.

[20] *See* SR–FINRA–2022–004, 87 FR at 16263.

[21] *See* SR–FINRA–2022–004, 87 FR at 16263–4. As a further basis for extending the expiration date to July 31, 2022, FINRA noted that its Board has approved the submission of a rule proposal to the Commission to make permanent the temporary service and filing rules originally set forth in SR–FINRA–2020–015. *See https://www.finra.org/about/governance/finra-board-governors/meetings/update-finra-board-governors-meeting-december-2021.* FINRA represented that it is contemplating filing the rule proposal with the Commission in the near future and the extension of the temporary rule amendments would help to avoid the rules reverting to their original form before the permanent rules, if approved by the Commission, become effective. FINRA further noted that the proposal approved by its Board does not include the temporary rule amendments pertaining to video conference hearings originally set forth in SR–FINRA–2020–027.

dissimilar vaccination rates throughout the United States, and the current medium to high COVID–19 community levels in many states indicate that COVID–19 remains an active and real public health concern.[22] Due to the uncertainty and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19–related health concerns and corresponding restrictions,[23] FINRA believes that there is a continued need for temporary relief beyond March 31, 2022.[24] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from March 31, 2022, to July 31, 2022.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE National Rules 10.9261 and 10.9830 as set forth in SR–NYSENAT–2020–31 from March 31, 2022, to July 31, 2022. The Exchange agrees with FINRA that, while there are material signs of improvement, uncertainty still remains for the coming months. The Exchange also agrees that, due to the uncertainty and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions, for the reasons set forth in SR–FINRA–2022–004, there is a continued need for this temporary relief beyond March 31, 2022. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2022–004, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. Similarly, as noted in SR–FINRA–2022–004, in SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[25] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 10.9261 and 10.9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[26] in general, and furthers the objectives of Section 6(b)(5),[27] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[28]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 as set forth in SR–FINRA–2022–004, will permit the Exchange to continue to effectively conduct hearings during the COVID–19 pandemic. Given the current and frequently changing COVID–19 conditions and the uncertainty around when those conditions will see meaningful, widespread and sustained improvement, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in SR–NYSENAT–2020–31, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act[29] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR–NYSENAT–2020–31, provides only temporary relief. As proposed, the changes would be in place through July 31, 2022. As noted in SR–NYSENAT–2020–31 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to provide continued temporary relief given the impacts of the COVID–19 pandemic and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the

[22] *See* note 18, *supra*.

[23] *See* note 19, *supra*.

[24] *See* SR–FINRA–2022–004, 87 FR at 16263.

[25] *See* SR–FINRA–2022–004, 87 FR at 16263, n. 15.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78f(b)(7) & 78f(d).

[29] 15 U.S.C. 78f(b)(7) & 78f(d).

temporary amendments were to expire on March 31, 2022.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [30] and Rule 19b–4(f)(6) thereunder.[31] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [32] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[33] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that the proposed rule change to extend the expiration date will continue to prevent unnecessary impediments to its critical adjudicatory processes, and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets, that would otherwise result if the temporary amendments were to expire on March 31, 2022.[34] Importantly, the Exchange has also stated that further extending the relief provided initially in SR–NYSENAT–2020–31 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of hearing participants.[35] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NYSENAT–2020–31.[36] As proposed, the changes would be in place through July 31, 2022 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[37] 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 designates the proposal operative upon filing.[38]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [39] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2022–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2022–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2022–03 and should be submitted on or before May 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08062 Filed 4–14–22; 8:45 am]

BILLING CODE 8011–01–P

[30] 15 U.S.C. 78s(b)(3)(A)(iii).

[31] 17 CFR 240.19b–4(f)(6).

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6)(iii).

[34] *See* supra Item II.

[35] *See* SR–FINRA–2022–004, 87 FR at 16264 (noting the same with respect to FINRA employees in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2022–004 would become operative immediately upon filing).

[36] *See* supra note 4.

[37] *See* supra note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond July 31, 2022 it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[38] 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).

[39] 15 U.S.C. 78s(b)(2)(B).

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94674; File No. SR–EMERALD–2022–04]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Withdrawal of Proposed Rule Change To Amend the MIAX Emerald Fee Schedule To Adopt a Tiered-Pricing Structure for Certain Connectivity Fees

April 11, 2022.

On February 1, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Fee Schedule to adopt a tiered-pricing structure for certain connectivity fees.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] On February 22, 2022, the proposed rule change was published for comment in the **Federal Register** and, pursuant to Section 19(b)(3)(C) of the Act,[4] the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule change.[6] On March 30, 2022, the Exchange withdrew the proposed rule change (SR–EMERALD–2022–04).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08070 Filed 4–14–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 94257 (February 15, 2022), 87 FR 9678.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94671; File No. SR–MIAX–2022–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange, LLC To Amend Exchange Rule 518, Complex Orders

April 11, 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 April 1, 2022, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 518, Complex Orders.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 518, Complex Orders, to change the value used in the calculation that determines whether a complex order is eligible to initiate a Complex Auction.[3]

Currently the Exchange uses the following methods to determine whether a complex order is qualified to initiate a Complex Auction:

Initial Improvement Percentage (''IIP'')

For complex orders received prior to the opening of all individual components of a complex strategy, the System[4] will calculate an IIP value, which is a defined percentage of the current dcMBBO[5] bid/ask differential once all of the components of the complex strategy have opened. Such percentage will be defined by the Exchange and communicated to Members[6] via Regulatory Circular.[7] If a Complex Auction-eligible order is priced equal to, or improves, the IIP value[8] and is also priced equal to, or improves, other complex orders and/or quotes resting at the top of the Strategy Book, the complex order will be eligible to initiate a Complex Auction.[9]

Upon Receipt Improvement Percentage (''URIP'')

Upon receipt of a complex order when the complex strategy is open, the System will calculate a URIP value, which is a defined percentage of the current dcMBBO bid/ask differential. Such percentage will be defined by the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Certain option classes, as determined by the Exchange and communicated to Members via Regulatory Circular, will be eligible to participate in a Complex Auction (an ''eligible class''). Upon evaluation as set forth in subparagraph (c)(5) of Exchange Rule 518, the Exchange may determine to automatically submit a Complex Auction-eligible order into a Complex Auction. Upon entry into the System or upon evaluation of a complex order resting at the top of the Strategy Book, Complex Auction-eligible orders may be subject to an automated request for responses (''RFR''). *See* Exchange Rule 518(d).

[4] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[5] The Displayed Complex MIAX Best Bid or Offer (''dcMBBO'') is calculated using the best displayed price for each component of a complex strategy from the Simple Order Book. For stock-option orders, the dcMBBO for a complex strategy will be calculated using the Exchange's best displayed bid or offer in the individual option component(s) and the NBBO in the stock component. *See* Exchange Rule 518(a)(8).

[6] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[7] *See* MIAX Options Regulatory Circular 2016–48, MIAX Complex Auction Initiating Percentages (October 20, 2016) available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_RC_2016_48.pdf.*

[8] The Initial Improvement Percentage (''IIP'') is currently set to 70%. *See Id.*

[9] *See* Policy .03(a) of Exchange Rule 518.

Exchange and communicated to Members via Regulatory Circular.[10] If a Complex Auction-eligible order is priced equal to, or improves, the URIP value [11] and is also priced to improve other complex orders and/or quotes resting at the top of the Strategy Book, the complex order will be eligible to initiate a Complex Auction.[12]

Re-Evaluation Improvement Percentage (''RIP'')

Upon evaluation of a complex order resting at the top of the Strategy Book, the System will calculate a Re-evaluation Improvement Percentage (''RIP'') value, which is a defined percentage of the current dcMBBO bid/ask differential. Such percentage will be defined by the Exchange and communicated to Members via Regulatory Circular.[13] If a complex order resting at the top of the Strategy Book is priced equal to, or improves, the RIP value,[14] the complex order will be eligible to initiate a Complex Auction.[15]

Proposal

The Exchange now proposes to replace the dcMBBO bid/ask differential with the cNBBO [16] bid/ask differential in the calculations described above for IIP, URIP, and RIP, respectively. The dcMBBO is calculated using the displayed price for each component of a complex strategy from the Simple Order Book [17] on the Exchange, whereas the cNBBO is calculated using the NBBO [18] for each component of a complex strategy to establish the best net bid and offer for a complex strategy.[19] The Exchange believes that using the cNBBO will reduce the number of auctions generated by the Exchange System which do not receive responses or result in price improvement for the initiating order. The cNBBO, which includes the best away markets as well as the MBBO for each component of a complex strategy, will always be equal to or better than the dcMBBO, which includes the MBBO for each component of a complex strategy. The component prices contained in the cNBBO provide a more accurate indicator of the overall market interest in each component, and therefore, provides a more accurate indicator of the overall market interest in the complex strategy. The Exchange believes that this will result in a reduction of the overall number of Complex Auctions initiated on the Exchange but will in turn increase the percentage of Complex Auctions that result in price improvement, as the auction start price will be more closely aligned to prevailing market prices.

Implementation

The Exchange proposes to implement the proposed rule change in the second quarter of 2022. The Exchange will announce the implementation date to its Members via Regulatory Circular.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act [20] in general, and furthers the objectives of Section 6(b)(5) of the Act [21] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms 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 proposal to use the cNBBO instead of the dcMBBO in the calculation used to determine whether a complex order is qualified to initiate a Complex Auction promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest as using the cNBBO provides a better measure of the current market and is more likely to result in price improvement for the initiating order as the cNBBO is calculated using the NBBO (which in turn is calculated by taking the best prices of all exchanges into consideration) [22] for each component of a complex strategy to establish the best net bid and offer for a complex strategy,[23] and therefore is more representative of the prevailing market interest and market prices. The example below demonstrates the difference between the current and proposed calculations.

Example 1

(Current Auction Evaluation Based on dcMBBO)

Reevaluation Improvement Percentage (RIP) for a complex order at the best price on the Strategy Book [24] subject to dcMBBO.

RIP = 80%
MBBO: [25] Option A 2.00×2.10
MBBO: Option B 1.05×1.20
Strategy $+1A - 1B = (2.00 - 1.20) \times (2.10 - 1.05)$
dcMBBO = 0.80×1.05

A complex order is resting on the Strategy Book to buy 1 Strategy at a price of 1.00. Upon reevaluation of the Strategy Book it is determined the complex order to buy at 1.00 improves the Strategy bid by 0.20; $(1.00 - 0.80)$. The improvement percentage is then calculated as the 0.20 improvement divided by the Strategy bid/offer spread; $(1.05 - 0.80)$, in this case resulting in 80% improvement. Because the 80% improvement equals the configured RIP of 80% an auction is initiated.

Example 2

(Proposed Auction Evaluation Based on cNBBO)

Reevaluation Improvement Percentage (RIP) for a complex order at the best price on the Strategy Book subject to cNBBO.

RIP = 80%
NBBO: Option A 2.05×2.10
NBBO: Option B 1.05×1.10
Strategy $+1A - 1B = (2.05 - 1.10) \times (2.10 - 1.05)$
cNBBO = 0.95×1.05

A complex order is resting on the Strategy Book to buy 1 Strategy at a price of 1.00. Upon reevaluation of the Strategy Book it is determined the complex order to buy at 1.00 improves the Strategy bid by 0.05; $(1.00 - 0.95)$. The improvement percentage is then calculated as the 0.05 improvement divided by the Strategy bid/offer spread; $(1.05 - 0.95)$, in this case resulting in 50% improvement. Because the 50%

[10] *See supra* note 7.

[11] The Upon Receipt Improvement Percentage (''URIP'') is currently set to 70%. *See supra* note 7.

[12] *See* Policy .03(b) of Exchange Rule 518.

[13] *See supra* note 7.

[14] The Re-evaluation Improvement Percentage (''RIP'') is currently set to 80%. *See supra* note 7.

[15] *See* Policy .03(c) of Exchange Rule 518.

[16] The Complex National Best Bid or Offer (''cNBBO'') is calculated using the NBBO for each component of a complex strategy to establish the best net bid and offer for a complex strategy. For stock-option orders, the cNBBO for a complex strategy will be calculated using the NBBO in the individual option component(s) and the NBBO in the stock component. *See* Exchange Rule 518(a)(2).

[17] The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

[18] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from the appropriate Securities Information Processor (''SIP''). *See* Exchange Rule 518(a)(14).

[19] *See supra* note 5.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *See supra* note 19.

[23] *See supra* note 16

[24] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[25] The term ''MBBO'' means the best bid or offer on the Exchange. *See* Exchange Rule 100.

improvement is less than the configured RIP of 80% an auction is not initiated.

The Exchange believes that using the cNBBO in its calculation to determine whether a complex order is qualified to initiate a Complex Auction will reduce the number of Complex Auctions initiated by the Exchange System [26] which do not receive responses. Using the cNBBO instead of the dcMBBO better reflects the current state of the market and may result in Complex Auctions that receive responses which in turn may result in price improvement for the initiating order.

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 does not believe that the proposed rule change to replace the dcMBBO value with the cNBBO value in the calculation used to determine whether a complex order is qualified to initiate a Complex Auction will impose any burden on inter-market competition. The Exchange believes its proposal may benefit competition as using the cNBBO in the calculation better reflects current market prices and may result in the initiation of Complex Auctions which result in price improvement for the initiating order. The Exchange believes the proposed rule change will enhance competition among the various markets for complex order execution, potentially resulting in more active complex order trading on all exchanges. Additionally, the Exchange believes that this change will result in a reduction of the overall number of Complex Auctions initiated on the Exchange but will in turn increase the percentage of auctions that result in price improvement, as the auction start price will be more closely aligned to prevailing market prices.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition as all complex orders submitted to the Exchange will be evaluated, and re-evaluated, equally under the Exchange's Rules.

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.

[26] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [27] and Rule 19b–4(f)(6) [28] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2022–13.

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–MIAX–2022–13. 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–MIAX–2022–13, and should be submitted on or before May 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Assistant Secretary.

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[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94666; File No. SR–NYSE–2022–17]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 9261 and 9830

April 11, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 29, 2022, New York Stock Exchange LLC (''NYSE'' 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes extending the expiration date of the temporary amendments to Rules 9261 and 9830 as set forth in SR–NYSE–2021–76 from March 31, 2022, to July 31, 2022, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE Rules 9261 and 9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes extending the expiration date of the temporary amendments as set forth in SR–NYSE–2020–76 [4] to Rules 9261 (Evidence and Procedure in Hearing) and 9830 (Hearing) from March 31, 2022, to July 31, 2022 to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSE–2020–76 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID–19 pandemic. The proposed rule change would not make any changes to the text of Exchange Rules 9261 and 9830.[5]

Background

In 2013, the NYSE adopted disciplinary rules that are, with certain exceptions, substantially the same as the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[6] The NYSE disciplinary rules were implemented on July 1, 2013.[7]

In adopting disciplinary rules modeled on FINRA's rules, the NYSE adopted the hearing and evidentiary processes set forth in Rule 9261 and in Rule 9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 9261 is identical to the counterpart FINRA rule. Rule 9830 is substantially the same as FINRA's rule, except for conforming and technical amendments.[8]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[9]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 15, 2020, the Exchange filed to temporarily amend Rule 9261 and Rule 9830 to permit FINRA to conduct virtual hearings on its behalf.[10] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[11] On December 22, 2020, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to April 30, 2021.[12] On April 1, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–006, to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.[13] On April 20, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to August 31, 2021.[14] On August 13, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–019, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from August 31, 2021, to December 31, 2021.[15] On August 27, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to December 31, 2021.[16] On December 7, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–031, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from December 31, 2021, to March 31, 2022.[17] On December 27, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to March 22, 2022, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[18]

While there are material signs of improvement, FINRA has determined that uncertainty still remains for the coming months. The continued presence of COVID–19 variants,

[4] *See* Securities Exchange Act Release No. 90024 (September 28, 2020), 85 FR 62353 (October 2, 2020) (SR–NYSE–2020–76) (''SR–NYSE–2020–76'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond July 31, 2022 if the Exchange requires additional temporary relief from the rule requirements identified in NYSE–SR–2020–76. The amended NYSE rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR–NYSE–2013–02) (''2013 Notice''), 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR–NYSE–2013–02) (''2013 Approval Order''), and 69963 (July 10, 2013), 78 FR 42573 (July 16, 2013) (SR–NYSE–2013–49).

[7] *See* NYSE Information Memorandum 13–8 (May 24, 2013).

[8] *See* 2013 Approval Order, 78 FR at 15394, n.7 & 15400; 2013 Notice, 78 FR at 5228 & 5234.

[9] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (the ''August 31 FINRA Filing'').

[10] *See* note 4, *supra.*

[11] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[12] *See* Securities Exchange Act Release No. 90821 (December 30, 2020), 86 FR 644 (January 6, 2021) (SR–NYSE–2020–107).

[13] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006).

[14] *See* Securities Exchange Act Release No. 91629 (April 22, 2021), 86 FR 22505 (April 28, 2021) (SR–NYSE–2020–27).

[15] *See* Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019).

[16] *See* Securities Exchange Act Release No. 92907 (September 9, 2021), 86 FR 51421 (September 15, 2021) (SR–NYSE–2021–47).

[17] *See* Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (SR–FINRA–2021–31).

[18] *See* Securities Exchange Act Release No. 93920 (January 6, 2022), 87 FR 1794 (January 12, 2022) (SR–NYSE–2021–78).

dissimilar vaccination rates throughout the United States, and the current medium to high COVID–19 community levels in many states indicate that COVID–19 remains an active and real public health concern.[19] Due to the uncertainty and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions,[20] FINRA believes that there is a continued need for temporary relief beyond March 31, 2022.[21] On March 7, 2022, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from March 31, 2022, to July 31, 2022.[22]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE Rules 9261 and 9830 as set forth in SR–NYSE–2020–76 from March 31, 2022, to July 31, 2022.

As set forth in SR–FINRA–2022–004, while there are material signs of improvement, uncertainty still remains for the coming months. The continued presence of COVID–19 variants, dissimilar vaccination rates throughout the United States, and the current medium to high COVID–19 community levels in many states indicate that COVID–19 remains an active and real public health concern.[23] Due to the uncertainty and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions,[24] FINRA believes that there is a continued need for temporary relief beyond March 31, 2022.[25] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from March 31, 2022, to July 31, 2022.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE Rules 9261 and 9830 as set forth in SR–NYSE–2020–76 from March 31, 2022, to July 31, 2022. The Exchange agrees with FINRA that, while there are material signs of improvement, uncertainty still remains for the coming months. The Exchange also agrees that, due to the uncertainty and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions, for the reasons set forth in SR–FINRA–2022–004, there is a continued need for this temporary relief beyond March 31, 2022. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2022–004, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. Similarly, as noted in SR–FINRA–2022–004, in SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[26] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 9261 and 9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Section 6(b)(5),[28] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[29]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 as set forth in SR–FINRA–2022–004, will permit the Exchange to continue to effectively conduct hearings during the COVID–19 pandemic. Given the current and frequently changing COVID–19 conditions and the uncertainty around when those conditions will see meaningful, widespread and sustained improvement, without this relief

[19] *See* Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR–FINRA–2022–004) (''SR–FINRA–2022–004''). FINRA noted that, for example, on February 18, 2022, President Joe Biden continued the national emergency concerning COVID–19 beyond March 1, 2022, because COVID–19 ''continues to cause significant risk to the public health and safety'' of the United States. *See* Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID–19) Pandemic, 87 FR 10289 (February 23, 2022). *See* SR–FINRA–2022–004, 87 FR at 16262, n. 6.

[20] For instance, FINRA noted that the Centers for Disease Control and Prevention (''CDC'') recommends that people wear a mask in public indoor settings in areas with a high COVID–19 community level regardless of vaccination status or individual risk. *See https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html.* Furthermore, numerous states currently have COVID–19 restrictions in place. Hawaii requires most people to wear masks in indoor public places regardless of vaccination status and several other states have mask mandates in certain settings, such as healthcare and correctional facilities. *See* SR–FINRA–2022–004, 87 FR at 16262, n. 7.

[21] *See* SR–FINRA–2022–004, 87 FR at 16263.

[22] *See* SR–FINRA–2022–004, 87 FR at 16263–4. As a further basis for extending the expiration date to July 31, 2022, FINRA noted that its Board has approved the submission of a rule proposal to the Commission to make permanent the temporary service and filing rules originally set forth in SR–FINRA–2020–015. See *https://www.finra.org/about/governance/finra-board-governors/meetings/update-finra-board-governors-meeting-december-2021.* FINRA represented that it is contemplating filing the rule proposal with the Commission in the near future and the extension of the temporary rule amendments would help to avoid the rules reverting to their original form before the permanent rules, if approved by the Commission, become effective. FINRA further noted that the proposal approved by its Board does not include the temporary rule amendments pertaining to video conference hearings originally set forth in SR–FINRA–2020–027.

[23] *See* note 19, *supra.*

[24] *See* note 20, *supra.*

[25] *See* SR–FINRA–2022–004, 87 FR at 16263.

[26] *See* SR–FINRA–2022–004, 87 FR at 16263, n. 15.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(7) & 78f(d).

allowing OHO to proceed by video conference, some or all hearings may have to be postponed. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in the SR–NYSE–2020–76, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act [30] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR–NYSE–2020–76, provides only temporary relief. As proposed, the changes would be in place through July 31, 2022. As noted in SR–NYSE–2020–76 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to provide continued temporary relief given the impacts of the COVID–19 pandemic and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on March 31, 2022.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [31] and Rule 19b–4(f)(6) thereunder.[32] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [33] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[34] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that the proposed rule change to extend the expiration date will continue to prevent unnecessary impediments to its critical adjudicatory processes, and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets, that would otherwise result if the temporary amendments were to expire on March 31, 2022.[35] Importantly, the Exchange has also stated that further extending the relief provided initially in SR–NYSE–2020–76 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of hearing participants.[36] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NYSE–2020–76.[37] As proposed, the changes would be in place through July 31, 2022 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[38] 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 designates the proposal operative upon filing.[39]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [40] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[30] 15 U.S.C. 78f(b)(7) & 78f(d).

[31] 15 U.S.C. 78s(b)(3)(A)(iii).

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6).

[34] 17 CFR 240.19b–4(f)(6)(iii).

[35] *See* supra Item II.

[36] *See* SR–FINRA–2022–004, 87 FR at 16264 (noting the same with respect to the health and safety of FINRA employees in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2022–004 would become operative immediately upon filing).

[37] *See* supra note 4.

[38] *See* supra note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond July 31, 2022 it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[39] 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).

[40] 15 U.S.C. 78s(b)(2)(B).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–17 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–NYSE–2022–17. 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–NYSE–2022–17 and should be submitted on or before May 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08065 Filed 4–14–22; 8:45 am]

BILLING CODE 8011–01–P

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94679; File No. SR–PEARL–2022–03]

Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Withdrawal of Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Adopt a Tiered-Pricing Structure for Certain Connectivity Fees

April 11, 2022.

On February 1, 2022, MIAX PEARL LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the MIAX Pearl Options Fee Schedule to adopt a tiered-pricing structure for certain connectivity fees.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] On February 22, 2022, the proposed rule change was published for comment in the **Federal Register** and, pursuant to Section 19(b)(3)(C) of the Act,[4] the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to approve or disapprove the proposed rule change.[6] On March 30, 2022, the Exchange withdrew the proposed rule change (SR–PEARL–2022–03).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08073 Filed 4–14–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 94258 (February 15, 2022), 87 FR 9659.

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17385 and #17386; Oklahoma Disaster Number OK–00155]

Administrative Declaration of a Disaster for the State of Oklahoma

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Oklahoma dated 04/07/2022.

Incident: Severe Storms, Tornadoes, and Straight-Line Winds.

Incident Period: 03/21/2022.

DATES: Issued on 04/07/2022.

Physical Loan Application Deadline Date: 06/06/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 01/06/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Marshall.

Contiguous Counties:

Oklahoma: Bryan, Carter, Johnston, Love.

Texas: Grayson.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	2.875
Homeowners without Credit Available Elsewhere	1.438
Businesses with Credit Available Elsewhere	5.880
Businesses without Credit Available Elsewhere	2.940
Non-Profit Organizations with Credit Available Elsewhere	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	2.940

	Percent
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17385 C and for economic injury is 17386 0.

The States which received an EIDL Declaration # are Oklahoma, Texas.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2022–08085 Filed 4–14–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires Federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before June 14, 2022.

ADDRESSES: Send all comments via email to, Robert Blocker, Small Business Administration, Office of Financial Assistance, at *robert.blocker@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Blocker, Small Business Administration, Office of Financial Assistance by email *robert.blocker@sba.gov* or phone at (202) 619–0477, or Curtis B. Rich, Agency Clearance Officer, (202) 205–7030, *curtis.rich@sba.gov;*

SUPPLEMENTARY INFORMATION: The Disaster Loan Program is an SBA financing program authorized under the Small Business Act of 1953, 15 U.S.C. 636 *et seq.* SBA provides low-interest disaster loans to help businesses and homeowners recover from declared disasters. The information collection that is approved under OMB Control Number 3245–0017 facilitates the ongoing administration of the Disaster Loan Program. This information collection currently consists of SBA Form 5, in both English and Spanish, titled Disaster Business Loan Application, and SBA Form 1368, in both English and Spanish, titled Additional Filing Requirements Economic Injury Disaster Loan (EIDL) and Military Reservist Economic Injury Disaster Loan (MREIDL). SBA recognizes that this information collection needs to be modernized to meet the needs of homeowners and small business applicants during their recovery after a disaster. As a result, SBA intends to make revisions to this information collection that would streamline the process. These form revisions will result in greater clarity and understanding for victims applying for assistance. SBA Form 5 will be updated to incorporate all business types including sole proprietors which may be moved from SBA Form 5 C, Disaster Home and Business (Sole Proprietor) Loan Application. Questions on SBA Form 5 will be reorganized and simplified, and as needed other questions may be added based on the Agency's recent experience with the Coronavirus pandemic.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

PRA Number: 3245–0017.

(1) Title: Disaster Business Loan Application.

Description of Respondents: Disaster survivors seeking disaster loan assistance.

Form Number: SBA Form 5.

Total Estimated Annual Responses: 11,916.

Total Estimated Annual Hour Burden: 18,814.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2022–08117 Filed 4–14–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before June 14, 2022.

ADDRESSES: Send all comments via email to, Robert Blocker, Small Business Administration, Office of Financial Assistance, at *robert.blocker@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Blocker, Small Business Administration, Office of Financial Assistance by email at *robert.blocker@sba.gov* or phone at (202) 619–0477, or Curtis B. Rich, Agency Clearance Officer, (202) 205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The Disaster Loan Program is an SBA financing program authorized under the Small Business Act of 1953, 15 U.S.C. 636 *et seq.* SBA provides low-interest disaster loans to help businesses and homeowners recover from declared disasters. The information collection that is approved under OMB Control Number 3245–0018 facilitates the ongoing administration of the Disaster Loan Program. This information collection currently consists of SBA Form 5C, in both English and Spanish, titled Disaster Home and Business (Sole Proprietor) Loan Application. SBA recognizes that this information collection needs to be modernized to meet the needs of homeowners and small business applicants during their recovery after a disaster. As a result, SBA intends to make revisions to this information collection that would streamline the process. These form revisions will result in greater clarity and understanding for victims applying for assistance. SBA Form 5C will be updated and some fields may be moved over to SBA Form 5, Disaster Business Loan Application to incorporate all business types including sole proprietors. Questions on SBA Form 5C will be reorganized and simplified, and as needed other questions may be added based on the Agency's recent experience with the Coronavirus pandemic.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly

perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

PRA Number: 3245–0018.

(1) Title: Disaster Home and Business (Sole Proprietor) Loan Application.

Description of Respondents: Disaster survivors seeking disaster loan assistance.

Form Number: SBA Form 5C.

Total Estimated Annual Responses: 117,738.

Total Estimated Annual Hour Burden: 147,173.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2022–08115 Filed 4–14–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs; Committee Member Nomination Solicitation

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Solicit nominations for veteran small business owners and veteran service organization representatives to serve on the Advisory Committee on Veterans Business Affairs (ACVBA).

SUMMARY: The SBA Office of Veterans Business Development (OVBD) is issuing this notice to solicit nominations of qualified owners, operators, and officers of veteran-owned small business and veteran service organizations to be considered for appointment by the SBA Administrator as a member of the Advisory Committee on Veterans Business Affairs. The Committee serves as an independent source of advice and policy recommendations to the Administrator of the U.S. Small Business Administration (SBA), the Associate Administrator for Veterans Business Development of SBA, the Congress, the President, and other U.S. policymakers on issues of interest to small businesses owned and operated by veterans. Nominations of qualified candidates are being sought to fill vacancies on the ACVBA. ACVBA members are appointed by and serve at the pleasure of the SBA Administrator for terms of no longer than three years. ACVBA members serve without compensation but will be reimbursed for authorized travel-related expenses at per diem rates established by GSA when asked to perform official duties as an ACVBA member.

DATES: Nominations for membership on the ACVBA will be accepted on a rolling basis.

ADDRESSES: All nominations should be emailed to *veteransbusiness@sba.gov* with the subject line: ACVBA Nomination.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Simms, Office of Veterans Business Development, U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416, Telephone: (202) 619–1697; email: *cheryl.simms@sba.gov.* A copy of the ACVBA Charter may be obtained by contacting Ms. Simms. For more information on OVBD, please visit our website, *www.sba.gov/ovbd.*

SUPPLEMENTARY INFORMATION: The Veterans Entrepreneurship and Small Business Development Act of 1999—Public Law 106–50—established the ACVBA to serve as an independent source of advice and policy recommendations on veteran owned small business opportunities. Through an annual report, the ACVBA reports to the SBA Administrator, SBA's Associate Administrator for Veterans Business Development, the Congress, the President, and other U.S. policy makers. The ACVBA is comprised of 15 members—eight members represent veteran owned small business and seven members represent veteran service or military organizations.

On Aug. 13, 2014, the Office of Management and Budget (OMB) published in the **Federal Register** revised guidance on individuals who are not eligible to serve on federal advisory committees. In accordance with OMB guidance, the President directed agencies and departments in the Executive Branch not to appoint or re-appoint federally registered lobbyists to advisory committees and other boards and commissions. Learn more about the ACVBA by reviewing the ACVBA charter at Advisory Committee on Veterans Business Affairs.

Requirements for Nomination Submission: Completed SBA Form 898: Interested applicants must submit a completed SBA Form 898. To download a copy of the form, please visit *https://www.sba.gov/document/sba-form-898-advisory-committee-membership-nominee-information-form.*

Please submit a resume that includes the following: (1) The nominee's contact information (including name, mailing address, telephone numbers, and email address) and a chronological summary of the nominee's experience and qualifications, and (2) a current biography.

Authority: This notice was prepared in accordance with the Veterans Entrepreneurship and Small Business Development Act of 1999, Public Law 106–50, Sec. 203. Advisory Committee on Veterans Business Affairs.

Dated: April 8, 2022.

Andrienne Johnson,

SBA Committee Management Officer.

[FR Doc. 2022–08083 Filed 4–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 11684]

Secretary of State's Determination Under the Foreign Assistance Act of 1961 To Provide Assistance to Ukraine

ACTION: Determination.

SUMMARY: The State Department is publishing a determination signed September 2, 2021 by the Secretary of State regarding the provision of military assistance to Ukraine.

SUPPLEMENTARY INFORMATION: Below is the ''Determination Under Section 506(a)(1) of the Foreign Assistance Act of 1961 to Provide Assistance to Ukraine.''

Determination Under Section 506(a)(1) of the Foreign Assistance Act of 1961 to Provide Assistance to Ukraine

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961 (the "Act") (22 U.S.C. 2318(a)(1)) and Presidential Delegation of Authority dated August 27, 2021, I hereby determine that an unforeseen emergency exists which requires immediate military assistance to Ukraine. I further determine that the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other provision of law.

I, therefore, pursuant to authority delegated to me by the President, direct the drawdown of up to $60 million in defense articles and services of the Department of Defense, and military education and training, under the authorities of section 506(a)(1) of the Act, to provide assistance to Ukraine. The Department of State will coordinate the implementation of this drawdown.

This determination shall be reported to the Congress and published in the *Federal Register*.

SEP 02 2021
Date

Antony J. Blinken
Secretary of State

Stanley L. Brown,

Acting Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 2022–08111 Filed 4–14–22; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 11683]

Secretary of State's Determination Under the Foreign Assistance Act of 1961 To Provide Military Assistance to the Philippines To Support Counterterrorism Operations

ACTION: Determination.

SUMMARY: The State Department is publishing a determination signed November 9, 2020 by the Secretary of State regarding the provision of military assistance to the Philippines to support counterterrorism operations.

SUPPLEMENTARY INFORMATION: Below is the ''Determination Under Section 506(a)(1) of the Foreign Assistance Act of 1961 to Provide Military Assistance to the Philippines to Support Counterterrorism Operations.''

Determination Under Section 506(a)(1) of the Foreign Assistance Act of 1961 to Provide Military Assistance to the Philippines to Support Counterterrorism Operations

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961 (the "Act") (22 U.S.C. 2318(a)(1)) and Presidential Delegation of Authority dated November 9, 2020, I hereby determine that an unforeseen emergency exists which requires immediate military assistance to the Philippines to support counterterrorism operations. I further determine that these requirements cannot be met under the authority of the Arms Export Control Act or any other provision of law.

I, therefore, pursuant to authority delegated to me by the President, direct the drawdown of up to $18 million in defense articles and services of the Department of Defense, and military education and training, for this purpose and under the authorities of section 506(a)(1) of the Act. The Department of State will coordinate implementation of this drawdown.

This determination shall be reported to the Congress and published in the *Federal Register*.

NOV 09 2020
Date

Michael R. Pompeo
Secretary of State

Stanley L. Brown,
Acting Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 2022–08110 Filed 4–14–22; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee: Notice of Public Meeting

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC).

DATES: The meeting will take place on May 3, 2022 from 1:00 p.m. to 4:00 p.m. and May 4, 2022 from 9:00 a.m. to 4:00 p.m.

ADDRESSES: Quesada Auditorium, FAA Headquarters, 3rd Floor, 800 Independence Ave. SW, Washington, DC. Guests should allow time for security screening when entering the building. Instructions on how to attend the meeting, copies of meeting minutes, and a detailed agenda will be posted on the COMSTAC website at: *https://www.faa.gov/space/additional_information/comstac/.*

FOR FURTHER INFORMATION CONTACT: James Hatt, Designated Federal Officer, U.S. Department of Transportation, at *james.a.hatt@faa.gov,* 202–549–2325. Any committee related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The Commercial Space Transportation Advisory Committee was created under the Federal Advisory Committee Act (FACA), in accordance with Public Law 92–463. Since its inception, industry-led COMSTAC has provided information, advice, and recommendations to the U.S. Department of Transportation through FAA regarding technology, business, and policy issues relevant to oversight of the U.S. commercial space transportation sector.

II. Proposed Agenda

Day 1

DOT/FAA Welcome Remarks
VIP Welcoming Remarks
Briefings
Year in Review
COMSTAC
Introductions
COMSTAC Reports
  Regulatory Working Group

Day 2

FAA/AST Remarks
Briefings
  National Space Council
  Congressional Speaker
COMSTAC Reports
  Safety Working Group
  Innovation and Infrastructure Working Group
COMSTAC Discussion on Industry Consensus Standards
Public Comments
Future Taskers

III. Public Participation

The meeting listed in this notice will be open to the public, virtually. Please see the website not later than five working days before the meeting for details on viewing the meeting on YouTube.

The Department is committed to provide equal access to this meeting for all program participants. If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section at least 10 calendar days before the meeting. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above and/or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** in writing (mail or email) 10 working days *in advance of the meeting* so that the information can be made available to COMSTAC members for their review and consideration before the meeting. Written statements should be supplied in the following formats: One hard copy with original signature and/or one electronic copy via email. Portable Document Format (PDF) attachments are preferred for email submissions. A detailed agenda will be posted on the FAA website at *https://www.faa.gov/space/additional_information/comstac/.*

James A. Hatt,

Designated Federal Officer, Commercial Space Transportation Advisory Committee, Federal Aviation Administration, Department of Transportation.

[FR Doc. 2022–08076 Filed 4–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice: Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Duluth Airport Authority (DAA) for Duluth International Airport (DLH) under the provisions of the Aviation Safety and Noise Abatement Act and FAA regulations are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for DLH in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before October 8, 2022.

DATES: The FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is effective April 11, 2022. The public comment period ends June 10, 2022.

FOR FURTHER INFORMATION CONTACT: Josh Fitzpatrick, 6020 South 28th Avenue, Suite 102, Minneapolis, MN 55450, *joshua.fitzpatrick@faa.gov,* (612) 253–4639. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for DLH are in compliance with applicable requirements of 14 CFR part 150, effective April 11, 2022. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before October 8, 2022. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C., section 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The DAA submitted to the FAA on December 13, 2021, noise exposure maps, descriptions and other documentation that were produced during the 2020–2021 DLH part 150 Noise Compatibility Program Update. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the DAA. The specific documentation determined to constitute the noise exposure maps includes: Exhibit 3–1 (Existing (2020) Baseline Noise Exposure Contour) and Exhibit 4–1 (Future (2026) Noise Compatibility Program—Noise Exposure Map). Chapters 3 and 4 of the DLH part 150 update describe the baseline noise exposure maps and noise compatibility program in greater detail. The FAA has determined that these maps for DLH are in compliance with applicable requirements. This determination is effective on April 11, 2022. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator,

under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for DLH, also effective on April 11, 2022. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 8, 2022.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program can be viewed online at the DLH website at *https://duluthairport.com/noise-study/#documents.* To review the documents in person, please contact the Airport by phone at (218) 727–2968 to set up a visit in their office at: Duluth Airport Authority, Attn: Tom Werner 4701 Grinden Drive, Duluth, MN 55811.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Minneapolis, Minnesota, April 11, 2022.

E. Lindsay Butler,

Manager, Dakota-Minnesota Airports District Office.

[FR Doc. 2022–08046 Filed 4–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration

Permanent Closure of the Public-Use of East Hampton Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of closure of the public-use of East Hampton Airport (HTO).

SUMMARY: The FAA received written notice on January 20, 2022 from the Town of East Hampton, followed by an amended request on February 17, 2022, advising that effective May 17, 2022, the Town will be closing the public-use East Hampton Airport (HTO), East Hampton, New York.

DATES: The closure of the public-use airport is effective as of May 17, 2022.

FOR FURTHER INFORMATION CONTACT: Mahendra Raghubeer, Manager, Safety and Standards Branch, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434 Tel: 718–553–3352, email: *Aea600@faa.gov.*

SUPPLEMENTARY INFORMATION: HTO is a general aviation airport in the National Plan of Integrated Airport Systems (NPIAS). The Town of East Hampton has owned and operated HTO for several decades. HTO previously received federal grants-in-aid for airport development and was subject to statutory grant assurances, but the Town is no longer contractually obligated to continue operating HTO as a public use airport. On January 20, 2022, and amended on February 17, 2020, the Town of East Hampton notified the FAA that it seeks to deactivate HTO on May 17, 2022 as a public-use airport and activate a new private-use airport, at the same location, on May 19, 2022. Section 46319 of title 49 of the United States Code (49 U.S.C. 46319) provides that a public agency (as defined in 49 U.S.C. 47102) may not permanently close an airport in the NPIAS without providing written notice to the FAA Administrator at least 30 days before the date of the closure. In this case, the public-use airport will be closed. The FAA recognizes the correspondence received on January 20, 2022 from the Town of East Hampton, followed by the amended request on February 17, 2022, meets that requirement. The FAA is publishing the Town of East Hampton's notice to close the public-use of HTO in accordance with 49 U.S.C. 46319(b).

Issued in Jamaica, New York on April 11, 2022.

David A. Fish,

Director, Eastern Region Airports Division.

[FR Doc. 2022–08059 Filed 4–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2022–0002–N–5]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Requests (ICRs) abstracted below to the Office of Management and Budget (OMB) for review and comment. These ICRs describe the information collections and their expected burdens. On January 14, 2022, FRA published a notice providing a 60-day period for public comment on the ICRs.

DATES: Interested persons are invited to submit comments on or May 16, 2022.

ADDRESSES: Written comments and recommendations for the proposed ICRs should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer at email: *Hodan.Wells@dot.gov* or telephone: (202) 493–0440.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On January 14, 2022, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICRs for which it is now seeking OMB approval. *See* 87 FR 2482. FRA received no comments in response to this notice.

Before OMB decides whether to approve the proposed collections of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(a); *see also* 60 FR 44978, 44983

(Aug. 29, 1995). OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICRs regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summaries below describe the ICRs that FRA will submit for OMB clearance as the PRA requires:

Title: Locomotive Certification (Noise Compliance Regulations).

OMB Control Number: 2130–0527.

Abstract: Under authority granted by the Noise Control Act of 1972, the Environmental Protection Agency (EPA) has established limits for noise emissions related to rail carriers in 40 CFR part 201. Those limits are enforced by FRA under 49 CFR part 210. In particular, the information FRA collects under § 210.27 is necessary to ensure compliance with EPA noise standards for new locomotives. Although railroads no longer need to display a certification badge or tag in the locomotive cab, as was previously required by now-removed § 210.27(d), the locomotives still need to be tested and certified to comply with the noise emission standards, as required under § 210.27(a)–(c).

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 4 locomotive manufacturers.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 4.

Total Estimated Annual Burden: 2 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $155.

Title: Use of Locomotive Horns at Highway-Rail Grade Crossings.

OMB Control Number: 2130–0560.

Abstract: Under 49 CFR part 222, FRA seeks to collect information from railroads and public authorities in order to increase safety at public highway-rail grade crossings nationwide by requiring that locomotive horns be sounded when trains approach and pass through these crossings or by ensuring that a safety level at least equivalent to that provided by routine locomotive horn sounding exists for quiet zone corridors in which such horn sounding is silenced. FRA reviews applications by public authorities intending to establish new quiet zones by implementing alternative safety measures and approves the effectiveness rate assigned to them.

FRA made several adjustments to its estimated paperwork burdens in this ICR extension.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 754 railroads/645 public authorities.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 3,620.

Total Estimated Annual Burden: 7,253 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $452,585.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2022–08141 Filed 4–14–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2022–0002–N–8]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Requests (ICRs) abstracted below to the Office of Management and Budget (OMB) for review and comment. These ICRs describe the information collections and their expected burdens. On February 2, 2022, FRA published a notice providing a 60-day period for public comment on the ICRs.

DATES: Interested persons are invited to submit comments on or before May 16, 2022.

ADDRESSES: Written comments and recommendations for the proposed ICRs should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer at email: *Hodan.Wells@dot.gov* or telephone: (202) 493–0440.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On February 2, 2022, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICRs for which it is now seeking OMB approval. *See* 87 FR 5933. FRA received no comments in response to this notice.

Before OMB decides whether to approve the proposed collections of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(a); *see also* 60 FR 44978, 44983 (Aug. 29, 1995). OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICRs regarding: (1) Whether the information collection activities are

necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summaries below describe the ICRs that FRA will submit for OMB clearance as the PRA requires:

Title: Certification of Glazing Materials.

OMB Control Number: 2130–0525.

Abstract: The collection of information is set forth under 49 CFR part 223, which requires the certification and permanent marking of glazing materials by the manufacturer. The manufacturer is also responsible for making available test verification data to railroads and to FRA upon request.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses (railroads and manufacturers of glazing materials).

Form(s): N/A.

Respondent Universe: 704 railroads and 5 manufacturers.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 25,439.

Total Estimated Annual Burden: 314 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $21,983.

Title: Disqualification Proceedings.

OMB Control Number: 2130–0529.

Abstract: FRA regulations at 49 CFR part 209, subpart D, explain FRA's responsibilities, and the rights and responsibilities of railroads and railroad employees, regarding disqualification procedures. For example, § 209.331, enforcement of a disqualification order, requires: (a) A railroad employing or formerly employing a disqualified individual to disclose the terms and conditions of the order to the individual's new or prospective employer railroad; (b) a railroad considering hiring an individual in a safety-sensitive position to inquire from the individual's prior employer railroad whether the individual is serving under a disqualification order; and (c) a disqualified individual to inform the individual's employer of the disqualification order, provide a copy of the order to the employer, inform a prospective employer railroad of the disqualification order, and provide a copy of the order.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 86,000 railroad employees and 754 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 22.

Total Estimated Annual Burden: 41 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $2,549.

In accordance with 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2022–08140 Filed 4–14–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0032]

Metro-North Commuter Railroad's Request To Amend Its Positive Train Control Safety Plan and Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on April 4, 2022, Metro-North Commuter Railroad (MNR) submitted a request for amendment (RFA) to its FRA-approved Positive Train Control Safety Plan (PTCSP). As this RFA may involve a request for FRA's approval of proposed material modifications to an FRA-certified positive train control (PTC) system, FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTCSP.

DATES: FRA will consider comments received by May 5, 2022. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES:

Comments: Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0032. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) section 20157(h) requires FRA to certify that a host railroad's PTC system complies with 49 CFR part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under Title 49 Code of Federal Regulations (CFR) Section 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that, on April 4, 2022, MNR submitted an RFA to its PTCSP for its Advanced Civil Speed Enforcement System II (ACSES II) and that RFA is available in Docket No. FRA–2010–0032.

Interested parties are invited to comment on MNR's RFA to its PTCSP by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a

railroad's RFA to its PTCSP at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2022–08132 Filed 4–14–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0131; Notice 2]

FCA US LLC, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: FCA US LLC (f/k/a Chrysler Group LLC) ''FCA'' has determined that certain model year (MY) 2004–2020 Chrysler, Dodge, Jeep, Fiat, and Alfa Romeo motor vehicles do not comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays.* FCA filed a noncompliance report dated November 15, 2019, and later amended it on December 9, 2019. FCA subsequently petitioned NHTSA on December 9, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of FCA's petition.

FOR FURTHER INFORMATION CONTACT: Neil Dold, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–7352, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION:

I. Overview

FCA has determined that certain MY 2004–2020 Chrysler, Dodge, Jeep, Fiat, and Alfa Romeo motor vehicles do not comply with paragraph S5.2.1 of FMVSS No. 101, *Controls and Displays* (49 CFR 571.101). FCA filed a noncompliance report dated November 15, 2019, and later amended it on December 9, 2019, pursuant to 49 CFR 573, *Defect and Noncompliance Responsibility and Reports.* FCA also petitioned NHTSA on December 9, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 40 U.S.C. 30118 and 49 U.S.C. 30120, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of FCA's petition was published with a 30-day public comment period, on July 13, 2020, in the **Federal Register** (85 FR 42066). One comment was received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2019–0131.''

II. Vehicles Involved

Approximately 2,507,693 MY 2004–2020 Chrysler, Dodge, Jeep, Fiat, and Alfa Romeo motor vehicles, manufactured between November 25, 2002, and November 9, 2019, are potentially involved.

III. Noncompliance

FCA explains that the noncompliance is that the subject vehicles are equipped with speedometers that allow the driver to configure the speedometer to display the vehicle's speed in kilometers-per-hour (km/h) only and therefore do not meet the requirements set forth in paragraph S5.2.1 and Table 1, Column 3 of FMVSS No. 101.

IV. Rule Requirements

Paragraph S5.2.1 and Table 1, Column 3 of FMVSS No. 101 provide that each passenger car, multipurpose passenger vehicle, truck and bus that is fitted with a control, a telltale, or an indicator listed in Table 1 or Table 2 must meet the requirements of FMVSS No. 101 for the location, identification, color, and illumination of that control, telltale or indicator. Each control, telltale and indicator that is listed in column 1 of Table 1 or Table 2 must be identified by the symbol specified for it in column 2 or the word or abbreviation specified for it in column 3 of Table 1 or Table 2. Specifically, the speedometer must only allow the speed to be displayed in miles per hour (MPH) or km/h and MPH.

V. Summary of FCA's Petition

The following views and arguments presented in this section, ''V. Summary of FCA's Petition,'' are the views and arguments provided by FCA and do not reflect the views of the Agency. In its petition, FCA describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, FCA offers the following reasoning:

1. FCA states that the vehicles are initially delivered for first-sale in a compliant state (vehicle speed displayed in MPH) and that it is only through vehicle operator interaction that the settings can be changed from MPH to km/h. FCA believes that this adjustment cannot be accomplished inadvertently.

2. FCA states that the two speedometer settings are clearly and continuously identified as ''km/h'' or ''MPH''. In addition, the two speedometer scales are noticeably different, and if a previous vehicle operator changed the units, a subsequent vehicle operator would be able to tell in a glance that the scale is not in MPH.

3. FCA states that the vehicle speed in km/h is 1.6 times greater than speed in MPH [in terms of numeric value displayed by the speedometer—1km/h is approximately 0.62 MPH]. FCA believes that if a vehicle operator changes the display to km/h and then later forgets that the change had been made, the operator will recognize that the vehicle is moving at a slower speed than intended and adjust the speed to match the road and vehicle conditions. This should alert the operator to (at the next appropriate opportunity) perform the appropriate steps to adjust the speedometer.

4. FCA also states that the owner's manuals for all of the affected vehicles contain instructions to change the speedometer display. Therefore, if a vehicle operator needs assistance to reconfigure the display to MPH, instructions are available.

5. FCA further states that the owner's manuals contain toll-free numbers to the FCA customer help-lines. Therefore, if a vehicle operator notices that the speed is unintentionally displayed in km/h

and does not know how to re-set the speed to display in MPH, *e.g.,* as set by a previous operator, the vehicle operator can easily contact FCA for assistance.

6. FCA has not received any customer contacts regarding this issue, even though this condition exists as in approximately 2.5 million vehicles, some of which have been in service for over 16 years.

7. FCA is not aware of any crashes, injuries, or customer complaints associated with this condition.

8. FCA states that NHTSA has previously granted inconsequential treatment for FMVSS No. 101 noncompliance for display of the vehicle speed in km/h only. An example of the Agency granting a similar inconsequentiality petition for display of the vehicle speed in km/h only is:

• BMW of North America, LLC, a subsidiary of BMW AG, 80 FR 61884 (October 14, 2015).

9. It is FCA's belief that the information described above satisfies the intent of 49 CFR part 556 and operators can safely utilize their vehicles for the intended purposes. FCA believes that pursuant to 49 CFR part 556, 49 U.S.C. 30118(d) and § 30120(h), and FMVSS 101 S5.2.1, this display of the vehicle speed in km/h only noncompliance is inconsequential to motor vehicle safety and FCA should be exempted from the notification and remedy requirements of 49 U.S.C. chapter 301, ''Motor Vehicle Safety'' for the reasons supporting exemption cited above.

FCA's complete petition and all supporting documents are available at the Federal Docket Management System (FDMS) website at: *https://www.regulations.gov* by following the online search instructions to locate the docket number as listed in the title of this notice.

VI. Public Comment

NHTSA received one comment from the public. This comment was submitted by an individual who expressed concerns over a vehicle they own that was manufactured by FCA. While the Agency takes great interest in the public's concerns and appreciates the commenter's feedback, the comment does not address the purpose of this particular petition.

VII. NHTSA's Analysis

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement with no performance implications*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.[1] Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality based upon NHTSA's prior decisions on noncompliance issues was the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[2] In general, NHTSA does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. ''Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.'' [3] ''[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.'' [4]

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.[5] Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance.[6] These considerations are also relevant when assessing whether a defect is inconsequential to motor vehicle safety.

FMVSS No. 101 requires speedometers to be labeled with units of MPH or both MPH and km/h simultaneously. The purpose of FMVSS No. 101 is to reduce safety hazards caused by the diversion of the driver's attention from the driving task when using controls, telltales, and indicators. In its petition, FCA explains that speedometers in certain vehicles are not compliant with FMVSS No. 101 because they may be set to display speed in units of km/h without simultaneously displaying speed in MPH.

NHTSA has evaluated the merits of the inconsequential noncompliance petition submitted by FCA and has determined that this particular noncompliance is inconsequential to motor vehicle safety. Specifically, the Agency considered the following when making its decision:

1. FCA explained that vehicles are delivered with speedometers displaying units in MPH and that switching the speedometer to display speed in units of km/h can only be accomplished by a vehicle operator adjusting the settings of the vehicle.

2. FCA explained that speedometers are clearly labeled at all times in either MPH or km/h and that an operator can change the setting back to MPH. If an operator were unaware of the means to change the setting from km/h to MPH, FCA indicated that instructions are available within the owner's manual or via FCA's customer-help phone service.

3. NHTSA agrees with FCA that it is unlikely that the switch from MPH to km/h could be done inadvertently because physical interactions with the vehicle settings controls are required by the operator to make the change. We believe that if an operator were to make this change it would be done intentionally and with some understanding of the implications and would be unlikely to cause any impact to vehicle safety. Also, if an operator

[1] *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

[2] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[3] Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance, 81 FR 21663, 21666 (Apr. 12, 2016).

[4] *United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

[5] *See Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance,* 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

[6] See Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance, 69 FR 19897, 19900 (Apr. 14, 2004); Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance, 64 FR 29408, 29409 (June 1, 1999).

were unaware that a speedometer had been changed to display speed in km/h, they would be likely to travel at a slower speed rather than a faster speed that might impact safety because the indicated numeric value of the speed in km/h would be 1.6 times greater than the numeric value of the speed in MPH. For example, a driver attempting to match a speed limit of 40 MPH using a speedometer reading ''40'' in km/h would be traveling approximately 25 MPH and have an opportunity to safely detect the difference between their speedometer reading and the speed of nearby traffic.

4. Based on the information provided by FCA, NHTSA agrees with FCA that their petition is highly similar to petitions previously granted inconsequential treatment (80 FR 61884 and 85 FR 39675).

VIII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that FCA has met its burden of persuasion that the subject FMVSS No. 101 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, FCA's petition is hereby granted and FCA is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that FCA no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after FCA notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–08107 Filed 4–14–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0074; Notice 1]

Daimler Trucks North America, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Daimler Trucks North America, LLC, (DTNA) has determined that certain model year (MY) 2020–2022 Freightliner Cascadia and Western Star motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials.* DTNA filed an original noncompliance report dated June 30, 2021, and later amended it on July 16, 2021. DTNA petitioned NHTSA on July 29, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of DTNA's petition.

FOR FURTHER INFORMATION CONTACT: Jack Chern, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), (202) 366–0661, *jack.chern@dot.gov.*

DATES: Send comments on or before May 16, 2022.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the docket. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview

DTNA has determined that certain MY 2020–2022 Freightliner Cascadia and Western Star motor vehicles do not fully comply with the requirements of paragraph S5.1 of FMVSS No. 205, *Glazing Materials* (49 CFR 571.205). DTNA filed an original noncompliance report dated June 30, 2021, and later amended it on July 16, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* DTNA subsequently petitioned NHTSA on July 29, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for*

Inconsequential Defect or Noncompliance.

This notice of receipt of DTNA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

II. Windshields Involved

Approximately 68,658 MY 2020–2022 Freightliner Cascadia, MY 2021 Western Star 57X, MY 2021–2022 Western Star 49X, and MY 2021–2022 Western Star 47X motor vehicles, manufactured between June 25, 2020, and June 22, 2021, are potentially involved.

III. Noncompliance

DTNA explains that the noncompliance is that windshield installed in the subject vehicles may contain a Tintex Plus light material, which, in combination with the windshield configuration and thickness, do not fully meet the requirements of paragraph S5.1 of FMVSS No. 205. Specifically, the windshields in the subject vehicles have a luminous transmittance measured between 67.35 and 68.01 percent, instead of the required 70 percent.

IV. Rule Requirements

Paragraph S5.1 of FMVSS No. 205 includes the requirements relevant to this petition. Glazing materials for use in motor vehicles must conform to ANSI/SAE Z26.1–1996.

V. Summary of DTNA's Petition

The following views and arguments presented in this section, ''V. Summary of DTNA's Petition,'' are the views and arguments provided by DTNA. They have not been evaluated by the Agency and do not reflect the views of the Agency. DTNA describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

DTNA states that although the luminous transmittance of the windshields in the subject vehicles is 1.99–2.65 percent less than the required 70 percent, the subject vehicles have such features as windshield's installation angles that make effective visibility much higher than other vehicles with similar transmittance.''

DTNA claims that NHTSA has previously determined that luminous transmittance, lower than what is required, to not be a safety risk. According to DTNA, NHTSA's ''Report to Congress on Tinting of Motor Vehicle Windows,'' in March 1991 found that ''the light transmittance of windows of the then new passenger cars and vans that complied with Standard No. 205 did not present an unreasonable risk of accident occurrence.'' DTNA says that a study reported by TUY Rheinland also supports its position that the subject noncompliance is inconsequential to motor vehicle safety because the report states that ''low contrast targets were not seen 100% of the time by either group of subjects, but the normally sighted group performed equally well in seeing them through windshields of 89, 76, and 58% transmittance'' and visibility was not found to be ''much reduced'' until it reached 40%. Thus, DTNA believes that the subject windshields ''are far closer to the standard'' in luminous transmittance than what the TUY Rheinland study found would reduce visibility.

DTNA explains the light transmittance ''as experienced by a vehicle driver, is a function of the windshield construction and installation angle.'' DTNA states that because of the measurements found in the subject windshields, the luminous transmittance of the subject windshields is ''only nominally outside the specification but perform in a manner exceeding the typical modern passenger vehicle with a window at a standard angle.'' Therefore, the luminous transmittance in the subject windshields are ''as good or better than the visibility through windshields of other vehicles that comply'' with the requirement.

Furthermore, DTNA explains that due to the ''6–9 month lifetime'' for heavy truck windshields, ''the length of time for any particular windshield to be on the road is limited'' and would be replaced with windshields that do not contain the subject noncompliance.

DTNA claims that NHTSA has previously granted inconsequentiality petitions for similar noncompliances with luminous transmittance.[1] DTNA says that in those cases, NHTSA agreed that although the percentage of luminous transmittance was lower, the reduction ''would have no practical or perceivable effect on driver visibility.'' Therefore, DTNA believes that granting its petition would be consistent with inconsequentiality petitions that NHTSA has previously granted.

DTNA concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that DTNA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles and replacement windshield glass panes under their control after DTNA notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–08108 Filed 4–14–22; 8:45 am]

BILLING CODE 4910–59–P

[1] *See* Ford Motor Company; Grant of Application for Decision of Inconsequential Noncompliance, 60 FR 31345 (June 14, 1995); *see also* Fleetwood Enterprises, Inc.; Action on Application for Decision of Inconsequential Noncompliance, 63 FR 10964 (March 5, 1998)

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. Additionally, OFAC is publishing the names of one or more persons that have been removed from the SDN List. As of the date of publication of this notice in the **Federal Register**, their property and interests in property are no longer blocked, and U.S.

persons are no longer generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective 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 the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

A. On April 11, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals

1. TADIC, Gordana, Bosnia and Herzegovina; DOB 27 Jun 1962; POB Zivinice, Bosnia and Herzegovina; nationality Bosnia and Herzegovina; citizen Bosnia and Herzegovina; Gender Female; National ID No. 2706962189234 (Bosnia and Herzegovina) (individual) [BALKANS-EO14033].

   Designated pursuant to section 1(a)(ii) of Executive Order 14033 of June 8, 2021, "Blocking Property and Suspending Entry into the United States of Certain Persons Contributing to the Destabilizing Situation in the Western Balkans," 86 FR 31079 (E.O. 14033) for being responsible for or complicit in, or having directly or indirectly engaged in, actions or policies that undermine democratic processes or institutions in the Western Balkans.

2. NDROQI, Ylli Bahri (a.k.a. PASMACIU, Xhemail; a.k.a. PASMACIU, Xhemal), Tirana, Albania; DOB 11 Mar 1965; POB Tirana, Albania; nationality Albania; Gender Male (individual) [BALKANS-EO14033].

   Designated pursuant to section 1(a)(v) of E.O. 14033 for being responsible for or complicit in, or having directly or indirectly engaged in, corruption related to the Western Balkans, including corruption by, on behalf of, or otherwise related to a government in the Western Balkans, or a current or former government official at any level of government in the Western Balkans, such as the misappropriation of public assets, expropriation of private assets for personal gain or political purposes, or bribery.

3. GRUEVSKI, Nikola (Cyrillic: ГРУЕВСКИ, Никола), Hungary; Skopje, North Macedonia, The Republic of; DOB 31 Aug 1970; POB Skopje, North Macedonia; nationality North Macedonia, The Republic of; Gender Male (individual) [BALKANS-EO14033].

   Designated pursuant to section 1(a)(v) of E.O. 14033 for being responsible for or complicit in, or having directly or indirectly engaged in, corruption related to the Western Balkans, including corruption by, on behalf of, or otherwise related to a government in the Western Balkans, or a current or former government official at any level of government in the Western Balkans, such as the misappropriation of public assets, expropriation of private assets for personal gain or political purposes, or bribery.

4. MIJALKOV, Sasho (Cyrillic: МИЈАЛКОВ, Сашо) (a.k.a. MIJALKOV, Alex; a.k.a. MIJALKOV, Alexander; a.k.a. MIJALKOV, Sasa; a.k.a. MIJALKOV, Saso), Naroden Front Street No. 5-31, Skopje, North Macedonia, The Republic of; DOB 15 Sep 1965; POB Skopje, North Macedonia; nationality North Macedonia, The Republic of; Gender Male (individual) [BALKANS-EO14033].

Designated pursuant to section 1(a)(ii) of E.O. 14033 for being responsible for or complicit in, or having directly or indirectly engaged in, actions or policies that undermine democratic processes or institutions in the Western Balkans;

5. SARAJLIC, Asim, Bosnia and Herzegovina; DOB 03 Oct 1975; POB Sarajevo, Bosnia and Herzegovina; nationality Bosnia and Herzegovina; Gender Male (individual) [BALKANS-EO14033].

Designated pursuant to section 1(a)(v) of E.O. 14033 for being responsible for or complicit in, or having directly or indirectly engaged in, corruption related to the Western Balkans, including corruption by, on behalf of, or otherwise related to a government in the Western Balkans, or a current or former government official at any level of government in the Western Balkans, such as the misappropriation of public assets, expropriation of private assets for personal gain or political purposes, or bribery.

6. RAKIPI, Aqif (f.k.a. EJYLBEGAJ, Skender), Elbasan, Albania; DOB 01 Apr 1964; POB Durres, Albania; nationality Albania; citizen Albania; Gender Male (individual) [BALKANS-EO14033].

Designated pursuant to section 1(a)(v) of E.O. 14033 for being responsible for or complicit in, or having directly or indirectly engaged in, corruption related to the Western Balkans, including corruption by, on behalf of, or otherwise related to a government in the Western Balkans, or a current or former government official at any level of government in the Western Balkans, such as the misappropriation of public assets, expropriation of private assets for personal gain or political purposes, or bribery.

7. MAROVIC, Svetozar (Cyrillic: МАРОВИЋ, Светозар), Serbia; DOB 31 Mar 1955; POB Kotor, Montenegro; nationality Montenegro; Gender Male (individual) [BALKANS-EO14033].

Designated pursuant to section 1(a)(v) of E.O. 14033 for being responsible for or complicit in, or having directly or indirectly engaged in, corruption related to the Western Balkans, including corruption by, on behalf of, or otherwise related to a government in the Western Balkans, or a current or former government official at any level of government in the Western Balkans, such as the misappropriation of public assets, expropriation of private assets for personal gain or political purposes, or bribery.

BILLING CODE 4810–AL–C

Entity

1. I.C.I.C. KFT. (a.k.a. I.C.I.C. LTD.), Bocskai utca 9, Pecel 2119, Hungary; Organization Established Date 15 Jul 2021; Tax ID No. 27189173–1–13 (Hungary); Registration Number 13–09–214318 (Hungary) [BALKANS–EO14033] (Linked To: GRUEVSKI, Nikola).

Designated pursuant to section 1(a)(vii) of E.O. 14033 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Nikola Gruevski, a person whose property and interests in property are blocked pursuant to E.O. 14033.

B. On May 28, 2003, the individuals listed below were included in the Annex to Executive Order 13219 of June 26, 2001, ''Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans,'' as amended by Executive Order 13304 of May 28, 2003, ''Termination of Emergencies With Respect to Yugoslavia and Modification of Executive Order 13219 of June 26, 2001'' and added to the SDN List. OFAC has determined that circumstances no longer warrant the inclusion of the following individuals on the SDN List under this authority.

1. ARSENOVIC, Djojo; DOB 06 Jan 1952; POB Donje Crnjelovo, Bosnia-Herzegovina (individual) [BALKANS].
2. BEARA, Ljubisa; DOB 14 Jul 1939; POB Sarajevo, Bosnia and Herzegovina (individual) [BALKANS].
3. BOROVNICA, Goran; DOB 15 Aug 1965; ICTY indictee at large (individual) [BALKANS].
4. DERONJIC, Miroslav; DOB 06 Jun 1945; POB Bratunac, Bosnia-Herzegovina; ICTY indictee (individual) [BALKANS].
5. HADZIC, Goran; DOB 07 Sep 1958; POB Municipality of Vinkovci, Croatia (individual) [BALKANS].
6. HYSENI, Xhemajl; DOB 15 Aug 1958; POB Lojane, Macedonia (individual) [BALKANS].
7. MARINIC, Zoran; DOB 06 Jun 1963; POB Busovaca, Bosnia-Herzegovina; ICTY indictee at large (individual) [BALKANS].
8. MRKSIC, Milan; DOB 20 Jul 1947; POB Vrginmost, Croatia; ICTY indictee in custody (individual) [BALKANS].
9. MUSLIU, Jonuz; DOB 05 Jan 1959; POB

Konculj, Serbia and Montenegro (individual) [BALKANS].
10. NIKOLIC, Drago; DOB 09 Nov 1957; POB Vlasenica, Bosnia-Herzegovina; ICTY indictee (individual) [BALKANS].
11. RUSHITI, Sait (a.k.a. RUXHETI, Sait); DOB 07 Nov 1966 (individual) [BALKANS].
12. TODOROVIC, Stevan; DOB 29 Dec 1957; POB Donja Slatina, Bosnia-Herzegovina; ICTY indictee (individual) [BALKANS].
13. CENGIC, Hasan; DOB 03 Aug 1957; POB Odzak, Bosnia-Herzegovina (individual) [BALKANS].
14. OJDANIC, Dragoljub; DOB 01 Jun 1941; POB Ravni-Cajetina, Serbia and Montenegro; Ex-Fry Minister of Defense; ICTY indictee in custody (individual) [BALKANS].
15. BALA, Haradin; DOB 10 Jun 1957; POB Gornja Koretica, Serbia and Montenegro; ICTY indictee (individual) [BALKANS].
16. JOSIPOVIC, Drago; DOB 14 Feb 1955; POB Santici, Bosnia-Herzegovina; ICTY indictee (individual) [BALKANS].
17. MUCIC, Zdravko; DOB 31 Aug 1955; ICTY indictee (individual) [BALKANS].
18. STRUGAR, Pavle; DOB 13 Jul 1933; POB Pec, Serbia and Montenegro; ICTY indictee (individual) [BALKANS].
19. TALIC, Momir; DOB 15 Jul 1942; POB Piskavica, Bosnia-Herzegovina; ICTY indictee (individual) [BALKANS].
20. ZELENOVIC, Dragan; DOB 12 Feb 1961; ICTY indictee at large (individual) [BALKANS].
21. GASHI, Sabit; DOB 30 Dec 1967; POB Suva Reka, Serbia and Montenegro (individual) [BALKANS].

The removal of the individuals listed above from the SDN List is effective as of the date of publication in the **Federal Register**.

Dated: April 11, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–08144 Filed 4–14–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form 5316

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 5316, Application for Group or Pooled Trust Ruling.

DATES: Written comments should be received on or before June 14, 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 Control No. 1545–2166 in the subject line of the message.

FOR FURTHER INFORMATION: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Application for Group or Pooled Trust Ruling.

OMB Number: 1545–2166.

Form Number: Form 5316.

Abstract: Group/pooled trust sponsors file this form to request a determination letter from the IRS for a determination that the trust is a group trust arrangement as described in Rev. Rul. 81–100, 1981–1 C.B. 326 as modified and clarified by Rev. Rul. 2004–67, 2004–28 I.R.B. 28, as modified by Rev. Rul. 2011–1, 2011–2, I.R.B. 251, and as modified by Rev. Rul. 2014–24, 2014–37 I.R.B. 529.

Current Actions: There are changes to the existing collection: (1) Form 5316 was revised for clarity and organization, (2) line 1(l) was added for the group trust EIN, (3) lines 2(b) through 2(g) duplicated information collected in required attachments and were removed, (4) additional Revenue Ruling and statutory citations were added throughout the form and instructions, and (5) lines in the Procedural Requirements Checklist do not collect information and were removed from the burden calculation.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 200.

Estimated Time per Respondent: 14 hours, 6 minutes.

Estimated Total Annual Burden Hours: 2,820.

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. 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 automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 12, 2022.

Jon R. Callahan,

Tax Analyst.

[FR Doc. 2022–08101 Filed 4–14–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8918

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the 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 Form 8918, Material Advisor Disclosure Statement.

DATES: Written comments should be received on or before June 14, 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.* Please reference the information collection's ''OMB number 1545–0865'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, (202–317–4542), Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Material Advisor Disclosure Statement.

OMB Number: 1545–0865.

Form Numbers: 8918.

Abstract: Internal Revenue Code (IRC) 6111 requires a sub-set of promoters called ''material advisors'' to disclose information about the promotion of certain types of transactions called ''reportable transactions.'' Material advisors to any reportable transaction must disclose certain information about the reportable transaction by filing a Form 8918 with the IRS. Material advisors who file a Form 8918 will receive a reportable transaction number from the IRS. Material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor. Form 8918 has been redesigned with 2D Barcodes Placed on Page 4, which will be submitted with the rest of the form. 2D Barcodes are capable of capturing a vast amount of information, relieving material advisors of the need to submit attachments to ensure all required information is provided.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 2,279.

Estimated Time per Respondent: 16 hrs., 30 minutes.

Estimated Total Annual Burden Hours: 37,627.

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. 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 automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 12, 2022.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2022–08147 Filed 4–14–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Patient Protection and Affordable Care Act Patient Protection Notice.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning patient protection and affordable care.

DATES: Written comments should be received on or before June 14, 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 control number 1545–2181 or Patient Protection and Affordable Care Act Patient Protection Notice, in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Patient Protection and Affordable Care Act Patient Protection Notice.

OMB Number: 1545–2181.

Regulation Project Number: T.D. 9951.

Abstract: The Patient Protection Notice is used by health plan sponsors and issuers to notify certain individuals of their right to (1) choose a primary care provider or a pediatrician when a plan or issuer requires participants or subscribers to designate a primary care physician; or (2) obtain obstetrical or gynecological care without prior authorization.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; not-for profit organizations.

Estimated Number of Respondents: 11,241.

Estimated Number of Responses: 148,181.

Estimated Time per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 2,810 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 11, 2022.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2022–08081 Filed 4–14–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Schedule E (Form 1040)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Schedule E (Form 1040), Supplemental Income and Loss.

DATES: Written comments should be received on or before June 14, 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 Control No. 1545–1972 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Supplemental Income and Loss.

OMB Number: 1545–1972.

Form Number: Schedule E (Form 1040).

Abstract: Pursuant to Internal Revenue Code (IRC) section 6012(b) and Treasury Regulations section 1.6012–3, fiduciaries file tax returns for estates and trusts using Form 1041. Filers of Form 1041 use Schedule E (Form 1040) to report income and loss from rental real estate, royalties, partnerships, S corporations, estates, trusts, and residual interests in real estate mortgage investment conduits (REMICs).

Current Actions: There is no change to the existing collection. However, the estimated number of responses has increased based on the most current filing data.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 832,395.

Estimated Time per Respondent: 9 hours, 56 minutes.

Estimated Total Annual Burden Hours: 8,274,006.

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. 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 automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 12, 2022.

Jon R. Callahan,

Tax Analyst.

[FR Doc. 2022–08100 Filed 4–14–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on TD 8400, Taxation of Gain or Loss From Certain Nonfunctional Currency Transactions (Section 988 Transactions)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Treasury Decision (TD) 8400, Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).

DATES: Written comments should be received on or before June 14, 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 Control No. 1545–1131 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: TD 8400—Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).

OMB Number: 1545–1131.

Regulation Project Number: TD 8400.

Abstract: This document contains previously approved final regulations regarding the taxation of gain or loss

from certain foreign currency transactions under Internal Revenue Code (IRC) section 988 and applies to taxpayers engaging in such transactions. Such gains and losses are characterized as ordinary income or loss. However, under IRC section 988(a)(1)(B), taxpayers may elect to characterize exchange gain or loss on certain transactions as capital gain or loss. Treasury Regulations section 1.988–3(b) provides the procedure for making the election. Under IRC section 988(c)(1)(D)(ii), taxpayers may elect to have regulated futures contracts and certain options (which generally are not subject to section 988) treated as section 988 transactions. Treasury Regulations sections 1.988–1(a)(7)(iii) and (iv) provide the procedure for making that election. Under IRC section 988(c)(1)(E)(iii), a qualified fund may elect out of section 988 with respect to certain financial transactions. Treasury Regulations section 1.988–1(a)(8)(iv) provides the procedure for making that election. Under IRC section 988(d), taxpayers may receive special treatment allowing integration with respect to certain borrowings and property if the transactions are properly identified. The identification rules are in Treasury Regulations sections 1.988–5(a)(8), 1.988–5(b)(3), and 1.988–5(c)(2). Treasury Regulations section 1.988–2(a)(2)(v) allows an accrual basis taxpayer to make an election that provides special translation rules regarding the purchase and sale of stock or securities traded on an established securities market. Treasury Regulations section 1.988–2(b)(2)(iii)(B) provides an election allowing the translation of interest income and expense using a spot accrual convention.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and individuals and households.

Estimated Number of Responses: 5,000.

Estimated Time per Respondent: 40 minutes.

Estimated Total Annual Burden Hours: 3,333.

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. 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 automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 12, 2022.

Jon R. Callahan,

Tax Analyst.

[FR Doc. 2022–08099 Filed 4–14–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Funding Opportunity: Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of funding opportunity.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the opportunity of funds for suicide prevention services grants under the Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program (SSG Fox SPGP). The SSG Fox SPGP enables the Office of Mental Health and Suicide Prevention (OMHSP) within the Veterans Health Administration (VHA) to provide financial assistance through a 3-year community-based grant program to eligible entities to provide, or coordinate the provision of, suicide prevention services to eligible Veterans and their families. Funding offered under this Notice of Funding Opportunity (NOFO) responds to the mounting need to reach Veterans at risk for suicide in their communities. This Notice contains information concerning the SSG Fox SPGP, the application process and the amount of funding available. Awards made for suicide prevention services grants will fund operations beginning on or around September 1, 2022.

DATES: Applications for suicide prevention services grants under the SSG Fox SPGP Program must be received by 11:59 p.m. Eastern Time on June 10, 2022. In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays, computer service outages, or other submission-related problems.

ADDRESSES: For a Copy of the Application Package: Copies of the application can be downloaded from the SSG Fox SPGP website at *https://www.mentalhealth.va.gov/ssgfox-grants/*. Questions should be referred to the SSG Fox SPGP at *VASSGFoxGrants@va.gov.* For detailed SSG Fox SPGP information and requirements, see part 78 of title 38 CFR part 78).

Application Submission: Applicants must submit applications electronically following instructions found at *https://www.mentalhealth.va.gov/ssgfox-grants/*. Applications may not be mailed or sent by facsimile (fax). Applications must be received by the SSG Fox SPGP Office no later than 11:59 p.m. Eastern Time on the application deadline date. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package and may result in the application being rejected.

Technical Assistance: Information on obtaining technical assistance preparing a suicide prevention services grant application is available on the SSG Fox SPGP website at *https://www.mentalhealth.va.gov/ssgfox-grants.*

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Foley, Director SSG Fox SPGP, Office of Mental Health and Suicide Prevention, 11MHSP, 202–502–0002 (this is not a toll-free telephone number), or *VASSGFoxGrants@va.gov.*

SUPPLEMENTARY INFORMATION:

Funding Opportunity Title: SSG Fox Suicide Prevention Grant Program.

Announcement Type: Initial.

Funding Opportunity Number: VA–FOX–SP–FY2022.

Assistance Instrument: Grant.

Assistance Listing: 64.055, VA Suicide Prevention Program.

I. Funding Opportunity Description

A. Purpose

Section 201 of the Commander John Scott Hannon Veterans Mental Health Care Improvement Act of 2019 (the Act), Public Law 116–171 (38 U.S.C. 1720F, note), enacted on October 17, 2020, created SSG Fox SPGP, a new community-based suicide prevention services grant program with the purpose of reducing Veteran suicide. The SSG Fox SPGP aims to build upon VA's public health approach, which combines clinical and community-based interventions to prevent Veteran suicide for those inside and outside of VA health care.

The SSG Fox SPGP is intended to provide grants to certain entities that will provide or coordinate the provision of suicide prevention services to eligible individuals and their families for the purpose of reducing Veteran suicide. This grant program will assist in further implementing a public health approach through these community efforts. The goal of these grants is to reduce Veteran suicide risk; improve baseline mental health status, well-being and social support; and improve financial stability for eligible individuals and their families.

B. Background

VA's top clinical priority is preventing suicide among all Veterans—including those who do not, and may never, seek care within the VA health care system. Guided by VA's National Strategy for Preventing Veteran Suicide (2018), OMHSP is implementing Suicide Prevention (SP) 2.0. SP 2.0 outlines a comprehensive public health approach to suicide prevention that blends community-based prevention and clinically based interventions. SP 2.0 expands VA's clinical suicide prevention efforts and establishes VA's Community-Based Interventions for Suicide Prevention initiative (CBI–SP).

SP 2.0 clinical efforts build upon VA's foundational approach, which includes over 500 suicide prevention coordinators to provide enhanced care to Veterans at highest risk, local follow up to Veterans Crisis Line referrals, training, staff consultation and outreach in communities. VA has implemented universal suicide risk screening at every level of care, expanded safety planning efforts and increased access to evidence-based psychotherapies for suicide prevention.

On the community side, CBI–SP includes expansion of the Governor's Challenge to Prevent Suicide Among Service members, Veterans and their families; VA's Community Engagement and Partnership Coordinator program; and the Together With Veterans model. Across all three approaches to CBI–SP, there are three overarching focused priority areas: (1) Identifying Service members, Veterans and their families and screening them for suicide risk; (2) promoting connectedness and improving care transitions; and (3) increasing lethal means safety and safety planning. The SSG Fox SPGP builds upon these initiatives to enhance connections to direct services for eligible individuals and their families.

C. Definitions

The regulations for the SSG Fox SPGP, published in the **Federal Register** (see 87 FR 13806, as amended by 87 FR 16101) as an Interim Final Rule on March 10, 2022, and amended on March 22, 2022, and codified in 38 CFR part 78, contain all detailed definitions and requirements pertaining to this program. Definitions of key terms are also provided below for ease of reference. However, 38 CFR part 78 should be consulted for all definitions.

Eligible Entity: Eligible entity means an entity that meets the definition of an eligible entity in section 201(q) of the Act. Under section 201(q)(3) of the Act, an eligible entity must be one of the following: (1) An incorporated private institution or foundation that (i) has no part of the net earnings of which incurs to the benefit of any member, founder, contributor, or individual, and (ii) has a governing board that would be responsible for the operation of the suicide prevention services provided under this section; (2) a corporation wholly owned and controlled by an organization meeting the requirements of clauses (i) and (ii) above; (3) an Indian tribe; (4) a community-based organization that can effectively network with local civic organizations, regional health systems and other settings where eligible individuals and their families are likely to have contact; or (5) a state or local government. This may include, but not be limited to, nonprofit and private organizations such as those that are part of VA-Substance Abuse and Mental Health Services Administration's Governors' and Mayors' Challenge to prevent suicide among Service members, Veterans and their families; universities; and city, county, state and tribal governments. Demonstration of eligibility as detailed in the application includes submission of documents as outlined in Section IV of this notice.

Eligible Individual: Eligible individual means an individual that meets the requirements of 38 CFR 78.10(a). This means that to be eligible to receive suicide prevention services under the SSG Fox SPGP, an individual must be at risk of suicide and meet the definition of eligible individual in section 201(q) of the Act. That is, the individual must be one of the following: (1) A Veteran as defined in 38 U.S.C. 101, (2) an individual described in 38 U.S.C. 1720I(b), or (3) an individual described in 38 U.S.C. 1712A(a)(1)(C)(i) through (iv). This is consistent with the definition of eligible individual in section 201(q)(4) of the Act. For purposes of eligible individuals, and consistent with section 201(q)(8) of the Act, risk of suicide means exposure to, or the existence of, any of the following factors, to any degree, that increase the risk of suicidal ideation and/or behaviors: (1) Health risk factors, including mental health challenges, substance use disorder, serious or chronic health conditions or pain and traumatic brain injury; (2) environmental risk factors, including prolonged stress, stressful life events, unemployment, homelessness, recent loss and legal or financial challenges; and (3) historical risk factors, including previous suicide attempts, family history of suicide and history of abuse, neglect, or trauma, including military sexual trauma.

Family: Family means, with respect to an eligible individual, any of the following: A parent, spouse, child, sibling, step-family member, extended family member and any other individual who lives with the eligible individual.

Grantee: Grantee means an eligible entity that is awarded a suicide prevention services grant under 38 CFR part 78 (that is, a grant under the SSG Fox SPGP).

Indian Tribe: Indian tribe means an Indian tribe as defined in 25 U.S.C. 4103. Section 4103(13)(A) of title 25, U.S.C., defines Indian tribe in general to mean a tribe that is a federally or a state recognized tribe. Section 4103(13)(B) of title 25, U.S.C., further defines federally recognized tribe to mean any Indian tribe, band, Nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*). Section 4103(13)(C) of title 25, U.S.C., also defines state recognized tribe to mean any tribe, band, Nation, pueblo, village, or community—(1) that has been

recognized as an Indian tribe by any state; and (2) for which an Indian Housing Authority has, before the effective date under section 705 of Public Law 104–330 (110 Stat. 4018, 4052), entered into a contract with the Secretary of Housing and Urban Development pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) for housing for Indian families and has received funding pursuant to such contract within the 5-year period ending upon such effective date. This definition also includes certain conditions set forth in 25 U.S.C. 4103(13)(C)(ii). This definition of Indian tribe is consistent with section 201(q)(7) of the Act.

Participant: Participant means an eligible individual or their family who is receiving suicide prevention services for which they are eligible from a grantee.

Suicide Prevention Services: Suicide prevention services include any of the following services provided to address the needs of a participant: (1) Outreach; (2) baseline mental health screening; (3) education; (4) clinical services for emergency treatment; (5) case management services; (6) peer support services; (7) assistance in obtaining VA benefits; (8) assistance in obtaining and coordinating other public benefits and assistance with emergent needs; (9) nontraditional and innovative approaches and treatment practices; and (10) other services. These services are further described in 38 CFR 78.45 through 78.90 and in section I.D of this notice, below.

Veteran: Veteran means a Veteran under 38 U.S.C. 101(2), which defines Veteran as a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable.

D. Approach

Suicide prevention services are those services that address the needs of eligible individuals and their families and are necessary for improving the mental health status and well-being and reducing the suicide risk of eligible individuals and their families. Applicants must include in their application how they will provide or coordinate the provision of the baseline mental health screening to all participants. In addition, the application must include the proposed suicide prevention services to be provided or coordinated to be provided and the identified need for those services. Suicide prevention services include:

Outreach to identify and engage eligible individuals (and their families) at highest risk of suicide: Grantees providing or coordinating the provision of outreach must use their best efforts to ensure that eligible individuals, including those who are at highest risk of suicide or who are not receiving health care or other services furnished by VA, and their families are identified, engaged and provided suicide prevention services. Based on the suicide risk and eligibility screening conducted by grantees, eligible individuals that should be considered at highest risk of suicide are those with a recent suicide attempt, an active plan or preparatory behavior for suicide, or a recent hospitalization for suicidality. VA will provide access to the Columbia Suicide Severity Rating Scale to determine level of suicide risk. Outreach must include active liaison with local VA facilities; state, local, or tribal government (if any); and private agencies and organizations providing suicide prevention services to eligible individuals and their families in the area to be served by the grantee. This can include, for example, local mental health and emergency or urgent care departments in local hospitals or clinics. Grantees are required to have a presence in the area to meet with individuals and organizations to create referral processes to the grantee and other community resources. VA requires that grantees coordinate with VA with respect to the provision of health care and other services to eligible individuals. VA expects that grantees will work with local VA facilities on a regular basis to coordinate care when needed for eligible individuals.

Baseline mental health screening: Grantees must provide or coordinate the provision of baseline mental health screenings to all participants they serve at the time those services begin. This baseline mental health screening ensures that the participant's mental health needs can be properly determined and that suicide prevention services can be further tailored to meet the individual's needs. The baseline mental health screening must be provided using validated screening tools that assess suicide risk and mental and behavioral health conditions. VA will provide access to the Patient Health Questionnaire, Generalized Self-Efficacy Scale, Interpersonal Support Evaluation List, Socio Economic Status and the Warwick Edinburgh Mental Well-Being Scale to grantees providing or coordinating the provision of baseline mental health screenings.

If an eligible individual is at risk of suicide or other mental or behavioral health condition pursuant to the baseline mental health screening, the grantee must refer such individual to VA for care. If the eligible individual refuses the grantee's referral to VA, any ongoing clinical services provided to the eligible individual by the grantee is at the expense of the grantee. It is important to note that this is only required for eligible individuals and not the family of eligible individuals.

If a participant other than an eligible individual is at risk of suicide or other mental or behavioral health condition pursuant to the baseline mental health screening, the grantee must refer such participant to appropriate health care services in the area. To the extent that the grantee is able to furnish such appropriate health care services on an ongoing basis and has available funding separate from funds provided under this grant program to do so, they would be able to furnish such services using those non-VA funds without being required to refer such participants to other services. As noted above, any ongoing clinical services provided to the participant by the grantee is at the expense of the grantee.

When such referrals are made by grantees to VA, to the extent practicable, those referrals are required to be a ''warm hand-off'' to ensure that the eligible individual receives necessary care. This ''warm hand-off'' may include providing any necessary transportation to the nearest VA facility, assisting the eligible individual with scheduling an appointment with VA and any other similar activities that may be necessary to ensure the eligible individual receives necessary care in a timely manner.

Education: Suicide prevention education programs may be provided and coordinated to be provided to educate communities, Veterans and families on how to identify those at risk of suicide, how and when to make referrals for care and the types of suicide prevention resources available within the area. Education can include gatekeeper training, lethal means safety training, or specific education programs that assist with identification, assessment, or prevention of suicide. Gatekeeper training generally refers to programs that seek to develop individuals' knowledge, attitudes and skills to prevent suicide. Gatekeeper training is an educational course designed to teach clinical and non-clinical professionals or gatekeepers the warning signs of a suicide crisis and how to respond and refer individuals for care. Education is important because learning the signs of suicide risk, how to reduce access to lethal means and to connect those at risk of suicide to care

can improve understanding of suicide and has the potential to reduce suicide.

Clinical services for emergency treatment: Clinical services may be provided or coordinated to be provided for emergency treatment of a participant. Emergency treatment means medical services, professional services, ambulance services, ancillary care and medication (including a short course of medication related to and necessary for the treatment of the emergency condition that is provided directly to or prescribed for the patient for use after the emergency condition is stabilized and the patient is discharged) was rendered in a medical emergency of such nature that a prudent layperson would have reasonably expected that delay in seeking immediate medical attention would have been hazardous to life or health. This standard is met by an emergency medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of the immediate medical assistance to result in placing the health of the individual in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. It is important to note that emergency medical conditions include emergency mental health conditions.

If an eligible individual is furnished clinical services for emergency treatment and the grantee determines that the eligible individual requires ongoing services, the grantee must refer the eligible individual to VA for additional care. If the eligible individual refuses the grantee's referral to VA, any ongoing clinical services provided to the eligible individual by the grantee is at the expense of the grantee.

If a participant other than an eligible individual is furnished clinical services for emergency treatment and the grantee determines that the participant requires ongoing services, the grantee must refer the participant to appropriate health care services in the area for additional care. Except in instances in which a participant other than an eligible individual is furnished clinical services for emergency treatment, funds provided under this grant program may not be used to provide ongoing clinical services to such participants and any ongoing clinical services provided to the participant by the grantee is at the expense of the grantee.

Case management services: Case management services are focused on suicide prevention to effectively assist participants at risk of suicide. Grantees providing or coordinating the provision of case management services must provide or coordinate the provision of such services that include, at a minimum: (a) Performing a careful assessment of participants, and developing and monitoring case plans in coordination with a formal assessment of suicide prevention services needed, including necessary follow-up activities, to ensure that the participant's needs are adequately addressed; (b) establishing linkages with appropriate agencies and service providers in the area to help participants obtain needed suicide prevention services; (c) providing referrals to participants and related activities (such as scheduling appointments for participants) to help participants obtain needed suicide prevention services, such as medical, social and educational assistance or other suicide prevention services to address participants' identified needs and goals; (d) deciding how resources and services are allocated to participants on the basis of need; (e) educating participants on issues, including, but not limited to, suicide prevention services availability and participant rights; and, (f) other activities, as approved by VA, to serve the comprehensive needs of participants for the purpose of reducing suicide risk.

Peer support services: The provision or coordination of the provision of peer support services by the grantee must be to help participants understand what resources and supports are available in their area for suicide prevention. Peer support services must be provided by Veterans trained in peer support with similar lived experiences related to suicide or mental health. Peer support specialists serve as role models and a resource to assist participants with their mental health recovery. Peer support specialists function as interdisciplinary team members, assisting physicians and other professional and non-professional personnel in a rehabilitation treatment program. Each grantee providing or coordinating the provision of peer support services must ensure that Veterans providing such services to participants meet the requirements of 38 U.S.C. 7402(b)(13) and meet qualification standards for appointment; or have completed peer support training, are pursuing credentials to meet the minimum qualification standards for appointment and are under the supervision of an individual who meets the necessary requirements of 38 U.S.C. 7402(b)(13). Qualification standards include that the individual is (1) a Veteran who has recovered or is recovering from a mental health condition, and (2) certified by (i) a not-for-profit entity engaged in peer support specialist training as having met such criteria as the Secretary shall establish for a peer support specialist position, or (ii) a state as having satisfied relevant state requirements for a peer support specialist position. VA has further set forth qualifications for its peer support specialists in VA Handbook 5005, Staffing (last updated July 17, 2012). See VA Handbook/Directive 5005. Grant funds may be used to provide education and training for employees of the grantee or the community partner who provide peer support services based on the terms set forth in the grant agreement.

Assistance in obtaining VA benefits: The provision of this assistance will provide grantees with additional means by which VA can notify participants of available VA benefits. Grantees assisting participants in obtaining VA benefits are required to aid participants in obtaining any benefits from VA for which the participants are eligible. Such benefits include but are not limited to: (1) Vocational and rehabilitation counseling; (2) supportive services for homeless Veterans; (3) employment and training services; (4) educational assistance; and (5) health care services. Grantees are not permitted to represent participants before VA with respect to a claim for VA benefits unless they are recognized for that purpose pursuant to 38 U.S.C. 5902. Employees and members of grantees are not permitted to provide such representation unless the individual providing representation is accredited pursuant to 38 U.S.C. chapter 59.

Assistance in obtaining and coordinating other public benefits and assistance with emergent needs: Grantees assisting participants in obtaining and coordinating other public benefits or assisting with emergency needs are required to assist participants in obtaining and coordinating the provision of benefits that are being provided by Federal, state, local, or tribal agencies, or any other grantee in the area served by the grantee by referring the participant to and coordinating with such entity. If a public benefit is not being provided by Federal, state, local, or tribal agencies, or any other grantee in the area, the grantee is not required to obtain, coordinate, or provide such public benefit. Public benefits and assistance that a participant may be referred to include: Health care services, which include (1) health insurance and (2) referrals to a governmental entity or grantee that provides (i) hospital care,

nursing home care, outpatient care, mental health care, preventive care, habilitative and rehabilitative care, case management, respite care and home care, (ii) the training of any eligible individual's family in the care of any eligible individual and (iii) the provision of pharmaceuticals, supplies, equipment, devices, appliances and assistive technology. Grantees may also refer participants, as appropriate, to an entity that provides daily living services relating to the functions or tasks for self-care usually performed in the normal course of a day. Grantees may refer or provide directly personal financial planning services; transportation services; temporary income support services (including, among other services, food assistance and housing assistance); fiduciary and representative payee services; legal services to assist eligible individuals with issues that may contribute to the risk of suicide; and the provision of childcare. For additional details on these elements, applicants should consult 38 CFR 78.80.

Nontraditional and innovative approaches and treatment practices: Grantees may provide or coordinate the provision of nontraditional and innovative approaches and treatment, including but not limited to complementary or alternative interventions with some evidence for effectiveness of improving mental health or mitigating a risk factor for suicidal thoughts and behavior. Applicants may propose nontraditional and innovative approaches and treatment practices in their suicide prevention services grant applications. VA is exercising its authority by reserving the right to approve or disapprove nontraditional and innovative approaches and treatment practices to be provided or coordinated to be provided using funds authorized under SSG Fox SPGP.

Other services: Grantees may provide general suicide prevention assistance, which may include payment directly to a third party (and not to a participant), in an amount not to exceed $750 per participant during any 1-year period, beginning on the date that the grantee first submits a payment to a third party. Expenses that may be paid include expenses associated with gaining or keeping employment, such as uniforms, tools, certificates and licenses, as well as expenses associated with lethal means safety and secure storage, such as gun locks and locked medication storage.

Applicants may propose additional suicide prevention services to be provided or coordinated to be provided. Examples of other services may include but are not limited to adaptive sports; equine assisted therapy; in-place or outdoor recreational therapy; substance use reduction programming; individual, group, or family counseling; and relationship coaching. VA reserves the right to approve or disapprove other suicide prevention services to be provided or coordinated to be provided using funds authorized under SSG Fox SPGP.

E. Authority

Funding applied for under this Notice is authorized by section 201 of the Act. VA established and implemented this statutory authority for the SSG Fox SPGP in 38 CFR part 78. Funds made available under this Notice are subject to the requirements of § 201 of the Act, 38 CFR part 78, and other applicable laws and regulations.

F. Guidance for the Use of Suicide Prevention Services Funds

Consistent with § 201(o) of the Act, only grantees that are a state or local government or an Indian tribe can use grant funds to enter into an agreement with a community partner under which the grantee may provide funds to the community partner for the provision of suicide prevention services to eligible individuals and their families. However, grantees may choose to enter into contracts for goods or services because in some situations, resources may be more readily available at a lower cost, or they may only be available, from another party in the community.

Grantees may make payments directly to a third party on behalf of a participant for childcare, transportation and general suicide prevention assistance.

Funds can be used to conduct outreach, educate and connect with eligible individuals who are not engaged with VA services. Any outreach and education that is funded by SSG Fox SPGP should link directly back to a referral to the grantee's program for an opportunity to enroll the eligible individual in the program.

Funds must be used to screen for eligibility and suicide risk and enroll individuals in the program accordingly. Note that some individuals who come through the referral process may not engage in services. Grantees are expected to determine what referrals are appropriate for these individuals for follow-up services. Funds must be used to coordinate and provide suicide prevention services, by the grantee, based on screening and assessment, including clinical services for emergency treatment.

Funds must also be used to evaluate outcomes and effectiveness related to suicide prevention services. Prior to providing suicide prevention services, grantees must verify, document and classify each participant's eligibility for suicide prevention services. Grantees must determine and document each participant's degree of risk of suicide using tools identified in the suicide prevention services grant agreement. Prior to services ending, grantees must provide or coordinate the provision of a mental health screening to all participants they serve, when possible. This screening must be conducted with the same tools used to conduct the initial baseline mental health screening. Having this screening occur at the beginning and prior to services ending is important in evaluating the effectiveness of the services provided.

Grantees must document the suicide prevention services provided or coordinated, how such services are provided or coordinated, the duration of the services provided or coordinated and any goals for the provision or coordination of such services. If the eligible individual wishes to enroll in VA health care, the grantee must inform the eligible individual of a VA point of contact for assistance in enrollment.

For each participant, grantees must develop and document an individualized plan with respect to the provision of suicide prevention services provided. This plan must be developed in consultation with the participant.

As outlined in 38 CFR 78.105, activities for which grantees will not be authorized to use suicide prevention services grant funds include direct cash assistance to participants, those legal services prohibited pursuant to § 78.80(g), medical or dental care and medicines except for clinical services for emergency treatment authorized pursuant to § 78.60, any activities considered illegal under Federal law and any costs identified as unallowable per 2 CFR part 200, subpart E.

II. Award Information

A. Allocation of Funds

Approximately $51,750,000 is available for suicide prevention grants to be funded under this Notice. The maximum allowable grant size is $750,000 per year per grantee.

B. Award Period

Grants awarded will be for a minimum of a 1-year period, not to exceed 13 months. In accordance with 38 CFR 78.15(b), subject to the availability of VA funds, VA may issue a future NOFO which would permit

grantees to apply for the renewal of a suicide prevention services grant in accordance with the terms and conditions of such NOFO.

III. Eligibility Information

A. Eligible Applicants

See Section I. Funding Opportunity Description, Section C. Definitions of this NOFO for a detailed description of eligible applicants.

B. Cost Sharing/Matching

There is no cost sharing/matching for this grant program.

C. Unique Entity Identifier

Applicants must be registered in the System for Award Management (*sam.gov*) and provide a unique entity identifier and continue to maintain an active SAM registration with current information as per 2 CFR part 200 (Appendix 1).

IV. Application and Scoring Information

A. Content and Form of Application

Applicants must include all required documents in their application submission. Submission of an incorrect, incomplete, inconsistent, unclear, or incorrectly formatted application package will result in the application being rejected. The application is organized into the following sections:

Section A: Background, Qualifications, Experience & Past Performance of Applicant and Any Identified Community Partners (30 Maximum Points)

VA will award points based on the background, qualifications, experience and past performance of the applicant and any community partners identified by the applicant in the suicide prevention services grant application. VA will consider whether the applicant's, and any identified community partners', background and organizational history are relevant to the program; whether the applicant, and any identified community partners, maintain organizational structures with clear lines of reporting and defined responsibilities; and whether the applicant, and any identified community partners, have a history of complying with agreements and not defaulting on financial obligations.

Staff qualifications includes determining whether the applicant's staff, and any identified community partners' staff, have experience providing services to, or coordinating services for, eligible individuals and their families as well as experience administering programs similar to SSG Fox SPGP.

Organizational qualifications and past performance, including experience with Veteran services, will be considered. VA will score this criterion based on whether the applicant, and any identified community partners, have organizational experience: (i) Providing suicide prevention services to, or coordinating suicide prevention services for, eligible individuals and their families; (ii) coordinating such services for eligible individuals and their families among multiple organizations and Federal, state, local, and tribal governmental entities; (iii) administering a program similar in type and scale to SSG Fox SPGP to eligible individuals and their families; and (iv) working with Veterans and their families.

Section B: Program Concept & Suicide Prevention Services Plan (30 Maximum Points)

VA will award points based on the applicant's program, concept and suicide prevention services plan, as demonstrated by the need for the program; outreach and screening plan; program concept; program implementation timeline; coordination with VA; ability to meet VA's requirements, goals and objectives for SSG Fox SPGP; and capacity to undertake the program.

The need for the program will be scored based on whether the applicant has shown a need amongst eligible individuals and their families in the area where the program will be based and whether the applicant demonstrates an understanding of the unique needs for suicide prevention services of eligible individuals and their families.

The outreach and screening plan will be scored based on whether the applicant has a feasible plan for outreach and referral to identify and assist individuals and their families that may be eligible for suicide prevention services and are most in need of suicide prevention services, a feasible plan to process and receive participant referrals and a feasible plan to assess and accommodate the needs of incoming participants.

Program concept will be scored based on whether the applicant's program concept, size, scope and staffing plan are feasible, as well as whether the applicant's program is designed to meet the needs of eligible individuals and their families.

As part of the program concept, VA will score applications based on how clearly the applicant identifies the suicide prevention services the applicant intends to provide or coordinate to provide and demonstrates how the services will be implemented. Suicide prevention services include: Outreach; baseline mental health screening; education; clinical services for emergency treatment; case management; peer support; assistance in obtaining VA benefits; assistance in obtaining and coordinating other public benefits and assistance with emergent needs; nontraditional and innovative approaches; and other services. These are further defined in VA's regulations at 38 CFR 78.45 through 78.90.

As part of program concept, for those applicants proposing nontraditional and innovative approaches, VA will consider whether the applicants effectively demonstrated: (1) A clear description of the program and services the participant is intended to receive; (2) the goal of the intended services; and (3) an effective methodology to measure the proposed outcomes and evaluate the effectiveness of the services provided. VA will consider any submitted proposed evaluation methodology if the grantee is already providing the services. If the grantee is already providing such services, any existing data included in the application that demonstrates the effectiveness of services as they relate to the overall SSG Fox SPGP program objectives to reduce Veteran suicide risk, improve baseline mental health status, well-being and social support, and financial stability for eligible individuals and their families will be considered. Existing data may include outcomes, participant exit interviews, participant self-reports and participant satisfaction surveys.

For those applicants proposing other suicide prevention services, VA will consider whether those have demonstrated evidence-informed interventions for improving the mental health status and well-being and reducing the suicide risk of eligible individuals and their families, and whether they have effectively demonstrated a clear description of the program and services the participant is intended to receive and the goal of the intended services. VA will consider whether any provided data shows the effectiveness of the services, as it relates to the overall SSG Fox SPGP objectives to reduce Veteran suicide risk, improve baseline mental health status, well-being and social support, and financial stability for eligible individuals and their families. VA will also review and determine approval in relation to evidence provided for significant improvements in pilot data utilizing validated instruments that demonstrate a reduction in indicators of suicide risk.

This aligns with recommendations from National Institutes of Health. Further examples of other services with listed evidence may be found in the VA/DoD Clinical Practice Guidelines for Suicide Prevention. It is also important for VA to note that any approaches and treatment practices approved will need to be consistent with applicable Federal law. For example, the use of grant funds to provide or coordinate the provision of marijuana to eligible individuals and their families will be prohibited, as marijuana is currently illegal under Federal law.

VA will score the program implementation timeline based on whether the applicant's program will be implemented in a timely manner and suicide prevention services will be delivered to participants as quickly as possible and within a specified timeline. VA will also score this based on whether there is a feasible staffing plan in place to meet the applicant's program timeline or that the applicant has existing staff to meet such timeline.

VA will score applications based on whether the applicant has a feasible plan to coordinate outreach and services with local VA facilities and VA Suicide Prevention Coordinators.

VA will score the applicant's demonstrated ability and commitment to meet VA's requirements, goals and objectives for SSG Fox SPGP, which will be based on whether the applicant demonstrates commitment to ensuring that its program meets VA's requirements, goals, and objectives for SSG Fox SPGP, which are to reduce Veteran suicide through community-based grants to provide or coordinate the provision of suicide prevention services to eligible individuals and their families, to improve mental health status, well-being and reduce the risk of eligible individuals and their families.

VA will score the applicant's capacity, including staff resources, to undertake its program.

Section C: Quality Assurance & Evaluation Plan (15 Maximum Points)

VA will award points based on the applicant's quality assurance and evaluation plan, as demonstrated by program evaluation, monitoring, remediation and management and reporting.

The scoring criterion, program evaluation, will be based on whether the applicant has created clear, realistic and measurable goals that reflect SSG Fox SPGP's aim of reducing and preventing suicide among Veterans against which the applicant's program performance can be evaluated, as well as whether the applicant has a clear plan to continually assess the program.

In scoring the monitoring criterion, VA will evaluate if the applicant has adequate controls in place to regularly monitor the program, including any community partners, for compliance with all applicable laws, regulations and guidelines; whether the applicant has adequate financial and operational controls in place to ensure the proper use of suicide prevention services grant funds; and whether the applicant has a feasible plan for ensuring that the applicant's staff and any community partners are appropriately trained and stay informed of SSG Fox SPGP policy, evidence-informed suicide prevention practices, and the requirements of 38 CFR part 78.

In scoring the remediation criterion, VA will assess whether the applicant has an appropriate plan to establish a system to remediate non-compliant aspects of the program if and when they are identified.

VA will score the applicant's management and reporting based on whether the applicant's program management team has the capability and a system in place to provide to VA timely and accurate reports at the frequency set by VA.

Section D: Financial Capability & Plan (15 Maximum Points)

VA will score applications on the applicant's financial capability and plan based on organizational finances and the financial feasibility of program.

VA will award points on the applicant's organizational finances based on whether the applicant, and any identified community partners, are financially stable. The financial feasibility of the program will be assessed based on whether the applicant has a realistic plan for obtaining all funding required to operate the program for the time period of the suicide prevention services grant, as well as whether the applicant's program is cost-effective and can be effectively implemented on-budget.

Section E: Area Linkages and Relations (10 Maximum Points)

VA will award points based on the applicant's area linkages and relations, as demonstrated by area linkages, past working relationships, local presence and knowledge and integration of linkages and program concept.

VA will evaluate an applicant's area linkages based on whether the applicant has a feasible plan for developing or relying on existing linkages with the Federal (including VA), state, local and tribal governmental agencies, and private entities for the purposes of providing additional services to eligible individuals within a given geographic area.

VA will assess whether the applicant (or staff) and any identified community partner (or staff) have fostered similar and successful working relationships and linkages with public and private organizations providing services to Veterans or their families in need of services.

VA will evaluate an applicant's local presence and knowledge based on whether the applicant has a presence in the area to be served by the applicant and understands the dynamics of the area to be served by the applicant. This presence and knowledge does not necessarily mean the applicant has an address or physical office in the area, but rather that they are operating in the area such that they have sufficient knowledge of the area and that their staff has a presence in the area. Evaluation of whether an applicant understands the dynamics of the area to be served by the applicant will be based on information including but not limited to the applicant's description of the area, including mental health centers, and relationships with local mental health centers. This may be met through letters of support and documented coordination of care.

Finally, VA will assess the applicant's integration of linkages and program concept based on whether the applicant's linkages to the area to be served by the applicant enhance the effectiveness of the applicant's program.

V. Review and Selection Process

Based on the scoring criteria described above, VA will award grants to those highest-scoring applicants that meet the definition of eligible entity that will provide or coordinate the provision of suicide prevention services to eligible individuals at risk of suicide and their families who may be eligible for services under the SSG Fox SPGP. Applicants should clearly describe the suicide prevention services intended to be offered. Suicide prevention services grant applications will be scored by a VA grant review committee. The grant review committee will be trained on a scoring rubric and follow uniform guidance on application grant review (pursuant to 2 CFR part 200). The SSG Fox SPGP scoring criteria mirrors the well-established criteria of the VA Supportive Services for Veteran Families program (See *https://www.va.gov/homeless/ssvf/index.asp* for details).

A. Application Selection

VA will only score applicants who meet the following threshold requirements: The application must be filed within the time period established in the NOFO, and any additional information or documentation requested by VA is provided within the time frame established by VA; the application must be completed in all parts; the activities for which the suicide prevention services grant is requested must be eligible for funding; the applicant's proposed participants must be eligible to receive suicide prevention services; the applicant must agree to comply with the requirements of 38 CFR part 78; the applicant must not have an outstanding obligation to the Federal Government that is in arrears and does not have an overdue or unsatisfactory response to an audit; and the applicant must not be in default by failing to meet the requirements for any previous Federal assistance. If these threshold requirements are not met, VA will deem applicants to be ineligible for further consideration.

VA will rank those applicants who score at least 60 cumulative points and receive at least one point under each of the categories: (a) Background, Qualifications, Experience and Past Performance of Applicant and Any Identified Community Partners; (b) Program Concept and Suicide Prevention Services Plan; (c) Quality Assurance and Evaluation Plan; (d) Financial Capability and Plan; and (e) Area Linkages and Relations.

VA will utilize the ranked scores of applicants as the primary basis for selection. The applicants will be ranked in order from highest to lowest. However, VA will give preference to applicants that have demonstrated the ability to provide or coordinate suicide prevention services. VA may prioritize the distribution of suicide prevention services grants to:

(i) Rural communities;

(ii) Tribal lands;

(iii) Territories of the United States;

(iv) Medically underserved areas;

(v) Areas with a high number or percentage of minority Veterans or women Veterans; and

(vi) Areas with a high number or percentage of calls to the Veterans Crisis Line.

To the extent practicable, VA will ensure that suicide prevention services grants are distributed to:

(i) Provide services in areas of the United States that have experienced high rates of suicide by eligible individuals, including suicide attempts;

(ii) Applicants that can assist eligible individuals at risk of suicide who are not currently receiving health care furnished by VA; and

(iii) Ensure that suicide prevention services are provided in as many areas as possible.

VI. Award Administration Information

A. Award Notices

Although subject to change, VA expects to announce grant awards in the fourth quarter of fiscal year 2022. VA reserves the right in any year to make adjustments (*e.g.,* to funding levels) as needed within the intent of the NOFO based on a variety of factors, including the availability of funding. The initial announcement of awards will be made via a news release posted on VA's SSG Fox SPGP website at *https://www.mentalhealth.va.gov/ssgfox-grants.* The SSG Fox SPGP will concurrently notify both successful and unsuccessful applicants. Only a grant agreement with a VA signature is evidence of an award and is an authorizing document allowing costs to be incurred against a grant award. Other notices, letters, or announcements are not authorizing documents. The grant agreement includes the terms and conditions of the award and must be signed by the entity and VA to be legally binding.

B. Administrative and National Policy Requirements

VA places great emphasis on responsibility and accountability. VA has procedures in place to monitor grants provided under the SSG Fox SPGP. All applicants selected in response to this NOFO must agree to meet applicable inspection standards outlined in the grant agreement.

C. Payments of Grant Funds

Grantees will receive payments electronically through the U.S. Department of Health and Human Services Payment Management System. Grantees will have the ability to request payments as frequently as they choose. Grantees must have internal controls in place to ensure funding is available for the full duration of the grant period of performance, to the extent possible:

D. Reporting and Monitoring

Applicants should be aware of the following:

(i) Upon execution of a suicide prevention services grant agreement with VA, grantees will have a liaison appointed by the SSG Fox SPGP Office who will provide oversight and monitor the use of funds to provide or coordinate suicide prevention services provided to participants.

(ii) VA will require grantees use validated tools and assessments to determine the effectiveness of the suicide prevention services furnished by VA. These include any measures and metrics developed and provided by VA for the purposes of measuring the effectiveness of the programming to be provided in improving mental health status and well-being and reducing suicide risk and suicide deaths of eligible individuals.

(iii) Grantees must provide each participant with a satisfaction survey, which the participant can submit directly to VA, within 30 days of such participant's pending exit from the grantee's program. This is required to assist VA in evaluating grantees' performance and participants' satisfaction with the suicide prevention services they receive.

(iv) Monitoring will also include the submittal of periodic and annual financial and performance reports by the grantee in accordance with 2 CFR part 200. The grantee will be expected to demonstrate adherence to the grantee's proposed program concept, as described in the grantee's application.

(v) VA has the right, at all reasonable times, to make onsite visits to all grantee locations and have virtual meetings where a grantee is using suicide prevention services grant funds to review grantee accomplishments and management control systems and to provide such technical assistance as may be required.

E. Program Evaluation

The purpose of program evaluation is to evaluate the impact participation in the SSG Fox SPGP has on eligible individuals' financial stability, mental health status, well-being, suicide risk and social support, as required by the Act.

As part of the national program evaluation, grantees must input data regularly to the VA's web-based system. VA will ensure grantees have access to the data they need to gather and summarize program impacts and lessons learned on the implementation of the program evaluation criteria; performance indicators used for grantee selection and communication; and the criteria associated with the best outcomes for Veterans.

Training and technical assistance for program evaluation will be provided by VA, which will coordinate with subject matter experts to provide various trainings including the use of measures and metrics required for this program.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on April 11, 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.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

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Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Energy Conservation Standards for Consumer Pool Heaters; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2021–BT–STD–0020]

RIN 1904–AD49

Energy Conservation Program: Energy Conservation Standards for Consumer Pool Heaters

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

ACTION: Notice of proposed rulemaking and announcement of public meeting.

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 consumer pool heaters. EPCA also requires the U.S. Department of Energy (''DOE'') to periodically determine whether more-stringent, standards would be technologically feasible and economically justified, and would result in significant energy savings. In this notice of proposed rulemaking (''NOPR''), DOE proposes definitions for the different classes of pool heaters, amended energy conservation standards for gas-fired pool heaters, new energy conservation standards for electric pool heaters, and also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES: *Meeting:* DOE will hold a public meeting via webinar on this NOPR on Wednesday, May 4, 2022, from 1 p.m. to 4 p.m. See section VII, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: 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 May 16, 2022.

DOE will accept comments, data, and information regarding this NOPR no later than June 14, 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 by email to the following address: *PoolHeaters2021STD0020@ee.doe.gov.* Include ''Energy Conservation Standards for Consumer Pool Heaters'' and the docket number EERE–2021–BT–STD–0020 and/or RIN number 1904–AD49 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

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.

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

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-2021-BT-STD-0020.* 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 the Office of Energy Efficiency and Renewable Energy following the instructions at *www.regulations.gov.*

EPCA requires the 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 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. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (240) 597–6737. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Kathryn McIntosh, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 586–2002. Email: *Kathryn.McIntosh@hq.doe.gov.*

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

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I. Synopsis of the Proposed Rule

Title III, Part B [1] of EPCA,[2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include consumer pool heaters, the subject of this rulemaking. (42 U.S.C. 6292(a)(11))

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) EPCA also provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1))

In accordance with these and other statutory provisions discussed in this document, DOE proposes amended energy conservation standards for gas-fired pool heaters and new energy conservation standards for electric pool heaters. In addition, the proposed new and amended standards are expressed in terms of the integrated thermal efficiency (TE_I) metric, which replaces the thermal efficiency (TE) metric for gas-fired pool heaters, and are shown in Table I.1. The proposed TE_I standards are expressed as a function of the active mode electrical input power (PE) in British thermal units per hour (Btu/h) for electric pool heaters and the gas input rating (Q_{IN}) in Btu/h for gas-fired pool heaters. These proposed standards, if adopted, would apply to all consumer pool heaters listed in Table I.1 manufactured in, or imported into, the United States starting on the date 5 years after the publication of the final rule for this rulemaking. (42 U.S.C. 6295(m)(4)(A)(ii))

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

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

Table I.1 Proposed Energy Conservation Standards for Consumer Pool Heaters

Product Class	Integrated Thermal Efficiency TE_I* *(percent)*
Electric Pool Heater	$\frac{600(PE)}{PE + 1{,}619}$
Gas-Fired Pool Heater	$\frac{84(Q_{IN} + 491)}{Q_{IN} + 2{,}536}$

*PE is the active electrical power for electric pool heaters, in Btu/h, and Q_{IN} is the input capacity for gas-fired pool heaters, in Btu/h, as determined in accordance with the DOE test procedure at title 10 of the Code of Federal Regulations part 430, subpart B, appendix P.

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of the proposed standards on consumers of consumer pool heaters, as measured by the average life-cycle cost (''LCC'') savings and the simple payback period (''PBP'').[3] The average LCC savings are positive for electric pool heaters and gas-fired pool heaters, and the PBP is less than the average lifetime of electric pool heaters and gas-fired pool heaters, which is estimated to be 11.2 years (*see* section IV.F.6 of this NOPR).

TABLE I.2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF POOL HEATERS

Product class	Average LCC savings 2020$	Simple payback period years
Electric Pool Heater	1,029	0.7
Gas-fired Pool Heater	43	1.5

DOE's analysis of the impacts of the proposed standards on consumers is described in section IV.F of this document.

B. Impact on Manufacturers

The industry net present value (''INPV'') is the sum of the discounted cash flows to the industry from the reference year through the end of the analysis period (2021–2057). Using a real discount rate of 7.4 percent,[4] DOE estimates that the INPV for manufacturers of consumer pool heaters in the case without new and amended energy conservation standards is $188.7 million in 2020$. Under the proposed standards, the change in INPV is estimated to range from −14.7 percent to −7.7 percent, which is approximately −$27.7 million to −$14.4 million. In order to bring products into compliance with the proposed standards, it is estimated that the consumer pool heater industry would incur conversion costs of approximately $38.8 million.

DOE's analysis of the impacts of the proposed standards on manufacturers is described in section IV.J of this document. The analytic results of the manufacturer impact analysis (''MIA'') are presented in section V.B.2 of this document.

C. National Benefits and Costs[5]

DOE's analyses indicate that the proposed energy conservation standards for consumer pool heaters would save a significant amount of energy. Relative to the case without new or amended standards, the lifetime energy savings for consumer pool heaters purchased in the 30-year period that begins in the anticipated first full year of compliance with the new or amended standards (2028–2057) amount to 0.49 quadrillion British thermal units (''Btu''), or quads.[6] This represents a savings of 5.3 percent relative to the energy use of electric and gas-fired pool heaters in the case without amended standards (referred to as the ''no-new-standards case'').

The cumulative net present value (''NPV'') of total consumer benefits of the proposed standards for consumer pool heaters ranges from $0.95 billion (at a 7-percent discount rate) to $2.39 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product and installation costs for consumer pool heaters purchased in 2028–2057.

In addition, the proposed standards for consumer pool heaters are projected to yield significant environmental benefits. DOE estimates that the proposed standards would result in cumulative emission reductions (over the same period as for energy savings) of 19 million metric tons (''Mt'')[7] of carbon dioxide (''CO_2''), 5.5 thousand tons of sulfur dioxide (''SO_2''), 90 thousand tons of nitrogen oxides

[3] The average LCC savings refer to consumers that are affected by a standard and are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of new or amended standards (*see* section IV.F.9 of this NOPR). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline product (*see* section IV.C of this NOPR).

[4] The discount rate was derived from industry financials from publicly traded companies and then modified according to feedback received during manufacturer interviews.

[5] All monetary values in this document are expressed in 2020 dollars.

[6] The quantity refers to full-fuel-cycle (''FFC'') energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.1 of this document.

[7] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

(''NO_X''), 161 thousand tons of methane (''CH_4''), 0.15 thousand tons of nitrous oxide (''N_2O''), and 0.03 tons of mercury (''Hg'').[8]

DOE estimates the value of climate benefits from a reduction in greenhouse gases using four different estimates of the social cost of CO_2 (''SC–CO_2''), the social cost of methane (''SC–CH_4''), and the social cost of nitrous oxide (''SC–N_2O''). Together these represent the social cost of greenhouse gases (SC–GHG). DOE used interim SC–GHG values developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).[9] The derivation of these values is discussed in section IV.L of this document. For presentational purposes, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are estimated to be $0.9 billion. DOE does not have a single central SC–GHG point estimate and it emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates.

DOE also estimates health benefits from SO_2 and NO_X emissions reductions.[10] DOE estimates the present value of the health benefits would be $0.1 billion using a 7-percent discount rate, and $0.3 billion using a 3-percent discount rate.[11] DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions [12] [13]

Table I.3 summarizes the economic benefits and costs expected to result from the proposed standards for consumer pool heaters. In the table, total benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate. DOE does not have a single central SC–GHG point estimate and it emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates. The estimated total net benefits using each of the four SC–GHG estimates are presented in section V.B.8. of this document.

TABLE I.3—SUMMARY OF MONETIZED ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER POOL HEATERS

[TSL 5]

	Billion 2020$
3% discount rate	
Consumer Operating Cost Savings	3.2
Climate Benefits *	0.9
Health Benefits **	0.3
Total Benefits †	4.4
Consumer Incremental Product Costs ‡	0.8
Net Benefits	3.6
7% discount rate	
Consumer Operating Cost Savings	1.4
Climate Benefits *	0.9
Health Benefits **	0.1
Total Benefits †	2.4
Consumer Incremental Product costs ‡	0.4
Net Benefits	2.0

Note: This table presents the costs and benefits associated with consumer pool heaters shipped in 2028–2057. These results include benefits to consumers which accrue after 2057 from the products shipped in 2028–2057.

* Climate benefits are calculated using four different estimates of the social cost of carbon (SC–CO2), methane (SC–CH4), and nitrous oxide (SC–N2O) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate), as shown in Table V.17 through Table V.19. Together these represent the global social cost of greenhouse gases (SC–GHG). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate. See section. IV.L of this document for more details

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing $PM_{2.5}$ and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.L of this document for more details.

[8] DOE calculated emissions reductions relative to the no-new-standards case, which reflects key assumptions in the *Annual Energy Outlook 2021* (''*AEO2021*). *AEO2021* represents current federal and state legislation and final implementation of regulations as of the time of its preparation. See section IV.K for further discussion of *AEO2021* assumptions that effect air pollutant emissions.

[9] See Interagency Working Group on Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990, Washington, DC, February 2021. Available at: *www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf* (last accessed March 17, 2022).

[10] DOE estimated the monetized value of SO_2 and NO_X emissions reductions associated with site and electricity savings using benefit per ton estimates from the scientific literature. See section IV.L.2 of this document for further discussion.

[11] DOE estimates the economic value of these emissions reductions resulting from the considered TSLs for the purpose of complying with the requirements of Executive Order 12866.

[12] DOE plans to update its methodology to reflect the Environmental Protection Agency's recent updates to benefit-per-ton values in a future impact analysis if DOE issues a final rule and generally for forthcoming rulemakings, but DOE does not have time to fully vet the new methods for this impact analysis.

[13] On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible under law.

† Total and net benefits include consumer, climate, and health benefits. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates. See Table V.22 for net benefits using all four SC–GHG estimates. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible under law.

‡ Costs include incremental equipment costs as well as installation costs.

The benefits and costs of the proposed standards, for consumer pool heaters sold in 2028–2057, can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are (1) the reduced consumer operating costs, minus (2) the increase in product purchase prices and installation costs, plus (3) the value of the benefits of GHGs, SO_2 and NO_X emission reductions, all annualized.[14]

The national operating savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered products and are measured for the lifetime of consumer pool heaters shipped in 2028–2057. The climate and health benefits associated with reduced emissions achieved as a result of the proposed standards are also calculated based on the lifetime of consumer pool heaters shipped in 2028–2057.

Estimates of annualized benefits and costs of the proposed standards are shown in Table I.4. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards proposed in this rule is $49.0 million per year in increased equipment costs, while the estimated annual benefits are $164 million in reduced equipment operating costs, $54.5 million in climate benefits, and $15.6 million in health benefits. In this case, the net benefit would amount to $185 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards is $49.3 million per year in increased equipment costs, while the estimated annual benefits are $195 million in reduced operating costs, $54.5 million in climate benefits, and $19.6 million in health benefits. In this case, the net benefit would amount to $220 million per year.

TABLE I.4—ANNUALIZED MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER POOL HEATERS

[TSL 5]

	Million 2020$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	194.9	179.0	212.8
Climate Benefits *	54.5	52.4	56.6
Health Benefits **	19.6	18.9	20.4
Total Benefits †	269	250	290
Consumer Incremental Product Costs ‡	49.3	51.4	49.4
Net Benefits	220	199	240
7% discount rate			
Consumer Operating Cost Savings	164.2	152.7	177.7
Climate Benefits *	54.5	52.4	56.6
Health Benefits **	15.6	15.0	16.1
Total Benefits †	234	220	250
Consumer Incremental Product Costs ‡	49.0	50.7	49.2
Net Benefits	185	169	201

Note: This table presents the costs and benefits associated with consumer pool heaters shipped in 2028–2057. These results include benefits to consumers which accrue after 2057 from the products shipped in 2028–2057.

* Climate benefits are calculated using four different estimates of the social cost of carbon (SC–CO2), methane (SC–CH4), and nitrous oxide (SC–N2O) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate). Together these represent the global social cost of greenhouse gases (SC–GHG). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates. See section. IV.L of this document for more details.

[14] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2028, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2030), and then discounted the present value from each year to 2028. The calculation uses discount rates of 3 and 7 percent for all costs and benefits. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing $PM_{2.5}$ and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.L of this document for more details.

† Total and net benefits include consumer, climate, and health benefits. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible under law.

‡ Costs include incremental equipment costs as well as installation costs.

DOE's analysis of the national impacts of the proposed standards is described in sections IV.H, IV.K, and IV.L of this document.

D. Conclusion

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified and would result in the significant conservation of energy. DOE further notes that products achieving these standard levels are already commercially available for all product classes covered by this proposal. Based on the analyses described previously, DOE has tentatively concluded that the benefits of the proposed standards to the Nation (energy savings, positive NPV of consumer benefits, consumer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers and LCC increases for some consumers).

DOE also considered more-stringent energy efficiency levels as potential standards and is still considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the more-stringent energy efficiency levels would outweigh the projected benefits.

Based on consideration of the public comments DOE received in response to this document and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this document that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

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 consumer pool heaters.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include consumer pool heaters, the subject of this document. (42 U.S.C. 6292(a)(11)) EPCA prescribed energy conservation standards for these products (42 U.S.C. 6295(e)(2)) and directs DOE to conduct two cycles rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(e)(4)) EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1))

The energy conservation program for covered products 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 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).

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(a)–(c)) 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. 6297(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. 6295(o)(3)(A) and 42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for consumer pool heaters appear at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix P (''appendix P'').

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including consumer pool heaters. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

Moreover, DOE may not prescribe a standard: (1) For certain products, including consumer pool heaters, if no test procedure has been established for the product, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard,

and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the 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 products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products 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 and water conservation; and

(7) Other factors the Secretary of Energy (''Secretary'') considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

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. 6295(o)(1)) 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. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group: (A) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (''EISA 2007''), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for consumer pool heaters, which measures integrated thermal efficiency, addresses standby mode and off mode energy use. In this rulemaking, DOE intends to incorporate such energy use into any new or amended energy conservation standards it adopts in the final rule through use of integrated thermal efficiency as the regulating metric.

B. Background

1. Current Standards

The current energy conservation standard for gas-fired pool heaters is set forth in DOE's regulations at 10 CFR 430.32(k) and is repeated in Table II.1 of this document. The current energy conservation standard for gas-fired pool heaters is in terms of thermal efficiency, which measures only active mode efficiency. Electric pool heaters are a covered product under EPCA, but there is currently no Federal energy conservation standard.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR CONSUMER POOL HEATERS

Product class	Minimum thermal efficiency (percent)
Gas-Fired Pool Heaters	82

2. History of Standards Rulemakings for Consumer Pool Heaters

On April 16, 2010, DOE published a final rule in which it concluded the first round of rulemaking required under EPCA and established an amended energy conservation standard for consumer pool heaters. 75 FR 20112 (''April 2010 final rule'').[15] In relevant part, the April 2010 final rule amended the statutorily prescribed standards for gas-fired pool heaters with a compliance date of April 16, 2013, on and after which gas-fired pool heaters were required to achieve a thermal efficiency of 82 percent.

On December 17, 2012, DOE published a final rule in the **Federal Register** that established a new efficiency metric for gas-fired pool heaters, ''integrated thermal efficiency.'' 77 FR 74559, 74565 (''December 2012 TP final rule''). The integrated thermal efficiency (TE_I) metric built on the existing thermal efficiency metric for measuring active mode energy efficiency, and also accounts for the energy consumption during standby mode and off mode operation. DOE stated in the December 2012 TP final rule that for purposes of compliance with the energy conservation standard, the test procedure amendments related to standby mode and off mode (*i.e.,* integrated thermal efficiency) are not required until the compliance date of the next standards final rule, which addresses standby and off mode. 77 FR 74559, 74559.

On January 6, 2015, DOE published a final rule pertaining to its test procedures for direct heating equipment (''DHE'') and consumer pool heaters. 80 FR 792 (''January 2015 TP final rule''). In that final rule, DOE established test methods for measuring the integrated thermal efficiency of electric resistance and electric heat pump pool heaters.

To evaluate whether to propose amendments to the energy conservation standard for consumer pool heaters, DOE issued a request for information (''RFI'') in the **Federal Register** on March 26, 2015. 80 FR 15922 (''March

[15] A correction notice was published on April 27, 2010, correcting a reference to the compliance date for the energy conservation standard. 75 FR 21981.

2015 RFI''). Through the March 2015 RFI, DOE requested data and information pertaining to its planned technical and economic analyses for DHE and consumer pool heaters. Among other topics, the March 2015 RFI sought data and information pertaining to electric pool heaters. 80 FR 15922, 15924–15925. Although the March 2015 RFI and the previous energy conservation standards rulemaking (concluding with the April 2010 final rule) included both DHE and consumer pool heaters, DOE has elected to review its energy conservation standards for each of these products separately.[16]

DOE subsequently published a notice of data availability (''NODA'') in the **Federal Register** on October 26, 2015, which announced the availability of its analyses for electric pool heaters. 80 FR 65169 (''October 2015 NODA''). The purpose of the October 2015 NODA was to make publicly available the initial technical and economic analyses conducted for electric pool heaters, and present initial results of those analyses to seek further input from stakeholders. DOE did not propose new or amended standards for consumer pool heaters at that time. The initial technical support document (''TSD'') and accompanying analytical spreadsheets for the October 2015 NODA provided the analyses DOE undertook to examine the potential for establishing energy conservation standards for electric pool heaters and provided preliminary discussions in response to a number of issues raised by comments to the March 2015 RFI. It described the analytical methodology that DOE used and each analysis DOE had performed.

In response to the publication of the March 2015 RFI, DOE received seven comments from interested parties regarding DOE's analytical approach pertaining to both electric and gas-fired pool heaters. The March 2015 RFI comments relating to electric pool heaters were addressed in chapter 2 of the October 2015 NODA TSD. DOE received nine comments in response to the October 2015 NODA. Commenters on the March 2015 RFI and October 2015 NODA are listed in Table II.2 of this document. The comments received in response to October 2015 NODA, as well as those comments received in response to the March 2015 RFI not previously addressed in the October 2015 NODA, are discussed in the appropriate sections of this document.

TABLE II.2—INTERESTED PARTIES PROVIDING WRITTEN COMMENT IN RESPONSE TO THE MARCH 2015 RFI AND/OR OCTOBER 2015 NODA

Name(s)	Commenter type *	Acronym
Association of Pool and Spa Professionals and International Hot Tub Association (Joint Comment).	TA	APSP and IHTA.
Appliance Standard Awareness Project and Natural Resources Defense Council (Joint Comment).	EA	ASAP and NRDC.
Appliance Standard Awareness Project, Natural Resources Defense Council, Alliance to Save Energy, American Council for an Energy-Efficient Economy, and National Consumer Law Center (Joint Comment).	EA	ASAP et al.
Laclede Group	U	Laclede.
National Propane Gas Association	U	NPGA.
Air-Conditioning, Heating and Refrigeration Institute	TA	AHRI.
Edison Electric Institute	U	EEI.
California Investor Owned Utilities	U	CA IOUs.
Adriana Murray	I	Murray.
Jeffery Tawney	I	Tawney.
Raypak, Inc	M	Raypak.
Lochinvar, LLC	M	Lochinvar.
Coates Heater Manufacturing Co., Inc	M	Coates.

* EA: Efficiency/Environmental Advocate; I: Individual; M: Manufacturer; TA: Trade Association; U: Utility or Utility Trade Association.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[17]

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A''), DOE notes that it is deviating from the provision in appendix A regarding the pre-NOPR stages for an energy conservation standards rulemaking. Section 6(d)(2) of appendix A specifies that the length of the public comment period for a NOPR will vary depending upon the circumstances of the particular rulemaking, but will not be less than 75 calendar days. For this NOPR, DOE has opted to instead provide a 60-day comment period. As stated, DOE requested comment in the March 2015 RFI on the technical and economic analyses and provided stakeholders a 30-day comment period. 80 FR 15922. Additionally, DOE provided a 45-day comment period for the October 2015 notice of data availability 80 FR 65169. DOE has relied on many of the same analytical assumptions and approaches as used in the preliminary assessment presented in the notice of data availability and has determined that a 60-day comment period in conjunction with the prior comment periods provides sufficient time for interested parties to review the proposed rule and develop comments.

III. General Discussion

DOE developed this proposal after considering written comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

A. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE

[16] The rulemaking docket for DHE can be found at: *www.regulations.gov/#!docketDetail;D=EERE-2016-BT-STD-0007.*

[17] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for pool heaters. (Docket No. EERE–2021–BT–STD–0020, which is maintained at *www.regulations.gov*). The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In determining whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q)(1))

This NOPR covers consumer ''pool heaters'' defined as an appliance designed for heating nonpotable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs and similar applications. 10 CFR 430.2. The scope of coverage and product classes for this NOPR are discussed in further detail in section IV.A.1 of this NOPR.

B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. DOE's current energy conservation standards for consumer pool heaters are expressed in terms of thermal efficiency. See 10 CFR 430.32(k)(2). As stated in section II.A, DOE's test procedure for consumer pool heaters is found at appendix P.

As discussed in section II of this document, EISA 2007 amended EPCA to require DOE to amend its test procedures for covered consumer products generally to include measurement of standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)) The test procedure applicable to fossil fuel-fired pool heaters, as amended in the December 2012 TP final rule, relies on the TE_I metric, which accounts for energy consumption during active mode operation (sections 2.1.1, 3.1.1, and 4.1.1 of appendix P) and standby mode (sections 2.2, 3.2, and 4.2 of appendix P) and off mode operation (sections 2.3, 3.2, and 4.3 of appendix P), as required by EISA 2007. 77 FR 74559, 74572. *See* also, 77 FR 74559, 74564–74565.

The DOE test procedure for electric resistance and electric heat pump pool heaters incorporates by reference Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') Standard 1160–2009, ''Performance Rating of Heat Pump Pool Heaters'' (''AHRI 1160'') and American National Standards Institute (''ANSI'')/ American Society of Heating, Refrigerating, and Air-Conditioning Engineers (''ASHRAE'') Standard 146–2011, ''Method of Testing and Rating Pool Heaters'' (''ASHRAE 146''). The procedures referenced in AHRI 1160 and ASHRAE 146 are used to determine the active mode energy use for electric resistance (sections 2.1.2, 3.1.2, and 4.1.2 of appendix P) and electric heat pump pool heaters (sections 2.1.3, 3.1.3, and 4.1.3 of appendix P). Standby mode and off mode energy use are also recorded using the same procedures used for fossil-fuel fired pool heaters (sections 2.2, 3.2, and 4.2 and 2.3, 3.2, and 4.3 of appendix P, respectively). The active mode, standby mode, and off mode energy use is then combined into the TE_I metric (section 5 of appendix P).

In this document, DOE is proposing new and amended energy conservation standards for consumer pool heaters. To the extent DOE is also proposing amendments to the test procedure, such proposed amendments are limited to those necessary to accommodate the proposed definitions and the proposed product classes. As discussed further in sections III.F.2 and IV.A.1 of this document, DOE is proposing to amend appendix P to add definitions for active electrical power, input capacity, and output capacity, add a calculation to determine the output capacity for electric pool heaters, and clarify the calculation of input capacity for fossil fuel-fired pool heaters. The proposed amendments to appendix P, if made final, would not impact how the test procedure is conducted in terms of the measurements taken, but rather the additional provisions use existing measurements to calculate the values necessary for comparing product efficiency to the proposed standards.

In response to the March 2015 RFI and October 2015 NODA, DOE received several comments from stakeholders relating to the consumer pool heater test procedure, which DOE will consider further in the next revision of its consumer pool heater test procedure.

C. Technological Feasibility

1. General

In evaluating potential amendments to energy conservation standards, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. Sections 6(c)(1), (2) of 10 CFR part 430, subpart C, appendix A. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially-available products or in working prototypes to be technologically feasible. Sections 6(b)(3)(i) and 7(b)(1) of appendix A to part 430, subpart C.

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on health or safety, and (4) unique-pathway proprietary technologies. Sections 6(b)(3)(ii)–(v) and 7(b)(2)–(5) of appendix A to part 430 subpart C. Section IV.B of this document discusses the results of the screening analysis for consumer pool heaters, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR TSD.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for consumer pool heaters, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C.1.c of this document and in chapter 5 of the NOPR TSD.

D. Energy Savings

1. Determination of Savings

For each trial standard level (''TSL''), DOE projected energy savings from application of the TSL to consumer pool heaters purchased in the 30-year period that begins in the first full year of compliance with the proposed standards (2028–2057).[18] The savings

[18] Each TSL is composed of specific efficiency levels for each product class. The TSLs considered for this NOPR are described in section V.A of this document. DOE conducted a sensitivity analysis

are measured over the entire lifetime of consumer pool heaters purchased in the previous 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of new or amended energy conservation standards.

DOE used its national impact analysis (''NIA'') spreadsheet model to estimate national energy savings (''NES'') from potential amended or new standards for consumer pool heaters. The NIA spreadsheet model (described in section IV.H of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy savings in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. For natural gas, the primary energy savings are considered to be equal to the site energy savings. DOE also calculates NES in terms of full-fuel-cycle (''FFC'') energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[19] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.1 of this document.

2. Significance of Savings

To adopt standards for a covered product, DOE must determine that such action would result in ''significant'' energy savings. (42 U.S.C. 6295(o)(3)(B))) Although the term ''significant'' is not defined in the EPCA, the U.S. Court of Appeals, for the District of Columbia Circuit in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), opined that Congress intended ''significant'' energy savings in the context of EPCA to be savings that were not ''genuinely trivial.''

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.[20] For example, the United States has now rejoined the Paris Agreement and will exert leadership in confronting the climate crisis. 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 full-fuel-cycle (''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.

Accordingly, DOE evaluated the significance of energy savings on a case-by-case basis. As discussed in section V.C of this document, DOE is proposing to adopt TSL 5, which would save an estimated 0.49 quads of energy (FFC). DOE has initially determined the energy savings for the TSL proposed in this proposed rulemaking are nontrivial, and, therefore, DOE considers them ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).

E. Economic Justification

1. Specific Criteria

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts a MIA, as discussed in section IV.J of this document. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) INPV, which values the industry on the basis of expected future cash flows, (2) cash flows by year, (3) changes in revenue and income, and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

b. Savings in Operating Costs Compared To Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of

that considers impacts for products shipped in a 9-year period.

[19] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

[20] A numeric threshold for determining the significance of energy savings was established in a final rule published on February 14, 2020 (85 FR 8626, 8670), but was subsequently eliminated in a final rule published on December 13, 2021 (86 FR 70892).

values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first full year of compliance with new or amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F of this document.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.D of this document, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards proposed in this document would not reduce the utility or performance of the products under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (''DOJ'') provide its determination on this issue. DOE will publish and respond to the Attorney General's determination in the final rule. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

f. Need for National Energy Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the proposed standards are likely to provide improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity, as discussed in section IV.M of this document.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The proposed standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases (''GHGs'') associated with energy production and use. As part of the analysis of the need for national energy and water conservation, DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K of this document; the estimated emissions impacts are reported in section V.B.7 of this document.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under ''other factors.'' No other factors were considered in this analysis.

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F.9 of this document.

F. Other Issues

1. Regulatory Approach for Consumer Pool Heaters

In response to the March 2015 RFI, EEI stated that if DOE intends to establish new energy efficiency standards for electric resistance pool heaters and electric heat pump pool heaters, it must follow the process used by DOE when considering whether to include a product as a covered product under EPCA. (EEI, No. 6 at p. 2) In response, DOE notes that the December 11, 2009 NOPR that preceded the April 2010 final rule explained in detail that the definition of ''pool heater'' in EPCA covers both gas-fired pool heaters and electric pool heaters, including heat pump pool heaters. 74 FR 65852, 65866–65867. And, as noted previously, DOE has established a test procedure for electric pool heaters and is now proposing standards in this document.

In the October 2015 NODA, DOE requested comment on its determination

to forgo a preliminary analysis for gas-fired pool heaters and noted that interested parties will have the opportunity to comment on DOE's analyses for gas-fired pool heaters during the next phase of the analysis. 80 FR 65169, 65171. In response, NPGA and EEI argued that DOE should publish a NODA for gas-fired pool heaters in order to provide the public with equal opportunities to provide comments for both products. (NPGA, No. 15 at p. 2; EEI, No. 21 at p. 2)

In response to these comments, DOE notes that the analysis conducted for gas-fired pool heaters in this proposed rulemaking follows similar methodologies to those presented and used in the April 2010 final rule. Stakeholders were informed that the analysis methodology employed in this proposed determination would be based on the prior rulemaking. As such, DOE determined that a preliminary analysis was not necessary for gas-fired pool heaters. Interested parties have an opportunity to comment on the analysis during the course of this proposed rulemaking.

Laclede stated that it opposes any limitation of minimum efficiency standards for consumer pool heaters to those fueled by natural gas and propane. (Laclede Group, No. 17 at p. 3) As noted previously, DOE is proposing to adopt the TE_I metric for gas-fired pool heater standard, as well as proposing to establish a new standard for electric pool heaters, in this document.

The CA IOUs encouraged DOE to establish standards for standby and off mode energy consumption separately from thermal efficiency, because establishing a requirement for an integrated thermal efficiency metric may lead to the standby and off mode energy consumption not being considered by manufacturers, as they are small relative to overall consumer pool heater energy consumption. The CA IOUs added that establishing separate standby and off mode requirements and thermal efficiency requirements will ensure that seasonal off switches remain on most consumer pool heaters. (CA IOUs, No. 20 at p. 3) In response, DOE notes that it is required by EISA 2007 to include the standby and off mode energy consumption in the test procedure of all covered products unless such an integrated test procedure is technically infeasible for a covered product. (42 U.S.C. 6295(gg)(2)(A)) DOE must prescribe separate standby mode and off mode energy use test procedure if an integrated test procedure is deemed technically infeasible. (42 U.S.C. 6295(gg)(2)(A)(ii)) DOE notes that such determinations are based on the technical characteristics of a product and, as such, are product specific. In the case of consumer pool heaters, in the December 2012 TP final rule DOE determined that the inclusion of the standby and off mode energy use into an integrated metric would provide a measurable performance differentiation and concluded that an integrated metric is technically feasible. 77 FR 74559, 74564 (December 17, 2012). DOE disagrees with the CA IOUs' assertion that the integrated thermal efficiency may lead to standby and off mode energy consumption not being considered by manufacturers. DOE has initially found that the presence of a seasonal off switch improves the integrated thermal efficiency and has included it as a technology option in its analysis. Standby and off mode energy consumption may have a large impact on the integrated thermal efficiency, primarily due to the large number of operational hours in standby and off modes as compared to active mode. For instance, the standby fuel consumption of a pilot light on a gas-fired pool heater has a dramatic impact on its integrated thermal efficiency. Likewise, DOE estimates that for a heat pump pool heater inclusion of the standby and off mode energy consumption can reduce the overall efficiency by as much as 8 percent.

2. Certification and Enforcement

DOE reviewed its certification and enforcement provisions as they pertain to consumer pool heaters and proposes several provisions to clarify its procedures for gas-fired pool heaters.

DOE proposes to harmonize its terminology related to the capacity of consumer pool heaters as it relates to certification. For gas-fired pool heaters, DOE proposes to use the term ''input capacity'' in its provisions. DOE notes that input capacity is already certified for basic models of gas-fired pool heaters and DOE's proposed revisions to its regulations are a clarification only. If standards for gas-fired pool heaters are adopted via this proposed rulemaking, DOE would consider requirements for reporting and certifying to TE_I in lieu of TE in a separate rulemaking.

If standards for electric pool heaters are adopted via this rulemaking, DOE would consider requirements for reporting and certifying active electrical power (as applicable) along with the representative value for integrated thermal efficiency in a separate rulemaking.

To provide clarity on how values would be determined for certification, DOE also proposes clarifications in its test procedure found in appendix P by adding definitions for the terms ''input capacity'' (Q_{IN}), ''active electrical power'' (PE), and ''output capacity'' (Q_{OUT}) and identifying which measured variables in the test procedure represent these characteristics. Specifically, DOE proposes to: Use values measured during the active mode test described in Section 2.10.1 of ANSI Z21.56 (*i.e.,* heating value times correction factor times the quantity of fossil-fuel used divided by the length of the test) to determine the input capacity of a fossil fuel-fired water heater, as this calculation was not stated clearly within appendix P; to clarify that active electrical power is represented by the variable PE; and to provide a calculation for output capacity so the product class for an electric pool heater can be appropriately determined.

Also, DOE proposes that for enforcement testing, the input capacity or active electrical power (as applicable) would be measured pursuant to appendix P and compared against the rated value certified by the manufacturer. If the measured input capacity or active electrical power (as applicable) is within ±2 percent of the certified value, then DOE would use the certified value when determining the applicable standard. The ±2 percent threshold is already used [21] within the DOE enforcement provisions and test procedures as a reasonable range for input capacity to account for manufacturing variations that may affect the input capacity.

During enforcement testing for a gas-fired pool heater, if the measured input capacity is not within ±2 percent of the certified value, then DOE would follow these steps to attempt to bring the fuel input rate to within ±2 percent of the certified value. First, DOE would attempt to adjust the gas pressure in order to increase or decrease the input capacity as necessary. If the input capacity is still not within ±2 percent of the certified value, DOE would then attempt to modify the gas inlet orifice (*i.e.,* drill) if the unit is equipped with one. Finally, if these measures do not bring the input capacity to within ±2 percent of the certified value, DOE would use the mean measured input capacity (either for a single unit sample or the average for a multiple unit sample) when determining the applicable standard for the basic model.

[21] For example, the enforcement provisions for commercial water heating equipment, at 10 CFR 429.134(n), requires that the tested input rate be within 2 percent of the certified rated input.

For an electric pool heater, DOE would not take any steps to modify the unit to bring the active electrical power of the unit within the ±2 percent threshold. Rather, if the active electrical power is not within ±2 percent of the certified value, DOE would use the measured active electrical power (either for a single unit sample or the average for a multiple unit sample) when determining the applicable standard for the basic model. DOE proposes this verification process to provide manufacturers with additional information about how DOE will evaluate compliance.

DOE requests comment on the proposal to add to its enforcement provisions to use a ±2 percent threshold on the certified value of input capacity or active electrical power (as applicable) when determining the applicable energy conservation standard for the basic model.

In response to the October 2015 NODA, AHRI expressed concern regarding the representation of the integrated thermal efficiency values. AHRI acknowledged that the inclusion of the standby and off mode consumptions in the TE_I calculation results in percentages that are lower than the coefficient of performance (''COP'') equivalent, but suggested that the relative scale of the ratings has been lost in this process. AHRI suggested that for products where the efficiency ratings are less than 100 percent, a change of one or two percentage points may make a difference. However, for products such as heat pump pool heaters with efficiency ratings that exceed 300 percent,[22] a difference of 1 or 2 points is inconsequential. (AHRI, No. 16 at p. 3)

In response, in the context of an initial analysis, DOE used the test procedure equations in appendix P to arrive at the analyzed efficiency levels examined in the NODA. See chapter 5 of the NODA TSD. For this NOPR, however, DOE proposes capacity-dependent standards as described in section IV.C.1 of this document. It is important to preserve a higher level of precision in the test procedure and certification criteria because the evaluated standards are continuous functions that vary greatly dependent on capacity of the pool heater (input capacity or active electrical power, as applicable). In order to clarify this precision, DOE would consider rounding requirements for consumer pool heater in a separate rulemaking addressing certification reports.

In response to the March 2015 RFI, Lochinvar and Raypak expressed concern that the use of the integrated thermal efficiency metric would reduce the efficiency ratings for consumer pool heaters. (Lochinvar, No. 2 at p. 2; Raypak, No. 4 at p. 2) Lochinvar highlighted that the small reduction in the efficiency rating would impose a significant burden on manufacturers who will be required to assign new model numbers to all products due to the efficiency reduction. (Lochinvar, No. 2 at p. 2) AHRI requested that DOE clarify whether manufacturers will be required to change model numbers when implementing the new efficiency metric. (AHRI, No. 7 at p. 2) Raypak requested clarification on how DOE will address products that currently meet the minimum 82% thermal efficiency requirement but would no longer meet the minimum standard. (Raypak, No. 4 at p. 2)

In response, DOE first clarifies that specifying amended energy conservation standards for consumer pool heaters in terms of TE_I rather than in terms of TE would not require new basic model numbers. Were certification to TE_I required, pursuant to 10 CFR 429.12(b)(7), manufacturers may submit updated or corrected certification information for basic models. Therefore, at such time as certification were required using TE_I manufacturers could submit an updated certification report with the TE_I for a given basic model rather than assign a new basic model number upon the compliance date of amended energy conservation standards.

Regarding the reduction in efficiency ratings for models rated using the TE_I metric relative to the TE metric, DOE accounted for the differences between the metrics in its analysis. DOE examined efficiency levels, including the baseline efficiency level corresponding to the current energy conservation standards, in terms of TE_I that account for to the inclusion of standby mode and off mode energy consumption and electrical energy consumption that will cause the TE_I value to be lower than the TE value of a given model. See section IV.C.1 for discussion of the TE_I efficiency levels analyzed. Furthermore, EPCA requires that when a test procedure amendment changes the measured energy efficiency, models in use before the date on which the amended energy conservation standard becomes effective that comply with the energy conservation standard applicable to such covered products on the day before such date shall be deemed to comply with the amended energy conservation standard. (42 U.S.C. 6293(e)(3))

DOE seeks comment on its proposed certification and enforcement provisions and clarifications.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to consumer pool heaters. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards proposed in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The NIA uses a second spreadsheet set that provides shipments projections and calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (''GRIM''), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE website for this proposed rulemaking: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=44&action=viewcurrent.* Additionally, DOE used output from the latest version of the Energy Information Administration's (''EIA's'') *Annual Energy Outlook* (''*AEO*'') 2020, a widely known energy projection for the United States, for the emissions and utility impact analyses.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this rulemaking include (1) a determination of the scope of the rulemaking and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends; and (6) technologies or design options that could improve the energy efficiency of consumer pool heaters. The

[22] Heat pump pool heaters move heat from the ambient air and to the pool water instead of heating the pool water directly, as is done with electric resistance pool heaters. Heat pumps move heat as opposed to generating heat, so a relatively small amount of energy is required to provide a large amount of heat.

findings of the market assessment inform downstream analyses, such as the engineering analysis and LCC analysis, and are presented in detail in chapter 3 of the NOPR TSD. In addition, chapter 3 of the TSD includes a detailed discussion of technology options for improving the energy efficiency of consumer pool heaters; the key findings and updates to the technology assessment are summarized in the following section.

1. Scope of Coverage and Product Classes

Under EPCA, pool heaters (which include electric pool heaters, and gas-fired pool heaters, and oil-fired pool heaters) are covered products. (42 U.S.C. 6292(a)(11)) EPCA defines ''pool heater'' as an ''appliance designed for heating nonpotable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs and similar applications.'' (42 U.S.C. 6291(25)) However, energy conservation standards have only been established for gas-fired pool heaters.[23] For this proposed rulemaking, DOE proposes to establish additional product classes for electric pool heaters, establish energy conservation standards for electric pool heaters, and for gas-fired pool heaters, to translate the existing standard from the TE metric to an equivalent level in terms of the TE_I metric and to amend the energy conservation standards. DOE has tentatively determined not to analyze potential standards for oil-fired pool heaters based on the understanding that such standards would result in minimal energy savings. DOE also did not perform energy conservation standards analysis for electric spa heaters as DOE was unable to identify technology options available to improve the efficiency of such products. Accordingly, DOE is not proposing amended standards for these products in this NOPR.

In the March 2015 RFI, DOE noted that oil-fired pool heaters have an extremely small market share and requested comment on the potential energy savings that could result from energy conservation standards for oil-fired pool heaters. 80 FR 15922, 15925. In response, Raypak and AHRI indicated that there is little opportunity for savings. (Raypak, No. 4 at p. 3; AHRI, No. 7 at p. 3) AHRI noted that they only knew of one oil-fired pool heater on the market currently. (AHRI, No. 7 at p. 3) EEI suggested that DOE should analyze oil-fired pool heaters if they have significant market share (*i.e.,* greater than 2%) in order to maintain fuel and market neutrality. (EEI, No. 6 at p. 4) For this NOPR, DOE tentatively determined not to analyze potential standards for oil-fired pool heaters based on its previous understanding that the market for oil-fired pool heaters is extremely limited and, thus, any standards would be unlikely to result in significant energy savings. DOE's market research and the comments from AHRI and Raypak indicate that oil-fired pool heaters comprise a very small share of the consumer pool heater market. DOE does not anticipate a significant number of consumers would choose an oil-fired pool heater as a substitute for a gas-fired or electric pool heater due to the high first cost associated with installing a fuel oil tank, and the ongoing cost of fuel oil for pool heating.

In response to the March 2015 RFI, AHRI suggested that DOE limit the scope to less than 400,000 Btu/h for gas- and oil-fired pool heaters and less than or equal to 140,000 Btu/h for heat pump pool heaters to make a clear distinction between residential and commercial products. (AHRI, No. 7 at p. 2) Raypak stated that gas-fired pool heaters typically range from 50,000 Btu/h to 400,000 Btu/h for residential pools and commercial pool heaters typically range from 200,000 Btu/h to 4,000,000 Btu/hr. Raypak also stated that it is not uncommon to see multiple smaller pool heaters used together instead of utilizing a larger pool heater(s). (Raypak, No. 4 at p. 4)

EPCA places no capacity limit on the pool heaters it covers in terms of its definition of ''pool heater.'' (42 U.S.C. 6291(25)) Furthermore, EPCA covers pool heaters as a ''consumer product,'' (42 U.S.C. 6291(2), 42 U.S.C. 6292(a)(11)) and defines ''consumer product,'' in part, as an article that ''to any significant extent, is distributed in commerce for personal use or consumption by individuals.'' (42 U.S.C. 6291(1)) Standards established for pool heaters as a consumer product under EPCA apply to any pool heater distributed to any significant extent as a consumer product for residential use, regardless of input capacity and including consumer pool heater models that may also be installed in commercial applications. DOE has initially concluded that further delineation by adding an input capacity limit is not necessary. As discussed in the April 2010 final rule, pool heaters marketed as commercial equipment contain additional design modifications related to safety requirements for installation in commercial buildings. 75 FR 20112, 20127. In that final rule, DOE noted that this would include pool heating systems that are designed to meet a high volume flow and are matched with a pump from the point of manufacture to accommodate the needs of commercial facilities. *Id.* DOE stated that manufacturers can distinguish those units from pool heaters distributed to any significant extent as a consumer product for residential use, regardless of input capacity. *Id.* at 75 FR 20127–20128. Moreover, standards for gas-fired pool heaters regardless of size have been in place since 1990, and to place a capacity limit on standards now would result in backsliding for products over the capacity limit, which would be contrary to the anti-backsliding provision in EPCA. (42 U.S.C. 6295(o)(1))

In response to the March 2015 RFI, AHRI suggested that DOE consider atmospheric gas-fired heaters separately from fan-assist gas-fired heaters. Similarly, AHRI suggested that DOE consider condensing and non-condensing products separately as well. (AHRI, No. 7 at p. 4)

EPCA requires that a rule prescribing an energy conservation standard for a type (or class) of covered products must specify a level of energy use higher or efficiency lower, than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary determines that covered products within such group—(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class). (42 U.S.C. 6295(q)(1)) In making a determination concerning whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as the Secretary deems appropriate. (*Id.*) DOE is not proposing to increase the stringency of the standard for gas-fired pool heaters to a level that would be unachievable by the gas-fired pool heaters described by AHRI. The gas-fired pool heaters described by AHRI are subject to the current standard and presently there are atmospheric, fan-assist, non-condensing, and condensing models on the market in compliance with that

[23] EPCA prescribed a minimum thermal efficiency of pool heaters and initially only defined thermal efficiency of pool heaters in the context of test conditions for gas-fired pool heaters. (*See* 42 U.S.C. 6295(e)(2) and 42 U.S.C. 6291(26))

standard. As such, there is no need to evaluate in the present document whether atmospheric, fan-assist, non-condensing, and/or condensing gas-fired pool heaters provide a unique feature and if so whether such feature justifies a different standard for gas-fired pool heaters.

In the March 2015 RFI, DOE requested comment on whether capacity or other performance related features that may affect efficiency would justify the establishment of consumer pool heater product classes that would be subject to different energy conservation standards. 80 FR 15922, 15925. Specifically, DOE sought comment on whether heat pump technology was a viable design for applications which typically utilize electric resistance pool heaters.

The CA IOUs and ASAP et al. both encouraged DOE to regulate electric pool heaters under a single product class, and to consider heat pump technology as a design option for electric pool heaters. (CA IOUs, No. 5 at p. 5 and No. 20 at p. 5; ASAP et al., No. 3 at p. 1–2) Murray stated support for a uniform homogenous standard for all consumer pool heaters. (Murray, No. 14 at p. 1) The CA IOUs further noted that in DOE's residential water heater standard, electric resistance and heat pump water heaters are combined into one product class and are not treated separately. (CA IOUs, No. 5 at p. 5) The CA IOUs encouraged DOE to investigate the national savings potential from water heating in portable electric spas which is almost entirely provided by electric resistance heating. (CA IOUs, No. 5 at p. 5)

EEI suggested that separate product classes should be established for electric resistance pool heaters and heat pump pool heaters in DOE's analysis, and AHRI recommended that each fuel type (gas, electric, and heat pump) be analyzed separately. (EEI, No. 6 at p. 2; AHRI, No. 7 at p. 2) EEI asserted that electric resistance pool heaters and heat pump pool heaters are distinct products with different characteristics and as such require different product classes. EEI stated that key differences include space constraints and operational considerations. (EEI, No. 6 at pp. 2–3)

AHRI and Raypak stated that heat pump technology is not a viable design for all applications in which electric resistance pool heaters are found. (AHRI, No. 7 at p. 3; Raypak, No. 4 at p. 2) The electric resistance-type units are typically installed as a component into a larger, more complex piece of equipment such as a spa or hot tub. AHRI stated that heat pumps could not typically be installed in the same housing. They further asserted that electric resistance pool heaters are typically installed in indoor applications where heat pump technology is not a cost-effective substitution. (AHRI, No. 7 at p. 3)

Coates stated that heat pump pool heaters have proven ineffective in climates that do not have high temperature and high humidity, being expensive and unable to perform as needed. Coates indicated that electric resistance spa heaters range from 1.5 kW to 11 kW. Coates added that heat pump pool heaters are usually not acceptable for spas due to their slow heat-up time, high cost, and inability to heat during the cool or cold months in northern climates. (Coates, No. 8 at p. 2)

In response to Murray's comment, DOE notes that, in evaluating and establishing energy conservation standards, EPCA directs DOE to divide covered products into classes based on the type of energy used. EPCA also directs DOE to divide covered products into classes based on capacity or other performance-related feature if such feature justifies a different standard. (42 U.S.C. 6295(q))

DOE considered comments raised by stakeholders when considering whether separate product classes should be evaluated in its analysis of potential standards for electric resistance pool heaters and electric heat pump pool heaters. DOE recognizes that that the performance of a heat pump is dependent upon the air temperature and air humidity at which it operates. However, DOE disagrees with Coates's assertion that heat pump pool heaters are ineffective in colder climates. Although heat pump pool heaters perform best when operating within an environment with high air temperature and high air humidity, they are nonetheless capable of operating effectively in cooler climates during the swimming season. DOE is aware of consumer heat pump pool heaters currently on the market with the capability of operating at below-freezing temperatures. DOE recognizes that heat pump pool heaters may have difficulty providing adequate heat to pools if operating during the colder months in northern climates. Rare cases such as these could be accommodated through the use of heat pump pool heaters that incorporate electric resistance backup in their designs (as is done in the case of some heat pump water heater designs [24]). Therefore, DOE proposes to maintain a single product class for electric pool heaters.

For this analysis, DOE has tentatively determined to separate certain electric pool heaters into an ''electric spa heaters'' product class. ANSI/APSP/International Code Council (''ICC'') Standard 6–2013, ''American National Standard for Residential Portable Spas and Swim Spas'' (ANSI 6) provides recommended minimum guidelines for the design, equipment, installation, and use of residential portable spas and swim spas. Spas and hot tubs come in many different configurations but are distinguished in section 1 of ANSI 6 based on whether they are portable or built-in and within the portable distinction whether they are self-contained or non-self-contained. Lower capacity electric heaters used to heat water in spas are a covered product by virtue of being within EPCA's definition of pool heater. (42 U.S.C. 6291(25)) Electric spa heaters are often incorporated into the construction of a self-contained spa or hot tub, resulting in the heater performing its major function (heating spa water) in a space constrained environment. These space constraints preclude the use of higher efficiency technologies (heat pump) and manufacturers instead rely on electric resistance heating elements. DOE has initially determined that heat pump technology is not a viable option for electric spa heaters designed for use within a self-contained portable electric spa because the space required for a heat pump impedes its incorporation into the construction of a spa or hot tub. DOE has also initially determined that heat pump technology is a viable option for heating a spa or hot tub if the heater is separate from the construction of the hot tub or spa (*i.e.,* non-self-contained as defined in section 1 of ANSI 6). As a result, DOE has separated electric spa heaters from the analysis of electric pool heaters. The proposed definition of ''electric spa heater'' distinguishes this product based on capacity and whether the product is designed to be installed within a portable electric spa. The proposed definitions for ''electric spa heater'' and ''portable electric spa'' are presented later in this section.

Electric spa heaters rely on electric heating elements for which there is currently negligible opportunity for efficiency gains. Consequently, DOE did not perform energy conservation standards analysis for electric spa heaters as DOE did not initially identify technology options that could be implemented to improve the efficiency of these products.

For the October 2015 NODA analysis, DOE defined electric spa heaters to be

[24] DOE gave similar consideration to establishing a separate product class for heat pump water heaters and consistent with the proposal in this document, DOE determined that heat pump electric water heaters do not warrant a separate product class. *See,* 75 FR 20112, 20135 (April 16, 2010).

heaters that: (1) Have a rated output capacity of 11 kW (37,534 Btu/h) or less; and (2) are factory- or field-assembled within the envelope of a spa, hot tub, or pool as defined by 10 CFR 430.2. See chapter 3 of the October 2015 NODA TSD. In the October 2015 NODA, DOE identified the 11 kW threshold as being a typical output capacity below which electric resistance heaters are integrated in spas. *Id.* DOE tentatively used this threshold in the October 2015 NODA analysis based on its assessment of the market. The threshold was also suggested in response to the March 2015 RFI by Coates, a manufacturer of electric resistance spa and pool heaters. (Coates, No. 8 at p. 2) Table IV.1 lists the product classes for consumer pool heaters outlined in Table 2.4.1 of the October 2015 NODA TSD.

TABLE IV.1—OCTOBER 2015 NODA PRODUCT CLASSES FOR CONSUMER POOL HEATERS

Product class	Additional description	Analyzed in October 2015 NODA?
Gas-fired Pool Heater		No.
Electric Pool Heater		Yes.
Electric Spa Heater	Output Capacity ≤11 kW; Assembled within spa, hot tub, or pool envelope.	No.

In response to the scope of coverage presented in the October 2015 NODA, AHRI stated that the analysis appears not to consider the market segment [25] that may require capacities much higher than the largest heat pump pool heaters available on the market. AHRI stated that the analysis must consider the entire current market for electric pool heaters and should not establish an efficiency standard that will make products unavailable for some segments of that market. AHRI recommended DOE establish separate product classes for electric pool heaters based on a capacity breakpoint. (AHRI, No. 16 at p. 1)

DOE's review of the heat pump pool heater market found that most models have output capacities less than 200,000 Btu/h, however, DOE did find electric heat pump pool heaters with output capacities up to 500,000 Btu/h. Whereas gas-fired pool heaters are available with output capacities approaching 4,100,000 Btu/h. Therefore, DOE agrees with AHRI's comment that heat pump technology is not currently utilized to a significant extent in the high capacity pool heater market segment. As discussed in section IV.C.1 of this document, DOE is proposing capacity dependent energy conservation standards for gas-fired and electric pool heaters. Further, the estimated TE_I values for the high capacity heat pump pool heaters available on the market are greater than the proposed efficiency levels discussed in section V.C, therefore, there DOE has tentatively determined that it is not currently necessary to establish separate product classes for electric pool heaters based on a capacity breakpoint.

DOE requested comment regarding whether the product classes outlined in the October 2015 NODA adequately describes the electric pool heater market. See chapter 3 of the October 2015 NODA.

Several commenters agreed with DOE's position to exclude electric spa heaters from the analysis. (CA IOUs, No. 20 at p. 6; APSP and IHTA No. 18 at p. 1) APSP and AHRI agreed with DOE's assumption that heat pump technology could not be implemented within a spa heater. (APSP and IHTA No. 18 at p. 1; AHRI, No. 16 at p. 2) The CA IOUs encouraged DOE to explore the energy savings potential from portable electric spas in another rulemaking. (CA IOUs, No. 20 at p. 6)

AHRI agreed that the basic concept of the product classes is adequate for the consumer pool heater market but suggested further development be made to the electric spa heater definition. AHRI agreed with the specification of a maximum output capacity as part of the definition of the electric spa heater product class, noting that the 11 kW limit is reasonable for spa heaters. However, AHRI stated that the second part of the definition (assembled within spa, hot tub, or pool envelope) is not clear enough. AHRI noted that the definition appears to exclude spa heaters that may be physically separate from the spa, hot tub, or pool but which are required to heat water for those units. AHRI suggested that either the specification of an ''envelope'' needs to be described in greater detail, or such specification should be reconsidered. (AHRI, No. 16 at p. 2)

DOE has considered AHRI's comment and agrees that the criterion that an electric spa heater is shipped within the spa envelope may cause confusion and issues for replacement electric spa heaters intended for existing portable electric spas. Due to these concerns, DOE has amended the envelope criterion in the definition of an electric spa heater to include electric spa heaters that are designed to be installed within a portable electric spa, which does not preclude electric spa heaters that are sold and shipped outside of the envelope of a spa, hot tub, or pool. The updated proposed definition is presented later in this section of this document.

In response to the product classes presented in the October 2015 NODA, Tawney suggested that DOE set separate standards for electric pool heaters that have both heating and cooling capabilities. Tawney stated that the addition of reversing components creates a diminished performance for all other components (*i.e.,* the compressor, evaporator, and condenser) and, therefore, requiring the minimum efficiency level to be set equal for these two different types of products would create design issues for the manufacturer and consumers. (Tawney, No. 13 at p. 1)

DOE recognizes that heat/cool heat pumps have reverse cycle capabilities to provide the cooling function, and, theoretically, manufacturers could design products intended for heating and cooling differently from those intended for heating only (*i.e.,* different size heat exchanger coils). However, based on DOE's review of products currently on the market, DOE does not expect the reverse cycle capability would negatively impact the integrated thermal efficiency of heat/cool heat pumps in heating mode. DOE examined parts diagrams found in manufacturer literature of traditional heat pump pool heaters and heat/cool heat pump models within the same product family which revealed the addition of a reversing valve as the only differentiator between the two products. DOE then compared the rated heating efficiency of both models and found them to be identical in the majority of cases, indicating that the presence of the reversing valve and reverse cycle capability does not inherently reduce heating performance. Therefore, DOE has tentatively determined that the creation of a separate product classes for heat pump

[25] Very large pools or pool in colder climates. (AHRI, No. 16, at p. 1)

pool heaters with cooling capability is not necessary.

DOE requests comment on its assumption that electric pool heaters that have both heating and cooling capabilities do not suffer diminished efficiency performance in heating mode.

DOE analyzed new and amended standards for gas-fired pool heaters and electric pool heaters but did not analyze energy conservation standards for electric spa heaters (*i.e.,* electric pool heaters with output capacity ≤ 11 kW that are designed to be installed in a portable electric spa).

DOE requests comment on the product classes analyzed for this proposed rulemaking.

DOE is proposing definitions for electric pool heaters, electric spa heaters, gas-fired pool heaters, oil-fired pool heaters, and portable electric spas to clarify its regulations as they apply to consumer pool heaters. Based on comments received in response to the October 2015 NODA, DOE refined its definition for electric spa heaters. The proposed definitions are as follows:

Electric pool heater means a pool heater other than an electric spa heater that uses electricity as its primary energy source.

Electric spa heater means a pool heater that (1) uses electricity as its primary energy source; (2) has an output capacity (as measured according to appendix P to subpart B of part 430) of 11 kW or less; and (3) is designed to be installed within a portable electric spa.

Gas-fired pool heater means a pool heater that uses gas as its primary energy source.

Oil-fired pool heater means a pool heater that uses oil as its primary energy source.

Portable electric spa means a self-contained, factory-built spa or hot tub in which all control, water heating and water circulating equipment is an integral part of the product. Self-contained spas may be permanently wired or cord connected.

DOE requests comment on the proposed definitions for electric pool heater, electric spa heater, gas-fired pool heater, oil-fired pool heater, and portable electric spa.

DOE also proposes to define output capacity and provide equations for its calculation for electric pool and spa heaters in its test procedure at appendix P. As described in section III.B of this document, appendix P incorporates by reference ASHRAE 146. DOE's proposed calculation for output capacity for an electric pool or spa heater utilizes measurements already taken for other calculations in appendix P and therefore DOE does not consider this provision to result in any additional test procedure burden. DOE proposes to define the output capacity for electric pool heaters and spa heaters as follows:

Output capacity for an electric pool or spa heater means the maximum rate at which energy is transferred to the water.

DOE proposes separate equations for the calculation of output capacity of an electric resistance pool heater and electric heat pump pool heater. For electric pool heaters that rely on electric resistance heating elements, DOE proposes that the output capacity be calculated as:

$$Q_{OUT,ER} = k * W * (T_{mo} - T_{mi}) * (60/30)$$

where k is the specific heat of water, W is the mass of water collected during the test, T_{mo} is the average outlet water temperature recorded during the primary test, T_{mi} is the average inlet water temperature record during the primary test, all as defined in Section 11.1 of ASHRAE 146, and (60/30) is the conversion factor to convert unit from per 30 minutes to per hour.

DOE proposes that the output capacity of an electric pool heater that uses heat pump technology be calculated as:

$$Q_{OUT,HP} = k * W * (T_{ohp} - T_{ihp}) * (60/t_{HP})$$

where k is the specific heat of water, W is the mass of water collected during the test, T_{ohp} is the average outlet water temperature during the standard rating test, T_{ihp} is the average inlet water temperature during the standard rating test, all as defined in Section 11.2 of ASHRAE 146, and t_{HP} is the elapsed time of data recording during the thermal efficiency test on electric heat pump pool heater, as defined in Section 9.1 of ASHRAE 146, in minutes.

DOE requests comment on its proposed definition for output capacity, as well as its proposed calculations for determining the output capacity of electric pool heaters.

2. Technology Options

In response to the March 2015 RFI, Coates stated their concern that DOE used the term ''less efficient products, such as electric resistance pool heaters'' and that the efficiency of electric pool and spa heaters is very high (98 percent or higher). (Coates, No. 8 at p. 5) DOE agrees that electric resistance pool heaters have efficiencies around 98 percent. However, the statement DOE made compares the efficiency of electric resistance pool heaters to heat pump pool heaters which have efficiencies greater than 100 percent. 80 FR 15922, 15929 (March 26, 2015). Therefore, electric resistance pool heaters are less efficient than heat pump pool heaters.

In the October 2015 NODA market and technology analysis for electric pool heaters, DOE identified eight technology options that would be expected to improve the efficiency of electric pool heaters, as measured by the DOE test procedure: Insulation improvements; control improvements; heat pump technology; heat exchanger improvements (heat pump); compressor improvements (heat pump); expansion valve improvements (heat pump); fan improvements (heat pump); and off switch. See section 3.3 of chapter 3 of the October 2015 NODA TSD.

DOE received no comments suggesting technology options be added to those listed in the October 2015 NODA analysis for electric pool heaters. In this NOPR analysis, DOE added switching mode power supply to the list of technology options for electric pool heaters.

In the March 2015 RFI, DOE identified five technology options that it expected to improve the efficiency of gas-fired pool heaters, as measured by the DOE test procedure: Insulation improvements; control improvements; improved heat exchanger design; condensing heat exchanger technology; and electronic ignition systems. 80 FR 15922, 15925.

In response to the potential technology options identified for gas-fired pool heaters in the March 2015 RFI, Raypak stated that improved insulation, improved controls, and improved ignition systems are currently widely used and have little opportunity to provide improvements in thermal efficiency. (Raypak, No. at 4 at p. 3) AHRI stated that improved controls are expected to have minimal or negative impact on efficiency due to the large size of pools as modulating heat is not an effective way to heat up pools. AHRI stated that most gas-fired pool heaters on the market currently are equipped with electronic ignition systems and the pilot light only comes on when heat is called. AHRI also opined that condensing heat exchanger technology is not an economically feasible option for gas-fired pool heaters due to the relatively short burner operating hours. (AHRI, No. 7 at p. 3)

In response, DOE notes that in its review of the market and during the engineering analysis (*see* section IV.C of this document), DOE generally identifies technologies that are commonly incorporated at the baseline efficiency level, as well as those typically implemented to achieve higher efficiencies. In the technology assessment DOE identifies all

technologies that are possibilities for improving efficiency, in the event that any models do not already utilize them. DOE's engineering analysis is based on the typical technology or combination of technologies used to achieve each efficiency level, as observed in products on the market.

For this NOPR analysis, DOE identified three more technology options that would be expected to improve the integrated thermal efficiency of gas-fired pool heaters as measured by the test procedure, which were not listed in the March 2015 RFI. These technologies include: Condensing pulse combustion, switch mode power supply, and seasonal off switch.

After identifying all potential technology options for improving the efficiency of consumer pool heaters, DOE performed the screening analysis (*see* section IV.B of this document or chapter 4 of the TSD) on these technologies to determine which could be considered further in the analysis and which should be eliminated.

B. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If it is determined that a technology would have a significant adverse impact on the utility of the product for significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-Pathway Proprietary Technologies.* If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further, due to the potential for monopolistic concerns.

10 CFR part 430, subpart C, appendix A, sections 6(b)(3) and 7(b).

In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis.

The subsequent sections include comments from interested parties pertinent to the screening criteria, DOE's evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded (''screened out'') based on the screening criteria. DOE did not receive any comments from interested parties related to the screening analysis.

1. Screened-Out Technologies

DOE eliminated condensing pulse combustion from its analysis having tentatively determined that it is not technologically feasible and not practical to manufacture, install, and service. Although condensing pulse combustion technology shows promising results in increasing efficiency, it has not yet penetrated the consumer pool heater market, and similar efficiencies are achievable with other technologies that have already been introduced on the market.

2. Remaining Technologies

Through a review of each technology, DOE tentatively concludes that all of the other identified technologies listed in section IV.A.2 met all five screening criteria to be examined further as design options in DOE's NOPR analysis. In summary, DOE did not screen out the technology options shown in Table IV.2 of this document and considers them as design options in the engineering analysis.

TABLE IV.2—TECHNOLOGY OPTIONS WHICH PASSED SCREENING CRITERIA

Technology option	Electric pool heater	Gas-fired pool heater
Insulation improvements	X	X
Control improvements	X	X
Heat pump technology	X	
Heat exchanger improvements	X	X
Expansion valve improvements	X	
Fan improvements	X	
Condensing heat exchanger		X
Electronic ignition systems		X
Switch mode power supply	X	X
Seasonal off switch	X	X

DOE has initially determined that these technology options are technologically feasible because they are being used or have previously been used in commercially-available products or commercially viable, existing prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety, unique-pathway proprietary technologies). For additional details, see chapter 4 of the NOPR TSD.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of consumer pool heaters. There are two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency products, DOE considers technologies and design option combinations not

eliminated by the screening analysis. For each product class, DOE estimates the baseline cost, as well as the incremental cost for the product at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) Relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). Using the design option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design option approach to ''gap fill'' levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the max-tech level (particularly in cases where the max-tech level exceeds the maximum efficiency level currently available on the market).

In this proposed rulemaking, DOE relies on the efficiency-level approach. For the October 2015 NODA, DOE identified the efficiency levels for analysis based on a review of products on the market and then, as described in section IV.C.2 of this document, used a cost-assessment approach which includes product teardowns to determine the technologies used at each efficiency level and the associated manufacturing costs at those levels. See section 5.7 of chapter 5 of the October 2015 NODA TSD.

DOE continued to use the same analytical approaches for this NOPR. DOE received specific comments from interested parties on certain aspects of the engineering analysis in response to the October 2015 NODA. A brief overview of the methodology, a discussion of the comments DOE received, DOE's response to those comments, and any adjustments made to the engineering analysis methodology or assumptions as a result of those comments is presented in the sections below. See chapter 5 of the NOPR TSD for additional details about the engineering analysis.

a. Efficiency Levels

As noted previously, for analysis of consumer pool heater standards, DOE used an efficiency-level approach to identify incremental improvements in efficiency for each product class. An efficiency-level approach enabled DOE to identify incremental improvements in efficiency for efficiency-improving technologies that consumer pool heater manufacturers already incorporate in commercially available models. After identifying efficiency levels for analysis, DOE used a cost-assessment approach (section IV.C.2 of this document) to determine the manufacturer production cost (''MPC'') at each efficiency level identified for analysis.

Integrated thermal efficiency accounts for the fuel and electricity consumption in active, standby, and off modes. However, at the time the engineering analysis for this NOPR was performed, manufacturers had not yet begun publishing the integrated thermal efficiency of their products (there are no existing standards for electric pool heaters, and standards for gas-fired pool heaters are currently in terms of thermal efficiency as described in section III.B of this document). Therefore, in the gathering of information to inform the engineering analysis, DOE was limited to thermal efficiency in the case of gas-fired pool heaters, and coefficients of performance (''COP'') (set equal to thermal efficiency by the test procedure) in the case of heat pump pool heaters. DOE then calculated the integrated thermal efficiency by combining the thermal efficiency (as defined in section 5.1 of the DOE test procedure) of the product, with typical values for active mode, standby mode, and off mode energy consumption. DOE derived these typical values from test data and sought manufacturer feedback during confidential manufacturer interviews to confirm that the values were appropriate.

The energy consumption rate measurements that contribute to the integrated thermal efficiency metric are presented in Table IV.3 of this document, and vary by consumer pool heater type (*i.e.,* electric resistance, electric heat pump, and gas-fired). DOE notes that these measurements also vary by efficiency level. The ''typical case'' energy use assumptions used to determine the efficiency levels are presented in greater detail in sections IV.C.1.b and IV.C.1.c of this document.

TABLE IV.3—INPUTS TO INTEGRATED THERMAL EFFICIENCY BY CONSUMER POOL HEATER TYPE

Consumer pool heater type	Inputs to TE_I	Description
Electric Resistance Pool Heater	E_t	Thermal efficiency (11.1 of ASHRAE 146).
	PE	Average annual electrical energy consumption.
	E_C	Electrical consumption in Btu per 30 mins.
	$P_{W,SB}$	Standby power consumption rate.
	$P_{W,OFF}$	Off power consumption rate.
Heat Pump Pool Heater	E_t	Thermal efficiency (11.1 of ASHRAE 146).
	PE	Average annual electrical energy consumption.
	$E_{c,hp}$	Electrical consumption during test time.
	t_{HP}	Test time.
	$P_{W,SB}$	Standby power consumption rate.
	$P_{W,OFF}$	Off power consumption rate.
Gas-Fired Pool Heater	E_t	Thermal efficiency (2.10 of ANSI Z21.56).
	E_C	Electrical consumption in Btu per 30 mins.
	Q_{PR}	Consumption rate of pilot.
	$Q_{off,R}$	Off mode fuel consumption rate.
	$P_{W,SB}$	Standby power consumption rate.
	$P_{W,OFF}$	Off Power consumption rate.

The integrated thermal efficiency metric is the ratio of the seasonal useful output of the consumer pool heater divided by the annual input to the consumer pool heater. Based on manufacturer interviews, DOE has tentatively determined that standby and off mode electricity consumption do not increase as capacity increases. This causes differences in the resulting integrated thermal efficiencies for units at different capacities that have the same thermal efficiency and same standby and off mode energy consumption. Lower capacity units will have lower integrated thermal efficiency ratings due to standby and off mode energy use comprising a larger share of the total energy use of the product than for larger capacity units. To account for this, instead of standards that are fixed integrated thermal efficiency levels as presented in section 5.3 of chapter 5 of the October 2015 NODA TSD, DOE is proposing equation-based efficiency levels in which the integrated thermal efficiency level is a function of the capacity of the unit.

DOE developed these integrated thermal efficiency equations using a similar methodology to the one used to develop the integrated thermal efficiency levels in the October 2015 NODA analysis for electric pool heaters. See section 5.3 of chapter 5 of the October 2015 NODA. Specifically, DOE selected the efficiency levels based on thermal efficiency, and then determined the typical values for all other energy consumption rate values that contribute to the integrated thermal efficiency metric (*i.e.,* standby mode, off mode). DOE then calculated the integrated thermal efficiency as a function of capacity by utilizing these typical values for all efficiency levels other than the max-tech level. As discussed further in section IV.C.1.c of this document, the max-tech level is the maximum efficiency theoretically possible and uses technologies (*i.e.,* seasonal off switch and switch mode power supply) that result in energy consumption rate values that are lower than the typical values used for the other efficiency levels.

Additional information regarding the selection of efficiency levels is provided in the following sections and in chapter 5 of the NOPR TSD.

b. Baseline Levels

For each product class, DOE generally selects a baseline model as a reference point for each class, and measures changes resulting from potential energy conservation standards against the baseline. The baseline model in each product class represents the characteristics of a product typical of that class (*e.g.,* capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market.

DOE uses the baseline model for comparison in several phases of the analyses, including the engineering analysis, LCC analysis, PBP analysis, and NIA. To determine energy savings that will result from a new or amended energy conservation standard, DOE compares energy use at each of the higher energy efficiency levels to the energy consumption of the baseline unit. Similarly, to determine the changes in price to the consumer that will result from an amended energy conservation standard, DOE compares the price of a baseline unit to the price of a unit at each higher efficiency level. In the March 2015 RFI, DOE requested information regarding typical energy use (fossil fuel and electricity) in all modes, including standby and off modes for all consumer pool heater types. 80 FR 15992, 15924.

Raypak responded that the typical fossil fuel energy use in standby and off modes is zero because gas-fired pool heaters only fire when there is a call for heat to maintain a set temperature. Raypak commented that the electricity consumption is limited to standby and off mode for all types of consumer pool heaters and that the magnitude of these electricity consumption values may change slightly based on the input capacity of the unit. (Raypak, No. 4 at p. 2)

DOE has found several consumer pool heaters on the market which utilize standing pilots. These pilot lights operate when the consumer pool heater is not in use and contribute to fossil fuel energy use in standby mode. DOE does not disagree that electricity consumption may change slightly based on input capacity but has tentatively determined to use a single typical value for the various types of electrical energy consumption based on feedback received during confidential manufacturer interviews. Table IV.4 of this document presents the baseline efficiency level identified for gas-fired pool heaters.

Table IV.4 Baseline Efficiency Level for Gas-Fired Pool Heaters

Efficiency Level	E_t (percent)	Q_{PR} (Btu/h)	$Q_{off,R}$ (Btu/h)	PE (W)	$P_{W,SB}$* (W)	$P_{W,OFF}$* (W)	TE_I** (percent)
EL 0	82	1,000	1,000	20	7.2	7.2	$\frac{82(Q_{IN}+68)}{Q_{IN}+85{,}344}$

* Presented in terms of Btu/h in appendix P.

** Equation comprises input capacity QIN and Et and assumptions for PW,SB, and PW,OFF at left and uses equation 5.4.3 in the DOE test procedure found in appendix P.

Table IV.5 of this document presents the baseline efficiency level identified for electric pool heaters. No comments were received in response to the October 2015 NODA in regard to the baseline efficiency level for electric pool heaters.

Table IV.5 Baseline Efficiency Level for Electric Pool Heaters

Efficiency Level	E_t (percent)	$P_{W,SB}$ (W)*	$P_{W,OFF}$ (W)*	TE_I** (percent)
EL 0	99	1.2	1.2	$\frac{99\ PE}{PE + 341}$

* Presented in terms of Btu/h in appendix P.
** Equation comprises active electrical power PE and assumptions for E_t, $P_{W,SB}$, and $P_{W,OFF}$ at left and uses equation 5.4.3 in the DOE test procedure found in appendix P.

Additional details on the selection of baseline models and the development of the baseline efficiency equations may be found in chapter 5 of the NOPR TSD.

c. Other Efficiency Levels

As part of DOE's analysis, the maximum available efficiency level is the highest efficiency model currently available on the market. DOE also defines a ''max-tech'' efficiency level to represent the maximum possible efficiency for a given product.

Table IV.6 of this document shows the efficiency levels DOE selected for the October 2015 NODA analysis. See section 5.3 of chapter 5 of the October 2015 NODA. As described previously in this section, all else being equal, the integrated thermal efficiency metric is expected to vary depending on a consumer pool heater's capacity. The integrated thermal efficiencies listed in Table IV.6 are based on an output capacity of 110,000 Btu/h. (Note, the large increase in integrated thermal efficiency between EL 0 and EL 1 is the result of a technology option change from electric resistance elements as the heat source to a heat pump.)

TABLE IV.6—OCTOBER 2015 NODA EFFICIENCY LEVEL FOR ELECTRIC POOL HEATERS AT OUTPUT CAPACITY OF 110,000 BTU/H

Efficiency level	E_t (percent)	$P_{W,SB}$ (W) *	$P_{W,OFF}$ (W) *	TE_I ** (percent)
EL 0	99	1.2	1.2	99
EL 1	360	5.2	5.2	344
EL 2	520	5.2	5.2	486
EL 3	580	5.2	5.2	538
EL 4	600	5.2	5.2	556
EL 5	610	5.2	5.2	564

* Presented in terms of Btu/h in appendix P.
** Values are based on E_t and assumptions for $P_{W,SB}$ and $P_{W,OFF}$ at left, and uses equation 5.4.3 in the DOE test procedure found in appendix P.

DOE requested comment on the efficiency levels presented in the October 2015 NODA analysis, including the typical standby and off mode energy consumption of electric pool heaters.

In response to the October 2015 NODA analysis, AHRI stated that many manufacturers have not measured the standby and off mode consumption for many of their consumer pool heater models. Therefore, AHRI stated that they are not able to address the ''typical'' values used in the preliminary analysis. AHRI also stated that the efficiency levels presented in the October 2015 NODA analysis were acceptable. (AHRI, No. 16 at p. 2, 3)

In response to the efficiency levels presented in the October 2015 NODA for electric pool heaters ASAP and NRDC and CA IOUs encouraged DOE to re-evaluate the max-tech level for electric pool heaters. The commenters stated that the AHRI database includes models that exceed a COP of 6.1, the level presented as max-tech in the October 2015 NODA. The commenters stated that those units with a COP greater than 6.1 are smaller in capacity than the representative unit size of 110,000 Btu/h. (CA IOUs, No. 20 at p. 5; ASAP and NRDC, No. 19 at p. 2) CA IOUs stated their belief that larger capacity units could achieve similarly high COP levels. (CA IOUs, No. 20, at p. 5)

DOE recognizes that there are models on the market with higher COP ratings than the assumed COP rating used in the max-tech energy level. However, as noted by commenters, these units have a lower capacity than DOE's representative capacity. DOE has not identified larger residential heat pump pool heaters with a COP rating greater than 6.1 on the market or in prototypes. Smaller heat pump pool heaters with a COP greater than 6.1 may not be representative of efficiency improvements of which larger heat pump pool heaters are capable. Therefore, DOE maintained the same COP max-tech level used in the October 2015 NODA as an input to the integrated thermal efficiency equation for this analysis.

ASAP and NRDC urged DOE to evaluate a level that incorporates technology options presented in the October 2015 NODA TSD that may not be present in currently available consumer pool heaters including electronically commutated motor (''ECM'') fan motors (*i.e.,* brushless permanent magnet (''BPM'') motors),[26] toroidal transformers, and an off switch. (ASAP and NRDC, No. 19 at p. 3)

In response to these comments, DOE has incorporated standby and off mode technology options at the max-tech level to decrease the standby and off mode electricity consumption and thereby increase the integrated thermal efficiency at that level. These technology options include: Transformer improvements, switching mode power supply, and a seasonal off switch.

As was noted in chapter 3 of the October 2015 NODA TSD, the efficiency

[26] ''ECM'' refers to the constant-airflow BPM offerings of a specific motor manufacturer. DOE refers to this technology using the generic term, ''BPM motor.''

of permanent split capacitor (''PSC'') motors is highest at a single speed, with significant diminishing operation efficiency at other speeds, whereas BPM motors are capable of maintaining a high operating efficiency at multiple speeds. However, the energy savings associated with this technology may be limited as heat pump pool heaters operate at full capacity to satisfy the call for heat. As noted by ASAP and NRDC, heat pump pool heaters on the market do not currently utilize BPM fan motors. Therefore, DOE has not been able to test products in order to determine the magnitude of efficiency improvement, if any, that could be expected due to the incorporation of BPM motors.

DOE requests comment on the efficiency improvement expected from replacing a PSC fan motor with a BPM fan motor in heat pump pool heater.

AHRI stated that the use of straight (EL 1) or twisted (EL 2) titanium tube coils are two different ways to get to the same end. AHRI further commented that the two different design features described for EL 1 and EL 2, respectively, do not inherently result in the significantly different efficiencies estimated in the analysis. AHRI stated that the efficiency that will result from the use of straight or twisted titanium tubing will be based on the effectiveness of the overall design of the heat exchanger; the twisted tube provides no significant efficiency improvement of itself. (AHRI, No. 16 at pp. 3–4)

In response to AHRI's assertions, DOE notes that for electric pool heaters it selected efficiency levels and units for teardown based on the published coefficients of performance of models currently on the market (as integrated thermal efficiency data were not yet available). As shown in Table IV.7, the heat exchanger design of the model DOE analyzed at EL 1 in the October 2015 NODA included two straight titanium tube coils in submerged water tanks; at EL2, the model that was analyzed had a heat exchanger consisting of a single twisted titanium tube coil in concentric counter-flow PVC pipe. These models were included in the engineering analysis described in chapter 5 of the October 2015 NODA TSD. DOE did not assume *a priori* that the concentric/counter-flow PVC heat exchanger design would result in a certain efficiency increase compared to the submerged coil design, but rather found that these were the design paths for units with such rated efficiencies on the market. Upon further review of the models on the market, DOE has tentatively determined that consideration of two straight titanium tube coils in submerged water tanks as a design option for EL 1, as presented in the October 2015 NODA, does not represent a typical design for the lowest efficiency heat pump pool heater and, as discussed later in section IV.C.2.c of this document, this design option is more expensive than other designs that are similar to those used at the other ELs. As such, DOE has amended the design option for EL 1 to a heat pump with a heat exchanger consisting of a single twisted titanium tube coil in concentric counter-flow PVC pipe as this design better resembles the lowest efficiency heat pump pool heater on the market.

Table IV.7 provides a description of the typical technological change at each efficiency level for electric pool heaters.

TABLE IV.7—TECHNOLOGY DESCRIPTION BY EFFICIENCY LEVEL FOR ELECTRIC POOL HEATERS

Efficiency level	Technology
EL 0	Electric Resistance.
EL 1 *	Heat Pump, twisted Titanium tube coil in concentric/counter flow PVC Pipe.
EL 2	EL1 + increased evaporator surface area.
EL 3	EL2 + increased evaporator surface area.
EL 4	EL3 + increased evaporator surface area.
EL 5	EL4 + condenser coil length + seasonal off switch + switch mode power supply.

* The EL 1 design option has been updated from that presented in the October 2015 NODA. The description in the October 2015 NODA was, ''Heat Pump, two straight Titanium tube coils in submerged water tanks.''

Table IV.8 shows the efficiency levels DOE selected for the NOPR analysis for electric pool heaters based on application of the design options presented in Table IV.7.

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Table IV.8 Efficiency Levels for Electric Pool Heaters

Efficiency Level	E_t (percent)	$P_{W,SB}$* (W)	$P_{W,OFF}$* (W)	TE_I‡ (percent)
EL 0	99	1.2	1.2	$\frac{99\ PE}{PE + 341}$
EL 1	410	5.7	5.7	$\frac{410\ PE}{PE + 1{,}619}$
EL 2	520	5.7	5.7	$\frac{520\ PE}{PE + 1{,}619}$
EL 3	580	5.7	5.7	$\frac{580\ PE}{PE + 1{,}619}$
EL 4	600	5.7	5.7	$\frac{600\ PE}{PE + 1{,}619}$
EL 5†	610	3.1	0	$\frac{610\ PE}{PE + 443}$

* Presented in terms of Btu/h in appendix P.
† The max-tech efficiency level includes standby and off mode technology options.
‡ Equation comprises assumptions for E_t, $P_{W,SB}$, and $P_{W,OFF}$ at left and uses equation 5.4.3 in the DOE test procedure found in appendix P.

In the March 2015 RFI, DOE also requested information on the max-tech efficiency levels for gas-fired pool heaters. 80 FR 15922, 15926. In response, Raypak stated that the max-tech efficiency level for gas-fired pool heaters would be in the range of 94 to 96-percent thermal efficiency. Raypak stated that the selection of heat exchanger materials for gas-fired pool heaters restricts the max-tech efficiency from being higher because the materials used have to be resistant to the chemicals used in pools, particularly when the pool chemistry is not properly maintained. (Raypak, No. 4 at p. 3)

DOE analyzed a max-tech efficiency level of 95-percent thermal efficiency in this NOPR analysis based on its review of the gas-fired pool heater market. At the time of the analysis, 95-percent thermal efficiency represented the highest level available on the market.

Table IV.9 shows the efficiency levels DOE analyzed for this NOPR with respect to gas-fired pool heaters. DOE selected the thermal efficiency levels based on its review of the gas-fired pool heaters market.

Table IV.9 Efficiency Levels for Gas-Fired Pool Heaters

Efficiency Level	E_t (percent)	Q_{PR} (Btu/h)	$Q_{off,R}$ (Btu/h)	PE (W)	$P_{W,SB}$* (W)	$P_{W,OFF}$* (W)	TE_I† (percent)
EL 0	82	1,000	1,000	20	7.2	7.2	$\frac{82(Q_{IN}+68)}{Q_{IN}+85{,}344}$
EL 1	82	0	0	20	7.2	7.2	$\frac{82(Q_{IN}+68)}{Q_{IN}+2{,}113}$
EL 2	84	0	0	144	7.2	7.2	$\frac{84(Q_{IN}+491)}{Q_{IN}+2{,}536}$
EL 3**	95	0	0	220	4.6**	0**	$\frac{95(Q_{IN}+751)}{Q_{IN}+1{,}409}$

* Presented in terms of Btu/h in appendix P.

** The max-tech efficiency level includes standby and off mode technology options.

† Equation comprises assumptions for E_t, $P_{W,SB}$, and $P_{W,OFF}$ at left and uses equation 5.4.3 in the DOE test procedure found in appendix P.

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DOE seeks comment from interested parties regarding the efficiency levels selected for the NOPR analysis.

Table IV.10 provides a description of the typical technological change(s) at each efficiency level for gas-fired pool heaters.

TABLE IV.10—TECHNOLOGY DESCRIPTION BY EFFICIENCY LEVEL FOR GAS-FIRED POOL HEATERS

Efficiency level	Technology
EL 0	Standing Pilot + Cu or CuNi Finned Tube + Atmospheric.
EL 1	Electronic Ignition + Cu or CuNi Finned Tube + Atmospheric.
EL 2	Electronic Ignition + Cu or CuNi Finned Tube + Blower Driven Gas/Air Mix.
EL 3	Condensing + CuNi and Cu Finned Tube + seasonal off switch + switch mode power supply.

DOE seeks comment from interested parties regarding the typical technological changes associated with each efficiency level.

See section VII.E for a list of issues on which DOE seeks comment.

2. Cost Analysis

The cost analysis portion of the engineering analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated product, the availability and timeliness of purchasing the product on the market. The cost approaches are summarized as follows:

- *Physical teardowns:* Under this approach, DOE physically dismantles a commercially available product, component-by-component, to develop a detailed bill of materials for the product.
- *Catalog teardowns:* In lieu of physically deconstructing a product, DOE identifies each component using parts diagrams (available from manufacturer websites or appliance repair websites, for example) to develop the bill of materials for the product.
- *Price surveys:* If neither a physical nor catalog teardown is feasible (for example, for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable) or cost-prohibitive and otherwise impractical (*e.g.* large commercial boilers), DOE conducts price surveys using publicly available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

At the start of the engineering analysis, DOE identified the energy efficiency levels associated with consumer pool heaters on the market using data gathered in the market assessment. DOE also identified the technologies and features that are typically incorporated into products at the baseline level and at the various energy efficiency levels analyzed above the baseline. Next, DOE selected products for the physical teardown analysis having characteristics of typical products on the market at the representative capacity. DOE gathered information from performing a physical teardown analysis (see section IV.C.2.a of this document) to create detailed bill of materials (BOMs), which included all components and processes used to manufacture the products. DOE used the BOMs from the teardowns as inputs to calculate the MPC for products at various efficiency levels spanning the full range of efficiencies from the baseline to the maximum technology available. DOE reexamined and revised its cost assessment performed for the October 2015 NODA analysis.

During the development of the analysis for the NOPR, DOE held interviews with manufacturers to gain insight into the consumer pool heater industry, and to request feedback on the engineering analysis. DOE used the information gathered from these interviews, along with the information obtained through the teardown analysis and public comments, to refine its MPC estimates for this rulemaking. Next, DOE derived manufacturer markups using publicly-available consumer pool heater industry financial data in conjunction with manufacturers' feedback. The markups were used to convert the MPCs into manufacturer sales prices (MSPs). Further information on comments received and the analytical methodology is presented in the following subsections. For additional detail, see chapter 5 of the NOPR TSD.

a. Teardown Analysis

To assemble BOMs and to calculate the manufacturing costs for the different components in consumer pool heaters, DOE disassembled multiple units into their base components and estimated the materials, processes, and labor required for the manufacture of each individual component, a process referred to as a ''physical teardown.''

Using the data gathered from the physical teardowns, DOE characterized each component according to its weight, dimensions, material, quantity, and the manufacturing processes used to fabricate and assemble it.

DOE also used a supplementary method, called a ''virtual teardown,'' which examines published manufacturer catalogs and supplementary component data to estimate the major physical differences between a product that was physically disassembled and a similar product that was not. For supplementary virtual teardowns, DOE gathered product data such as dimensions, weight, and design features from publicly-available information, such as manufacturer catalogs.

The teardown analysis allowed DOE to identify the technologies that manufacturers typically incorporate into their products, along with the efficiency levels associated with each technology or combination of technologies. The BOMs from the teardown analysis were then used as inputs to calculate the MPC for each product that was torn down. The MPC's resulting from the teardowns were used to develop an industry average MPC for each efficiency level of each product class analyzed.

More information regarding details on the teardown analysis can be found in chapter 5 of the NOPR TSD.

b. Cost Estimation Method

The costs of individual models are estimated using the content of the BOMs (*i.e.,* materials, fabrication, labor, and all other aspects that make up a production facility) to generate the MPCs. For example, these MPCs include overhead and depreciation. DOE collected information on labor rates, tooling costs, raw material prices, and other factors as inputs into the cost estimates. For purchased parts, DOE estimates the purchase price based on volume-variable price quotations and detailed discussions with manufacturers and component suppliers. For fabricated parts, the prices of raw metal materials [27] (*i.e.,* tube, sheet metal) are estimated using the average of the most recent 5-year period. The cost of transforming the intermediate materials into finished parts was estimated based on current industry pricing at the time of analysis.[28]

c. Manufacturing Production Costs

DOE estimated the MPC at each efficiency level considered for each product class, from the baseline through the max-tech and then calculated the percentages attributable to each cost category (*i.e.,* materials, labor, depreciation, and overhead). These percentages are used to validate the assumptions by comparing them to manufacturers' actual financial data published in annual reports, along with feedback obtained from manufacturers during interviews. DOE uses these production cost percentages in the MIA (see section IV.J of this document).

DOE's analysis focused on a single representative capacity for each product class analyzed. DOE selected a representative output capacity of 110,000 Btu/h for electric pool heaters and a representative input capacity of 250,000 Btu/h for gas-fired pool heaters.[29] DOE selected these representative capacities based on the number of available models on the market and by referencing a number of sources, including information collected for the market and technology assessment, as well as information obtained from product literature. DOE then sought feedback on the representative capacities during confidential manufacturer interviews.

AHRI stated that the MPC estimates for electric pool heaters presented in the October 2015 NODA analysis are significantly flawed. AHRI stated that the relationship of manufacturing cost to efficiency for heat pump pool heaters is relatively linear and proportional, similar to other consumer products. AHRI suggested that the design features assumed for EL 1 and EL 2 mischaracterize how those respective efficiency levels are achieved and provide an unrealistic estimate of MPC, *i.e.,* a 40% improvement in the EL 1 efficiency cannot be achieved for only a $1 increase in MPC. (AHRI, No. 16 at p. 3–4)

As discussed in section IV.C.1.c, the electric pool heaters selected for teardown and to represent each efficiency level were based on the published coefficients of performance of models currently on the market (as integrated thermal efficiency data were not yet available). DOE did not assume *a priori* that the concentric/counter-flow PVC heat exchanger design would result in a certain efficiency increase compared to the submerged coil design, but rather found that these were the design paths for units with such rated efficiencies on the market. Further, as demonstrated by DOE's cost-efficiency curves, although the design at EL 2 provides a large improvement in efficiency as compared to the design evaluated at EL 1 in the October 2015 NODA, DOE's estimate of the MPC based on its teardown analysis indicated that the cost to manufacture the product with a heat exchanger as designed at EL 2 was not substantially more than that at EL 1. For the analysis conducted for this NOPR, as discussed in section IV.C.1.c, DOE has tentatively determined to change the design option for the electric pool heater EL 1 to be more similar to the design options at the other ELs (*i.e.,* twisted Titanium tube coil in concentric/counter flow PVC Pipe).

For this NOPR analysis, DOE revised the cost analysis assumptions it used for the October 2015 NODA analysis based on updated pricing information (for raw materials and purchased parts) and additional manufacturer feedback. This resulted in refined MPCs and production cost percentages.

Table IV.11 presents DOE's estimates of the MPC's by efficiency level for electric pool heaters in the NOPR analysis. The integrated thermal efficiencies and MPCs listed in Table IV.11 are based on an output capacity of 110,000 Btu/h.

TABLE IV.11—MANUFACTURING PRODUCTION COST FOR ELECTRIC POOL HEATERS AT REPRESENTATIVE OUTPUT CAPACITY OF 110,000 BTU/H

Efficiency level	TE_I (percent)	MPC ($2020)
EL 0	99	893
EL 1	387	1,093

[27] American Metals Market, available at *www.amm.com/.*

[28] U.S. Department of Labor, Bureau of Labor Statistics, Producer Price Indices, available at *www.bls.gov/ppi/.*

[29] For gas-fired pool heaters, manufacturers are currently required to certify input capacity pursuant to 10 CFR 429.12. For electric heat pump pool heaters, manufacturers currently use output capacity in order to represent the capacity of a unit. DOE used a combination of the AHRI directory data (*www.ahridirectory.org/)* and product literature to obtain data regarding electric heat pump pool heater output capacity.

TABLE IV.11—MANUFACTURING PRODUCTION COST FOR ELECTRIC POOL HEATERS AT REPRESENTATIVE OUTPUT CAPACITY OF 110,000 BTU/H—Continued

Efficiency level	TE_I (percent)	MPC ($2020)
EL 2	483	1,144
EL 3	534	1,188
EL 4	551	1,220
EL 5	595	1,304

In developing the MPCs for gas-fired pool heaters for this NOPR, DOE considered the heat exchanger material and whether a model would utilize a cupronickel or copper heat exchanger at a given efficiency level. DOE surveyed the market and found that the percentage of models at each efficiency level that currently utilize copper or cupronickel heat exchangers and assumed that, under an amended standard, the percentage would remain unchanged.[30]

DOE requests comment on its assumption that the fraction of shipments which utilize cupronickel heat exchangers would not change as a result of amended standards.

Table IV.12 presents DOE's estimates of the MPCs by efficiency level for gas-fired pool heaters in the NOPR analysis. The integrated thermal efficiencies and MPCs listed in Table IV.12 are based on an input capacity of 250,000 Btu/h.

TABLE IV.12—MANUFACTURING PRODUCTION COST FOR GAS-FIRED POOL HEATERS AT REPRESENTATIVE INPUT CAPACITY OF 250,000 BTU/H

Efficiency level	TE_I (percent)	MPC ($2020)
EL 0	61.1	659
EL 1	81.3	665
EL 2	83.3	827
EL 3	94.8	1,157

Chapter 5 of the NOPR TSD presents additional detail regarding the development of DOE's estimates of the MPCs for consumer pool heaters.

d. Manufacturer Markups

To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the MPC. The resulting MSP is the price that DOE research suggests the manufacturer can sell a given unit into the marketplace under a standards scenario. To meet new or amended energy conservation standards, manufacturers typically redesign their baseline products. These design changes typically increase MPCs relative to those of previous baseline MPCs. Depending on the competitive environment for these particular products, some or all of the increased production costs may be passed from manufacturers to retailers and eventually to customers in the form of higher purchase prices. As production costs increase, manufacturers may also incur additional overhead (*e.g.,* warranty costs).

The manufacturer markup has an important bearing on profitability. A high markup under a standards scenario suggests manufacturers can readily pass along the increased variable costs and some of the capital and product conversion costs (the one-time expenditures) to consumers. A low markup suggests that manufacturers will have greater difficulty recovering their investments, product conversion costs, and/or incremental MPCs.

DOE estimated manufacturer markups based on publicly available financial information for consumer pool heater manufacturers, and information obtained during manufacturer interviews, DOE assumed the non-production cost markup—which includes selling, general, and administrative (''SG&A'') expenses, research and development (''R&D'') expenses, interest, and profit—to be 1.33 for gas-fired pool heaters and 1.28 for electric pool heaters. See chapter 5 of the NOPR TSD for more details about the manufacturer markup calculation.

e. Manufacturer Interviews

Throughout the rulemaking process, DOE has sought and continues to seek feedback and insight from interested parties that would improve the information used in its analyses. DOE interviewed manufacturers as a part of the NOPR manufacturer impact analysis (*see* section IV.J.3 of this document). During the interviews, DOE sought feedback on all aspects of its analyses for consumer pool heaters. For the engineering analysis, DOE discussed the analytical assumptions and estimates, cost analysis, and cost-efficiency curves with consumer pool heater manufacturers. DOE considered all the information manufacturers provided when refining the cost analysis and assumptions. DOE incorporated equipment and manufacturing process figures into the analysis as averages to avoid disclosing sensitive information about individual manufacturers' products or manufacturing processes. More details about the manufacturer interviews are contained in chapter 12 of the NOPR TSD.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* wholesaler and distributors, pool contractors, pool retailers, pool builders) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis. At each step in the distribution channel, companies add markup to the price of the product to cover business costs and profit margin.

[30] For example, assume that at EL 1, 60 percent of the market currently uses copper heat exchangers and 40 percent of the market currently uses cupronickel heat exchangers. Then, if EL 1 was chosen as the amended standard level, DOE assumes that 60 percent of the market would continue to use copper heat exchangers and 40 percent of the market would continue to use cupronickel heat exchangers.

For consumer pool heaters, the main parties in the distribution chain are: (1) Manufacturers; (2) wholesalers or distributors; (3) pool contractors; (4) pool retailers; (5) buying groups; [31] and (6) pool builders. For each actor in the distribution chain except for manufacturers, DOE developed baseline and incremental markups. Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating profit before and after new or amended standards.[32]

At each step in the distribution channel, companies add markup to the price of the product to cover business costs and profit margin. For the electric pool heater October 2015 NODA, DOE characterized two markets in which pool products pass from the manufacturer to residential and commercial consumers: [33] (1) Replacement or new installation of consumer pool heater for existing swimming pool or spa; (2) installation of consumer pool heater in new swimming pool or spa. For this NOPR, DOE gathered data from several sources including 2020 Pkdata report,[34] POOLCORP's 2020 Form 10–K,[35] PRNewswire,[36] PoolPro Magazine,[37] Aqua Magazine,[38] and Pool and Spa News [39] to determine the distribution channels and fraction of shipments going through each distribution channel. The distribution channels for replacement or new installation of a consumer pool heater for existing swimming pool or spa are characterized as follows: [40]

Manufacturer → Wholesaler → Pool Contractor → Consumer

Manufacturer → Wholesaler → Pool Retailer → Consumer

Manufacturer → Pool Retailer → Consumer

Manufacturer → Buying Group → Pool Contractor → Consumer

The distribution channels for installation of consumer pool heaters in a new swimming pool or spa are characterized as follows: [41]

Manufacturer → Wholesaler → Pool Builder → Consumer

Manufacturer → Buying Group → Pool Builder → Consumer

Lochinvar stated that the distribution channels for pool heaters sold for commercial applications are similar to those used in commercial packaged boiler and commercial water heater rulemakings. (Lochinvar, No. 2 at p. 2) Lochinvar did not provide specific fractions of shipments for each distribution channel. For the NOPR analysis, DOE estimated that half of consumer pool heaters installed in commercial applications would use similar distribution channels to commercial packaged boilers and commercial water heaters (Manufacturer → Wholesaler → Mechanical Contractor → Consumer for replacements and new owners; and Manufacturer → Wholesaler → Mechanical Contractor → General Contractor → Consumer for new swimming pool construction),[42] while the remaining consumer pool heaters would have the distribution channels described previously.

DOE requests comment on whether the distribution channels described above are appropriate for consumer pool heaters and are sufficient to describe the distribution markets. In addition, DOE seeks input on the percentage of products being distributed through the different distribution channels, and whether the share of products through each channel varies based on product class, capacity, or other features.

To estimate average baseline and incremental markups, DOE relied on several sources, including: (1) Form 10–K from U.S. Securities and Exchange Commission (''SEC'') for Pool Corp (pool wholesaler and retailers); [43] (2) form 10–K from U.S. SEC for the Home Depot, Lowe's, Wal-Mart, and Costco (for pool retailers); (3) U.S. Census Bureau 2017 Annual Retail Trade Report for miscellaneous store retailers (NAICS 453) (for direct pool retailers),[44] (4) U.S. Census Bureau 2017 Economic Census data [45] on the residential and commercial building construction industry (for pool builder, pool contractor, and general and plumbing/mechanical contractors for commercial applications); and (5) the Heating, Air Conditioning & Refrigeration Distributors International (''HARDI'') 2013 Profit Report [46] (for wholesalers for

[31] Buying groups are intermediaries between the pool heater manufacturers and contractors. A buying group is a coalition of companies within a shared category who leverage their collective purchasing power to negotiate price reductions from manufacturers.

[32] Because the projected price of standards-compliant products is typically higher than the price of baseline products, using the same markup for the incremental cost and the baseline cost would result in higher per-unit operating profit. While such an outcome is possible, DOE maintains that in markets that are reasonably competitive it is unlikely that standards would lead to a sustainable increase in profitability in the long run.

[33] DOE estimates that 6 percent of electric pool heaters and 13 percent of gas pool heaters will be shipped to commercial applications in 2028. See section IV.E.1 of this document for further discussion.

[34] Pkdata, *2020 Residential and Commercial Swimming Pool, Hot Tub, and Pool Heater Customized Report for LBNL,* October 15, 2020, available at: *www.pkdata.com/datapointstrade.html#/* (last accessed April 15, 2021).

[35] POOLCORP, *2020 Form 10–K,* available at: *dd7pmep5szm19.cloudfront.net/603/0000945841-21-000022.pdf* (last accessed April 15, 2021).

[36] PRNewswire, *United Aqua Group, one of the nation's largest organizations dedicated to the professional pool construction, service and retail industry, announces that POOLCORP® is no longer the preferred distributor for its swimming pool products or building materials,* May 15, 2018, available at: *www.prnewswire.com/news-releases/united-aqua-group-one-of-the-nations-largest-organizations-dedicated-to-the-professional-pool-construction-service-and-retail-industry-announces-that-poolcorp-is-no-longer-the-preferred-distributor-for-its-swimming-pool-produ-300648220.html* (last accessed April 15, 2021).

[37] PoolPro, *Channel Choices,* PoolPro Magazine, March 5, 2018, available at: *poolpromag.com/channel-choices/* (last accessed April 15, 2021).

[38] Herman, E., *Distributors: The Middleman's Role,* Aqua Magazine, December 2017, available at: *aquamagazine.com/features/the-middleman-s-role.html* (last accessed April 15, 2021).

[39] Green, L., *Forward Thinking: A Look at Distributor Sector in Pool, Spa Industry Distributors adapt with the times*, Pool and Spa News, March 27, 2015, available at: *www.poolspanews.com/business/retail-management/forward-thinking-a-look-at-distributor-sector-in-pool-spa-industry_o* (last accessed April 15, 2021).

[40] Based on 2020 Pkdata, in residential pools and spas, DOE assumes that the consumer pool heater goes through the wholesaler 45 percent of the time, 10 percent of the time wholesaler to retailer, 40 percent of the time directly through the pool retailer, and 5 percent of the time through the buying group.

[41] Based on 2020 Pkdata, DOE estimated that about 40 percent of consumer pool heater installations in new pools are distributed through a wholesaler and about 60 percent are distributed through a buying group.

[42] Based on 2020 Pkdata, which showed a much larger fraction of pool heaters being sold through distributors (about 70 percent) and directly to end users (about 20 percent) in commercial applications compared to pool heaters in residential applications.

[43] U.S. Securities and Exchange Commission, *SEC 10–K Reports* (2016–2020), available at *www.sec.gov/* (last accessed April 15, 2021).

[44] U.S. Census Bureau, *2017 Annual Retail Trade Report,* available at *www.census.gov/programs-surveys/arts.html* (last accessed April 15, 2021). Note that the 2017 Annual Retail Trade Report is the latest version of the report that includes detailed operating expenses data.

[45] U.S. Census Bureau, *2017 Economic Census Data.* available at *www.census.gov/programs-surveys/economic-census.html* (last accessed April 15, 2021).

[46] Heating, Air Conditioning & Refrigeration Distributors International (''HARDI''), *2013 HARDI Profit Report,* available at *hardinet.org/* (last

commercial applications). DOE assumes that the markups for buying group is half of the value of pool wholesaler markups derived from Pool Corp's form 10–K. In addition, DOE used the 2005 Air Conditioning Contractors of America's (''ACCA'') Financial Analysis on the Heating, Ventilation, Air-Conditioning, and Refrigeration (''HVACR'') contracting industry [47] to disaggregate the mechanical contractor markups into replacement and new construction markets for consumer pool heaters used in commercial applications.

In addition to the markups, DOE obtained state and local taxes from data provided by the Sales Tax Clearinghouse.[48] These data represent weighted average taxes that include county and city rates. DOE derived shipment-weighted average tax values for each region considered in the analysis.

DOE requests comment on the data sources used to establish the markups for the parties involved with the distribution of covered products.

Chapter 6 of the NOPR TSD provides details on DOE's development of markups for consumer pool heaters.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of consumer pool heaters at different efficiencies in representative U.S. applications, and to assess the energy savings potential of increased consumer pool heater efficiency. The energy use analysis estimates the range of energy use of consumer pool heaters in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

1. Pool Heater Consumer Samples

DOE created individual consumer samples for seven pool heater market types: (1) pool heaters in single family homes that serve a swimming pool only (pool type 1); (2) pool heaters in single family homes that serve both a swimming pool and spa (pool type 2); (3) pool heaters in single family homes that serve a spa only (pool type 3); [49] (4) pool heaters in single-family community swimming pools or spas (pool type 4); (5) pool heaters in multi-family community swimming pools or spas (pool type 5); (6) pool heaters in indoor commercial swimming pools or spas (pool type 6); (7) pool heaters in outdoor commercial swimming pools or spas (pool type 7). DOE used the samples not only to determine pool heater annual energy consumption, but also as the basis for conducting the LCC and PBP analysis.

For the October 2015 NODA, DOE used EIA 2009 Residential Energy Consumption Survey (''RECS 2009'') to establish a sample of single family homes that use an electric pool heater in swimming pool or spa or both.[50] For the NOPR, DOE used the EIA's 2015 Residential Energy Consumption Survey (''RECS 2015'') to establish a sample of single family homes that use an electric or gas-fired pool heater in a swimming pool or spa or both.[51] RECS 2015 includes information such as the household or building owner demographics, fuel types used, months swimming pool used in the last year, energy consumption and expenditures, and other relevant data.

For consumer pool heaters used in indoor swimming pools in commercial applications, DOE developed a sample using the 2012 Commercial Building Energy Consumption Survey (''CBECS 2012'').[52] CBECS 2012 does not provide data on community pools or outdoor swimming pools in commercial applications. To develop samples for consumer pool heaters in single or multi-family community pools and/or spas, DOE used a combination of RECS 2015, U.S. Census 2017 American Home Survey Data, and the 2020 Pkdata.[53] To develop a sample for pool heaters in outdoor swimming pools in commercial applications, DOE used a combination of CBECS 2012 and the 2020 Pkdata.

Table IV.13 shows the estimated weights for the samples of electric pool heaters and gas pool heaters by the seven pool heater market types. See chapter 7 of the NOPR TSD for more details about the creation of the samples and the regional breakdowns.

TABLE IV.13—FRACTION OF ELECTRIC POOL HEATERS AND GAS-FIRED POOL HEATERS BY POOL HEATER MARKET

Pool type ID	Description	Electric pool heaters (%)	Gas-fired pool heaters (%)
1	Single Family with Pool Heater Serving Swimming Pool Only	58.4	32.5
2	Single Family with Pool Heater Serving Swimming Pool + Spa	28.3	28.7
3	Single Family with Pool Heater Serving Spa Only	7.1	25.7
4	Community Pools or Spas (Single-Family)	0.8	1.5
5	Community Pools or Spas (Multi-Family)	2.8	5.1
6	Commercial Indoor Pools and Spas	1.0	3.9
7	Commercial Outdoor Pools and Spas	1.5	2.6

accessed April 15, 2021). Note that the 2013 HARDI Profit Report is the latest version of the report.

[47] Air Conditioning Contractors of America (''ACCA''), *Financial Analysis for the HVACR Contracting Industry* (2005), available at *www.acca.org/store#/storefront* (last accessed April 15, 2021). Note that the 2005 Financial Analysis for the HVACR Contracting Industry is the latest version of the report and is only used to disaggregate the mechanical contractor markups into replacement and new construction markets.

[48] Sales Tax Clearinghouse Inc., *State Sales Tax Rates Along with Combined Average City and County Rates* (Feb. 8, 2021), available at *thestc.com/STrates.stm* (last accessed April 15, 2021).

[49] For electric pool heater sample, DOE only considered a small fraction of large spas that require a pool heater large than 11 kW. For this NOPR, the fraction of spas with an electric pool heater larger than 11 kW was determined based on 2020 Pkdata and DOE's shipments analysis.

[50] U.S. Department of Energy–Energy Information Administration. *2009 RECS Survey Data,* available at *www.eia.gov/consumption/residential/data/2009/* (last accessed April 15, 2021).

[51] U.S. Department of Energy–Energy Information Administration. *2015 RECS Survey Data,* available at *www.eia.gov/consumption/residential/data/2015/* (last accessed April 15, 2021). RECS 2015 uses the term hot tub instead of spa. When a household has a pool heater and spa heater of the same fuel, RECS 2015 does not provide information about whether the pool heater is used for both. For the NOPR, DOE assumes that in this case, a single pool heater is used to heat both the pool and spa.

[52] U.S. Department of Energy–Energy Information Administration. *2012 CBECS Survey Data,* available at *www.eia.gov/consumption/commercial/data/2012/* (last accessed April 15, 2021).

[53] Pkdata. *2020 Residential and Commercial Swimming Pool, Hot tub, and Pool Heater Customized Report for LBNL,* available at *www.pkdata.net/datapointstrade.html* (last accessed April 15, 2021).

AHRI stated that although the RECS information is readily available and useful, the usage and installation circumstances of electric pool heaters may be such that a more detailed estimate of installations per state is needed to properly analyze an efficiency standard for electric pool heaters. AHRI stated that because climate affects the electricity use of electric pool heaters, any changes in the assumed geographical distribution of electric pool heaters would alter electricity use. (AHRI, No. 16 at p. 4) DOE contends that RECS provides a reasonable distribution of users of electric pool heaters, since it closely matches regional data for electric pool heaters from 2020 Pkdata. DOE acknowledges that there is some uncertainty related to the distribution of electric pool heaters and discusses its assumptions in more detail in appendix 7A of the NOPR TSD.

EEI stated that because commercial pools, including community pools, commercial indoor spas or pools, and commercial outdoor swimming pools, are usually much larger in volume and operate for many more hours during the year than pools in residential applications, their inclusion in the analysis distorts the baseline energy usage and the impacts of energy efficiency improvements. EEI stated that because commercial swimming pool heaters are outside of the scope of this residential product rulemaking, any data or estimates associated with such units should be removed from the final analysis. (EEI, No. 21 at p. 5, 13)

EPCA specifies pool heaters as a consumer product that is a covered product for the purpose of the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6292(a)(11)) EPCA defines ''consumer product,'' in part, as ''any article [. . .] of a type- (A) which in operation consumes, or is designed to consume, energy [. . .]; and (B) which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual[.] (42 U.S.C. 6291(1)) As such, if a product meets the definition of ''pool heater,'' regardless of whether that unit it is installed in a residential or commercial application, that product is still subject to regulation as a consumer product. Because pool heaters are considered a consumer product under this definition, and because the definition of pool heaters does not include a capacity limit, DOE's authority to consider energy conservation standards for pool heaters includes consumer pool heaters used in commercial settings.

To accurately estimate the costs and benefits of potential standards, DOE must consider all applications of the covered product, including commercial-sector usage of a consumer product. DOE limited consideration of pool heaters installed in commercial pools in its energy use analysis to pool heaters installed in commercial pools of similar size as pools in residential applications, because it has limited data on the number of pool heaters serving larger commercial pools and their energy use. For the NOPR, DOE revised its energy use estimates based on all available data, including recent data from the 2020 Pkdata about pool heaters in commercial applications. DOE notes that the fraction of electric pool heaters used in commercial applications decreased from 10 percent in the October 2015 NODA to 6 percent in the NOPR (see the section regarding residential and commercial applications in chapter 7 of the NOPR TSD).

AHRI stated that it seems unreasonable that the cold and relatively sparsely populated Mountain Census division would have a higher fraction of electric pool heaters than the Pacific Census division, which includes highly populated and warm California. (AHRI, No. 16 at p. 4) The CA IOUs stated that in California the vast majority of pool heaters are gas-fired, and that they understand that electric pool heaters are used extensively elsewhere throughout the country. (CA IOUs, No. 5 at p. 5)

In response, DOE notes that in RECS 2015, the Mountain Census division does consistently show a lower fraction of pool heaters than the Pacific Census division (see Table IV.14 for details), and these data are consistent with the comments from AHRI and the CA IOUs.

TABLE IV.14—FRACTION OF POOL HEATERS IN MOUNTAIN CENSUS DIVISION AND PACIFIC DIVISION

Region	Percent of existing installations in U.S.	
	Mountain Census division (percent)	Pacific division (percent)
All swimming pool heaters (gas-fired and electric)	10	21
Electric swimming pool heaters	4	11
All spa and hot tub heaters (gas-fired and electric)	8	26
Electric spa and hot tub heaters	9	23

Source: RECS 2015

DOE requests comment on the data sources and methodology used to establish pool heater consumer samples.

2. Energy Use Estimation

For the October 2015 NODA, to estimate the annual energy consumption of consumer pool heaters at the considered efficiency levels, DOE first calculated the pool heater load for each sampled consumer based on assumptions regarding the size of a typical pool, ambient conditions for different locations, length of the swimming pool season, and whether the pool has a cover.[54] For each household or building with a consumer pool heater, DOE matched the pool heating load to the sampled swimming pool based on household or building geographical location and an assumption of whether the pool is covered or not. DOE then used the pool heating load together with the consumer

[54] For the October 2015 NODA (80 FR 65169), RECS 2009 estimates of the annual energy consumption from the household's energy bills using conditional demand analysis does not provide separate estimates for electric pool heater energy use. Instead, RECS 2009 groups these pool heaters in the ''other devices and purposes not elsewhere classified.'' Furthermore, RECS 2009 does not provide any energy use data for community pools with pool heaters and CBECS 2012 does not provide separate energy use estimates for pool heaters in other commercial applications.

pool heater output [55] to determine the burner operating hours. The electricity or fuel consumption in active mode was calculated by multiplying the burner operating hours by the input capacity. For heat pump pool heaters, DOE accounted for the potential increase in pump electricity use due to longer operating hours of these products (see discussion below). For heat pump pool heaters, to account for variations of output capacity, input capacity, and COPs observed in the field, DOE determined these values based on the geographical location of the sampled household.

For the October 2015 NODA, DOE assumed that 32 percent of pools with consumer pool heaters use a cover and 68 percent of pools with consumer pool heaters do not use a cover based on comments from NRDC in a CEC pool pumps rulemaking.[56] See chapter 7 of the October 2015 NODA TSD.

EEI stated that since at least 2001, residential and commercial swimming pool heaters installed with or in new buildings are required to have covers, readily accessible on-off switches, and time switches. EEI also stated that assuming no pool cover overstates the baseline energy usage by at least 5 times the actual energy usage. (EEI, No. 21 at p. 6) For the October 2015 NODA, DOE did account for a fraction of installations with a pool cover. See chapter 7 of the October 2015 NODA TSD. DOE also notes that code requirements only affect pools built since these codes went into effect, and the timing of requirements for pools varies among the different States. Also, these building code requirements are focused on safety and do not necessarily require only pool covers. For example, Florida requirements can be met using fencing or alarms instead of pool covers.[57] California requires that when a building permit is issued for the construction of a new swimming pool or spa or the remodeling of an existing swimming pool or spa at a private single-family home, the respective swimming pool or spa is required to have a minimum of two drowning prevention safety features, one of which may be a pool cover.[58] Furthermore, there is a lack of statistics and data of the usage pattern of pool covers combined with pool heaters. For example, 2020 Pkdata shows that less than half of pool covers are installed primarily to reduce energy use, while the rest are primarily safety covers or only used to cover the pool during the winter season. In the absence of any other information, DOE maintained its assumptions on use of pool covers.

For the NOPR, DOE revised its energy use analysis based on all available data including RECS 2015,[59] CBECS 2012, a Consortium for Energy Efficiency (''CEE'') report,[60] a Brookhaven National Laboratory report,[61] and 2020 Pkdata. In particular, for consumer pool heaters in single family homes, DOE was able to use the energy use estimates provided in RECS 2015 to estimate the pool heater load for each sampled pool or spa. For consumer pool heaters in commercial buildings, DOE used the same energy use methodology as in the October 2015 NODA. See chapter 7 of the NOPR TSD for more details.

DOE requests comment on the overall methodology for determining consumer pool heater energy use.

a. Consumer Pool Heater Operating Hours

For the October 2015 NODA, DOE estimated that electric pool heaters operate on average approximately 400 hours per year at the representative output capacity of 110 kBtu/h. See chapter 7 of the October 2015 NODA TSD.

EEI asserted that the estimated operating hours appear to be overstated for most States or regions. (EEI, No. 21 at p. 6–8) For the October 2015 NODA, DOE's estimate of operating hours was based on a fixed output capacity of 110 kBtu/h for electric pool heaters. For this NOPR, DOE assigned a consumer pool heater size for each sampled pool or spa, so that the estimated operating hours vary by region and application. DOE estimated that electric resistance pool heaters operate on average approximately 260 hours per year and heat pump pool heaters operate on average approximately 360 hours per year. The decrease in consumer pool heater operating hours between the October 2015 NODA and the NOPR is primarily due to updating the methodology for assignment of pool size, changes in the methodology for estimating pool heater load, and changes in sample, which includes a decrease in the estimate of consumer pool heaters in commercial applications from 10 percent in the October 2015 NODA to 6 percent in the NOPR (for more details see chapter 7 of the NOPR TSD). DOE estimated that gas-fired pool heaters operate on average approximately 190 hours per year.

EEI stated that for the South Atlantic region, DOE used the pool operating hours from Florida only (12 months of operation) and ignores the values from the other States that are estimated to operate for 5 months or 7 months. EEI stated that a weighted average for the region would be much more appropriate. (EEI, No. 21 at p. 8) For the October 2015 NODA, DOE's analysis for single-family pool heaters (which account for the majority of shipments) uses separate values for the number of months of operation for Florida compared to other States in the South Atlantic region. The analysis for pool heaters servicing community and commercial swimming pool is divided into Census divisions, and the South Atlantic values for the number of months are a shipment-weighted average between Florida and the different States in this region. For the NOPR, DOE's analysis for single-family pool heaters is based on the months the swimming pool is used, as reported in RECS 2015, in the last year for each individual household. For pool heaters servicing community and commercial pools, DOE kept its approach of using the shipment-weighted average between Florida and the other States in the South Atlantic region, as well as assigning a fraction of pools for year-round use.

Raypak and AHRI stated that gas-fired pool heaters heat a pool rapidly and so do not need to operate when the pool

[55] For heat pump pool heaters, pool heater output capacity is adjusted based on average outdoor conditions, since the rated output is measured at outdoor ambient conditions that are often different from actual field conditions. The adjustment is done based on coefficient of performance (COP) from heat pump pool heater data at different ambient conditions.

[56] NRDC's Response to CEC's Invitation to Participate in the Development of Appliance Energy Efficiency Measures 2013 Appliance Efficiency Pre-Rulemaking on Appliance Efficiency Regulations: Docket Number 12–AAER–2F—Residential Pool Pumps and Motors (May 2013), available at *efiling.energy.ca.gov/GetDocument.aspx?tn=70721&DocumentContentId=8266* (last accessed April 15, 2021).

[57] State of Florida. Chapter 515. Residential Swimming Pool Safety Act, available at *www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0500-0599/0515/0515.html* (last accessed April 15, 2021).

[58] CA Health and Safety Code, section 115922, available at *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=115922.&nodeTreePath=43.11.5.3&lawCode=HSC* (last accessed April 15, 2021).

[59] RECS 2015 provides separate estimates for electric spa heaters, natural gas pool heaters, and natural gas spa heaters in single family homes. However, RECS 2015 does not provide separate estimates for electric pool heater energy use and propane pool and spa heaters. Instead, RECS 2015 groups these pool heaters in the ''other devices and purposes not elsewhere classified.''

[60] Consortium for Energy Efficiency (CEE), *CEESM High Efficiency Residential Swimming Pool Initiative,* January 2013, available at *library.cee1.org/system/files/library/9986/CEE_Res_SwimmingPoolInitiative_01Jan2013_Corrected.pdf* (last accessed April 15, 2021).

[61] Brookhaven National Laboratory (BNL), *Performance Study of Swimming Pool Heaters,* January 2009, available at *www.bnl.gov/isd/documents/73878.pdf* (last accessed April 15, 2021).

is not in use; in contrast, heat pump pool heaters generally take several days to heat a pool. (Raypak, No. 4 at p. 7; AHRI, No. 7 at p. 9) DOE's analysis takes into account longer operating hours for heat pump pool heaters compared to gas-fired pool heaters and electric resistance pool heaters.

For the October 2015 NODA, DOE assigned different swimming pool use hours depending on the region the consumer pool heater is installed in, based on DOE's Energy Saver website assumptions.[62] See chapter 7 of the October 2015 NODA TSD. EEI stated that a study by the National Renewable Energy Laboratories (''NREL'') shows that in Florida, California, and Arizona (three of the top four States with the highest number of in-ground pools according to NRDC[63]), consumer pool heaters are used less than DOE's analysis would indicate. The report states that ''the majority of solar [pool heating] users actually use their pools from April through October, whereas a majority of non-users [of solar pool heating] only use their pools from May through September.''[64] EEI stated that although this information is somewhat dated, it clearly shows that even in the best climates, a very small percentage of residential pool owners use their pools (and consumer pool heaters) anywhere close to the values estimated by DOE. (EEI, No. 21 at p. 8–9) In response, DOE contends that a study of users of solar pool heating (*i.e.,* those who own a home with a swimming pool heated by a solar collector) is not representative of users of electric and gas-fired pool heaters. Also, as stated in the NREL report, non-users of solar pool heaters include those who do not heat their pool at all and therefore the pool usage is not an appropriate comparison. For the NOPR, DOE used RECS 2015 data that include average number of pool and spa operating months for each of the single-family households with a pool and/or spa heater, as well as 2020 Pkdata that include average pool operating months by state for pool heaters in commercial pool applications.

The CA IOUs stated that portable electric spas are typically heated year-round, while consumer pool heaters often are only used occasionally during the swimming months. (CA IOUs, No. 5 at p. 5; CA IOUs, No. 20 at p. 7) DOE's analysis for electric pool heaters is not currently analyzing portable electric spa heaters, which are typically at or below 11 kW. DOE's analysis accounts for differences in operation between consumer pool heaters used in swimming pools compared to spas by using RECS 2015 reported months of use. RECS 2015 data show that on average heated swimming pools are used 5.2 months per year, while spas are used on average 7.4 months per year.

DOE requests comment on the data sources and methodology for determining consumer pool heater hours of operation as well as swimming pool and spa hours of operation.

b. Heat Pump Pool Heater Energy Use

For both the October 2015 NODA and NOPR, DOE took into account variations in heat pump pool heaters regarding output capacity, input capacity, and COPs observed in the field based on the geographical location.

Commenting on the March 2015 RFI, the CA IOUs stated that although heat pump pool heaters have diminished performance at temperatures below 55 °F, most consumer pool heaters only operate during the swimming months, when ambient temperatures are often significantly higher than 55 °F. They added that the outside air temperature constraint on heat pump technology has been successfully addressed in water heaters that utilize heat pump technology whenever possible, with electric resistance as a backup only when needed. (CA IOUs, No. 5 at p. 5)

DOE accounted for outdoor air temperature and pool season length in determining the energy use of heat pump pool heaters. In the October 2015 NODA, DOE assigned an average COP value for each heat pump efficiency level based on climate region (Hot Humid, Warm, or Cold climate). For example, for EL 2 the weighted COPs by region are 5.2 for the Hot Humid region, 4.6 for the Warm region, and 4.0 for the Cold region. See chapter 7 of the October 2015 NODA TSD. For the NOPR, DOE refined its methodology to adjust the COP for heat pumps based on pool season length and monthly average temperatures for the different climate regions in the analysis. For example, for EL 2 the weighted COPs by region are 5.44 for the Hot Humid region, 5.20 for the Warm region, and 3.76 for the Cold region. DOE is not aware of any hybrid units in the market that utilize electric resistance as a heat pump pool heater backup but agrees with CA IOUs that this is a potential solution for a fraction of installations that might require operation at very low ambient temperatures or during a period of high demand. DOE is aware of a hybrid gas-fired/heat pump unit.[65]

For the October 2015 NODA, DOE accounted for the potential increase in pool pump electricity use due to longer operating hours of heat pump pool heaters, since the pool pump used by the pool heater needs to operate while the pool heater heats the pool. DOE assumed that heat pumps would tend to run longer than an electric resistance pool heater with similar output capacity and would therefore require the pool pump to work longer. See chapter 7 of the October 2015 NODA TSD. ASAP and NRDC commented that typical daily pool pump operating hours are significantly higher than pool heater operating hours; therefore, the additional pool heater operating hours estimated for heat pump pool heaters would not necessarily translate directly to additional pool pump operating hours. (ASAP and NRDC, No. 19 at p. 3) Similarly, the CA IOUs stated that most pool heating is achieved during the normal daily filtration pumping cycle, minimizing the need for additional pumping energy to heat pools. The CA IOUs additionally stated as filtration pumping is increasingly met by energy efficient dual-speed, multi-speed, and variable-speed pumps, which often run at lower flows for a longer number of hours, the need for increased pumping for pool heating is further reduced. (CA IOUs, No. 20 at p. 6) The CA IOUs, ASAP, and NRDC encouraged DOE to ensure that it is not overestimating the additional pool pump energy required for heat pump pool heaters. (ASAP and NRDC, No. 19 at p. 3; CA IOUs, No. 20 at p. 6)

For the NOPR, DOE updated its analysis to take into account the coincidental heat pump pool heater and typical pool pump use, as well as the use of higher efficiency pumps. This revision decreased the impact of the heat pump pool heater on additional pool pump energy use by about half compared to the October 2015 NODA estimates.

DOE requests comment on the methodology used for determining heat pump pool heater energy use.

[62] DOE Energy Saver, available at *www.energy.gov/energysaver/heat-pump-swimming-pool-heaters* (last accessed April 15, 2021).

[63] NRDC, NRDC's Response to CEC's Invitation to Participate in the Development of Appliance Energy Efficiency Measures 2013 Appliance Efficiency Pre-Rulemaking on Appliance Efficiency Regulations: Docket Number 12–AAER–2F Residential Pool Pumps and Motors (May 2013), available at *efiling.energy.ca.gov/GetDocument.aspx?tn=70721&DocumentContentId=8266* (last accessed April 15, 2021).

[64] Synapse Infusion Group, Inc., Report on Solar Pool Heating Quantitative Survey, August 1998–December 1998, April 1998, NREL/SR–550–26485, available at *www.nrel.gov/docs/fy99osti/26485.pdf* (last accessed April 15, 2021).

[65] Pentair. UltraTemp ETi Hybrid Heater, available at *www.pentair.com/en/products/pool-spa-equipment/pool-heaters/ultratemp-hybrid-heater.html* (last accessed April 15, 2021).

c. Consumer Pool Heater Standby and Off Mode Energy Use

Lochinvar estimated that, based on DOE's estimates of burner operating hours (''BOH'') and average pool operating hours (''POH''), the annual power consumption in standby mode and off mode will be between 0.1 percent and 1 percent of the total annual power consumption for all Lochinvar pool heaters. (Lochinvar, No. 2 at p. 2) DOE's estimate of annual power consumption in standby mode and off mode is consistent with Lochinvar's comment. Lochinvar stated that its gas-fired pool heaters use spark ignition and have no fossil fuel consumption in either standby mode or off mode. (Lochinvar, No. 2 at p. 1) Raypak stated that the typical fossil fuel energy use in standby mode and off mode is zero because gas-fired pool heaters only fire when there is a call for heat to maintain a setpoint temperature. Raypak also stated that standby and off-mode is limited to electricity consumption for all gas-fired, electric resistance, and electric heat pump pool heaters and that the magnitude of the electricity consumption may change slightly based on the input capacity of the unit. (Raypak, No. 4 at p. 2) DOE's understanding based on a review of the market and product literature is consistent with Raypak's comments about fossil fuel consumption in either standby or off mode for units not equipped with standing pilot ignition. DOE only accounted for standby or off mode fossil fuel consumption for gas-fired pool heaters equipped with standing pilot ignition. DOE's understanding based on a review of the market and product literature is also consistent with Raypak's comment that all pool heaters have standby and off mode electricity use. For all gas-fired pool heaters, regardless of ignition type, as well as for electric resistance and electric heat pump pool heaters, DOE's analysis accounts for standby and off mode electricity use.

For the October 2015 NODA, DOE assumed that most consumers are unlikely to set their electric pool heaters to the off mode during the non-heating season. See chapter 7 of the October 2015 NODA TSD. AHRI disagreed with this assumption and stated that in climates with a long and cold non-heating season, many consumers will put their pool heater in the off mode as part of the process of closing their pool for the season. AHRI stated that in parts of the country where the non-heating season is either relatively short or relatively mild, some consumers will also put their pool heater in the off mode. AHRI stated that in parts of the country where there is a minimal non-heating season, consumers are unlikely to put the pool heater in the off mode. (AHRI, No. 16 at p. 5)

Upon further consideration, including consideration of the comments received, for the NOPR, DOE revised its standby and off mode analysis to account for a large fraction of consumers that turn off their equipment during the non-pool heating season, especially in colder regions of the country. Chapter 7 of the NOPR TSD provides details on DOE's standby and off mode analysis for consumer pool heaters.

DOE requests comment on the methodology used for determining standby and off mode energy use.

3. Energy Use Results

For the October 2015 NODA, DOE estimated that the average electric pool heater load is 47.9 million Btu per year, which resulted in average energy use of 14,034 kWh per year for an electric resistance pool heater and 4,091 to 2,505 kWh per year for an electric heat pump pool heater, depending on the efficiency level. See chapter 7 of the October 2015 NODA TSD.

EEI stated that according to RECS 2005, the average electricity use of a consumer pool heater was 3,512 kWh per year. EEI stated that RECS 2005 also estimates that electric pool heaters use an average of 37.7 million Btu/year, corresponding to 11,046 kWh per year. EEI stated that RECS 2001 data show an average annual energy use for electric pool heaters, spa heaters, and hot tubs of 2,300 kWh/year. (EEI, No. 21 at p. 3)

The values presented by EEI do not represent pool heater electricity use, but instead represent the estimated electricity use for the domestic water heater. RECS data before 2015 did not report disaggregated pool heater energy use, but instead groups such energy use with other appliances (including pool pumps, furnace fans, freezers, dishwashers, lighting, etc.), while the domestic water heating energy use associated by the electric water heater is disaggregated.[66] For households with an electric pool heater in RECS 2009 this value (energy use with other appliances) is 16,953 kWh per year.[67] The quoted value reported by EEI from RECS 2005 of 3,512 kWh represents the domestic hot water energy use by the electric water heater for households with both an electric water heater and a pool heater.[68] Meanwhile the 37.7 million Btu/year figure in RECS 2005 represents the domestic hot water energy use for any water heater used in households with an electric pool heater.[69] Neither of these values include the electric pool heater energy use. The 2,300 kWh/year average annual energy use for electric pool heaters, spa heaters, and hot tubs from RECS 2001[70] does not represent RECS 2001 data, but instead references a 1997 report.[71] It is important to note that this 2,300 kWh/year represents all electric pool heaters, spa heaters, and hot tubs, most of which are small spa heaters and hot tubs with electric resistance heaters below 11 kW (which are outside of the scope of the proposed standards). Therefore, the 2,300 kWh is not necessarily inconsistent with DOE's current energy use estimates for electric pool heaters. For the NOPR, the estimated shipment-weighted average electricity consumption for electric pool heaters in residential applications in 2028 is 2,635 kWh.

EEI also stated that pool pumps represent about 70 percent of energy used in swimming pools, consuming around 3,500 kWh per year, so electric pool heaters use about 29 percent of the residential swimming pool energy use in the US and Canada. EEI stated that using these data, an electric pool heater would use about 1,050 kWh per year. (EEI, No. 21 at p. 4) In response, the study cited by EEI includes all swimming pools with and without a pool heater. Swimming pools with both a pool heater and pool pump tend to consume much more energy than the numbers cited by EEI.

[66] Previous to the RECS 2015, RECS only reported disaggregated conditional demand analysis electricity use estimates for space heating, space cooling, water heating, and refrigerator appliances.

[67] This value includes a mixture of households with electric resistance and heat pump pool heaters.

[68] U.S. Department of Energy–Energy Information Administration. 2005 Residential Energy Consumption Survey: Energy Consumption and Expenditures Tables. Table WH6. Average Consumption for Water Heating by Major Fuels Used, 2005 Physical Units per Household, Page 8, available at *www.eia.gov/consumption/residential/data/2005/c&e/pdf/tablewh6.pdf* (last accessed April 15, 2021).

[69] U.S. Department of Energy–Energy Information Administration. 2005 Residential Energy Consumption Survey: Energy Consumption and Expenditures Tables. Table WH7. Average Consumption for Water Heating by Major Fuels Used, 2005 Million British Thermal Units (Btu) per Household, Page 8, available at *www.eia.gov/consumption/residential/data/2005/c&e/pdf/tablewh7.pdf* (last accessed April 15, 2021).

[70] U.S. Department of Energy–Energy Information Administration. 2001 Residential Energy Consumption Survey: Energy Consumption and Expenditures Tables. Table 2. Residential Consumption of Electricity by End Use, 2001, available at *www.eia.gov/consumption/residential/data/2001/index.php?view=consumption#Water* (last accessed April 15, 2021).

[71] Wenzel, Tom, Jonathan G. Koomey, Gregory J. Rosenquist, Marla Sanchez, and James W. Hanford. Energy Data Sourcebook for the U.S. Residential Sector, September 1997, page 128, available at *eta-publications.lbl.gov/sites/default/files/lbnl-40297.pdf* (last accessed April 15, 2021).

For this NOPR, DOE updated its energy use analysis to account for RECS 2015 and CBECS 2012 pool heater data. For residential applications, DOE estimated that on average electric resistance pool heater load is 22.9 million Btu per year, which resulted in average shipment-weighted energy use of 6,788 kWh per year, and on average electric heat pump pool heater load is 37.6 million Btu per year, which resulted in average shipment-weighted energy use of 2,315 kWh per year. For commercial applications,[72] DOE estimated that on average electric resistance pool heater load is 129.0 million Btu per year, which resulted in average shipment-weighted energy use of 38,187 kWh per year, and on average electric heat pump pool heater load is 151.6 million Btu per year, which resulted in average shipment-weighted energy use of 9,202 kWh per year.

For gas-fired pool heaters, DOE also based its analysis on RECS 2015 data, CBECS 2012 data, and updated energy use methodology. For residential applications, DOE estimated that the consumer pool heater load is 28.9 million Btu per year, which resulted in average shipment-weighted energy use of 35.0 million Btu per year. For commercial applications,[73] DOE estimated that on average gas-fired pool heater load is 206.2 million Btu per year, which resulted in average shipment-weighted energy use of 247.2 million Btu per year.

See chapter 7 of the NOPR TSD for further details.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for consumer pool heaters. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of consumer pool heaters in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of consumers. As stated previously, DOE developed consumer samples primarily from the 2015 RECS and 2012 CBECS. For each sample consumer, DOE determined the energy consumption for the consumer pool heater and the appropriate energy price. By developing a representative sample of consumers, the analysis captured the variability in energy consumption and energy prices associated with the use of consumer pool heaters.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and consumer pool heater user samples. For this proposed rule, the Monte Carlo approach is implemented in MS Excel together with the Crystal Ball™ add-on.[74] The model calculated the LCC and PBP for products at each efficiency level for 10,000 consumer pool heater installations per simulation run. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC and PBP calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

DOE calculated the LCC and PBP for all consumers of pool heaters as if each were to purchase a new product in the expected year of required compliance with new or amended standards. Any amended standards would apply to consumer pool heaters manufactured 5 years after the date on which any new or amended standard is published. (42 U.S.C. 6295(m)(4)(A)(ii)) For this analysis DOE assumed publication of a final rule, were standards to be amended, in 2023. Therefore, for purposes of its analysis, DOE used 2028 as the first year of compliance with any amended standards for consumer pool heaters.

Table IV.15 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the NOPR TSD and its appendices.

[72] DOE estimated that commercial applications account for 6 percent of electric pool heater shipments in 2028.

[73] DOE estimated that commercial applications account for 13 percent of gas-fired pool heater shipments in 2028.

[74] Crystal Ball™ is commercially-available software tool to facilitate the creation of these types of models by generating probability distributions and summarizing results within Excel, available at *www.oracle.com/middleware/technologies/crystalball.html* (last accessed April 15, 2021).

TABLE IV.15—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS*

Inputs	Source/method
Product Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Used historical data to derive a price scaling index to project product costs.
Installation Costs	Baseline and incremental installation cost determined with data from 2021 RS Means.
Annual Energy Use	The total annual energy use multiplied by the hours per year. Average number of hours based on field data. *Variability:* Based on regional data and 2015 RECS and 2012 CBECS.
Energy Prices	*Natural Gas:* Based on EIA's Natural Gas Navigator data for 2020. *Propane:* Based on EIA's SEDS for 2019. *Electricity:* Based on EIA's Form 861 data for 2020. *Variability:* Regional energy prices determined for 10 regions for pool heaters in individual single-family homes and 9 census divisions for pool heaters in community and commercial pool heaters. Marginal prices used for both natural gas and electricity.
Energy Price Trends	Based on *AEO2021* price projections.
Repair and Maintenance Costs	Based on 2021 RS Means data and other sources. Assumed variation in cost by efficiency.
Product Lifetime	*Average:* 11.2 years for both electric and gas-fired pool heaters.
Discount Rates	*Residential:* Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances. *Commercial:* Calculated as the weighted average cost of capital for businesses purchasing pool heaters. Primary data source was Damodaran Online.
Compliance Date	2028.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPR TSD.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described previously (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products. Many 82-percent thermal efficiency (EL 0 and EL 1) gas-fired pool heaters without low-NO_X burners are currently available that do not meet low-NO_X criteria in California, Utah, and Texas.[75] Thus, for the NOPR, DOE included the additional cost of a low-NO_X burner to all gas-fired pool heaters installed in certain California,[76] Utah,[77] or Texas [78] locations and applications. DOE assigned a fraction of installations outside these three regions the low-NO_X burner cost adder since the models are so widespread.[79]

DOE requests comments on its assumption that gas-fired pool heaters installed in California, Utah, or Texas would have a low-NO_X burner and the fraction of installations outside these three regions that would have a low-NO_X burner.

Commenting on the October 2015 NODA, EEI stated that publicly available information on websites shows price differentials between electric resistance pool heaters and heat pump pool heaters on the order of $2,000 or $3,000, at least two to three times more than DOE's estimates. (EEI, No. 21 at p. 11) DOE compared its estimated prices to available online retail prices for electric resistance pool heaters and heat pump pool heaters with a size close to 110 kBtu/h and found them to be consistent with DOE's analysis. DOE's derivation of product costs is discussed in more detail in sections IV.C.2 and IV.D of this document.

In the October 2015 NODA, DOE developed separate product price projections for baseline electric resistance pool heaters and heat pump pool heaters. For baseline electric resistance pool heaters, DOE used the historical producer price index (''PPI'') data from the Bureau of Labor Statistics' (''BLS'') for ''heating equipment (except warm air furnace) manufacturing'' from 1980 to 2014 to determine a constant

[75] Low-NO_x gas-fired pool heaters account for 11 percent of gas-fired pool heaters at EL 0 and 59 percent of pool heaters at EL 1.

[76] Low-NOx gas-fired pool heaters with a rated heat input capacity less than or equal to 2,000,000 Btu/h Hour are required in South Coast Air Quality Management District (''SCAQMD'') and San Joaquin Valley Air Pollution Control District (''SJAPCD''). SCAQMD Rule 1146.2, available at *www.aqmd.gov/docs/default-source/rule-book/reg-xi/rule-1146–2.pdf;* SJAPCD Rule 4308, available at *www.valleyair.org/rules/currntrules/03–4308_CleanRule.pdf* (last accessed April 15, 2021). Low NO_X gas-fired pool heaters with a rated heat input capacity 400,001 to 2,000,000 Btu/h are required in Bay Area Air Quality Management District (''BAAQMD''). Regulation 9, available at *www.baaqmd.gov/~/media/dotgov/files/rules/reg-9-rule-6-nitrogen-oxides-emissions-from-natural-gasfired-water-heaters/documents/rg0906.pdf?la=en* (last accessed April 15, 2021).

[77] Low-NO_X gas-fired pool heaters with a rated heat input capacity less than 2,000,000 Btu/Hour. Utah Code 15A–6–102, available at *le.utah.gov/xcode/Title15A/Chapter6/15A–6–S102.html?v=C15A–6–S102_2017050920170509* (last accessed April 15, 2021).

[78] Low NO_X gas-fired pool heater with a rated heat input capacity less than or equal to 2,000,000 Btu/h Hour are required (except for units installed in single-family residences, used exclusively to heat swimming pools and hot tubs). Texas Administrative Code, Control of Air Pollution from Nitrogen Compounds, available at *texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=30&pt=1&ch=117&sch=E&div=3&rl=Y* (last accessed April 15, 2021).

[79] Pires, K. *It's A Low-NO_X Life.* AQUA. November 2008, available at *aquamagazine.com/it-s-a-low-nox-life.html* (last accessed April 15, 2021).

price trend.[80] Because heat pump pool heaters share similar technology with heat pumps used for space conditioning, DOE used historical PPI data for ''unitary air conditioners manufacturing'' spanning the period 1978–2014 to determine a decreasing price trend for these products.[81] See chapter 8 of the October 2015 NODA TSD.

EEI stated that DOE provides no evidence for assuming that heat pump pool heater costs will decrease on a real basis, while electric resistance pool heater prices stay constant on a real basis. (EEI, No. 21 at p. 11) AHRI and EEI stated that pool heaters are significantly different from the space heating and cooling equipment used to derive the product price trend used in the October 2015 NODA analysis. AHRI and EEI also stated that there are different economies of scope and scale, as electric pool heater shipments are in the tens of thousands per year, while space heating and cooling equipment have shipments of about six to seven million units per year. (AHRI, No. 16 at p. 5; EEI, No. 21 at p. 10) AHRI stated that there is no economy of scale available to the manufacturers of heat pump pool heaters. (AHRI, No. 16 at p. 5) EEI also stated that over the past several years, the real price of unitary air conditioners has increased, and to project downward prices ignores this recent trend. EEI stated that DOE should only use data for pool heaters for price projections, and if not available, use the same price factor index projections for electric resistance pool heaters and heat pump pool heaters. (EEI, No. 21 at p. 10)

DOE acknowledges that use of a price trend for heat pumps may not accurately reflect the trend for heat pump pool heaters. For the NOPR, DOE used shipment-weighted wholesaler listed prices from 2003–2019 from the 2020 Pkdata report.[82] This data was used to produce different decreasing price trends for electric resistance pool heaters, heat pump pool heaters, and gas-fired pool heaters. DOE performed a sensitivity analysis on price trend as detailed in appendix 8C of the NOPR TSD. Further details about the development of the price trends can be found in chapter 8 and appendix 8C of the NOPR TSD.

DOE requests comments on its assumption and methodology for determining equipment price trends. DOE also requests data that would allow for use of different price trend projections for electric resistance and heat pump pool heaters.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE estimates all the installation costs associated with fitting a consumer pool heater in a new housing unit, as a replacement for an existing pool heater, or in an existing pool without a pool heater (new owners). This includes any additional costs, such as electric modifications that would be required to install equipment at various efficiency levels. For the October 2015 NODA, DOE used 2015 RS Means for the materials and labor cost data needed to estimate the installation costs for electric pool heaters.[83] See chapter 8 and appendix 8C of the October 2015 NODA TSD. DOE accounted for regional differences in labor costs by using RS Means regional cost factors.

For the October 2015 NODA, DOE accounted for the increased cost of additional electrical requirements for new swimming pool and new owner installations. 80 FR 65169. For new electric pool heater owners (including owners of new swimming pools and owners of existing swimming pools), DOE assumed that an electric resistance pool heater would have higher electrical connection installation costs in comparison to the electrical requirements for a heat pump pool heater. For replacements in outdoor swimming pools, DOE assumed that the installation costs would be the same for all efficiency levels because the old consumer pool heater already has adequate electrical service for the new pool heater. For replacements in indoor installations, DOE assumed that they are all electrical resistance and that replacement with a heat pump pool heater would add a significant cost to run water piping and an electrical connection to outside the building, where the heat pump pool heater will be installed. See chapter 8 and appendix 8C of the October 2015 NODA TSD.

EEI stated that the difference in installation cost between efficiency levels for replacements of outdoor electric pool heaters is understated. EEI stated that based on information from *poolheatpumps.com* and *worldwidepoolheaters.com,* electric resistance pool heaters weigh between 40 and 50 pounds, while heat pump pool heaters weigh anywhere between 140 and 328 pounds (depending on the capacity and features). EEI stated that therefore, shipping and labor costs will be higher, as it is likely that a two-person crew will be needed to move and install the heat pump pool heater. It added that the existing electric resistance pool heater may be located in a space-constrained area, and addressing the space constraints to install a heat pump unit will increase the installation cost dramatically in a number of cases (on the order of thousands of dollars). (EEI, No. 21 at p. 12) DOE's estimates for installing a consumer pool heater come from RS Means, which assumes a two-person crew. DOE also accounts for significant increased installation costs for heat pump pool heaters installed indoors. Further details about the development of the heat pump installation costs can be found in chapter 8 of the NOPR TSD.

DOE seeks comment regarding the fraction of electric pool heater installations that are located in a space-constrained area that could increase the cost of installing a heat pump pool heater.

The October 2015 NODA analysis accounted for installing the electrical connection new swimming pool installations with electric pool heaters. AHRI stated that DOE needs to account for installing utilities in new pool installations. (AHRI, No. 7 at p. 6) For the NOPR, DOE added the cost of new gas piping and electrical connection for new swimming pool installations with a natural gas or propane pool heater.

For the NOPR, DOE updated the installation cost data using RS Means 2021[84] (including labor costs) and included the costs for installing a gas-fired pool heater. For gas-fired pool heaters, the incremental installation cost for the condensing design includes the cost of the condensate drain piping that goes from the consumer pool heater to a P-trap device[85] located at the sewer line entrance. See chapter 8 of the NOPR TSD for more details.

DOE requests comments on its assumption, methodology, and sources

[80] Bureau of Labor Statistics. Heating equipment PPI series ID: PCU 333414333414, available at *www.bls.gov/ppi/*(last accessed April 15, 2021).

[81] Bureau of Labor Statistics. Unitary air conditioners manufacturing product series ID: PCU333415333415E, available at *www.bls.gov/ppi/* (last accessed April 15, 2021).

[82] Pkdata, *2020 Residential and Commercial Swimming Pool, Hot tub, and Pool Heater Customized Report for LBNL,* October 15, 2020, available at: *www.pkdata.com/datapointstrade.html#/* (last accessed April 15, 2021).

[83] RS Means Company, Inc., *RS Means Residential Cost Data 2015* (2015), available at *www.rsmeans.com/* (last accessed April 15, 2021).

[84] RS Means Company, Inc., *RS Means Residential Cost Data 2021* (2021), available at *www.rsmeans.com/* (last accessed April 15, 2021).

[85] A ''P-trap'' is required by many city codes. It helps to isolate the condensate from back-flowing into the pool water and prevents the sewer gas from back-flowing.

for determining installation costs for consumer pool heaters.

3. Annual Energy Consumption

For each sampled installation, DOE determined the energy consumption for a consumer pool heater at different efficiency levels using the approach described previously in section IV.E of this document.

a. Rebound Effect

Higher-efficiency consumer pool heaters reduce the operating costs for a consumer, which can lead to greater use of the consumer pool heater. A direct rebound effect occurs when a product that is made more efficient is used more intensively, such that the expected energy savings from the efficiency improvement may not fully materialize. At the same time, consumers benefit from increased utilization of products due to rebound. Overall consumer welfare (taking into account additional costs and benefits) is generally understood to increase from rebound. DOE did not find any data on the rebound effect that is specific to consumer pool heaters. In the April 2010 final rule, DOE estimated a rebound of 10 percent for pool heaters for the NIA but did not include rebound in the LCC analysis. 75 FR 20112, 20165. Given the uncertainty and lack of data specific to pool heaters, DOE does not include the rebound effect in the LCC analysis for this NOPR. DOE does include rebound in the NIA for a conservative estimate of national energy savings. DOE estimates a rebound effect of 10 percent for consumer pool heaters used in residential applications based on studies of other residential products and 0 percent for consumer pool heaters used in commercial applications. See section IV.H.2 for further details on how the rebound effect is applied in the NIA.

AHRI stated that DOE should include the rebound effect in the LCC analysis. AHRI stated that although the increased use of the heated pool is real, it has no real monetary value. AHRI stated that the increase in a consumer's monthly energy bill due to the rebound effect is real. (AHRI, No. 16 at p. 6) DOE disagrees that the benefit of using a heated pool more often has no real monetary value. The value of any service can be inferred from what a user will pay for it. In the case of a rebound effect, the user indirectly pays for the increased use by foregoing savings on the utility bill. For the LCC analysis, DOE does not include the rebound effect due to a lack of data specific to pool heaters. DOE recognizes, however, that increased consumer pool heater usage associated with the rebound effect provides consumers with increased welfare (*e.g.,* more pool usage or higher swimming pool water temperature). Economic theory suggests that, if it were able to monetize the welfare change to consumers due to the rebound effect, consumer welfare would increase.

DOE requests comments on its approach for determining the rebound effect, including the magnitude of the rebound effect and data sources specific to pool heaters.

4. Energy Prices

Because marginal electricity price more accurately captures the incremental savings associated with a change in energy use from higher efficiency, it provides a better representation of incremental change in consumer costs than average electricity prices. Therefore, DOE applied average electricity prices for the energy use of the product purchased in the no-new-standards case, and marginal electricity prices for the incremental change in energy use associated with the other efficiency levels considered.

For the October 2015 NODA, DOE derived average and marginal residential marginal electricity prices for 30 geographic regions and commercial average and marginal electricity prices for 9 census divisions based on data from EIA's form EIA–861M (formerly EIA–826).[86] 80 FR 65169.

EEI stated that if DOE analyzes commercial pools in this pool heater rulemaking, then the estimated residential energy prices must be decreased significantly to account for lower commercial electricity prices. (EEI, No. 21 at p. 13) In the October 2015 NODA and this NOPR, DOE used commercial energy prices for pool heaters in commercial applications and residential energy prices for pool heaters in residential applications.

For the NOPR, DOE derived average monthly residential and commercial marginal electricity and natural gas prices for the various regions using 2020 data from EIA, [87] [88] and average monthly residential and commercial LPG prices for the various regions using 2019 data from EIA.[89] The methodology and data sources are described in detail in appendix 8E of the NOPR TSD.

To estimate energy prices in future years, DOE multiplied the average regional energy prices by a projection of annual change in national-average residential or commercial energy price in the Reference case from *AEO2021*, which has an end year of 2050.[90] To estimate price trends after 2050, DOE used simple extrapolations of the average annual growth rate in prices from 2045 to 2050 based on the methods used in the 2021 Life-Cycle Costing Manual for the Federal Energy Management Program (''FEMP'').[91]

DOE requests comments on its approach for developing gas, LPG, and electricity prices.

5. Repair and Maintenance Costs

Repair costs are associated with repairing or replacing product components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the product. Typically, small incremental increases in product efficiency produce no or only minor changes in repair and maintenance costs compared to baseline efficiency products.

For the October 2015 NODA, DOE used 2015 RS Means for the materials and labor cost data needed to estimate the maintenance and repair costs for electric pool heaters.[92] 80 FR 65169. In addition, DOE used information provided in comments, manufacturer literature, and expert consultants to calculate maintenance and repair costs, as well as the frequency of maintenance and repairs. DOE accounted for regional differences in labor costs by using RS Means regional cost factors.

DOE estimated that the repair cost for heat pump pool heaters is slightly greater than for electric resistance pool heaters due to the presence of more

[86] U.S. Department of Energy-Energy Information Administration, Form EIA–861M (formerly EIA–826) Database Monthly Electric Utility Sales and Revenue Data (2013), available at *www.eia.gov/electricity/data/eia861m/* (last accessed April 15, 2021).

[87] U.S. Department of Energy-Energy Information Administration, Form EIA–861M (formerly EIA–826) Database Monthly Electric Utility Sales and Revenue Data (1990–2020), available at *www.eia.gov/electricity/data/eia861m/* (last accessed April 15, 2021).

[88] U.S. Department of Energy-Energy Information Administration, Natural Gas Navigator (1990–2020), available at *www.eia.gov/dnav/ng/ng_pri_sum_dcu_nus_m.htm* (last accessed April 15, 2021).

[89] U.S. Department of Energy-Energy Information Administration, 2019 State Energy Consumption, Price, and Expenditure Estimates (SEDS) (2019), available at *www.eia.gov/state/seds/* (last accessed April 15, 2021).

[90] U.S. Department of Energy-Energy Information Administration, *Annual Energy Outlook 2021 with Projections to 2050,* available at *www.eia.gov/outlooks/aeo/* (last accessed April 15, 2021).

[91] Lavappa, Priya D. and J. D. Kneifel. *Energy Price Indices and Discount Factors for Life-Cycle Cost Analysis—2021 Annual Supplement to NIST Handbook 135.* National Institute of Standards and Technology (NIST). NISTIR 85–3273–36, available at *www.nist.gov/publications/energy-price-indices-and-discount-factors-life-cycle-cost-analysis-2021-annual* (last accessed April 15, 2021).

[92] RS Means Company, Inc., *RS Means Residential Cost Data 2015* (2015), available at *www.rsmeans.com/* (last accessed April 15, 2021).

complex components. DOE assumed that electric resistance pool heaters do not require maintenance. DOE assumed that a fraction of consumers maintain their heat pump pool heaters regularly, while the rest do not. DOE estimated the frequency of annual maintenance of heat pump pool heaters using data from RECS 2009 about how often air source heat pump (space heating and cooling) owners perform maintenance. DOE included the cost of preventative maintenance, such as cleaning the air filter and checking the evaporator and refrigeration system, in the maintenance cost of heat pump pool heaters.

AHRI stated that the estimated annual maintenance and repair costs are too low. AHRI is not aware of 2015 RS Means Facilities Repair and Maintenance Data specific to the repair and maintenance of heat pump pool heaters. (AHRI, No. 16 at p. 6) DOE determined maintenance and repair costs based on RS Means data for products that are similar to heat pump pool heaters, such as air source space heating and cooling heat pumps and air conditioners. For the NOPR, DOE used 2021 RS Means for the materials and labor cost data needed to estimate the maintenance and repair costs for electric pool heaters.[93] The methodology and data sources are described in detail in appendix 8F of the NOPR TSD.

Raypak stated that the repair costs for gas-fired pool heaters vary as a function of efficiency. Raypak stated that the lowest-efficiency products have the lowest repair costs because they are generally atmospheric units that do not have blowers and the associated controls. Raypak stated that fan-assisted pool heaters have higher repair costs, and condensing gas-fired pool heaters have the highest repair costs because of the use of materials that are more resistant to both the pool chemicals on one side and corrosive condensate on the other side of the heat exchanger. (Raypak, No. 4 at p. 6) For the NOPR, DOE included additional repair costs for higher efficiency gas-fired pool heaters (including repair costs associated with electronic ignition, controls, and blowers for fan-assisted designs) based on 2021 RS Means data.

Further detail regarding the maintenance and repair costs developed for consumer pool heaters can be found in chapter 8 of the NOPR TSD.

DOE requests comments on its approach for calculating maintenance and repair costs.

[93] RS Means Company, Inc., *RS Means Facilities Repair and Maintenance 2021* (2021), available at *www.rsmeans.com/* (last accessed April 15, 2021).

6. Product Lifetime

For the October 2015 NODA, DOE used consumer pool heater lifetime estimates from published literature and manufacturer input. The data allowed DOE to develop a survival function, which provides a distribution of lifetime ranging from 1 to 25 years with a mean value of 11 years. DOE assumes that the distribution of lifetimes accounts for the impact of the pool water quality on the life of the product, the level of maintenance of a consumer pool heater, and the fraction of consumers winterizing the consumer pool heater.

AHRI stated that an average lifetime of 10 years should be applied consistently throughout the analysis. (AHRI, No. 16 at p. 6) For the October 2015 NODA, the 11.2-year average estimate used was primarily based on published literature and manufacturer input from the RFI. For the NOPR, DOE updated its lifetime methodology by using historical shipments data and pool heater stock data from RECS 1987–2015 and 2020 Pkdata. The updated average lifetime is 11.2 years for both electric and gas-fired pool heaters. Appendix 8G of the NOPR TSD includes a sensitivity analysis of higher and lower lifetime estimates.

DOE welcomes additional comments and data regarding lifetime estimates, particularly in relation to differences between electric resistance pool heaters, heat pump pool heaters, and gas-fired pool heaters.

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating costs. DOE estimated a distribution of residential discount rates for consumer pool heaters based on consumer financing costs and the opportunity cost of consumer funds.

DOE applies weighted average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates. DOE notes that the LCC does not analyze the appliance purchase decision, so the implicit discount rate is not relevant in this model. The LCC estimates net present value over the lifetime of the product, so the appropriate discount rate will reflect the general opportunity cost of household funds, taking this time scale into account. Given the long time horizon modeled in the LCC, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their debt and asset holdings over the LCC analysis period, based on the restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate impact of this rebalancing using the historical distribution of debts and assets.

To establish residential discount rates for the October 2015 NODA LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances[94] (''SCF'') for 1995, 1998, 2001, 2004, 2007, and 2010. Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each type, was 4.0 percent.

AHRI stated that the true marginal discount rates for consumers are much more likely to cluster around 8–9 percent than around 3–5 percent. AHRI stated that only a minority of consumers will be able to use cash or other savings to pay for a consumer pool heater. AHRI stated that even then, cash is not a low/no cost source of funds because it must be replaced with high cost funds or deferred consumption to rebuild the liquidity cushion. AHRI stated that the marginal source of funds for most consumers is credit card debt (estimated by DOE to have a rate of 14.2–15.0 percent). AHRI stated that according to the American Housing Survey, only 7 percent of respondents had home equity loans or lines of credit (the lowest cost of borrowing for most consumers). (AHRI, No. 16 at p. 7)

AHRI stated DOE applies weighted average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates, and as the LCC does not analyze the appliance purchase decision the implicit discount rate is not relevant in this model. For the NOPR, DOE maintained its existing approach to derive discount rates, but included data

[94] Board of Governors of the Federal Reserve System. *Survey of Consumer Finances.* 1995, 1998, 2001, 2004, 2007, and 2010, available at *www.federalreserve.gov/econres/scfindex.htm* (last accessed April 15, 2021).

from the 2013 SCF, 2016 SCF, and 2019 SCF, and updated several other data sources. The average rate in the NOPR analysis across all types of household debt and equity and income groups, weighted by the shares of each type, is 3.8 percent for electric pool heaters and 3.7 percent for gas-fired pool heaters.

To establish commercial discount rates for the fraction of instances where businesses are using consumer pool heaters, DOE estimated the weighted-average cost of capital using data from Damodaran Online.[95] The weighted-average cost of capital is commonly used to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so their cost of capital is the weighted average of the cost to the firm of equity and debt financing. DOE estimated the cost of equity using the capital asset pricing model, which assumes that the cost of equity for a particular company is proportional to the systematic risk faced by that company. The average rate in the October 2015 NODA analysis across all commercial groups was 4.0 percent for electric resistance pool heaters. For the NOPR analysis, the commercial discount rate average is 5.5 percent for electric pool heaters and 5.5 percent for gas-fired pool heaters.

See chapter 8 of the NOPR TSD for further details on the development of consumer discount rates.

8. Energy Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of product efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards).

For the October 2015 NODA, to estimate the energy efficiency distribution of heat pump pool heaters in the compliance year, DOE used the 2015 AHRI Directory of the Certified Pool Heater models as a primary data source.[96] The fraction of heat pump pool heaters was adjusted to take into account standards in Florida [97] and California [98] that require higher efficiency heat pump pool heaters. The region and market specific fraction of electric resistance pool heaters was determined for each region and consumer pool heater market. For example, DOE assumed that warmer areas of the country such as Florida, which are better suited for heat pump installations, have a lower fraction of electric resistance installations (pool type 1, 2, 4, 5, and 7; see section IV.E.1 of this document), while large spas (pool type 3) have a larger fraction of electric resistance installations and all indoor installations (pool type 6) were estimated to be electric resistance pool heaters.

Raypak stated that there are no data available on shipments by efficiency and that all heat pump pool heater models and all electric resistance pool heater models have approximately the same efficiency range. Only gas-fired pool heaters have a range of efficiencies. (Raypak, No. 4 at p. 6) AHRI stated that by 2022, some percentage of commercial indoor pools will be heated with heat pump pool heaters. (AHRI, No. 16 at p. 7) The CA IOUs understand that heat pump pool heaters comprise most of the electric pool heater market, given their significantly higher efficiency compared to electric resistance pool heaters. (CA IOUs, No. 5 at p. 5)

For the NOPR, based on input from manufacturer interviews, DOE adjusted its fraction of electric resistance pool heaters in 2020, as shown in Table IV.16, by assuming a larger growth in heat pump pool heater shipments compared to electric resistance pool heater shipments and an overall lower total fraction of electric resistance pool heaters based on input from manufacturer interviews. DOE also updated the market shares of the different heat pump pool heater efficiency levels based on 2021 AHRI Directory of Certified Product Performance [99] and CEC's 2021 Modernized Appliance Efficiency Database System (''MAEDbS'') [100] for heat pump pool heaters models as well as manufacturer product literature. The fraction of heat pump pool heaters was also adjusted to take into account standards in Connecticut that require higher efficiency heat pump pool heaters,[101] in addition to standards in California and Florida. To extrapolate from 2020 to 2028, DOE assumed different growth rates for the electric resistance and heat pump pool heater shipments. These assumptions resulted in a 7.8 percent overall market share for electric resistance pool heaters in 2028.

[95] Damodaran Online, *Data Page: Costs of Capital by Industry Sector,* (2021), available at *pages.stern.nyu.edu/~adamodar/* (last accessed April 15, 2021).

[96] AHRI. *Directory of the Certified Pool Heater models,* available at *www.ahridirectory.org/* (last accessed April 15, 2021).

[97] 2017 Florida Energy & Conservation Code Chapter 4 section R403.10.5 states: ''Heat pump pool heaters shall have a minimum COP of 4.0 when tested in accordance with AHRI 1160, Table 2, Standard Rating Conditions-Low Air Temperature.'' State of Florida. Energy & Conservation Code, Chapter 4, available at *codes.iccsafe.org/content/FEC2017/chapter-4-re-residential-energy-efficiency?site_type=public* (last accessed April 15, 2021).

[98] California Title 20 Section 1605.3 (g) (3) states: ''For heat pump pool heaters manufactured on or after March 1, 2003, the average of the coefficient of performance (COP) at Standard Temperature Rating and the coefficient of performance (COP) at Low Temperature Rating shall be not less than 3.5.'' California Energy Commission. California Code of Regulations: Title 20. Public Utilities and Energy, Division 2. State Energy Resources Conservation and Development Commission, Chapter 4. Energy Conservation, Article 4. Appliance Efficiency Regulations (Refs & Annos), 1605.3. State Standards for Non-Federally-Regulated Appliances available at *govt.westlaw.com/calregs/Document/IEEDE2D64EF7B4F168C0E85379828A8C2?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)* (last accessed April 15, 2021).

[99] AHRI. *Directory of Certified Heat Pump Pool Heater Models.* February 9, 2021, available at *www.ahridirectory.org* (last accessed April 15, 2021).

[100] CEC. *Modernized Appliance Efficiency Database System.* February 9, 2021, available at *cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx* (last accessed April 15, 2021).

[101] Connecticut's Regulations and Procedures for Establishing Energy Efficiency Standards for Certain Appliances and Products Section 16a–48–4(S)(4) states: ''Heat pump pool heaters shall have a coefficient of performance (COP) of not less than 3.5 at standard temperature rating and at low temperature rating.'' State of Connecticut. Title 16a—Planning and Energy Policy. 2015, available at *eregulations.ct.gov/eRegsPortal/Browse/RCSA/Title_16aSubtitle_16a-48Section_16a-48-4/* (last accessed April 15, 2021).

TABLE IV.16—MARKET SHARE OF ELECTRIC RESISTANCE POOL HEATERS BY CONSUMER POOL HEATER MARKET AND REGION IN 2028

Consumer pool heater market type * and region	Electric resistance pool heater market share (%)		Sample weight of pool heater market (%)
	2020	2028	
Pool Type = 1 and 2, 4, 5, 7 (in South Atlantic)	1.9	1.6	40.0
Pool Type = 1 and 2, 4, 5, 7 (in California, Connecticut)	3.8	3.2	13.4
Pool Type = 1 and 2, 4, 5, 7 (in Rest of Country)	7.5	6.3	38.4
Pool Type = 3 (in South Atlantic)	18.8	15.8	1.0
Pool Type = 3 (in California, Connecticut)	37.5	31.7	1.7
Pool Type = 3 (in Rest of Country)	75.0	63.4	4.5
Pool Type = 6	87.5	73.9	1.1
Overall Electric Resistance Market Share	9.2	7.8	

* Consumer Pool Heater Market Types are described in Table IV.13.

Raypak stated that the majority of the gas-fired pool heater market is and will continue to be at the minimum efficiency level (82-percent thermal efficiency) because of the high price of higher-efficiency models and the low number of annual operating hours. Raypak estimated that the market share for non-condensing gas-fired pool heaters is 98 percent, while the market share for condensing units is 2 percent or less. Raypak believes that this market share trend will continue in the absence of a significant increase in the efficiency standards. (Raypak, No. 4 at p. 5, 7)

For the NOPR, to estimate the energy efficiency distribution of gas-fired pool heaters for the compliance year, DOE used the DOE's 2021 Compliance Certification Management System (''CCMS'') [102] and CEC's 2021 MAEDbS [103] for gas-fired pool heaters models as well as manufacturer product literature. During manufacturer interviews, DOE received input that consumer pool heaters with standing pilot only represented about 4 percent of gas-fired pool heater shipments. In addition, DOE accounted for the ban on pilot lights in gas-fired pool heaters in California,[104] Connecticut,[105] Florida,[106] and New York.[107] DOE's NOPR estimates a higher fraction of gas-fired pool heaters will be above the baseline or condensing compared to Raypak's comment due to the number of models currently available. For example, DOE estimates that the EL 2 market share will be approximately 35 percent and the condensing efficiency level (EL 3) will be approximately 7 percent.

The estimated market shares in the no-new-standards case for consumer pool heaters used for the NOPR are shown in Table IV.17 and Table IV.18. See chapter 8 of the NOPR TSD for further information on the derivation of the efficiency distributions.

TABLE IV.17—EFFICIENCY DISTRIBUTION IN THE NO-NEW-STANDARDS CASE FOR ELECTRIC POOL HEATERS IN 2028

Efficiency level	Representative TE_I (%)	National market share (%)
EL 0	99	7.8
EL 1	387	11.7
EL 2	483	59.1
EL 3	534	9.1
EL 4	551	9.1
EL 5	595	3.1

TABLE IV.18—EFFICIENCY DISTRIBUTION IN THE NO-NEW-STANDARDS CASE FOR GAS-FIRED POOL HEATERS IN 2028

Efficiency level	Representative TE_I (%)	National market share (%)
EL 0	61.1	4.9
EL 1	81.3	43.6
EL 2	83.3	45.3
EL 3	94.8	6.2

DOE welcomes additional comments and data regarding estimates for energy efficiency distribution for 2020 and future distribution in 2028.

9. Payback Period Analysis

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. Payback periods are expressed in years.

[102] DOE. *Compliance Certification Management System*. February 9, 2021, available at *www.regulations.doe.gov/certification-data/* (last accessed April 15, 2021).

[103] CEC. *Modernized Appliance Efficiency Database System*. February 9, 2021, available at *cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx* (last accessed April 15, 2021).

[104] California Title 20 Section 1605.3(g)(1) states: ''Energy Design Standard for Natural Gas Pool Heaters. Natural gas pool heaters shall not be equipped with constant burning pilots.'' California Energy Commission. California Code of Regulations: Title 20. Public Utilities and Energy, Division 2. State Energy Resources Conservation and Development Commission, Chapter 4. Energy Conservation, Article 4. Appliance Efficiency Regulations (Refs & Annos), 1605.3. State Standards for Non-Federally-Regulated Appliances available at *govt.westlaw.com/calregs/Document/IEEDE2D64EF7B4F168C0E85379828A8C2?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)* (last accessed April 15, 2021).

[105] Connecticut's Regulations and Procedures for Establishing Energy Efficiency Standards for Certain Appliances and Products Section 16a–48–4(S)(2) states: ''Natural gas pool heaters shall not be equipped with a constantly burning pilot light.'' State of Connecticut. Title 16a—Planning and Energy Policy. 2015, available at *eregulations.ct.gov/eRegsPortal/Browse/RCSA/Title_16aSubtitle_16a-48Section_16a-48-4/* (last accessed April 15, 2021).

[106] 2017 Florida Energy & Conservation Code Chapter 4 section R403.10.4 states: ''Pool heaters fired by natural or LP gas shall not have continuously burning pilot lights.'' State of Florida. Energy & Conservation Code, Chapter 4, available at *codes.iccsafe.org/content/FEC2017/chapter-4-re-residential-energy-efficiency?site_type=public* (last accessed September 2, 2021).

[107] 2020 Energy Conservation Construction Code of New York State Chapter 4 section R403.10.1 states: ''Gas-fired heaters shall not be equipped with continuously burning ignition pilots.'' State of New York, available at *codes.iccsafe.org/content/NYSECC2020P1* (last accessed September 2, 2021).

Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

As noted previously, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the new and amended standards would be required.

G. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential or new amended energy conservation standards on energy use, net present value (''NPV''), and future manufacturer cash flows.[108] The shipments model takes an accounting approach, tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

For the October 2015 NODA, DOE estimated electric pool heater shipments by projecting shipments in three market segments: (1) Replacements; (2) new swimming pool owners; and (3) new owners with an existing swimming pool that did not previously have an electric pool heater,[109] as follows:

(1) To project electric pool heater replacement shipments in the residential sector, DOE developed retirement functions for electric pool heaters from the lifetime estimates (see section IV.F.6 of this document) and applied them to the existing products in the stock. DOE estimated the existing stock of products using estimated historical shipments and survival function for electric pool heaters from the lifetime estimates. DOE took into account replacement rate of retired (failed) residential electric pool heaters, which DOE estimated to be 70 percent (in other words 30 percent are not replaced).[110]

(2) To project shipments to the new swimming pool market in the residential sector, DOE utilized projected new swimming pool (inground and above ground) installations and saturation rates. DOE estimated projected new swimming pool (inground and above ground) installations based on 2015 Pkdata and projected saturation rates based on saturation data from 2015 Pkdata and 1990–2009 RECS data.[111]

(3) To project shipments to new owners in existing swimming pools that did not previously have an electric pool heater in the residential sector, DOE estimated that a small fraction of existing swimming pools (0.1 percent) would add an electric pool heater.[112]

In addition, in the October 2015 NODA to account for consumer pool heaters in commercial applications, DOE assumed that the market for electric pool heaters used in commercial swimming pools and spas (including community swimming pools and spas) accounted for about 10 percent of the total electric pool heaters market over the analysis period.

AHRI stated that the projected rate of growth in future shipments of electric pool heaters is significantly overestimated. AHRI also stated that the rate of growth in historical shipments of heat pump pool heaters does not support the rate of increase estimated by DOE. (AHRI, No. 16 at p. 7) EEI also questioned the dramatic increase in electric pool heater shipments from 2015 through 2040. (EEI, No. 21 at p. 13)

For the NOPR, DOE updated its shipments estimates based on information from manufacturer interviews, 2016 Pkdata,[113] 2020 Pkdata,[114] and RECS 2015 data, a revised regression methodology for determining projected new swimming pool shipments, and a modified approach for projecting electric pool heaters in standalone spas (without connecting to swimming pools) and in the commercial sector. As a result, DOE projected a lower average annual growth rate of electric pool heater shipments for the NOPR compared to the October 2015 NODA. In regard to heat pump pool heaters, DOE did not have access to the historical data mentioned by AHRI. See chapter 9 of the NOPR TSD for details.

For the NOPR, DOE used a similar approach for projecting gas-fired pool heater shipments. There are limited historical gas-fired pool heater shipments data that were used to calibrate the shipments model.[115] [116] [117] See chapter 9 of the NOPR TSD for details.

DOE requests comment on DOE's methodology and data sources used for projecting the future shipments of consumer pool heaters in the absence of amended energy conservation standards.

Because the standards-case projections take into account the increase in purchase price and the decrease in operating costs caused by amended standards, projected shipments for a standards case typically deviate from those for the no-new-standards case. Because purchase price tends to have a larger impact than operating cost on appliance purchase decisions, standards-case projections

[108] DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general, one would expect a close correspondence between shipments and sales.

[109] DOE assumed in the October 2015 NODA that new owners also account for potential switching between gas and electric pool heater products.

[110] In preparing the October 2015 NODA, DOE did not find historical shipments data for electric pool heaters, so DOE ''backcasted'' the shipments model (*i.e.,* applied the shipments model to years prior to 2015) to estimate historical shipments.

[111] Pkdata. 2015 Swimming Pool and Pool Heater Customized Report for LBNL, available at *www.pkdata.com/datapointstrade.html#/* (last accessed April 15, 2021).

[112] Number of existing swimming pools without an electric pool heater was based on 1990–2015 RECS data.

[113] Pkdata. *2016 Residential and Commercial Swimming Pool, Hot tub, and Pool Heater Customized Report for LBNL,* June 21, 2016, available at *www.pkdata.com/datapointstrade.html#/* (last accessed April 15, 2021).

[114] Pkdata. *2020 Residential Swimming Pool, Hot tub, and Pool Heater Customized Report for LBNL,* October 15, 2020, available at *www.pkdata.com/datapointstrade.html#/* (last accessed April 15, 2021).

[115] U.S. Department of Energy-Office of Codes and Standards, Technical Support Document: Energy Efficiency Standards for Consumer Products: Room Air Conditioners, Water Heaters, Direct Heating Equipment, Mobile Home Furnaces, Kitchen Ranges and Ovens, Pool Heaters, Fluorescent Lamp Ballasts & Television Sets, 1993. Washington, DC Vol. 1 of 3. Report No. DOE/EE–0009.

[116] Association of Pool & Spa Professionals (APSP). 2003–2009 Gas-fired Pool Heater Shipments Data (Comment #135 for 2010 Heating Products Final Rule), available at *www.regulations.gov/document/EERE-2006-STD-0129-0135* (last accessed April 15, 2021).

[117] 2016 Pkdata provided estimated combined historical shipments for electric and gas-fired pool heaters used in commercial applications from 2010–2015.

typically show a decrease in product shipments relative to the no-new-standards case.

EEI stated that if there is a dramatic increase in the efficiency standards for electric pool heaters, while the standards (and retail prices) for competing gas products do not change, it would be reasonable to project a much more dramatic impact on shipments of electric pool heaters than what is currently shown in the TSD. (EEI, No. 21 at p. 13) EEI stated that with a relative price elasticity of −0.68, a 10-percent increase in price would result in a 6.8-percent decrease in shipments. EEI stated that given the estimated incremental total installed cost increases, shipments would be reduced (before any fuel switching) by 10.7 percent to 20.1 percent, which is much higher than the decrease in shipments DOE projected of 5 percent to 7.7 percent. (EEI, No. 21 at p. 14)

DOE's relative price elasticity incorporates the energy cost savings of a more-efficient product as well as the increase in installed cost. Because the energy cost savings of a heat pump water heater are very large compared to the baseline product, the impact of the higher installed cost is lessened. DOE maintained its approach to estimate the impact of any proposed standard on consumer pool heater shipments, but it also conducted a sensitivity analysis that assumes that the energy cost savings of higher efficiency design options are given less weight. Appendix 10C of the NOPR TSD describes this analysis.

Raypak asserted that some consumers may repair existing pool heaters instead of purchasing new units. (Raypak, No. 4 at p. 7) The application of the relative price elasticity implicitly accounts for reduction in shipments for any reason, including extension of the lifetime by repairing existing pool heaters.

EEI stated that if electric resistance heaters are removed from the market, it is very likely that a significant portion of consumers will shift to natural gas-, propane-, or oil-fired pool heaters due to lower first costs. EEI stated that DOE should account for fuel switching in this analysis unless the proposed increases in gas or oil pool heater standards increase the efficiency and/or costs as much as for electric pool heaters. (EEI, No. 21 at p. 14)

DOE reasons that costs associated with switching from an electric pool heater to a gas-fired pool heater (such as extending the gas line, adding a propane tank, or accounting for venting) would tend to limit such switching.

To estimate the impact on shipments of the price increase for the considered efficiency levels, DOE used a relative price elasticity approach. DOE welcomes stakeholder input on the effect of amended standards on future consumer pool heater shipments.

DOE welcomes any additional information that would help to estimate the likely magnitude of fuel and equipment switching in response to the evaluated standards.

H. National Impact Analysis

The NIA assesses the NES and the NPV from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.[118] (''Consumer'' in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses.[119] For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of consumer pool heaters sold from 2028 through 2057.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the TSLs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV.19 summarizes the inputs and methods DOE used for the NIA analysis for the NOPR. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPR TSD for further details.

TABLE IV.19—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Modeled Compliance Date of Standard	2028.
Efficiency Trends	No-new-standards case: Based on historical data. Standards cases: Roll-up in the compliance year and then DOE estimated growth in shipment-weighted efficiency in all the standards cases, except max-tech.
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL. Incorporates projection of future product prices based on historical data.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit	Annual values do not change with efficiency level.
Energy Price Trends	*AEO2021* projections (to 2050) and extrapolation thereafter.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on *AEO2021* (to 2050) and extrapolation thereafter.
Discount Rate	3 percent and 7 percent.

[118] The NIA accounts for impacts in the 50 states and U.S. territories.

[119] For the NIA, DOE adjusts the installed cost data from the LCC analysis to exclude sales tax, which is a transfer.

TABLE IV.19—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS—Continued

Inputs	Method
Present Year	2021.

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.8 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) and for each of the considered product classes for the first full year of anticipated compliance with an amended or new standard. The approach is further described in chapter 10 of the NOPR TSD.

For the standards cases, DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the first full year that standards are assumed to become effective (2028). In this scenario, the market shares of products in the no-new-standards case that do not meet the standard under consideration would ''roll up'' to meet the new standard level, and the market share of products above the standard would remain unchanged. In the standards cases, the efficiency after the compliance year increases at a rate similar to that of the no-new-standards case.

To develop no-new standards case efficiency trends after 2020, DOE assumed an annual decreasing trend of negative 2 percent in the market share for the minimum efficiency levels (EL 0) for both electric and gas-fired pool heaters. This resulted in a market share for EL 0 of 8 percent in 2028 and 4 percent in 2057 for electric pool heaters and 4 percent in 2028 and 2 percent in 2057 for gas-fired pool heaters.

2. National Energy Savings

The NES analysis involves a comparison of national energy consumption of the considered products between each potential standards case (TSL) and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new-standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO2021.* Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

Use of higher-efficiency products is occasionally associated with a direct rebound effect, which refers to an increase in utilization of the product due to the increase in efficiency. DOE did not find any data on the rebound effect specific to consumer pool heaters. DOE applied a rebound effect of 10 percent for consumer pool heaters used in residential applications based on studies of other residential products and 0 percent for consumer pool heaters used in commercial applications (see section IV.F.3.a for more details). The April 2010 final rule also utilized a 10 percent rebound when calculating the NES. 75 FR 20112, 20165. The calculated NES at each efficiency level is therefore reduced by 10 percent in residential applications. DOE does not include the rebound effect in the NPV analysis.

In 2011, in response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use full-fuel-cycle (''FFC'') measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (''NEMS'') is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [120] that EIA uses to prepare its *Annual Energy Outlook.* The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the NOPR TSD.

NPGA commented that the calculation of primary (source) energy savings is misleading and unnecessary given the use of FFC analysis. NPGA further stated that DOE's reliance on an additional energy consumption calculation conflicts with the purpose and function of FFC analysis. NPGA urged DOE to rely on the FFC analysis to calculate NES as the best estimation of energy consumption and as intended by the agency's formal policy adoption of FFC. (NPGA, No. 15 at p. 3)

As indicated in section I and Table V.23 of this document, DOE primarily uses FFC energy savings when considering the energy savings from standards. DOE presents primary energy savings in some tables for information purposes.

NPGA stated that there is no clear difference between the FFC analysis that measures energy consumption in ''extracting, processing, and transporting'' versus primary (source) energy that measures energy loss in transmission and distribution and in electricity generation.'' (NPGA, No. 15 at p. 3) The FFC includes primary energy as well as upstream energy, which refers to the extracting, processing, and transporting of the primary fuels, such as coal or natural gas that are used to generate electricity. In contrast, losses in transmission and distribution and in electricity generation refer to the losses in the conversion from the primary fuel to electricity and in distribution of electricity.

[120] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009,* DOE/EIA–0581, Oct. 2009, available at *www.eia.gov/forecasts/aeo/nems/overview/pdf/0581(2009).pdf* (last accessed April 15, 2021).

EEI stated that the national average site-to-source conversion factors ignore the significant variation in electric generation by region. EEI also stated that the factors incorrectly assign a fossil fuel heat rate to renewable electric generation. (EEI, No. 21 at p. 15)

DOE's approach uses end-use dependent site-to-primary energy conversion factors. The correlation between regional variations in end-use energy consumption and regional variations in the mix of generation technologies is accounted for by this approach. Regarding renewable electric generation, DOE uses the same convention that EIA uses in national energy statistics. Renewable electric generation technologies transform the inputs of solar, wind, and hydro energy into electricity, but characterizing these inputs in terms of primary energy consumption is difficult and not very relevant for national energy accounting. The convention used by EIA reflects the likelihood that renewable electricity generation displaces conventional fossil fuel generation.

EEI stated that the factors that convert site electricity use to primary energy use in the October 2015 NODA NIA spreadsheet increase slightly from 2035 to 2040 without explanation and with no improvement after 2040. EEI stated that the post-2035 increase does not comport with the expected fuel mix that will be generating electricity post-2030. (EEI, No. 21 at pp. 14–15)

The increase from 2035 to 2040 is consistent with the projections of the mix of electricity generation in *AEO2015,* which was used in the October 2015 NODA. Regarding the factors after 2040, the marginal conversion factors derived from projections in *AEO2015* do not show a clear trend, so DOE refrained from projecting a change after 2040. For the NOPR, DOE used conversion factors based on *AEO2021,* which shows a generally flat trend from 2035 to 2050 for these factors. *AEO2021* provides trends up to 2050, after which DOE maintained the 2050 value.

EEI expressed concern that DOE used an annual conversion factor for an appliance that operates primarily during the summer season in the majority of the country. EEI stated that if DOE is going to use annualized data, it should at least recognize in its analysis that summer usage often corresponds with the use of more solar electricity (central station and distributed). (EEI, No. 21 at pp. 15–16)

DOE acknowledges that marginal site-to-source conversion factors in the summer may vary from annual factors; however, *AEO* does not provide information that would allow for derivation of such factors. DOE notes that the greater use of solar electricity in the summer does not necessarily mean that solar electricity would be disproportionately reduced at the margin if electricity demand declines.

EEI stated that the site-to-source conversion factors do not account for the changes that are due to the Environmental Protection Agency's (''EPA'') Clean Power Plan (''CPP''). (EEI, No. 21 at p. 16) EEI also stated that any estimated upstream losses analysis regarding the production of electricity should properly account for new Federal regulations and increases in the use of lower carbon and renewable electric generation. (EEI, No. 21 at p. 16)

On July 8, 2019, EPA published a final rule repealing the Clean Power Plan. 84 FR 32520. As stated previously, for this NOPR, DOE used projections from *AEO2021.* The *AEO2021* reference case does not include the CPP but does account for recent Federal regulations. Because renewable electricity generation is assigned a fossil-fuel-equivalent site-to-primary factor, increases in the share of such generation would have little impact on the site-to-source conversion factors.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

As discussed in section IV.F.1 of this document, DOE used historical shipment-weighted wholesaler prices to produce different decreasing price trends for electric resistance pool heaters, heat pump pool heaters, and gas-fired pool heaters. DOE's projection of product prices is described in appendix 10C of the NOPR TSD.

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price projections on the consumer NPV for the considered TSLs for consumer pool heaters. In addition to the default price trend, DOE considered two product price sensitivity cases: (1) A low price—high declining trend case based on exponential fit to 2003 to 2014 wholesale price data from the 2020 Pkdata report [121] for electric resistance pool heaters, heat pump pool heaters, and gas-fired pool heaters, and (2) a constant price trend. The derivation of these price trends and the results of these sensitivity cases are described in appendix 10C of the NOPR TSD.

The operating cost savings are the sum of the differences in energy cost savings, maintenance, and repair costs, which are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the calculated 2020 national average and marginal residential and commercial energy prices by the projection of annual national-average residential or commercial energy price changes from the Reference case from *AEO2021,* which has an end year of 2050.[122] To estimate price trends after 2050, DOE used the average of annual growth rates in prices from 2045 through 2050.[123] As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *AEO2021* Reference case that have lower and higher economic growth. Those cases have lower and higher energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10D of the NOPR TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this NOPR, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (''OMB'') to Federal agencies on the development of regulatory analysis.[124] The discount

[121] Pkdata, *2020 Residential and Commercial Swimming Pool, Hot tub, and Pool Heater Customized Report for LBNL,* October 15, 2020, available at */www.pkdata.com/datapointstrade.html#/* (last accessed April 15, 2021).

[122] The regional 2020 average and marginal energy prices are converted to national averages using the regional weights calculated by the pool heater sample discussed in section IV.E.1. The census division price trends from *AEO2021* are also converted to national average values using the pool heater sample weights.

[123] Lavappa, Priya D. and J.D. Kneifel. *Energy Price Indices and Discount Factors for Life-Cycle Cost Analysis—2021 Annual Supplement to NIST Handbook 135.* National Institute of Standards and Technology (NIST). NISTIR 85–3273–36, available at *www.nist.gov/publications/energy-price-indices-and-discount-factors-life-cycle-cost-analysis-2021-annual* (last accessed April 15, 2021).

[124] United States Office of Management and Budget. Circular A–4: Regulatory Analysis.

rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended energy conservation standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. The purpose of a subgroup analysis is to determine the extent of any such disproportional impacts. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this NOPR, DOE analyzed the impacts of the considered standard levels on senior-only households and small businesses.[125] The analysis used subsets of the consumer pool heater sample composed of households or buildings that meet the criteria for the subgroup. DOE used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on these subgroups. Chapter 11 in the NOPR TSD describes the consumer subgroup analysis.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of new and amended energy conservation standards on manufacturers of consumer pool heaters and to estimate the potential impacts of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of projected industry cash flows, the INPV, investments in research and development (''R&D'') and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how new and amended energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (''GRIM''), an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant products. The key GRIM outputs are the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital, and the impact to domestic manufacturing employment. The model uses standard accounting principles to estimate the impacts of more-stringent energy conservation standards on a given industry by comparing changes in INPV and domestic manufacturing employment between a no-new-standards case and the various standards cases *(i.e.,* TSLs). To capture the uncertainty relating to manufacturer pricing strategies following new and amended standards, the GRIM estimates a range of possible impacts under different markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard's impact on manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the NOPR TSD.

DOE conducted the MIA for this proposed rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the consumer pool heater manufacturing industry based on the market and technology assessment, preliminary manufacturer interviews, and publicly-available information. This included a top-down analysis of consumer pool heater manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.,* revenues; materials, labor, overhead, and depreciation expenses; selling, general, and administrative expenses (''SG&A''); and R&D expenses). DOE also used public sources of information to further calibrate its initial characterization of the consumer pool heater manufacturing industry, including company filings of form 10–K from the SEC,[126] corporate annual reports, industry trade association product database from AHRI,[127] the U.S. Census Bureau's *Economic Census,*[128] and reports from Dun & Bradstreet.[129]

In Phase 2 of the MIA, DOE prepared a framework industry cash-flow analysis to quantify the potential impacts of new and amended energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the compliance date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) Creating a need for increased investment, (2) raising production costs per unit, and (3) altering revenue due to higher per-unit prices and changes in sales volumes.

In addition, during Phase 2, DOE developed interview guides to distribute to manufacturers of consumer pool heaters in order to develop other key GRIM inputs, including product and capital conversion costs, and to gather additional information on the anticipated effects of energy conservation standards on revenues, direct employment, capital assets, industry competitiveness, and subgroup impacts.

In Phase 3 of the MIA, DOE conducted structured, detailed interviews with representative manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. See section IV.J.3 of this document for a description of the key issues raised by manufacturers during the interviews. As part of Phase 3, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by new and amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small business manufacturers, low-volume manufacturers, niche players, and/or manufacturers exhibiting a cost

September 17, 2003. Section E, available at *www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf* (last accessed April 15, 2021).

[125] DOE did not evaluate low-income consumer subgroup impacts for pool heaters because the sample size of the subgroups is too small for meaningful analysis.

[126] See *www.sec.gov/edgar.shtml.*

[127] See *www.ahridirectory.org/NewSearch?programId=36&searchTypeId=3.*

[128] See *www.census.gov/programs-surveys/asm/data.html.*

[129] See *www.dnb.com.*

structure that largely differs from the industry average. DOE identified one manufacturer subgroup for a separate impact analysis: Small business manufacturers. The small business subgroup is discussed in section VI.B, ''Review under the Regulatory Flexibility Act'' of this document, and in chapter 12 of the NOPR TSD.

2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to new and amended standards that result in a higher or lower industry value. The GRIM uses a standard, annual discounted cash-flow analysis that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from new and amended energy conservation standards. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2021 (the base year of the analysis) and continuing to 2057. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of consumer pool heaters, DOE used a real discount rate of 7.4 percent, which was derived from industry financials and then modified according to feedback received during manufacturer interviews.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the new and amended energy conservation standards on consumer pool heater manufacturers. As discussed previously, DOE developed critical GRIM inputs using a number of sources, including publicly available data, results of the engineering analysis, and information gathered from industry stakeholders during the course of manufacturer interviews. The GRIM results are presented in section V.B.2. of this document. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the NOPR TSD.

a. Manufacturer Production Costs

Manufacturing more efficient products is typically more expensive than manufacturing baseline products due to the use of more complex components, which are typically more costly than baseline components. The changes in the manufacturer production costs (''MPCs'') of covered products can affect the revenues, gross margins, and cash flow of the industry.

In the MIA, DOE used the MPCs calculated in the engineering analysis, as described in section IV.C and in chapter 5 of the NOPR TSD. DOE used information from its teardown analysis, described in section IV.C.2 of this document to disaggregate the MPCs into material, labor, depreciation, and overhead costs. To calculate the MPCs for products above the baseline, DOE added incremental material, labor, depreciation, and overhead costs from the engineering cost-efficiency curves to the baseline MPCs. These cost breakdowns were validated with manufacturers during manufacturer interviews.

For a complete description of the MPCs, see chapter 5 of the NOPR TSD.

b. Shipments Projections

The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For the no-new-standards case, the GRIM uses the NIA's annual shipment projections derived from the shipment analysis from the reference year, 2021, to the end of the analysis period in 2057. For the standards case shipment projection, the GRIM uses the NIA standards case shipment projections. The NIA assumes elasticity in demand as explained in section IV.G and chapter 9 of the NOPR TSD. Therefore, the total number of shipments per year in the standards cases could be fewer than the total number of shipments per year in the no-new-standards case. DOE assumed that products that did not meet the analyzed standards in the no-new-standards case in the compliance year and beyond, would become minimally compliant products in the standards cases. This is referred to as a ''roll up'' shipment scenario (*i.e.,* new and amended energy conservation standards only impact models and shipments that do not meet the adopted standards).

For a complete description of the shipments analysis, see chapter 9 of the NOPR TSD.

c. Product and Capital Conversion Costs

New and amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and product designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each product class. For the MIA, DOE classified these conversion costs into two major groups: (1) Product conversion costs; and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with new and amended energy conservation standards. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled.

To evaluate the level of capital conversion costs manufacturers would likely incur to comply with new and amended energy conservation standards, DOE used data gathered from manufacturer interviews as well as information derived from the product teardown analysis and engineering model. In developing its conversion cost estimates, DOE conservatively assumed manufacturers would redesign all noncompliant heat pump pool heater models and gas-fired pool heater models to comply with new and amended energy conservation standards. Manufacturers could choose to drop some models that do not meet the levels prescribed by new and amended standards. Therefore, total product and capital conversion costs may be lower than the estimates calculated as part of this analysis.

Product conversion are calculated on a per model basis and are primarily driven by R&D costs. R&D costs include redesign, selection and purchasing of new components, and testing to demonstrate compliance with adopted energy conservation standards for those redesigned models. DOE assumed that manufacturers would discontinue all their electric resistance pool heater models for any standard level above baseline for electric pool heaters, because electric resistance pool heaters use different technologies and designs than heat pump pool heaters. Consequently, no redesign costs are assigned to the redesign of electric resistance pool heater models. For heat pump pool heaters, all design options include growing the size of the evaporator. DOE assumed that the per model redesign effort is the same irrespective of how much the size of the evaporator is increased and the per model redesign cost does not vary by the analyzed standard for electric pool heaters, however, the number of models that would be required to be redesigned would vary by the analyzed standard. DOE estimated a redesign effort of six

months of engineering time per model for electric heat pump pool heaters.

For gas-fired pool heaters, DOE estimated that the redesign effort varies by efficiency level. The design option analyzed at EL 1 replaces the standing pilot with an electronic ignition system. This entails a component swap and requires the addition of a sparker. DOE estimates a total of two months of engineering time per model to redesign a model with a standing pilot to an electronic ignition. The design option analyzed at EL 2 incorporates a blower. Product conversion costs involve the selection, qualification, and safety testing of the blower. DOE estimated a redesign effort of 18 months of engineering time per model, or three fully utilized engineers for a period of six months. The design option analyzed at max-tech level incorporates condensing technology. This requires a significant amount of redesign to fine tune the gas-fired pool heater such that it can accommodate condensate. DOE estimated a redesign effort of 24 months of engineering per model, or four fully utilized engineers for a period of six months each.

The product conversion costs presented in Table IV.20 also include costs of testing and demonstrating compliance that would result from new and amended standards. Since gas-fired pool heaters already must meet DOE energy conservation standards, only the models that are redesigned because of amended energy conservation standards would have to be retested to demonstrate compliance with the standards. In contrast, electric pool heaters are not currently required to be tested to demonstrate compliance with a DOE energy conservation standard. Therefore, for the analyzed TSLs that set standards for electric pool heaters, manufacturers would have to test all electric pool heater models to comply with potential standards.

Capital conversion costs are estimated on a per manufacturer basis. DOE developed a list of manufacturers of gas-fired, heat pump, and electric resistance pool heaters using manufacturer websites and public databases such as AHRI [130] and DOE's publicly available Compliance Certification Database.[131] For gas-fired pool heaters capital conversion costs would be minimal at EL 1 and EL 2, which would likely not require the use of condensing technology to meet these efficiency levels. However, manufacturers would likely be required to use condensing technology to meet EL 3. This would require larger investments from manufacturers to necessitate major changes to tooling to make condensing heat exchangers as well as changes to injection molding machinery to accommodate larger cabinet sizes.

In general, DOE assumes all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the new and amended standards. The conversion cost figures used in the GRIM can be found in Table IV.20 and in section V.B.2.a of this document. For additional information on the estimated capital and product conversion costs, see chapter 12 of the NOPR TSD.

Table IV.20 Industry Product and Capital Conversion Costs per Efficiency Level

	Units	Product Class	Efficiency Level					
			Baseline	EL 1	EL 2	EL 3	EL 4	EL 5
Product Conversion Costs	*2020$ millions*	Gas-Fired	0.0	0.5	9.1	15.5		
		Electric	0.0	2.2	5.5	22.4	23.5	26.1
Capital Conversion Costs	*2020$ millions*	Gas-Fired	0.0	0.0	0.8	12.1		
		Electric	0.0	0.0	0.6	5.3	5.3	5.4

DOE seeks additional information on industry capital and product conversion costs of compliance associated with the analyzed energy conservation standards for consumer pool heaters evaluated in this NOPR.

d. Stranded Assets

In addition to capital and product conversion costs, new and amended energy conservation standards could create stranded assets (*i.e.,* tooling and equipment that would have enjoyed longer use if the energy conservation standard had not made them obsolete). In the compliance year, manufacturers write down the remaining undepreciated book value of existing tooling and equipment rendered obsolete by new and amended energy conservation standards.

DOE assumed that manufacturers discontinue all electric resistance pool heaters for any electric pool heater standard above baseline. Manufacturers of electric resistance pool heaters typically purchase components from vendors and assemble them in-house. These manufacturers do not own capital equipment or machinery and therefore stranded assets are limited for electric resistance pool heater manufacturers. DOE estimated stranded assets for the electric pool heater industry at $0.7 million for any level above baseline. This includes welding machines and other tools used to assemble these products.

Based on manufacturer interviews, manufacturers could strand assets for gas-fired pool heaters if standards were set at max-tech. Manufacturers stated that existing injection molding machines, fin presses, and fin dies could be orphaned. DOE estimated the industry stranded assets for gas-fired pool heaters to be $5.6 million if standards were set at max-tech.

DOE requests comment on the estimated stranded assets for both electric resistance pool heaters and gas-fired pool heaters.

e. Manufacturer Markup Scenarios

MSPs include direct manufacturing production costs (*i.e.,* labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied non-production cost markups to the MPCs estimated in the engineering analysis for each product class and efficiency level, and then added the cost of shipping. Modifying these markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case manufacturer markup scenarios to represent uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of new and amended energy conservation standards: (1) A preservation of gross

[130] See *www.ahridirectory.org/* (last accessed April 15, 2021).

[131] See *www.regulations.doe.gov/certification-data* (last accessed April 15, 2021).

margin percentage markup scenario; and (2) a preservation of per-unit operating profit markup scenario. These scenarios lead to different manufacturer markup values that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the preservation of gross margin percentage scenario, DOE applied a single uniform ''gross margin percentage'' manufacturer markup across all efficiency levels. As production costs increase with efficiency, this scenario implies that the absolute dollar markup will increase as well. Based on publicly available financial information for consumer pool heater manufacturers, and information obtained during manufacturer interviews, DOE assumed the non-production cost manufacturer markup—which includes SG&A expenses, R&D expenses, interest, and profit—to be 1.33 for gas-fired pool heaters and 1.28 for electric pool heaters. These manufacturer markups are consistent with the ones DOE assumed in the engineering analysis (see section IV.C of this document). Therefore, DOE assumes that this scenario represents the upper bound to industry profitability under energy conservation standards.

Under the preservation of per-unit operating profit markup scenario, DOE modeled a scenario in which manufacturers are not able to increase per-unit operating profit in proportion to increases in MPCs. Under this scenario, as the MPCs increase, manufacturers are generally required to reduce the manufacturer markup to maintain a cost competitive offering in the market. Therefore, gross margin (as a percentage) shrinks in the standards cases. This manufacturer markup scenario represents the lower bound to industry profitability under new and amended energy conservation standards.

A comparison of industry financial impacts under the two manufacturer markup scenarios is presented in section V.B.2.a of this document.

3. Manufacturer Interviews

DOE conducted additional interviews with manufacturers following the October 2015 NODA as part of the NOPR analysis. In these interviews, DOE asked manufacturers to describe their major concerns with new and amended consumer pool heater energy conservation standards. Manufacturers identified three major areas of concern: (1) Use of integrated thermal efficiency metric for electric pool heaters; (2) cost and complexity of installing condensing gas-fired pool heaters; and (3) impact on profitability. Manufacturer interviews are conducted under non-disclosure agreements (''NDAs''), so DOE does not document these discussions in the same way that it does public comments in the comment summaries and DOE's responses throughout the rest of this document.

a. Use of Integrated Thermal Efficiency Metric for Electric Pool Heaters

Manufacturers stated that the coefficient of performance is currently used by industry and consumers to evaluate the efficiency of electric heat pump pool heaters. This metric is accepted throughout the industry and is widely used in state regulations such as California, Connecticut, and Florida. Manufacturers commented that changing the metric to integrated thermal efficiency would be confusing to consumers, because it shows efficiencies over 100 percent. Furthermore, using integrated thermal efficiency would make the comparison between existing heat pumps with a coefficient of performance label, and heat pumps with an integrated thermal efficiency metric more difficult.

b. Cost and Complexity of Installing Condensing Gas-Fired Pool Heaters

Manufacturers indicated that a condensing standard would require greater investment in R&D and capital equipment than a non-condensing standard and would also raise per-unit production costs, resulting in higher end-user purchase prices. They expressed concern that the combination of higher installation costs and retail prices for condensing pool heaters could deter consumers from purchasing new units, potentially impacting manufacturer revenues and reducing the prospective energy savings from new and amended standards.

c. Impacts on Profitability

Manufacturers have indicated that it would be optimistic for DOE to assume that as MPCs increase in response to energy conservation standards, manufacturers would be able to maintain the same gross margin percentage markup. Manufacturers stated that consumer pool heaters are typically purchased on a first-cost basis and they indicated that they do not earn a premium on more efficient units. They indicated that consumer pool heaters are relatively low-margin offerings and consumers are typically more concerned with capacity and speed of heating than with efficiency and therefore look to purchase the least expensive consumer pool heater at the right capacity.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) 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.

The analysis of power sector emissions of CO_2, NO_X, SO_2, and Hg uses marginal emissions factors that were derived from data in *AEO2021,* as described in section IV.M of this document. Details of the methodology are described in the appendices to chapters 13 and 15 of the TSD for this NOPR.

Power sector emissions of CO_2, CH_4, and N_2O are estimated using Emission Factors for Greenhouse Gas Inventories published by the EPA.[132] The FFC upstream emissions are estimated based on the methodology described in chapter 15 of the NOPR TSD. The upstream emissions include both emissions from extraction, processing, and transportation of fuel, and ''fugitive'' emissions (direct leakage to the atmosphere) of CH_4 and CO_2.

The on-site operation of certain consumer pool heaters requires combustion of fossil fuels and results in emissions of CO_2, NO_X, SO_2, CH_4, and N_2O at the sites where these products are used. DOE accounted for the reduction in these site emissions and the associated FFC upstream emissions due to potential standards. Site emissions of these gases were estimated using Emission Factors for Greenhouse Gas Inventories and emissions intensity factors from an EPA publication.[133]

The emissions intensity factors are expressed in terms of physical units per megawatt-hour (MWh) or million British thermal units (MMBtu) of site energy savings. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

[132] Available at *www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf* (last accessed July 12, 2021).

[133] U.S. Environmental Protection Agency. External Combustion Sources. In *Compilation of Air Pollutant Emission Factors.* AP–42. Fifth Edition. Volume I: Stationary Point and Area Sources. Chapter 1, available at *www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors* (last accessed April 15, 2021).

1. Air Quality Regulations Incorporated in DOE's Analysis

DOE's no-new-standards case for the electric power sector reflects the *AEO2021,* which incorporates the projected impacts of existing air quality regulations on emissions. *AEO2021* generally represents current legislation and environmental regulations, including recent government actions, that were in place at the time of preparation of *AEO2021,* including the emissions control programs discussed in the following paragraphs.[134]

SO_2 emissions from affected electric generating units (''EGUs'') are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from numerous States in the eastern half of the United States are also limited under the Cross-State Air Pollution Rule (''CSAPR''). 76 FR 48208 (Aug. 8, 2011). CSAPR requires these States to reduce certain emissions, including annual SO_2 emissions, and went into effect as of January 1, 2015.[135] *AEO2021* incorporates implementation of CSAPR, including the update to the CSAPR ozone season program emission budgets and target dates issued in 2016, 81 FR 74504 (Oct. 26, 2016). Compliance with CSAPR is flexible among EGUs and is enforced through the use of tradable emissions allowances. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by another regulated EGU.

However, beginning in 2016, SO_2 emissions began to fall as a result of the Mercury and Air Toxics Standards (''MATS'') for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS final rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (''HAP''), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions are being reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *T*o continue operating, coal power plants must have either flue gas desulfurization or dry sorbent injection systems installed. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Because of the emissions reductions under the MATS, it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by another regulated EGU. Therefore, energy conservation standards that decrease electricity generation would generally reduce SO_2 emissions. DOE estimated SO_2 emissions reduction using emissions factors based on *AEO2021.*

CSAPR also established limits on NO_X emissions for numerous States in the eastern half of the United States. Energy conservation standards would have little effect on NO_X emissions in those States covered by CSAPR emissions limits if excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other EGUs. In such case, NO_X emissions would remain near the limit even if electricity generation goes down. A different case could possibly result, depending on the configuration of the power sector in the different regions and the need for allowances, such that NO_X emissions might not remain at the limit in the case of lower electricity demand. In this case, energy conservation standards might reduce NO_X emissions in covered States. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that standards will not reduce NO_X emissions in States covered by CSAPR. Energy conservation standards would be expected to reduce NO_X emissions in the States not covered by CSAPR. DOE used *AEO2021* data to derive NO_X emissions factors for the group of States not covered by CSAPR.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would be expected to slightly reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO2021,* which incorporates the MATS.

DOE welcomes any additional comments on the approach for conducting the emissions analysis for pool heaters.

L. Monetizing Emissions Impacts

As part of the development of this proposed rule, for the purpose of complying with the requirements of Executive Order 12866, DOE considered the estimated monetary benefits from the reduced emissions of CO_2, CH_4, N_2O, NO_X, and SO_2 that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the projection period for each TSL. This section summarizes the basis for the values used for monetizing the emissions benefits and presents the values considered in this NOPR.

On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible under law. DOE requests comment on how to address the climate benefits and other non-monetized effects of the proposal.

1. Monetization of Greenhouse Gas Emissions

For the purpose of complying with the requirements of Executive Order 12866, DOE estimates the monetized benefits of the reductions in emissions

[134] For further information, see the Assumptions to *AEO2021* report that sets forth the major assumptions used to generate the projections in the Annual Energy Outlook. Available at *www.eia.gov/outlooks/aeo/assumptions/* (last accessed April 15, 2021).

[135] CSAPR requires states to address annual emissions of SO_2 and NO_X, precursors to the formation of fine particulate matter ($PM_{2.5}$) pollution, in order to address the interstate transport of pollution with respect to the 1997 and 2006 $PM_{2.5}$ National Ambient Air Quality Standards (''NAAQS''). CSAPR also requires certain states to address the ozone season (May-September) emissions of NO_X, a precursor to the formation of ozone pollution, in order to address the interstate transport of ozone pollution with respect to the 1997 ozone NAAQS. 76 FR 48208 (Aug. 8, 2011). EPA subsequently issued a supplemental rule that included an additional five states in the CSAPR ozone season program; 76 FR 80760 (Dec. 27, 2011) (Supplemental Rule).

of CO_2, CH_4, and N_2O by using a measure of the social cost (''SC'') of each pollutant (*e.g.,* SC–GHGs). These estimates represent the monetary value of the net harm to society associated with a marginal increase in emissions of these pollutants in a given year, or the benefit of avoiding that increase. These estimates are intended to include (but are not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. DOE exercises its own judgment in presenting monetized climate benefits as recommended by applicable Executive Orders and guidance, and DOE would reach the same conclusion presented in this notice in the absence of the social cost of greenhouse gases, including the February 2021 Interim Estimates presented by the Interagency Working Group on the Social Cost of Greenhouse Gases.

DOE estimated the global social benefits of CO_2, CH_4, and N_2O reductions (*i.e.,* SC–GHGs) using the estimates presented in the Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990 published in February 2021 by the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG) (IWG, 2021).[136] The SC–GHGs is the monetary value of the net harm to society associated with a marginal increase in emissions in a given year, or the benefit of avoiding that increase. In principle, SC–GHGs includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. The SC–GHGs therefore, reflects the societal value of reducing emissions of the gas in question by one metric ton. The SC–GHGs is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect CO_2, N_2O and CH_4 emissions. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD), the DOE agrees that the interim SC–GHG estimates represent the most appropriate estimate of the SC–GHG until revised estimates have been developed reflecting the latest, peer-reviewed science.

The SC–GHGs estimates presented here were developed over many years, using transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. Specifically, in 2009, an interagency working group (IWG) that included the DOE and other executive branch agencies and offices was established to ensure that agencies were using the best available science and to promote consistency in the social cost of carbon (SC–CO_2) values used across agencies. The IWG published SC–CO_2 estimates in 2010 that were developed from an ensemble of three widely cited integrated assessment models (IAMs) that estimate global climate damages using highly aggregated representations of climate processes and the global economy combined into a single modeling framework. The three IAMs were run using a common set of input assumptions in each model for future population, economic, and CO_2 emissions growth, as well as equilibrium climate sensitivity (ECS)—a measure of the globally averaged temperature response to increased atmospheric CO_2 concentrations. These estimates were updated in 2013 based on new versions of each IAM. In August 2016 the IWG published estimates of the social cost of methane (SC–CH_4) and nitrous oxide (SC–N_2O) using methodologies that are consistent with the methodology underlying the SC–CO_2 estimates. The modeling approach that extends the IWG SC–CO_2 methodology to non-CO_2 GHGs has undergone multiple stages of peer review. The SC–CH_4 and SC–N_2O estimates were developed by Marten et al. (2015) and underwent a standard double-blind peer review process prior to journal publication. In 2015, as part of the response to public comments received to a 2013 solicitation for comments on the SC–CO_2 estimates, the IWG announced a National Academies of Sciences, Engineering, and Medicine review of the SC–CO_2 estimates to offer advice on how to approach future updates to ensure that the estimates continue to reflect the best available science and methodologies. In January 2017, the National Academies released their final report, Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide, and recommended specific criteria for future updates to the SC–CO_2 estimates, a modeling framework to satisfy the specified criteria, and both near-term updates and longer-term research needs pertaining to various components of the estimation process (National Academies, 2017). Shortly thereafter, in March 2017, President Trump issued Executive Order 13783, which disbanded the IWG, withdrew the previous TSDs, and directed agencies to ensure SC–CO_2 estimates used in regulatory analyses are consistent with the guidance contained in OMB's Circular A–4, ''including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates'' (E.O. 13783, Section 5(c)).

On January 20, 2021, President Biden issued Executive Order 13990, which re-established the IWG and directed it to ensure that the U.S. Government's estimates of the social cost of carbon and other greenhouse gases reflect the best available science and the recommendations of the National Academies (2017). The IWG was tasked with first reviewing the SC–GHG estimates currently used in Federal analyses and publishing interim estimates within 30 days of the E.O. that reflect the full impact of GHG emissions, including by taking global damages into account. The interim SC–GHG estimates published in February 2021, specifically the SC–CH_4 estimates, are used here to estimate the climate benefits for this proposed rulemaking. The E.O. instructs the IWG to undertake a fuller update of the SC–GHG estimates by January 2022 that takes into consideration the advice of the National Academies (2017) and other recent scientific literature.

The February 2021 SC–GHG TSD provides a complete discussion of the IWG's initial review conducted under E.O. 13990. In particular, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to reflect the full impact of GHG emissions in multiple ways. First, the IWG found that a global perspective is essential for SC–GHG estimates because it fully captures climate impacts that affect the United States and which have been omitted from prior U.S.-specific estimates due to methodological constraints. Examples of omitted effects include direct effects on U.S. citizens, assets, and investments located abroad, supply chains, and tourism, and spillover pathways such as economic and political destabilization and global migration. In addition, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other

[136] *See* Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990,* Washington, DC, February 2021. Available at: *www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf* (last accessed March 17, 2021).

countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents. If the United States does not consider impacts on other countries, it is difficult to convince other countries to consider the impacts of their emissions on the United States. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees with this assessment and, therefore, in this proposed rule DOE centers attention on a global measure of SC–GHG. This approach is the same as that taken in DOE regulatory analyses from 2012 through 2016. Prior to that, in 2008 DOE presented Social Cost of Carbon (SCC) estimates based on values the Intergovernmental Panel on Climate Change (IPCC) identified in literature at that time. As noted in the February 2021 SC–GHG TSD, the IWG will continue to review developments in the literature, including more robust methodologies for estimating a U.S.-specific SC–GHG value, and explore ways to better inform the public of the full range of carbon impacts. As a member of the IWG, DOE will continue to follow developments in the literature pertaining to this issue.

Second, the IWG found that the use of the social rate of return on capital (7 percent under current OMB Circular A–4 guidance) to discount the future benefits of reducing GHG emissions inappropriately underestimates the impacts of climate change for the purposes of estimating the SC–GHG. Consistent with the findings of the National Academies (2017) and the economic literature, the IWG continued to conclude that the consumption rate of interest is the theoretically appropriate discount rate in an intergenerational context (IWG 2010, 2013, 2016a, 2016b), and recommended that discount rate uncertainty and relevant aspects of intergenerational ethical considerations be accounted for in selecting future discount rates. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees with this assessment and will continue to follow developments in the literature pertaining to this issue.

While the IWG works to assess how best to incorporate the latest, peer reviewed science to develop an updated set of SC–GHG estimates, it set the interim estimates to be the most recent estimates developed by the IWG prior to the group being disbanded in 2017. The estimates rely on the same models and harmonized inputs and are calculated using a range of discount rates. As explained in the February 2021 SC–GHG TSD, the IWG has recommended that agencies revert to the same set of four values drawn from the SC–GHG distributions based on three discount rates as were used in regulatory analyses between 2010 and 2016 and subject to public comment. For each discount rate, the IWG combined the distributions across models and socioeconomic emissions scenarios (applying equal weight to each) and then selected a set of four values recommended for use in benefit-cost analyses: An average value resulting from the model runs for each of three discount rates (2.5 percent, 3 percent, and 5 percent), plus a fourth value, selected as the 95th percentile of estimates based on a 3 percent discount rate. The fourth value was included to provide information on potentially higher-than-expected economic impacts from climate change. As explained in the February 2021 SC–GHG TSD, and DOE agrees, this update reflects the immediate need to have an operational SC–GHG for use in regulatory benefit-cost analyses and other applications that was developed using a transparent process, peer-reviewed methodologies, and the science available at the time of that process. Those estimates were subject to public comment in the context of dozens of proposed rulemakings as well as in a dedicated public comment period in 2013.

DOE's derivations of the SC–GHG (*i.e.,* SC–CO_2, SC–N_2O, and SC–CH_4) values used for this NOPR are discussed in the following sections, and the results of DOE's analyses estimating the benefits of the reductions in emissions of these pollutants are presented in section V.B.6. of this document.

a. Social Cost of Carbon

The SC–CO_2 values used for this NOPR were generated using the values presented in the 2021 update from the IWG's February 2021 TSD. Table IV.21 shows the updated sets of SC–CO_2 estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14A of the NOPR TSD. For purposes of capturing the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC–CO_2 values, as recommended by the IWG.[137]

TABLE IV.21—ANNUAL SC–CO_2 VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ per metric ton CO_2]

Year	Discount rate			
	5% (average)	3% (average)	2.5% (average)	3% (95th percentile)
2020	14	51	76	152
2025	17	56	83	169
2030	19	62	89	187
2035	22	67	96	206
2040	25	73	103	225
2045	28	79	110	242
2050	32	85	116	260

In calculating the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2021 interagency report, adjusted to 2020$ using the implicit price deflator for gross domestic product (GDP) from the Bureau of Economic Analysis. For each of the four sets of SC–CO_2 cases specified, the values for emissions in 2020 were $14, $51, $76, and $152 per metric ton avoided (values expressed in 2020$). DOE derived values from 2051 to 2070 based on estimates published by

[137] For example, the February 2021 TSD discusses how the understanding of discounting approaches suggests that discount rates appropriate for intergenerational analysis in the context of climate change may be lower than 3 percent.

EPA.[138] These estimates are based on methods, assumptions, and parameters identical to the 2020–2050 estimates published by the IWG. DOE derived values after 2070 based on the trend in 2060–2070 in each of the four cases in the IWG update.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SC–CO_2 value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SC–CO_2 values in each case. See chapter 13 for the annual emissions reduction. See appendix 14A for the annual SC–CO_2 values.

b. Social Cost of Methane and Nitrous Oxide

The SC–CH_4 and SC–N_2O values used for this NOPR were generated using the values presented in the 2021 update from the IWG.[139] Table IV.22 shows the updated sets of SC–CH_4 and SC–N_2O estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14A of the NOPR TSD. To capture the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC–CH_4 and SC–N_2O values, as recommended by the IWG.

TABLE IV.22—ANNUAL SC–CH_4 AND SC–N_2O VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ per metric ton]

Year	SC–CH_4 discount rate and statistic				SC–N_2O discount rate and statistic			
	5% (average)	3% (average)	2.5% (average)	3% (95th percentile)	5% (average)	3% (average)	2.5% (average)	3% (95th percentile)
2020	670	1500	2000	3900	5800	18000	27000	48000
2025	800	1700	2200	4500	6800	21000	30000	54000
2030	940	2000	2500	5200	7800	23000	33000	60000
2035	1100	2200	2800	6000	9000	25000	36000	67000
2040	1300	2500	3100	6700	10000	28000	39000	74000
2045	1500	2800	3500	7500	12000	30000	42000	81000
2050	1700	3100	3800	8200	13000	33000	45000	88000

DOE multiplied the CH_4 and N_2O emissions reduction estimated for each year by the SC–CH_4 and SC–N_2O estimates for that year in each of the cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the cases using the specific discount rate that had been used to obtain the SC–CH_4 and SC–N_2O estimates in each case. See chapter 13 for the annual emissions reduction. See appendix 14A for the annual SC–CH_4 and SC–N_2O values.

2. Monetization of Other Air Pollutants

DOE estimated the monetized value of NO_X and SO_2 emissions reductions from electricity generation using benefit per ton estimates based on air quality modeling and concentration-response functions conducted for the Clean Power Plan final rule. 84 FR 32520. DOE used EPA's reported values for NO_X (as $PM_{2.5}$) and SO_2 for 2020, 2025, and 2030 calculated with discount rates of 3 percent and 7 percent, and EPA's values for ozone season NO_X, which do not involve discounting since the impacts are in the same year as emissions. DOE derived values specific to the sector for pool heaters using a method described in appendix 14A of the NOPR TSD. For this analysis DOE used linear interpolation to define values for the years between 2020 and 2025 and between 2025 and 2030; for years beyond 2030 the values are held constant.

DOE estimated the monetized value of NO_X and SO_2 emissions reductions from gas pool heaters using benefit per ton estimates from the EPA's ''Technical Support Document Estimating the Benefit per Ton of Reducing $PM_{2.5}$ Precursors from 17 Sectors'' (''EPA TSD'').[140] Although none of the sectors refers specifically to residential and commercial buildings, and by association pool heaters, the sector called ''area sources'' would be a reasonable proxy for residential and commercial buildings. ''Area sources'' represents all emission sources for which states do not have exact (point) locations in their emissions inventories. Because exact locations would tend to be associated with larger sources, ''area sources'' would be fairly representative of small dispersed sources like homes and businesses. The EPA TSD provides high and low estimates for 2016, 2020, 2025, and 2030 at 3- and 7-percent discount rates. DOE primarily relied on the low estimates to be conservative.

DOE multiplied the site emissions reduction (in tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate. DOE will continue to evaluate the monetization of avoided NO_X emissions and will make any appropriate updates for the final rule. Additional details on the monetization of NO_X and SO_2 emissions reductions are included in chapter 14 of the NOPR TSD.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the electric power generation industry that would result from the adoption of new or amended energy conservation standards. The utility impact analysis estimates the changes in installed electrical capacity and generation that would result for each TSL. The analysis is based on published output from the NEMS associated with *AEO2021.* NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. For the current analysis, impacts are quantified by comparing the levels of

[138] See EPA, *Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis,* Washington, DC, December 2021. Available at: *https://www.epa.gov/system/files/documents/2021-12/420r21028.pdf* (last accessed January 13, 2022).

[139] See Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990,* Washington, DC, February 2021. Available at: *www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf* (last accessed March 17, 2021).

[140] U.S. Environmental Protection Agency. Technical Support Document: Estimating the Benefit per Ton of Reducing $PM_{2.5}$ Precursors from 17 Sectors, available at: *www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-17-sectors* (last accessed August 11, 2021).

electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO2021* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the NOPR TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of potential new or amended energy conservation standards.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by (1) reduced spending by consumers on energy, (2) reduced spending on new energy supply by the utility industry, (3) increased consumer spending on the products to which the new standards apply and other goods and services, and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (''BLS''). BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[141] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this NOPR using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4 (''ImSET'').[142] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (''I–O'') model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer- based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and that the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rule. Therefore, DOE used ImSET only to generate results for near-term timeframes (2028–2033), where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

[141] U.S. Department of Commerce—Bureau of Economic Analysis. *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II).* 1997. U.S. Government Printing Office: Washington, DC. Available at *www.bea.gov/resources/methodologies/RIMSII-user-guide* (last accessed April 15, 2021).

[142] Livingston, O.V., S.R. Bender, M.J. Scott, and R.W. Schultz. *ImSET 4.0: Impact of Sector Energy Technologies Model Description and User Guide.* 2015. Pacific Northwest National Laboratory: Richland, WA. PNNL–24563. Available at *www.pnnl.gov/main/publications/external/technical_reports/PNNL-24563.pdf* (last accessed April 15, 2021).

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for consumer pool heaters. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for consumer pool heaters, and the standards levels that DOE is proposing to adopt in this NOPR. Additional details regarding DOE's analyses are contained in the NOPR TSD supporting this document.

A. Trial Standard Levels

In general, DOE typically evaluates potential amended standards for products and equipment by grouping individual efficiency levels for each class into TSLs. Use of TSLs allows DOE to identify and consider manufacturer cost interactions between the equipment classes, to the extent that there are such interactions, and market cross elasticity from consumer purchasing decisions that may change when different standard levels are set. DOE analyzed the benefits and burdens of six TSLs for consumer pool heaters. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the NOPR TSD.

Table V.1 presents the TSLs and the corresponding efficiency levels at the representative capacity (input for gas-fired, output for electric) that DOE has identified for potential amended energy conservation standards for consumer pool heaters. TSL 6 represents the max-tech energy efficiency for both electric and gas-fired pool heaters and represents the maximum energy savings possible given the specific efficiency levels analyzed by DOE (see section III.C.2 of this NOPR). TSL 5 represents efficiency levels below max-tech for both electric and gas-fired pool heaters and represents the maximum energy savings excluding max-tech efficiency levels. A greater fraction of gas-fired pool heater consumers experience a net cost compared to electric pool heater consumers at TSL 5. Therefore, TSL 4 is constructed with the same efficiency level for electric pool heaters (*i.e.,* EL 4) but the next highest efficiency level for gas-fired pool heaters (*i.e.,* EL 1). Finally, because EL 1 is the lowest analyzed efficiency level above baseline, TSLs 3, 2, and 1 are also constructed with EL 1 for gas-fired pool heaters as opposed to analyzing a no-new-standards case for this product class. TSLs 3, 2, and 1 consist of the

remaining efficiency levels for electric pool heaters.

TABLE V.1—TRIAL STANDARD LEVELS FOR CONSUMER POOL HEATERS BY EFFICIENCY LEVEL

Product class	Trial standard level					
	1	2	3	4	5	6
	Efficiency Level and Representative TE_I					
Electric Pool Heaters	1 (387%)	2 (483%)	3 (534%)	4 (551%)	4 (551%)	5 (595%)
Gas-fired Pool Heaters	1 (81.3%)	1 (81.3%)	1 (81.3%)	1 (81.3%)	2 (83.3%)	3 (94.8%)

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on consumer pool heater consumers by looking at the effects that potential new or amended standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on selected consumer subgroups. These analyses are discussed in the following sections.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products affect consumers in two ways: (1) Purchase price increases and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

Table V.2 through Table V.5 show the LCC and PBP results for the TSLs considered for each product class. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second table, impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F.8 of this document). Because some consumers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline product and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase a product with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

TABLE V.2—AVERAGE LCC AND PBP RESULTS FOR ELECTRIC POOL HEATERS

TSL	Representative TE_I (%)	Average costs 2020$				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1	387	3,974	502	4,610	8,584	0.6	11.2
2	483	4,063	419	3,868	7,932	0.6	11.2
3	534	4,140	389	3,601	7,741	0.7	11.2
4,5	551	4,196	380	3,521	7,716	0.7	11.2
6	595 (Max Tech)	4,342	363	3,374	7,716	0.8	11.2

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ELECTRIC POOL HEATERS

TSL	Representative TE_I (%)	Life-cycle cost savings	
		Average LCC savings * 2020$	Percent of consumers that experience net cost (%)
1	387	7,995	0.4
2	483	3,695	0.9
3	534	1,123	11.0
4,5	551	1,029	20.9
6	595 (Max Tech)	929	37.8

* The savings represent the average LCC for affected consumers.

TABLE V.4—AVERAGE LCC AND PBP RESULTS FOR GAS-FIRED POOL HEATERS

TSL	Representative TE_I (%)	Average costs (2020$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1,2,3,4	81.3	2,881	884	8,374	11,255	0.1	11.2
5	83.3	3,059	871	8,261	11,320	1.5	11.2
6	94.8 (Max Tech).	3,749	798	7,603	11,352	4.4	11.2

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR GAS-FIRED POOL HEATERS

TSL	Representative TE_I (%)	Life-cycle cost savings	
		Average LCC savings * (2020$)	Percent of consumers that experience net cost (%)
1,2,3,4	81.3	1,085	0.0
5	83.3	43	31.9
6	94.8 (Max Tech)	(15)	70.1

* The savings represent the average LCC for affected consumers.
Parentheses indicate negative (−) values.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on senior-only households and small businesses. Table V.6 and Table V.7 compare the average LCC savings and PBP at each efficiency level for the consumer subgroup, along with the average LCC savings for the entire consumer sample for electric pool heaters and gas-fired pool heaters, respectively. In most cases, the average LCC savings and PBP for senior-only households and small businesses at the considered efficiency levels are substantially different from the average for all households, since all households includes consumer pool heaters in homes and commercial applications. Chapter 11 of the NOPR TSD presents the complete LCC and PBP results for the subgroup.

TABLE V.6—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS FOR ELECTRIC POOL HEATERS

TSL	Average life-cycle cost savings (2020$)			Simple payback period (years)		
	Senior-only households	Small business	All households	Senior-only households	Small business	All households
1	2,758	24,716	7,995	1.1	0.3	0.6
2	1,165	25,600	3,695	1.2	0.3	0.6
3	302	16,750	1,123	1.3	0.3	0.7
4,5	251	16,295	1,029	1.4	0.4	0.7
6	140	15,383	929	1.6	0.4	0.8

TABLE V.7—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS FOR GAS-FIRED POOL HEATERS

TSL	Average life-cycle cost savings (2020$)			Simple payback period (years)		
	Senior-only households	Small business	All households	Senior-only households	Small business	All households
1,2,3,4	1,122	384	1,085	0.1	0.3	0.1
5	(22)	126	43	1.6	2.6	1.5
6	(464)	800	(15)	6.0	3.0	4.4

Parentheses indicate negative (−) values.

c. Rebuttable Presumption Payback

As discussed in section III.E.2, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption payback period for each of the considered TSLs, DOE used discrete

values, and, as required by EPCA, based the energy use calculation on the DOE test procedure for consumer pool heaters. In contrast, the PBPs presented in section V.B.1.a of this document were calculated using distributions that reflect the range of energy use in the field.

Table V.8 presents the rebuttable-presumption payback periods for the considered TSLs for consumer pool heaters. These results show that, in most cases, the projected payback period will be three years or less with respect to each TSL examined. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for the NOPR are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

TABLE V.8—REBUTTABLE-PRESUMPTION PAYBACK PERIODS (YEARS)

TSL	Electric pool heaters	Gas-fired pool heaters
1	2.41	0.11
2	2.52	0.11
3	2.68	0.11
4	2.83	0.11
5	2.83	1.72
6	3.20	5.87

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of new and amended energy conservation standards on manufacturers of consumer pool heaters. The following section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the NOPR TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

In this section, DOE provides GRIM results from the analysis, which examines changes in the industry that would result from a standard. The following tables illustrate the estimated financial impacts (represented by changes in INPV) of potential new and amended energy conservation standards on manufacturers of consumer pool heaters, as well as the conversion costs that DOE estimates manufacturers of consumer pool heaters would incur at each TSL.

As discussed in section IV.J.2.e of this document, DOE modeled two manufacturer markup scenarios to evaluate a range of cash flow impacts on the consumer pool heater industry: (1) The preservation of gross margin percentage markup scenario and (2) the preservation of operating profit. DOE considered the preservation of gross margin percentage scenario by applying a ''gross margin percentage'' markup for each product class across all efficiency levels. As MPCs increase with efficiency, this scenario implies that the absolute dollar markup will increase. DOE assumed a manufacturer markup of 1.33 for gas-fired pool heaters and 1.28 for electric pool heaters. This manufacturer markup is consistent with the one DOE assumed in the engineering analysis and the no-new-standards case of the GRIM. Because this scenario assumes that a manufacturer's absolute dollar markup would increase as MPCs increase in the standards cases, it represents the upper-bound to industry profitability under potential new and amended energy conservation standards.

The preservation of operating profit scenario reflects manufacturers' concerns about their inability to maintain margins as MPCs increase to reach more-stringent efficiency levels. In this scenario, while manufacturers make the necessary investments required to convert their facilities to produce compliant products, operating profit does not change in absolute dollars and decreases as a percentage of revenue.

Each of the modeled manufacturer markup scenarios results in a unique set of cash-flows and corresponding industry values at each TSL. In the following discussion, the INPV results refer to the difference in industry value between the no-new-standards case and each standards case resulting from the sum of discounted cash-flows from 2021 through 2057. To provide perspective on the short-run cash-flow impact, DOE includes in the discussion of results a comparison of free cash flow between the no-new-standards case and the standards case at each TSL in the year before new and amended standards are required.

Table V.9 and Table V.10 show the MIA results for both product classes at each TSL using the manufacturer markup scenarios previously described.

TABLE V.9—MANUFACTURER IMPACT ANALYSIS FOR CONSUMER POOL HEATERS UNDER THE PRESERVATION OF GROSS MARGIN MARKUP SCENARIO

	Units	No-new-standards case	Trial standard level *					
			1	2	3	4	5	6
INPV	2020$ millions.	188.7	186.5	184.2	171.8	171.1	174.2	187.3
Change in INPV.	2020$ millions.		(2.2)	(4.4)	(16.9)	(17.5)	(14.4)	(1.4)
	%		(1.2)	(2.3)	(9.0)	(9.3)	(7.7)	(0.7)
Product Conversion Costs.	2020$ millions.		2.7	6.1	22.9	24.1	32.6	41.5
Capital Conversion Costs.	2020$ millions.			0.6	5.3	5.3	6.2	17.5
Total Investment Requires **.	2020$ millions.		2.7	6.6	28.3	29.4	38.8	59.0

* Numbers in parentheses indicate a negative number. Numbers may not sum exactly due to rounding.

TABLE V.10—MANUFACTURER IMPACT ANALYSIS FOR CONSUMER POOL HEATERS UNDER THE PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO

	Units	No-new-standards case	Trial standard level *					
			1	2	3	4	5	6
INPV	2020$ millions.	188.7	186.1	183.6	170.3	169.0	161.0	135.5
Change in INPV.	2020$ millions.	.....	(2.5)	(5.0)	(18.3)	(19.6)	(27.7)	(53.2)
	%	.....	(1.3)	(2.7)	(9.7)	(10.4)	(14.7)	(28.2)
Product Conversion Costs.	2020$ millions.	.....	2.7	6.1	22.9	24.1	32.6	41.5
Capital Conversion Costs.	2020$ millions.	.....	.....	0.6	5.3	5.3	6.2	17.5
Total Investment Requires.	2020$ millions.	.....	2.7	6.6	28.3	29.4	38.8	59.0

* Numbers in parentheses indicate a negative number. Numbers may not sum exactly due to rounding.

At TSL 1, DOE estimates that impacts on INPV will range from −$2.5 million to −$2.2 million, or a change in INPV of −1.3 to −1.2 percent. At TSL 1, industry free cash-flow is $13.4 million, which is a decrease of approximately $0.9 million compared to the no-new-standards case value of $14.3 million in 2027, the year leading up to the proposed standards.

TSL 1 would set the energy conservation standard for both gas-fired consumer pool heaters and electric consumer pool heaters at EL 1. DOE estimates that 96 percent of gas-fired pool heater shipments and 93 percent of electric pool heater shipments already meet or exceed the efficiency levels analyzed at TSL 1. Gas-fired pool heater manufacturers would likely need to redesign any models with a standing pilot light. DOE assumed this would require approximately two months of engineering time per model, which would cost manufacturers approximately $0.5 million. Electric heat pump pool heater manufacturers would incur approximately $2.2 million in product conversion costs primarily to test all compliant electric pool heater models to demonstrate compliance with standards at TSL 1. DOE estimates pool heater manufacturers will incur minimal to no capital conversion costs at TSL 1.

Furthermore, no electric resistance pool heaters meet or exceed the electric pool heater efficiency level analyzed at TSL 1 or above. DOE estimates manufacturers will not incur conversion costs for electric resistance pool heaters, because of the expectation that these consumer pool heater products will be discontinued, as described in section IV.J.2.c of this document.

At TSL 1, the shipment-weighted average MPC for all consumer pool heaters increases by 0.5 percent relative to the no-new-standards case shipment-weighted average MPC for all consumer pool heaters in 2028. In the preservation of gross margin markup scenario, manufacturers are able to fully pass on this slight cost increase to consumers. The slight increase in shipment-weighted average MPC for consumer pool heaters is slightly outweighed by the $2.7 million in conversion costs, causing a slightly negative change in INPV at TSL 1 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 0.5 percent shipment-weighted average MPC increase results in a reduction in the manufacturer markup after the analyzed compliance year. This reduction in the manufacturer markup and the $2.7 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 1 under the preservation of operating profit markup scenario.

At TSL 2, DOE estimates that impacts on INPV will range from −$5.0 million to −$4.4 million, or a change in INPV of −2.7 percent to −2.3 percent. At TSL 2, industry free cash-flow is $11.9 million, which is a decrease of approximately $2.4 million compared to the no-new-standards case value of $14.3 million in 2027, the year leading up to the proposed standards.

DOE estimates that 96 percent of gas-fired pool heater shipments and 79 percent of electric pool heater shipments already meet or exceed the efficiency levels analyzed at TSL 2. To bring non-compliant electric heat pump pool heaters into compliance and to test all electric heat pump pool heaters to demonstrate compliance with standards at TSL 2, electric heat pump pool heater manufacturers would incur approximately $5.5 million in product conversion costs and $0.6 million in capital conversion costs at TSL 2.

At TSL 2, the shipment-weighted average MPC for all consumer pool heaters increases by 0.9 percent relative to the no-new-standards case shipment-weighted average MPC for all consumer pool heaters in 2028. In the preservation of gross margin markup scenario, the slight increase in shipment-weighted average MPC for consumer pool heaters is slightly outweighed by the $6.6 million in conversion costs, causing a slightly negative change in INPV at TSL 2 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup scenario, the 0.9 percent shipment-weighted average MPC increase results in a reduction in the manufacturer markup after the analyzed compliance year. This reduction in the manufacturer markup and the $6.6 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 2 under the preservation of operating profit markup scenario.

At TSL 3, DOE estimates that impacts on INPV will range from −$18.3 million

to −$16.9 million, or a change in INPV of −9.7 percent to −9.0 percent. At TSL 3, industry free cash-flow is $3.8 million, which is a decrease of approximately $10.6 million compared to the no-new-standards case value of $14.3 million in 2027, the year leading up to the proposed standards.

DOE estimates that 96 percent of gas-fired pool heater shipments and 19 percent of electric pool heater shipments already meet or exceed the efficiency levels analyzed at TSL 3. To bring non-compliant electric heat pump pool heaters into compliance and to test all electric heat pump pool heaters to demonstrate compliance with standards at TSL 3, electric heat pump pool heater manufacturers would incur approximately $22.4 million in product conversion costs and $5.3 million in capital conversion costs at TSL 3.

At TSL 3, the shipment-weighted average MPC for all consumer pool heaters increases by 2.1 percent relative to the no-new-standards case shipment-weighted average MPC for all consumer pool heaters in 2028. In the preservation of gross margin markup scenario, the increase in shipment-weighted average MPC for consumer pool heaters is outweighed by the $28.3 million in conversion costs, causing a moderately negative change in INPV at TSL 3 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup scenario, the 2.1 percent shipment-weighted average MPC increase results in a reduction in the manufacturer markup after the analyzed compliance year. This reduction in the manufacturer markup and the $28.3 million in conversion costs incurred by manufacturers cause a moderately negative change in INPV at TSL 3 under the preservation of operating profit markup scenario.

At TSL 4, DOE estimates that impacts on INPV will range from −$19.6 million to −$17.5 million, or a change in INPV of −10.4 percent to −9.3 percent. At TSL 4, industry free cash-flow is $3.4 million, which is a decrease of approximately $11.0 million compared to the no-new-standards case value of $14.3 million in 2027, the year leading up to the proposed standards.

DOE estimates that 96 percent of gas-fired pool heaters and 10 percent of electric pool heaters meet or exceed the efficiency levels analyzed at TSL 4. To bring non-compliant products into compliance, consumer pool heater manufacturers would incur approximately $24.1 million in product conversion costs for redesign and testing. DOE estimates manufacturers will incur approximately $5.3 million in capital conversion costs associated with TSL 4 to make changes to existing machinery and tooling.

At TSL 4, the shipment-weighted average MPC for all consumer pool heaters increases by 3.1 percent relative to the no-new-standards case shipment-weighted average MPC for all consumer pool heaters in 2028. In the preservation of gross margin markup scenario, the increase in shipment-weighted average MPC for consumer pool heaters is outweighed by the $29.4 million in conversion costs, causing a moderately negative change in INPV at TSL 4 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup scenario, the 3.1 percent shipment-weighted average MPC increase results in a reduction in the manufacturer markup after the analyzed compliance year. This reduction in the manufacturer markup and the $29.4 million in conversion costs incurred by manufacturers causing a moderately negative change in INPV at TSL 4 under the preservation of operating profit markup scenario.

At TSL 5, DOE estimates that impacts on INPV will range from −$27.7 million to −$14.4 million, or a change in INPV of −14.7 percent to −7.7 percent. At TSL 5, industry free cash-flow is slightly negative (less then −$0.1 million), which is a decrease of approximately $14.4 million compared to the no-new-standards case value of $14.3 million in 2027, the year leading up to the proposed standards.

DOE estimates that 45 percent of gas-fired pool heaters and 10 percent of electric pool heaters meet or exceed the efficiency levels analyzed at TSL 5. To bring non-compliant products into compliance, consumer pool heater manufacturers would incur approximately $32.6 million in product conversion costs for redesign and testing. DOE estimates manufacturers will incur approximately $6.2 million in capital conversion costs associated with TSL 5 to make changes to existing machinery and tooling. The design options analyzed at TSL 5 incorporate a blower for gas-fired pool heaters.

At TSL 5, the shipment-weighted average MPC for all consumer pool heaters increases by 10.2 percent relative to the no-new-standards case shipment-weighted average MPC for all consumer pool heaters in 2028. In the preservation of gross margin markup scenario, the increase in shipment-weighted average MPC for consumer pool heaters is outweighed by the $38.8 million in conversion costs, causing a moderately negative change in INPV at TSL 5 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup scenario, the 10.2 percent shipment-weighted average MPC increase results in a reduction in the manufacturer markup after the analyzed compliance year. This reduction in manufacturer markup and the $38.8 million in conversion costs incurred by manufacturers cause a moderately negative change in INPV at TSL 5 under the preservation of operating profit markup scenario.

At TSL 6, DOE estimates that impacts on INPV will range from $53.2 million to −$1.4 million, or a change in INPV of −28.2 percent to −0.7 percent. At TSL 6, industry free cash-flow is −$8.3 million, which is a decrease of approximately $22.6 million compared to the no-new-standards case value of $14.3 million in 2027, the year leading up to the proposed standards.

DOE estimates 9 percent of gas-fired pool heaters and less than 1 percent of electric pool heaters meet the efficiency levels analyzed at TSL 6. To bring non-compliant products into compliance, consumer pool heater manufacturers would incur approximately $41.5 million in product conversion costs for redesign and testing. DOE estimates manufacturers will incur approximately $17.5 million in capital conversion costs associated with TSL 6 to make changes to existing machinery and tooling. The design options at TSL 6 analyzed the implementation of condensing technology for gas-fired pool heaters, which requires a significant redesign effort and capital investment.

At TSL 6, the shipment-weighted average MPC for all consumer pool heaters significantly increases by 37.0 percent relative to the no-new-standards case shipment-weighted average MPC for all consumer pool heaters in 2028. In the preservation of gross margin markup scenario, the large increase in shipment-weighted average MPC for consumer pool heaters is still outweighed by the $59.0 million in conversion costs, causing a slightly negative change in INPV at TSL 6 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup scenario, the 37.0 percent shipment-weighted average MPC increase results in a significant reduction in the manufacturer markup after the analyzed compliance year. This large reduction in manufacturer markup and the significant $59.0 million in conversion costs incurred by manufacturers cause a significantly negative change in INPV at TSL 6 under

the preservation of operating profit markup scenario.

b. Direct Impacts on Employment

To quantitatively assess the potential impacts of new and amended energy conservation standards on direct employment in the consumer pool heater industry, DOE used the GRIM to estimate the number of direct production employees and non-production employees in the no-new-standards case, and the standards cases at each TSL.

Production employees are those who are directly involved in fabricating and assembling products within an original equipment manufacturer facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are included as production labor, as well as line supervisors.

DOE used the GRIM to calculate the number of production employees from labor expenditures. DOE used statistical data from the U.S. Census Bureau's 2019 Annual Survey of Manufacturers (''ASM'') and the results of the engineering analysis to calculate industry-wide labor expenditures. Labor expenditures related to product manufacturing depend on the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in the GRIM were then converted to domestic production employment levels by dividing production labor expenditures by the annual payment per production worker.

Non-production employees account for those workers that are not directly engaged in the manufacturing of the covered product. This could include sales, human resources, engineering, and management. DOE estimated non-production employment levels by multiplying the number of consumer pool heater production workers by a scaling factor. The scaling factor is calculated by taking the ratio of the total number of employees, and the total production workers associated with the industry NAICS code 333414, which covers heating equipment (except warm air furnaces) manufacturing.

Using the GRIM, DOE estimates that there would be 857 domestic production workers, and 495 non-production workers for consumer pool heaters in 2028 in the absence of new and amended energy conservation standards. Table V.11 shows the range of the impacts of energy conservation standards on U.S. production on consumer pool heaters.

TABLE V.11—TOTAL NUMBER OF DOMESTIC CONSUMER POOL HEATER PRODUCTION WORKERS IN 2028

	No-new-standards case	Trial standard level					
		1	2	3	4	5	6
Domestic Production Workers in 2028	857	853	853	853	850	852	1,064
Domestic Non-Production Workers in 2028	495	492	492	492	491	492	614
Total Direct Employment in 2028	1,352	1,345	1,345	1,345	1,341	1,344	1,678
Potential Changes in Total Direct Employment in 2028	.....	(30)–(7)	(30)–(7)	(30)–(7)	(30)–(11)	(30)–(8)	(356)–326

The direct employment impacts shown in Table V.11 represent the potential changes in direct employment that could result following the compliance date for the consumer pool heaters in this proposal. Employment could increase or decrease due to the labor content of the various products being manufactured domestically or if manufacturers decided to move production facilities abroad because of the new and amended standards. At one end of the range, DOE assumes that all manufacturers continue to manufacture the same scope of the products domestically after new and amended standards. However, since the labor content of consumer pool heaters varies by efficiency level, this can either result in an increase or decrease in domestic employment, even if all domestic product remains in the U.S.[143] The other end of the range assumes that some domestic manufacturing either is eliminated or moves abroad due to the analyzed new and amended standards. DOE assumes that for electric pool heaters, only the electric resistance pool heater employees would be impacted at all TSLs analyzed. DOE estimates there would be approximately 30 domestic production and non-production employees manufacturing electric resistance pool heaters in 2028. Therefore, DOE assumes that for all TSLs analyzed, there would be a reduction in 30 domestic employees due to electric resistance pool heaters no longer being manufactured domestically. For gas pool heaters, DOE assumes there would not be any impact to domestic production until TSL 6, max-tech. At this TSL, DOE assumes that up to half of all domestic gas pool heater production could move abroad due to the new and amended standards at TSL 6. DOE estimated there would be approximately 651 domestic production workers manufacturing gas-fired pool heaters in 2028. Therefore, DOE estimates that if standards were set at TSL 6, max-tech, there could be a loss of up to 356 domestic employees responsible for manufacturing consumer pool heaters.[144] Additional detail on the analysis of direct employment can be found in chapter 12 of the NOPR TSD.

c. Impacts on Manufacturing Capacity

DOE did not identify any significant capacity constraints for the design options being evaluated for this NOPR. The design options evaluated for this NOPR are available as products that are on the market currently, with models meeting all the efficiency levels analyzed as part of this analysis. The materials used to manufacture models at all efficiency levels are widely available on the market. As a result, DOE does not anticipate that the industry will likely experience any capacity constraints directly resulting from energy conservation standards at any of the TSLs considered.

d. Impacts on Subgroups of Manufacturers

As discussed in section IV.J.1 of this document, using average cost

[143] TSL 6 is estimated to have an increase in domestic employment, while TSL 1 through TSL 5, are estimated to have a reduction in domestic employment, assuming all production remains in the U.S.

[144] 326 domestic production employees manufacturing consumer gas-fired pool heaters and 30 domestic production and non-production employees manufacturing consumer electric resistance pool heaters.

assumptions to develop an industry cash-flow estimate may not be adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. DOE used the results of the industry characterization to group manufacturers exhibiting similar characteristics. Consequently, DOE identified small business manufacturers as a subgroup for a separate impact analysis.

For the small business subgroup analysis, DOE applied the small business size standards published by the Small Business Administration (''SBA'') to determine whether a company is considered a small business. The size standards are codified at 13 CFR part 121. To be categorized as a small business under NAICS code 333414, ''heating equipment (except warm air furnaces) manufacturing,'' a consumer pool heater manufacturer and its affiliates may employ a maximum of 500 employees. The 500-employee threshold includes all employees in a business's parent company and any other subsidiaries. Based on this classification, DOE identified six potential manufacturers that could qualify as domestic small businesses.

All six small businesses manufacture electric pool heaters and none of them manufacture gas-fired pool heaters. Therefore, only new standards set for electric pool heaters would impact any of the small businesses. Five of the six small businesses exclusively manufacture electric heat pump pool heaters, while the other small business exclusively manufacturers electric resistance pool heaters.

The small business subgroup analysis is discussed in more detail in chapter 12 of the NOPR TSD. DOE examines the potential impacts on small business manufacturers in section VI.B of this NOPR.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

Some consumer pool heater manufacturers also make other products or equipment that could be subject to energy conservation standards set by DOE. DOE looks at regulations that could affect consumer pool heater manufacturers that will take effect three years before or after the estimated 2028 compliance date. Therefore, this cumulative regulatory burden analysis focuses on DOE regulations taking place between 2025 and 2031. DOE was not able to identify any potential energy conservation standard or test procedure for other products or equipment manufactured by consumer pool heater manufacturer that are scheduled to require compliance between 2025 and 2031.

DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of consumer pool heaters associated with multiple DOE standards or product-specific regulatory actions of other Federal agencies.

3. National Impact Analysis

This section presents DOE's estimates of the NES and the NPV of consumer benefits that would result from each of the TSLs considered as potential amended standards.

a. Significance of Energy Savings

To estimate the energy savings attributable to potential new or amended standards for consumer pool heaters, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2028–2057). Table V.12 presents DOE's projections of the national energy savings for each TSL considered for consumer pool heaters. The savings were calculated using the approach described in section IV.H of this document.

TABLE V.12—CUMULATIVE NATIONAL ENERGY SAVINGS FOR CONSUMER POOL HEATERS; 30 YEARS OF SHIPMENTS

[2028–2057]

Energy savings	Product class	Trial standard level (quads *)					
		1	2	3	4	5	6
Site energy	Electric Pool Heaters	0.08	0.10	0.13	0.14	0.14	0.16
	Gas-fired Pool Heaters	0.02	0.02	0.02	0.02	0.09	0.80
	Total	0.11	0.12	0.15	0.16	0.23	0.96
Primary energy.	Electric Pool Heaters	0.22	0.27	0.35	0.38	0.38	0.43
	Gas-fired Pool Heaters	0.02	0.02	0.02	0.02	0.09	0.80
	Total	0.25	0.30	0.38	0.40	0.47	1.23
FFC energy	Electric Pool Heaters	0.23	0.28	0.37	0.39	0.39	0.45
	Gas-fired Pool Heaters	0.02	0.02	0.02	0.02	0.10	0.88
	Total	0.26	0.31	0.39	0.42	0.49	1.33

* quads = quadrillion British thermal units.
Note numbers may not add to totals, due to rounding.

OMB Circular A–4 [145] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this proposed rulemaking, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[146] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to consumer pool heaters. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V.13 of this document. The impacts are counted over the lifetime of consumer pool heaters purchased in 2028–2057.

TABLE V.13—CUMULATIVE NATIONAL ENERGY SAVINGS FOR CONSUMER POOL HEATERS; 9 YEARS OF SHIPMENTS

[2028–2036]

Energy savings	Product class	Trial standard level (quads *)					
		1	2	3	4	5	6
Site energy	Electric Pool Heaters	0.03	0.03	0.04	0.04	0.04	0.05
	Gas-fired Pool Heaters	0.01	0.01	0.01	0.01	0.03	0.22
	Total	0.03	0.04	0.05	0.05	0.07	0.26
Primary energy.	Electric Pool Heaters	0.07	0.09	0.11	0.11	0.11	0.13
	Gas-fired Pool Heaters	0.01	0.01	0.01	0.01	0.03	0.22
	Total	0.08	0.09	0.11	0.12	0.14	0.35
FFC energy	Electric Pool Heaters	0.07	0.09	0.11	0.12	0.12	0.13
	Gas-fired Pool Heaters	0.01	0.01	0.01	0.01	0.03	0.24
	Total	0.08	0.10	0.12	0.13	0.15	0.37

* quads = quadrillion British thermal units.
Note numbers may not add to totals, due to rounding.

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for consumer pool heaters. In accordance with OMB's guidelines on regulatory analysis,[147] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.14 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2028–2057.

TABLE V.14—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CONSUMER POOL HEATERS; 30 YEARS OF SHIPMENTS

[2028–2057]

Discount rate	Product class	Trial standard level (billion 2020$)					
		1	2	3	4	5	6
7 percent	Electric Pool Heaters	0.64	0.77	0.94	0.96	0.96	0.95
	Gas-fired Pool Heaters	0.08	0.08	0.08	0.08	(0.01)	(0.18)
	Total	0.72	0.85	1.02	1.04	0.95	0.77
3 percent	Electric Pool Heaters	1.49	1.81	2.25	2.32	2.32	2.36
	Gas-fired Pool Heaters	0.18	0.18	0.18	0.18	0.07	0.37
	Total	1.67	1.99	2.43	2.50	2.39	2.73

Parentheses indicate negative (−) values.
Note numbers may not add to totals, due to rounding.

[145] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Available at: *www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf* (last accessed April 15, 2021).

[146] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6 year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

[147] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Available at: *www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf* (last accessed April 15, 2021).

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.15. The impacts are counted over the lifetime of products purchased in 2028–2057. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.15—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CONSUMER POOL HEATERS; 9 YEARS OF SHIPMENTS

[2028–2036]

Discount rate	Product class	Trial standard level (billion 2020$)					
		1	2	3	4	5	6
7 percent	Electric Pool Heaters	0.35	0.42	0.50	0.51	0.51	0.51
	Gas-fired Pool Heaters	0.04	0.04	0.04	0.04	(0.01)	(0.13)
	Total	0.40	0.46	0.54	0.56	0.51	0.37
3 percent	Electric Pool Heaters	0.64	0.76	0.92	0.94	0.94	0.95
	Gas-fired Pool Heaters	0.08	0.08	0.08	0.08	0.02	0.04
	Total	0.71	0.83	0.99	1.02	0.96	0.99

Parentheses indicate negative (−) values.
Note numbers may not add to totals, due to rounding.

The above results reflect the use of a default trend to estimate the change in price for consumer pool heaters over the analysis period (see section IV.H.3 of this document). DOE also conducted a sensitivity analysis that considered one scenario with a larger price decline from the reference case and one scenario with a constant price. The results of these alternative cases are presented in appendix 10C of the NOPR TSD. In the high-price-decline case, the NPV of consumer benefits is higher than in the default case. In the constant-price case, the NPV of consumer benefits is lower than in the default case.

c. Indirect Impacts on Employment

It is estimated that that new or amended energy conservation standards for consumer pool heaters would reduce energy expenditures for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered. There are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2028–2033), where these uncertainties are reduced.

The results suggest that the proposed standards would be likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

As discussed in section IV.C.1.b of this document, DOE has tentatively concluded that the standards proposed in this NOPR would not lessen the utility or performance of the consumer pool heaters under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the proposed standards.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that would be likely to result from new or amended standards. As discussed in section III.E.1.e of this document, the Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. To assist the Attorney General in making this determination, DOE has provided DOJ with copies of this NOPR and the accompanying TSD for review. DOE will consider DOJ's comments on the proposed rule in determining whether to proceed to a final rule. DOE will publish and respond to DOJ's comments in that document. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information on how to send comments to DOJ.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. Chapter 15 in the NOPR TSD presents the estimated impacts on electricity generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this proposed rulemaking.

Energy conservation resulting from potential new and amended energy conservation standards for consumer pool heaters is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and greenhouse gases. Table V.16 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The emissions were calculated using the multipliers discussed in section IV.K. of this document. DOE reports annual emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.16—CUMULATIVE EMISSIONS REDUCTION FOR CONSUMER POOL HEATERS SHIPPED IN 2028–2057

	Trial standard level					
	1	2	3	4	5	6
Site and Power Sector Emissions						
CO_2 (million metric tons)	8.5	10.1	12.7	13.6	17.2	56.4
SO_2 (thousand tons)	3.2	4.00	5.1	5.5	5.4	6.8
NO_X (thousand tons)	8.4	9.1	10.2	10.5	67.0	74.1
Hg (tons)	0.02	0.02	0.03	0.03	0.03	0.04
CH_4 (thousand tons)	0.6	0.7	0.9	1.0	1.0	2.0
N_2O (thousand tons)	0.08	0.10	0.13	0.14	0.14	0.24
Upstream Emissions						
CO_2 (million metric tons)	0.7	0.8	1.0	1.1	1.5	6.2
SO_2 (thousand tons)	0.04	0.05	0.06	0.07	0.07	0.10
NO_X (thousand tons)	10.5	12.3	15.2	16.2	23.2	95.0
Hg (tons)	0.00	0.00	0.00	0.00	0.00	0.00
CH_4 (thousand tons)	71	83	103	109	160	681
N_2O (thousand tons)	0.00	0.00	0.00	0.01	0.01	0.01
Total FFC Emissions						
CO_2 (million metric tons)	9.2	11.0	13.8	14.7	18.8	62.7
SO_2 (thousand tons)	3.2	4.0	5.2	5.6	5.5	6.9
NO_X (thousand tons)	19	21	25	27	90	169
Hg (tons)	0.02	0.02	0.03	0.03	0.03	0.04
CH_4 (thousand tons)	72	84	104	110	161	683
N_2O (thousand tons)	0.08	0.10	0.13	0.14	0.15	0.26

Note numbers may not add to totals, due to rounding.

As part of the analysis for this proposed rulemaking, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 that DOE estimated for each of the considered TSLs for consumer pool heaters. Section IV.L of this document discusses the SC–CO_2 values that DOE used. Table V.17 presents the value of CO_2 emissions reduction at each TSL.

TABLE V.17—PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR CONSUMER POOL HEATERS SHIPPED IN 2028–2057

TSL	SC–CO_2 case discount rate and statistics (million 2020$)			
	5% (average)	3% (average)	2.5% (average)	3% (95th percentile)
1	79	347	545	1,053
2	94	413	649	1,253
3	117	517	813	1,569
4	125	552	868	1,675
5	158	701	1,103	2,126
6	521	2,319	3,656	7,030

As discussed in section IV.L.1.b of this document, DOE estimated monetary benefits likely to result from the reduced emissions of methane and N_2O that DOE estimated for each of the considered TSLs for consumer pool heaters. Table V.18 presents the value of the CH_4 emissions reduction at each TSL, and Table V.19 presents the value of the N_2O emissions reduction at each TSL.

TABLE V.18—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR CONSUMER POOL HEATERS SHIPPED IN 2028–2057

TSL	SC–CH_4 case discount rate and statistics (million 2020$)			
	5% (average)	3% (average)	2.5% (average)	3% (95th percentile)
1	28	86	120	226
2	33	100	141	265
3	40	124	174	326
4	42	131	185	347

TABLE V.18—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR CONSUMER POOL HEATERS SHIPPED IN 2028–2057—Continued

TSL	SC–CH_4 case discount rate and statistics (million 2020$)			
	5% (average)	3% (average)	2.5% (average)	3% (95th percentile)
5	62	192	270	506
6	258	807	1,139	2,130

TABLE V.19—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR CONSUMER POOL HEATERS SHIPPED IN 2028–2057

TSL	SC–N_2O case discount rate and statistics (million 2020$)			
	5% (average)	3% (average)	2.5% (average)	3% (95th percentile)
1	0.27	1.11	1.74	2.96
2	0.33	1.35	2.13	3.62
3	0.42	1.74	2.74	4.65
4	0.45	1.87	2.94	5.00
5	0.47	1.94	3.05	5.19
6	0.82	3.39	5.35	9.09

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed on reduced GHG emissions in this rulemaking is subject to change. That said, because of omitted damages, DOE agrees with the IWG that these estimates most likely underestimate the climate benefits of greenhouse gas reductions. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. DOE notes that the proposed standards would be economically justified even without inclusion of monetized benefits of reduced GHG emissions.

DOE also estimated the monetary value of the economic benefits associated with SO_2 emissions reductions anticipated to result from the considered TSLs for consumer pool heaters. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.20 presents the present value for SO_2 emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates.

TABLE V.20—PRESENT SOCIAL VALUE OF SO_2 EMISSIONS REDUCTION FOR CONSUMER POOL HEATERS SHIPPED IN 2028–2057

TSL	7% Discount rate (million 2020$)	3% Discount rate (million 2020$)
1	28	72
2	35	88
3	44	114
4	47	123
5	47	120
6	58	152

DOE also estimated the monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from the considered TSLs for consumer pool heaters. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.21 presents the present value for NO_X emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates.

TABLE V.21—PRESENT SOCIAL VALUE OF NO_X EMISSIONS REDUCTION FOR CONSUMER POOL HEATERS SHIPPED IN 2028–2057

TSL	7% Discount rate (million 2020$)	3% Discount rate (million 2020$)
1	39	93
2	45	109
3	55	133
4	59	142
5	82	202

TABLE V.21—PRESENT SOCIAL VALUE OF NO_X EMISSIONS REDUCTION FOR CONSUMER POOL HEATERS SHIPPED IN 2028–2057—Continued

TSL	7% Discount rate (million 2020$)	3% Discount rate (million 2020$)
6	324	819

The benefits of reduced CO2, CH4, and N2O emissions are collectively referred to as climate benefits. The benefits of reduced SO_2 and NO_X emissions are collectively referred to as health benefits. For the time series of estimated monetary values of reduced emissions, see chapter 14 of the NOPR TSD.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis.

8. Summary of National Economic Impacts

Table V.22 presents the NPV values that result from adding the monetized estimates of the potential economic, climate, and health benefits resulting from reduced GHG, SO_2, and NO_X emissions to the NPV of consumer benefits calculated for each TSL considered in this rulemaking. The consumer benefits are domestic U.S. monetary savings that occur as a result

of purchasing the covered pool heaters and are measured for the lifetime of products shipped in 2028–2057. The climate benefits associated with reduced GHG emissions resulting from the adopted standards are global benefits and are also calculated based on the lifetime of pool heaters shipped in 2028–2057. The climate benefits associated with four SC–GHG estimates are shown. DOE does not have a single central SC–GHG point estimate and it emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates.

TABLE V.22—NPV OF CONSUMER BENEFITS COMBINED WITH MONETIZED CLIMATE AND HEALTH BENEFITS FROM EMISSIONS REDUCTIONS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
3% discount rate for NPV of Consumer and Health Benefits (billion 2020$)						
5% d.r., Average SC–GHG case	1.9	2.3	2.8	2.9	2.9	4.5
3% d.r., Average SC–GHG case	2.3	2.7	3.3	3.5	3.6	6.8
2.5% d.r., Average SC–GHG case	2.5	3.0	3.7	3.8	4.1	8.5
3% d.r., 95th percentile SC–GHG case	3.1	3.7	4.6	4.8	5.3	12.9
7% discount rate for NPV of Consumer and Health Benefits (billion 2020$)						
5% d.r., Average SC–GHG case	0.9	1.1	1.3	1.3	1.3	1.9
3% d.r., Average SC–GHG case	1.2	1.4	1.8	1.8	2.0	4.3
2.5% d.r., Average SC–GHG case	1.5	1.7	2.1	2.2	2.5	6.0
3% d.r., 95th percentile SC–GHG case	2.1	2.5	3.0	3.2	3.7	10.3

The national operating cost savings are domestic U.S. monetary savings that occur as a result of purchasing the covered products and are measured for the lifetime of products shipped in 2028–2057. The benefits associated with reduced GHG emissions achieved as a result of the adopted standards are also calculated based on the lifetime of consumer pool heaters shipped in 2028–2057.

C. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

For this NOPR, DOE considered the impacts of new and amended standards for consumer pool heaters at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy. DOE refers to this process as the ''walk-down'' analysis.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information, (2) a lack of sufficient salience of the long-term or aggregate benefits, (3) a lack of sufficient savings to warrant delaying or altering purchases, (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments, (5) computational or other difficulties associated with the evaluation of relevant tradeoffs, and (6) a divergence in incentives (for example, between renters and owners, or builders and purchasers). Having less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a standard decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of product purchases in chapter 9 of the NOPR TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[148]

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework

[148] P.C. Reiss and M.W. White. Household Electricity Demand, Revisited. *Review of Economic Studies*. 2005. 72(3): pp. 853–883. doi: *10.1111/0034-6527.00354*.

that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy conservation standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[149] DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of TSLs Considered for Consumer Pool Heater Standards

Table V.23 and Table V.24 summarize the quantitative impacts estimated for each TSL for consumer pool heaters. The national impacts are measured over the lifetime of consumer pool heaters purchased in the 30-year period that begins in the anticipated year of compliance with amended standards (2028–2057). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. DOE exercises its own judgment in presenting monetized climate benefits as recommended in applicable Executive Orders and DOE would reach the same conclusion presented in this notice in the absence of the social cost of greenhouse gases, including the February 2021 Interim Estimates presented by the Interagency Working Group on the Social Cost of Greenhouse Gases. The efficiency levels contained in each TSL are described in section V.A of this document.

TABLE V.23—SUMMARY OF ANALYTICAL RESULTS FOR CONSUMER POOL HEATERS TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Cumulative FFC National Energy Savings (quads)						
Quads	0.26	0.31	0.39	0.42	0.49	1.33
Cumulative FFC Emissions Reduction (Total FFC Emissions)						
CO_2 *(million metric tons)*	9	11	14	15	19	63
SO_2 *(thousand tons)*	3.2	4.0	5.2	5.6	5.5	6.9
NO_X *(thousand tons)*	19	21	25	27	90	169
Hg *(tons)*	0.02	0.02	0.03	0.03	0.03	0.04
CH_4 *(thousand tons)*	72	84	104	110	161	683
N_2O *(thousand tons)*	0.08	0.10	0.13	0.14	0.15	0.26
Present Value of Monetized Benefits and Costs (3% discount rate, billion 2020$)						
Consumer Operating Cost Savings	1.73	2.10	2.68	2.87	3.20	7.16
Climate Benefits *	0.43	0.51	0.64	0.69	0.89	3.13
Health Benefits **	0.16	0.20	0.25	0.26	0.32	0.97
Total Benefits †	2.33	2.81	3.57	3.82	4.42	11.26
Consumer Incremental Product Costs ‡	0.07	0.11	0.25	0.37	0.81	4.43
Consumer Net Benefits	1.67	1.99	2.43	2.50	2.39	2.73
Total Net Benefits	2.27	2.70	3.32	3.45	3.61	6.83
Present Value of Monetized Benefits and Costs (7% discount rate, billions 2020$)						
Consumer Operating Cost Savings	0.75	0.90	1.15	1.23	1.36	2.98
Climate Benefits *	0.43	0.51	0.64	0.69	0.89	3.13
Health Benefits *	0.07	0.08	0.10	0.11	0.13	0.38
Total Benefits †	1.25	1.50	1.89	2.02	2.38	6.49
Consumer Incremental Product Costs ‡	0.03	0.06	0.13	0.19	0.40	2.21
Consumer Net Benefits	0.72	0.85	1.02	1.04	0.95	0.77
Total Net Benefits	1.22	1.44	1.76	1.83	1.98	4.28

Note: This table presents the costs and benefits associated with consumer pool heaters shipped in 2028–2057. These results include benefits to consumers which accrue after 2057 from the products shipped in 2028–2057.

* Climate benefits are calculated using four different estimates of the social cost of carbon (SC–CO2), methane (SC–CH4), and nitrous oxide (SC–N2O) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate), as shown in Table V.17 through Table V.19. Together these represent the global social cost of greenhouse gases (SC–GHG). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate. See section. IV.L of this document for more details.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing $PM_{2.5}$ and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.L of this document for more details.

† Total and net benefits include consumer, climate, and health benefits. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates. See Table V.22 for net benefits using all four SC–GHG estimates. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible under law.

[149] Sanstad, A. H. *Notes on the Economics of Household Energy Consumption and Technology Choice.* 2010. Lawrence Berkeley National Laboratory. Available at: *www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf* (last accessed April 15, 2021).

‡ Costs include incremental equipment costs as well as installation costs.

TABLE V.24—SUMMARY OF ANALYTICAL RESULTS FOR CONSUMER POOL HEATERS TSLs: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Manufacturer Impacts						
Industry NPV (*million 2020$*) (No-new-standards case INPV = 188.7)	186.1–186.5	183.6–184.2	170.3–171.8	169.0–171.1	161.0–174.2	135.5–187.3
Industry NPV (*% change*)	(1.3)–(1.2)	(2.7)–(2.3)	(9.7)–(9.0)	(10.4)–(9.3)	(14.7)–(7.7)	(28.2)–(0.7)
Consumer Average LCC Savings (2020$)						
Electric Pool Heaters	7,995	3,695	1,123	1,029	1,029	929
Gas-fired Pool Heaters	1,085	1,085	1,085	1,085	43	(15)
Shipment-Weighted Average *	7,995	3,695	1,123	1,121	677	465
Consumer Simple PBP (years)						
Electric Pool Heaters	0.6	0.6	0.7	0.7	0.7	0.8
Gas-fired Pool Heaters	0.1	0.1	0.1	0.1	1.5	4.4
Shipment-Weighted Average *	0.6	0.6	0.7	0.3	1.3	3.3
Percent of Consumers that Experience a Net Cost (%)						
Electric Pool Heaters	0.4	0.9	11.0	20.9	20.9	37.8
Gas-fired Pool Heaters	0.0	0.0	0.0	0.0	31.9	70.1
Shipment-Weighted Average *	0.1	0.3	3.3	3.3	28.6	60.3

Parentheses indicate negative (−) values.
* Weighted by shares of each product class in total projected shipments in 2028.

DOE first considered TSL 6, which represents the max-tech efficiency levels. TSL 6 would save an estimated 1.33 quads of energy, an amount DOE considers significant. Under TSL 6, the NPV of consumer benefit would be $0.77 billion using a discount rate of 7 percent, and $2.73 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 6 are 63 Mt of CO_2, 6.9 thousand tons of SO_2, 169 thousand tons of NO_X, 0.04 tons of Hg, 683 thousand tons of CH_4, and 0.26 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 6 is $3.13 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 6 is $0.38 billion using a 7-percent discount rate and $0.97 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total monetized NPV at TSL 6 is $4.28 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total monetized NPV at TSL 6 is $6.83 billion. The estimated total monetized NPV is provided for additional information, however DOE gives considerable weight to the NPV of consumer benefits and the percentage of consumers experiencing a net cost when determining whether a proposed standard level is economically justified.

At TSL 6, the average LCC impact is a savings of $929 for electric pool heaters and an average LCC loss of $15 for gas-fired pool heaters. The simple payback period is 0.8 years for electric pool heaters and 4.4 years for gas-fired pool heaters. The fraction of consumers experiencing a net LCC cost is 37.8 percent for electric pool heaters and 70.1 percent for gas-fired pool heaters.

At TSL 6, the projected change in INPV ranges from a decrease of $53.2 million to a decrease of $1.4 million, which corresponds to decreases of 28.2 percent and 0.7 percent, respectively. DOE estimates that industry must invest $59.0 million to comply with standards set at TSL 6. DOE estimates that approximately nine percent of gas-fired pool heater shipments and less than one percent of electric pool heater shipments would meet the efficiency levels analyzed at TSL 6. There are 18 pool heater manufacturers that manufacture electric pool heaters covered by this rulemaking. Only one of the 18 electric pool heater manufacturers offers electric pool heater models that meet the efficiency level required at TSL 6 for electric pool heaters. All other electric pool heater manufacturers do not offer any models that would meet the efficiency level required at TSL 6 for electric pool heaters covered by this rulemaking. If these manufacturers decide to leave the electric pool heater market, there would be only one manufacturer of electric pool heaters, which could raise concerns related to anti-competitive market forces. There are four pool heater manufacturers that manufacture gas-fired pool heaters covered by this rulemaking. Only one of the four gas-fired pool heater manufacturers offers gas-fired pool heater models that meet the efficiency level required at TSL 6 for gas-fired pool heaters. All other gas-fired pool heater manufacturers do not offer any models that would meet the efficiency level required at TSL 6 for gas-fired pool heaters covered by this rulemaking. At TSL 6, most manufacturers would be required to redesign every pool heater model covered by this rulemaking. It is unclear if most manufacturers would have the engineering capacity to complete the necessary redesigns within the 5-year compliance period. If manufacturers require more than 5 years to redesign all their covered pool heater models, they will likely prioritize redesigns based on sales volume. There is risk that some pool heater models will become either temporarily or permanently unavailable after the compliance date.

The Secretary tentatively concludes that at TSL 6 for consumer pool heaters,

the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the climate and health benefits would be outweighed by the economic burden on many consumers, and the impacts on manufacturers, including the large conversion costs, profit margin impacts that could result in a large reduction in INPV, and the lack of manufacturers currently offering products meeting the efficiency levels required at this TSL, including most small businesses. A majority of gas-fired pool heater consumers (70.1 percent) would experience a net cost and the average LCC savings would be negative. The potential reduction in INPV could be as high as 28.2 percent. Additionally, only one pool heater manufacturer offers models that meet the efficiency level required at TSL 6 for electric pool heaters covered by this rulemaking and only one pool heater manufacturer offers models that meet the efficiency level required at TSL 6 for gas-fired pool heaters covered by this rulemaking. Due to limited amount of engineering resources each manufacturer has, it is unclear if most manufacturers will be able to redesign their entire product offerings of pool heaters covered by this rulemaking in the 5-year compliance period. Lastly, only one small business offers pool heater models that meet the efficiency levels required at TSL 6. No other small businesses offer any pool heater models that meet the efficiency levels required at TSL 6. Consequently, the Secretary has tentatively concluded that TSL 6 is not economically justified.

DOE then considered TSL 5, which represents efficiency level 4 for electric pool heaters and efficiency level 2 for gas-fired pool heaters. TSL 5 would save an estimated 0.49 quads of energy, an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit would be $0.95 billion using a discount rate of 7 percent, and $2.39 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 19 Mt of CO_2, 5.5 thousand tons of SO_2, 90 thousand tons of NO_X, 0.03 tons of Hg, 161 thousand tons of CH_4, and 0.15 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 5 is $0.89 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 5 is $0.13 billion using a 7-percent discount rate and $0.32 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total monetized NPV at TSL 5 is $1.98 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total monetized NPV at TSL 5 is $3.61 billion. The estimated total NPV is provided for additional information, however DOE gives considerable weight to the NPV of consumer benefits and the percentage of consumers experiencing a net cost when determining whether a proposed standard level is economically justified.

At TSL 5, the average LCC impact is a savings of $1,029 for electric pool heaters and $43 for gas-fired pool heaters. The simple payback period is 0.7 years for electric pool heaters and 1.5 years for gas-fired pool heaters. The fraction of consumers experiencing a net LCC cost is 20.9 percent for electric pool heaters and 31.9 percent for gas-fired pool heaters.

At TSL 5, the projected change in INPV ranges from a decrease of $27.7 million to a decrease of $14.4 million, which correspond to decreases of 14.7 percent and 7.7 percent, respectively. DOE estimates that industry must invest $38.8 million to comply with standards set at TSL 5. DOE estimates that approximately 45 percent of gas-fired pool heater shipments and ten percent of electric pool heater shipments would meet the efficiency levels analyzed at TSL 5. All gas-fired pool heater manufacturers and eight of the 18 electric pool heater manufacturers offer products that meet or exceed the efficiency levels required at TSL 5.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that at a standard set at TSL 5 for consumer pool heaters would be economically justified. At this TSL, the average LCC savings for both electric and gas-fired pool heater consumers is positive. An estimated 20.9 percent of electric pool heater consumers and 31.9 percent of gas-fired pool heater consumers experience a net cost. The FFC national energy savings are significant and the NPV of consumer benefits is positive using both a 3-percent and 7-percent discount rate. Notably, the benefits to consumers vastly outweigh the cost to manufacturers. At TSL 5, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent is over 34 times higher than the maximum estimated manufacturers' loss in INPV. The positive LCC savings—a different way of quantifying consumer benefits—reinforces this conclusion. The standard levels at TSL 5 are economically justified even without weighing the estimated monetary value of emissions reductions. When those monetized climate benefits from GHG emissions reductions and health benefits from SO_2 and NO_X emissions reductions are included—representing $0.89 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate) and $0.32 billion (using a 3-percent discount rate) or $0.13 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

As stated, DOE conducts a ''walk-down'' analysis to determine the TSL that represents the maximum improvement in energy efficiency that is technologically feasible and economically justified as required under EPCA. The walk-down is not a comparative analysis, as a comparative analysis would result in the maximization of net benefits instead of energy savings that are technologically feasible and economically justified and would be contrary to the statute. 86 FR 70892, 70908. Although DOE has not conducted a comparative analysis to select the proposed energy conservation standards, DOE notes that as compared to TSL 6, TSL 5 has higher average LCC savings, smaller percentages of consumer experiencing a net cost, a lower maximum decrease in INPV, and lower manufacturer conversion costs.

Accordingly, the Secretary has tentatively concluded that TSL 5 would offer the maximum improvement in efficiency that is technologically feasible and economically justified and would result in the significant conservation of energy. Although results are presented here in terms of TSLs, DOE analyzes and evaluates all possible ELs for each product class in its analysis. For both gas-fired pool heaters and electric pool heaters, TSL 5 is comprised of the highest efficiency level below max-tech. For gas-fired pool heaters, the max-tech efficiency level results in negative average LCC savings and a large percentage of consumers that experience a net LCC cost, in addition to significant manufacturer impacts. For electric pool heaters the max-tech efficiency level can only be achieved by a single manufacturer, resulting in large expected conversion costs and significant reductions in INPV. The ELs one level below max-tech, representing the proposed standard levels, result in positive LCC savings for both classes, significantly reduce the number of consumers experiencing a net cost, and reduce the decrease in INPV and conversion costs to the point where DOE has tentatively concluded they are

economically justified, as discussed for TSL 5 in the preceding paragraphs.

Therefore, based on the previous considerations, DOE proposes to adopt the energy conservation standards for consumer pool heaters at TSL 5. The proposed amended energy conservation standards for pool heaters, which are expressed as TE_I, are shown in Table V.25.

Table V.25 Proposed Amended Energy Conservation Standards for Consumer Pool Heaters

Product Class	Integrated Thermal Efficiency TE_I† (*percent*)
Electric Pool Heater	$\frac{600PE}{PE + 1{,}619}$
Gas-Fired Pool Heater	$\frac{84(Q_{IN} + 491)}{Q_{IN} + 2{,}536}$

†PE is the active electrical power for consumer pool heaters and Q_{IN} is the input capacity as determined in accordance with the DOE test procedure in appendix P.

2. Annualized Benefits and Costs of the Proposed Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized net benefit is (1) the annualized national economic value (expressed in 2020$) of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs, and (2) the annualized monetary value of the benefits of GHGs, SO_2, and NO_X emission reductions.

Table V.26 shows the annualized values for consumer pool heaters under TSL 5, expressed in 2020$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards proposed in this rule is $49.0 million per year in increased equipment costs, while the estimated annual benefits are $164 million in reduced equipment operating costs, $54.5 million in climate benefits, and $15.6 million in monetized health benefits. In this case, the net monetized benefit would amount to $185 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards is $49.3 million per year in increased equipment costs, while the estimated annual benefits are $195 million in reduced operating costs, $54.5 million in climate benefits, and $19.6 million in monetized health benefits. In this case, the net monetized benefit would amount to $220 million per year.

TABLE V.26—ANNUALIZED MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER POOL HEATERS

[TSL 5]

	Million 2020$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	194.9	179.0	212.8
Climate Benefits *	54.5	52.4	56.6
Health Benefits **	19.6	18.9	20.4
Total Benefits †	269	250	290
Consumer Incremental Product Costs ‡	49.3	51.4	49.4
Net Benefits	220	199	240
7% discount rate			
Consumer Operating Cost Savings	164.2	152.7	177.7
Climate Benefits *	54.5	52.4	56.6
Health Benefits **	15.6	15.0	16.1
Total Benefits †	234	220	250
Consumer Incremental Product Costs ‡	49.0	50.7	49.2
Net Benefits	185	169	201

Note: This table presents the costs and benefits associated with consumer pool heaters shipped in 2028–2057. These results include benefits to consumers which accrue after 2057 from the products shipped in 2028–2057.

* Climate benefits are calculated using four different estimates of the social cost of carbon (SC–CO2), methane (SC–CH4), and nitrous oxide (SC–N2O) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate). Together these represent the global social cost of greenhouse gases (SC–GHG). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates. See section. IV.L of this document for more details.

* Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing $PM_{2.5}$ and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.L of this document for more details.

† Total and net benefits include consumer, climate, and health benefits. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible under law.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order (''E.O.'')12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that the proposed standards set forth in this NOPR are intended to address are as follows:

(1) Insufficient information and the high costs of gathering and analyzing relevant information leads some consumers to miss opportunities to make cost-effective investments in energy efficiency.

(2) In some cases, the benefits of more-efficient equipment are not realized due to misaligned incentives between purchasers and users. An example of such a case is when the equipment purchase decision is made by a building contractor or building owner who does not pay the energy costs.

(3) There are external benefits resulting from improved energy efficiency of appliances and equipment that are not captured by the users of such products. These benefits include externalities related to public health, environmental protection, and national energy security that are not reflected in energy prices, such as reduced emissions of air pollutants and greenhouse gases that impact human health and global warming.

The Administrator of the Office of Information and Regulatory Affairs (''OIRA'') in the OMB has determined that the proposed regulatory action is a significant regulatory action under section (3)(f) of Executive Order 12866. Accordingly, pursuant to section 6(a)(3)(B) of the Order, DOE has provided to OIRA:

(i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and

(ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate. DOE has included these documents in the rulemaking record. A summary of the potential costs and benefits of the regulatory action is presented in Table VI.1.

TABLE VI.1—ANNUALIZED BENEFITS, COSTS, AND NET BENEFITS OF PROPOSED STANDARDS

Category	Million 2020$/year	
	3% Discount rate	7% Discount rate
Consumer Operating Cost Savings	194.9	164.2
Climate Benefits *	54.5	54.5
Health Benefits **	19.6	15.6
Total Benefits †	269	234
Costs ‡	49.3	49.0
Net Benefits	220	185

Note: This table presents the costs and benefits associated with consumer pool heaters shipped in 2028–2057. These results include benefits to consumers which accrue after 2057 from the products shipped in 2028–2057.

* Climate benefits are calculated using four different estimates of the social cost of carbon (SC–CO2), methane (SC–CH4), and nitrous oxide (SC–N2O) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate). Together these represent the global social cost of greenhouse gases (SC–GHG). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing $PM_{2.5}$ and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. The health benefits are presented at real discount rates of 3 and 7 percent.

† Total and net benefits include consumer, climate, and health benefits. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible under law.

‡ Costs include incremental equipment costs as well as installation costs.

In addition, the Administrator of OIRA has determined that the proposed regulatory action is an ''economically'' significant regulatory action under section (3)(f)(1) of E.O. 12866. Accordingly, pursuant to section 6(a)(3)(C) of the Order, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments are summarized in this preamble and further detail can be found in the technical support document for this rulemaking.

DOE has also reviewed this proposed regulation pursuant to E.O. 13563, issued on January 18, 2011. 76 FR 3281 (Jan. 21, 2011). E.O. 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in E.O. 12866. To the extent permitted by law, agencies are required by E.O. 13563 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, OIRA 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 NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

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 E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.* DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. DOE has prepared the following IRFA for the products that are the subject of this rulemaking.

For manufacturers of consumer pool heaters, the SBA has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. *See* 13 CFR part 121. The size standards are listed by North American Industry Classification System (''NAICS'') code and industry description and are available at *www.sba.gov/document/support--table-size-standards.* Manufacturing of consumer pool heaters is classified under NAICS 333414, ''heating equipment (except warm air furnaces) manufacturing.'' The SBA sets a threshold of 500 employees or fewer for an entity to be considered as a small business for this category.

1. Description of Reasons Why Action Is Being Considered

DOE has undertaken this rulemaking pursuant to 42 U.S.C. 6295(e)(4)(B), which requires DOE to conduct a second round of amended standards rulemaking for consumer pool heaters. The Energy Policy and Conservation Act, as amended (EPCA), also requires that not later than six years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of the determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards. (42 U.S.C. 6295(m)(1)) This rulemaking is in accordance with DOE's obligations under EPCA.

2. Objectives of, and Legal Basis for, Rule

As discussed previously in section II, Title III, Part B of EPCA, sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances and certain industrial and commercial equipment. The National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, amended EPCA to establish energy conservation standards for residential pool heaters and set requirements to conduct two

cycles of rulemaking to determine whether these standards should be amended. (42 U.S.C. 6295(e)(2) and (4)) The first of these two rulemakings, which amended standards for gas-fired pool heaters, concluded with the promulgation of a final rule on April 16, 2010. 75 FR 20112. (Codified at 10 CFR 430.32(k)). This rulemaking satisfies the statutory requirements under EPCA to conduct a second round of review of the pool heaters standard. (42 U.S.C. 6295(e)(4)(B)) This proposed rulemaking is also in accordance the six-year review required under 42 U.S.C. 6295(m)(1).

3. Description on Estimated Number of Small Entities Regulated

For manufacturers of consumer pool heaters, the SBA has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of this proposed rule. *See* 13 CFR part 121. The size standards are listed by NAICS code and industry description and are available at *www.sba.gov/document/support--table-size-standards.*

Manufacturing of consumer pool heaters is classified under NAICS code 333414, ''heating equipment (except warm air furnaces) manufacturing.'' The SBA sets a threshold of 500 employees or fewer for an entity to be considered as a small business for this category.

DOE reviewed the potential standard levels considered in this NOPR under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. During its market survey, DOE used publicly available information to identify potential small manufacturers. DOE's research involved industry trade association membership directories (*e.g.,* AHRI), information from previous rulemakings, individual company websites, and market research tools (*e.g.,* D&B Hoover's reports) to create a list of companies that manufacture consumer pool heaters. DOE also asked stakeholders and industry representatives if they were aware of any additional small manufacturers during manufacturer interviews. DOE reviewed publicly available data and contacted various companies on its complete list of manufacturers to determine whether they met the SBA's definition of a small business manufacturer. DOE screened out companies that do not offer products impacted by this rulemaking, do not meet the definition of a ''small business,'' or are foreign owned and operated.

DOE identified 21 companies manufacturing consumer pool heaters covered by this rulemaking. Of these manufacturers, DOE identified six as domestic small businesses. All six domestic small businesses only manufacture electric pool heaters. DOE did not identify any domestic small businesses that manufacture gas-fired pool heaters.

DOE was able to reach and discuss potential standards with two of the six small businesses. Additionally, DOE requested information about small businesses and potential impacts on small businesses while interviewing large manufacturers.

Gas-fired pool heaters account for most of the consumer pool heater market, with approximately 70 percent of all consumer pool heater units shipped annually. Within the electric pool heater market, over 90 percent of shipments are heat pump pool heaters and only a small fraction of the shipments are electric resistance pool heaters. (See chapter 9 of the NOPR TSD for more information on the shipments analysis conducted for this rulemaking.) Although the electric pool heater market is smaller than the gas-fired pool heater market, it is also more fragmented. Whereas DOE identified five manufacturers of gas-fired pool heaters, DOE identified 20 manufacturers of electric pool heaters (four of the companies make both gas-fired and electric pool heaters).

Four major players dominate the market for electric pool heaters, three are large manufacturers and one is a small business. The rest of the market is served by a combination of large and small businesses with market shares estimated to be in the single digits. Of the six small businesses identified, five only manufacture electric heat pump pool heaters and one only manufactures electric resistance pool heaters.

4. Description and Estimate of Compliance Requirements Including Differences in Cost, if Any, for Different Groups of Small Entities

As stated previously, DOE identified six small manufacturers of electric pool heaters and no small manufacturers of gas-fired pool heaters. Accordingly, this analysis of small business impacts focuses exclusively on the electric pool heater industry. Within the electric pool heater industry, this analysis focuses only on products impacted by this rulemaking (*i.e.,* electric heat pump pool heaters and electric resistance pool heaters with capacities greater than 11 kW, as discussed in section III.A of this document).

This NOPR proposes minimum energy conservation standards for electric pool heaters at efficiency levels above those achieved by electric resistance pool heaters. Given that the designs of electric heat pump pool heaters and electric resistance pool heaters use different types of technology, DOE assumes manufacturers of electric resistance pool heaters with capacities greater than 11 kW would discontinue those product lines rather than redesign them as electric heat pump pool heaters. As a result, expected impacts on manufacturers vary based on the type of electric pool heaters they manufacture.

As described in section IV.J.2.c of this document, there are two types of conversion costs that small businesses could incur due to the proposed standards for electric pool heaters: Product conversion costs and capital conversion costs. Product conversion costs are investments in R&D, testing, marketing, and other non-capitalized costs necessary to make product designs comply with new and amended energy conservation standards. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled. Manufacturers would only need to make these investments if they have products that do not meet the adopted energy conservation standards. Testing costs are costs manufacturers must make to test their electric pool heaters in accordance with DOE's test procedure to demonstrate compliance with adopted energy conservation standards. Manufacturers must do this for all compliant electric pool heaters that are in the scope of this rulemaking.

DOE estimates there are three small businesses that do not have any electric heat pump pool heater models that would meet the proposed standards. DOE applied the conversion cost methodology described in section IV.J.2.c of this document to calculate small business product and capital conversion costs. To calculate product conversion costs DOE estimated it would take six months of engineering time to redesign a single electric heat pump pool heater model to meet the proposed standards. DOE estimates that there are approximately 101 electric heat pump pool heaters manufactured by small businesses that may need to be redesigned to comply with the proposed energy conservation standards for electric pool heaters, if adopted. To calculate capital conversion costs DOE estimates that most small businesses

would need to make minor investments in tooling to accommodate electric heat pump pool heater models with a larger evaporator. Small business conversion costs are presented in Table VI.2. of this document.

The five small businesses that manufacture electric heat pump pool heaters would incur testing costs to demonstrate compliance of electric pool heaters with adopted energy conservation standards in accordance with DOE's test procedure. Electric pool heaters are currently not subject to DOE energy conservation standards. This NOPR proposes to establish new energy conservation standards for electric pool heaters. Manufacturers, including small businesses, would have to test all electric pool heaters that are subject to this rulemaking after the compliance date. DOE estimates that small businesses manufacture approximately 131 electric heat pump pool models that would be included in the scope of this rulemaking. All 118 electric heat pump pool heater models would need to be tested after the compliance date. DOE estimates a per model testing cost for these electric heat pump pool heater models. Small business conversion and testing costs are presented in Table VI.2.

TABLE VI.2—SMALL BUSINESS COSTS

	Small business costs (2020$)	Average cost per small business (2020$)
Product Conversion Costs	6.34 million	1.27 million
Capital Conversion Costs	0.23 million	0.05 million
Testing Costs for Compliance	0.66 million	0.13 million
Total Small Business Costs	7.23 million	1.45 million

DOE estimates the average small business would incur approximately $1.45 million per small business. DOE assumes that all consumer pool heater manufacturers would spread these costs over the five-year compliance timeframe, as standards are expected to require compliance approximately five years after the publication of a Final Rule. Therefore, DOE assumes that the average consumer pool heater small business would incur on average $290,000 annually in the five years leading up to the compliance date for consumer pool heaters. Using publicly available data, DOE estimated the average annual revenue of the five small businesses that manufacturer electric heat pump pool heaters to be $4.89 million. Table VI.3 compares these average small business costs to average annual revenue of small businesses.

Additionally, these manufacturers could choose to discontinue their least efficient models and ramp up production of existing, compliant models rather than redesign each of their noncompliant models. Therefore, actual conversion costs could be lower than estimates developed under the conservative assumption that manufacturers would redesign all noncompliant models.

TABLE VI.3—AVERAGE SMALL BUSINESS COSTS COMPARED TO ANNUAL REVENUE

Units	Estimated compliance costs (2020$)	Annual revenue (2020$)	Compliance costs as a percent of annual revenue (%)	5 Years of revenue (2020$)	Compliance costs as a percent of 5 years of revenue (%)
Average Small Business	1.45 million	4.89 million	29.5	24.47 million	5.9

Lastly, for the one small business that manufactures only electric resistance pool heaters, based on public company literature, this small business manufactures 72 electric resistance pool heaters with capacities greater than 11 kW. This small business also manufactures electric resistance pool heaters with capacities less than or equal to 11 kW and a small selection of other heating products that would still be allowed to be sold, even if this proposal is adopted in a final rule. If the proposed standards were adopted, this manufacturer's business and competitive position in the electric pool heater market (for electric resistance pool heaters with capacities greater than 11 kW) would be negatively impacted, since the proposed standards result in a minimum efficiency level that is not feasible for electric resistance pool heaters to achieve. This small business does not offer any compliant consumer pool heater products that could serve as a replacement product for the non-compliant electric resistance pool heaters. However, this small business would still be able to sell electric resistance pool heaters with capacities less than or equal to 11 kW and would still be able to export electric resistance pool heaters with capacities greater than 11 kW to other countries, including into Canada.

DOE requests comment on its findings that there are six domestic small businesses that manufacture consumer pool heaters and its estimate of the potential impacts on these small businesses.

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the proposed rule being considered today.

6. Significant Alternatives to the Rule

The discussion in the previous section analyzes impacts on small businesses that would result from DOE's proposed rule, represented by TSL 5. In reviewing alternatives to the proposed rule, DOE examined energy conservation standards set at lower efficiency levels. While TSL 1, TSL 2, and TSL 3 would reduce the impacts on small business manufacturers, it would come at the expense of a reduction in energy savings and, for some TSLs, a reduction in NPV benefits to

consumers.[150] TSL 1 achieves 47 percent lower energy savings and 24 percent less NPV benefits discounted at 7 percent to consumers compared to the energy savings and NPV benefits at TSL 5. TSL 2 achieves 37 percent lower energy savings and 11 percent less NPV benefits discounted at 7 percent to consumers compared to the energy savings and NPV benefits at TSL 5. TSL 3 achieves 20 percent lower energy savings compared to the energy savings at TSL 5.

DOE tentatively concludes that establishing standards at TSL 5 balances the benefits of the energy savings with the potential burdens placed on consumer pool heater manufacturers, including small business manufacturers. Accordingly, DOE does not propose one of the other TSLs considered in the analysis, or the other policy alternatives examined as part of the regulatory impact analysis and included in chapter 17 of the NOPR TSD.

Additional compliance flexibilities may be available through other means. EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. (42 U.S.C. 6295(t)). Additionally, 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 430, subpart E, and 10 CFR part 1003 for additional details.

C. Review Under the Paperwork Reduction Act

Manufacturers of consumer pool heaters currently subject to energy conservation standards 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 for consumer pool heaters, 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 consumer pool heaters. 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.

DOE is proposing to amend energy conservation standards for gas-fired consumer pool heaters and proposing to establish energy conservation standards for electric consumer pool heaters. DOE is not proposing to amend the existing reporting requirements or establish new DOE reporting requirements. Were DOE to establish amended and new energy conservation standards as proposed in this NOPR, DOE would consider associated reporting and certification requirements in a future rulemaking. Therefore, DOE has tentatively concluded that amended energy conservation standards for gas-fired consumer pool heaters and new energy conservation standards for electric consumer pool heaters would not impose additional costs for manufacturers related to reporting and certification.

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 because it is a 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 products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) 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

[150] TSL 4 would have an identical impact on electric pool heater manufacturers as TSL 5 since the standards for electric pool heaters are identical at TSL 4 and TSL 5. Both TSL 4 and TSL 5 require the same EL for electric pool heaters, EL 4. All small businesses only manufacture electric pool heaters. No small businesses manufacture gas-fired pool heaters. Therefore, the impacts on small businesses are identical at TSL 4 and TSL 5.

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, if finalized, 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 regulatory action, which proposes new and amended energy conservation standards for consumer pool heaters, 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.[151] Generation of this report involved a rigorous, formal, and documented

[151] The 2007 ''Energy Conservation Standards Rulemaking Peer Review Report'' is available at the following website: *https://energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0.*

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. DOE has determined that the peer-reviewed analytical process continues to reflect current practice, and the Department followed that process for developing energy conservation standards in the case of the present proposed rulemaking.

M. Description of Materials Incorporated by Reference

In this NOPR, DOE proposes to maintain the following material previously approved for incorporation by reference in appendix P: The test standard published by American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., titled ''Method of Testing and Rating Pool Heaters'', approved February 2, 2011, ASHRAE 146; and the test standard published by American National Standards Institute, titled ''Standard for Gas-Fired Pool Heaters'', approved December 13. 2005. ANSI Z21.56.

ASHRAE 146 is an industry standard for testing and rating pool heaters. Appendix P references ASHRAE 146 to establish the active mode equilibrium condition for fossil fuel-fired pool heaters and the active mode test method, measurements, and calculations for electric resistance and electric heat pump pool heaters. The proposed amendments to appendix P include additional references to ASHRAE 146 to clarify the calculations of average annual electrical energy consumption and for electric pool heaters, output capacity. Copies of ASHRAE 146 can be obtained from American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., Publication Sales, 1791 Tullie Circle NE, Atlanta, GA 30329, 800–527–4723 or 404–636–8400, or go to *www.ashrae.org.*

ANSI Z21.56 is an industry standard for testing gas-fired pool heaters. Appendix P references ANSI Z21.56 to establish the active mode test method, test conditions, measurements, and calculations for fossil fuel-fired pool heaters. The proposed amendments to appendix P include additional references to ANSI Z21.56 to clarify the calculations of input capacity and active electrical power for fossil fuel-fired pool heaters. Copies of ANSI Z21.56 can be obtained from, American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, 212–642–4900, or go to *www.ansi.org.*

VII. Public Participation

A. Participation in the Webinar

The time and date of 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: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=44&action=viewcurrent.* 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 NOPR, 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 requests to speak by email to: *Appliance StandardsQuestions@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 proposed 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. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present summaries of comments received before the webinar, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this proposed 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 NOPR. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, 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 contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

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

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, 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:

(1) DOE requests comment on the proposal to add to its enforcement provisions to use a ±2 percent threshold on the certified value of input capacity or active electrical power (as applicable) when determining the applicable energy conservation standard for the basic model.

(2) DOE requests comment on its assumption that electric pool heaters that have both heating and cooling capabilities do not suffer diminished efficiency performance in heating mode.

(3) DOE requests comment on the product classes analyzed for this rulemaking.

(4) DOE requests comment on the proposed definitions for electric pool heater, electric spa heater, gas-fired pool heater, oil-fired pool heater, and portable electric spa.

(5) DOE requests comment on its proposed definition for output capacity, as well as its proposed calculations for determining the output capacity of electric pool heaters.

(6) DOE requests comment on the efficiency improvement expected from replacing a PSC fan motor with a BPM fan motor in heat pump pool heater.

(7) DOE seeks comment from interested parties regarding the efficiency levels selected for the NOPR analysis.

(8) DOE seeks comment from interested parties regarding the typical technological changes associated with each efficiency level.

(9) DOE requests comment on its assumption that the fraction of shipments which utilize cupronickel heat exchangers would not change as a result of amended standards.

(10) DOE requests comment on whether the distribution channels described above are appropriate for consumer pool heaters and are sufficient to describe the distribution markets. In addition, DOE seeks input on the percentage of products being distributed through the different distribution channels, and whether the share of products through each channel varies based on product class, capacity, or other features.

(11) DOE requests comment on the data sources used to establish the markups for the parties involved with the distribution of covered products.

(12) DOE requests comment on the data sources and methodology used to establish pool heater consumer samples.

(13) DOE requests comment on the overall methodology for determining consumer pool heater energy use.

(14) DOE requests comment on the data sources and methodology for determining consumer pool heater hours of operation as well as swimming pool and spa hours of operation.

(15) DOE requests comment on the methodology used for determining heat pump pool heater energy use.

(16) DOE requests comment on the methodology used for determining standby and off mode energy use.

(17) DOE requests comments on its assumption that gas-fired pool heaters installed in California, Utah, or Texas would have a low-NO_X burner and the fraction of installations outside these three regions that would have a low-NO_X burner.

(18) DOE requests comments on its assumption and methodology for

determining equipment price trends. DOE also requests data that would allow for use of different price trend projections for electric resistance and heat pump pool heaters.

(19) DOE seeks comment regarding the fraction of electric pool heater installations that are located in a space-constrained area that could increase the cost of installing a heat pump pool heater.

(20) DOE requests comments on its assumption, methodology, and sources for determining installation costs for consumer pool heaters.

(21) DOE requests comments on its approach for determining the rebound effect.

(22) DOE requests comments on its approach for developing gas, LPG, and electricity prices.

(23) DOE requests comments on its approach for calculating maintenance and repair costs.

(24) DOE welcomes additional comments and data regarding lifetime estimates, particularly in relation to differences between electric resistance pool heaters, heat pump pool heaters, and gas-fired pool heaters.

(25) DOE welcomes additional comments and data regarding estimates for energy efficiency distribution for 2020 and future distribution in 2028.

(26) DOE requests comment on DOE's methodology and data sources used for projecting the future shipments of consumer pool heaters in the absence of amended energy conservation standards.

(27) To estimate the impact on shipments of the price increase for the considered efficiency levels, DOE used a relative price elasticity approach. DOE welcomes stakeholder input on the effect of amended standards on future consumer pool heater shipments.

(28) DOE seeks additional information on industry capital and product conversion costs of compliance associated with the analyzed energy conservation standards for consumer pool heaters evaluated in this NOPR.

(29) DOE requests comment on the estimated stranded assets for both electric resistance pool heaters and gas-fired pool heaters.

(30) DOE welcomes any additional comments on the approach for conducting the emissions analysis for pool heaters.

(31) DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of consumer pool heaters associated with multiple DOE standards or product-specific regulatory actions of other Federal agencies.

(32) DOE requests comment on its findings that there are six domestic small businesses that manufacture consumer pool heaters and its estimate of the potential impacts on these small businesses.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this 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.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements.

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 28, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 31, 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 10 CFR parts 429 and 430 as set forth below:

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

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

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

■ 2. Section 429.134 is amended by adding paragraph (s) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(s) *Pool heaters.* Beginning on [DATE 5 YEARS AFTER PUBLICATION OF FINAL RULE]:

(1) *Verification of input capacity for gas-fired pool heaters.* The input capacity of each tested unit will be measured pursuant to the test requirements of § 430.23(p). The results of the measurement(s) will be compared to the represented value of input capacity certified by the manufacturer for the basic model. The certified input capacity will be considered valid only if the measurement(s) (either the measured input capacity for a single unit sample or the average of the measured input capacity for a multiple unit sample) is within two percent of the certified input capacity.

(i) If the representative value of input capacity is found to be valid, the certified input capacity will serve as the basis for determination of the applicable standard and the mean measured input capacity will be used as the basis for calculation of the integrated thermal efficiency standard for the basic model.

(ii) If the representative value of input capacity is not within two percent of the certified input capacity, DOE will first attempt to increase or decrease the gas pressure within the range specified in manufacturer's installation and operation manual shipped with the gas-fired pool heater being tested to achieve the certified input capacity (within two percent). If the input capacity is still not within two percent of the certified input capacity, DOE will attempt to modify the gas inlet orifice. If the input capacity still is not within two percent of the certified input capacity, the mean measured input capacity (either for a single unit sample or the average for a multiple unit sample) determined from the tested units will serve as the basis for calculation of the integrated thermal efficiency standard for the basic model.

(2) *Verification of active electrical power for pool heaters.* The active electrical power of each tested unit will be measured pursuant to the test

requirements of § 430.23. The results of the measurement(s) will be compared to the represented value of active electrical power city certified by the manufacturer for the basic model. The certified active electrical power will be considered valid only if the measurement(s) (either the measured active electrical power for a single unit sample or the average of the measured active electrical power for a multiple unit sample) is within two percent of the certified active electrical power.

(i) If the representative value of active electrical power is found to be valid, the certified active electrical power will serve as the basis for determination of the applicable standard and the mean measured active electrical power will be used as the basis for calculation of the integrated thermal efficiency standard for the basic model.

(ii) If the representative value of input capacity is not within two percent of the certified input capacity, the mean measured active electrical power (either for a single unit sample or the average for a multiple unit sample) determined from the tested units will serve as the basis for calculation of the integrated thermal efficiency standard for the basic model.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 4. Section 430.2 is amended by adding in alphabetical order definitions for ''Electric pool heater'', ''Electric spa heater'', ''Gas-fired pool heater'', ''Oil-fired pool heater'', and ''Portable electric spa'' to read as follows:

§ 430.2 Definitions.

* * * * *

Electric pool heater means a pool heater other than an electric spa heater that uses electricity as its primary energy source.

Electric spa heater means a pool heater that—

(1) Uses electricity as its primary energy source;

(2) Has an output capacity (as measured according to appendix P to subpart B of part 430) of 11 kW or less; and

(3) Is designed to be installed within a portable electric spa.

* * * * *

Gas-fired pool heater means a pool heater that uses gas as its primary energy source.

* * * * *

Oil-fired pool heater means a pool heater that uses oil as its primary energy source.

* * * * *

Portable electric spa means a self-contained, factory-built spa or hot tub in which all control, water heating and water circulating equipment is an integral part of the product. Self-contained spas may be permanently wired or cord connected.

* * * * *

■ 5. Appendix P of subpart B of part 430 is amended by:

■ a. Revising the introductory note.

■ b. Revising sections 1., 5.2, and 5.3; and

■ c. Adding sections 5.5, 5.5.1, and 5.5.2;

The revisions and additions read as follows:

Appendix P to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Pool Heaters

Note: On and after [*Date 180 days after publication of final rule*], any representations made with respect to the energy use or efficiency of all pool heaters must be made in accordance with the results of testing pursuant to this appendix. Until [*Date 180 Days After Publication of Final Rule*], manufacturers must test gas-fired pool heaters in accordance with this appendix, or appendix P as it appeared at 10 CFR part 430, subpart B revised as of January 1, 2021. Prior to [*Date 180 days after publication of final rule*], if a manufacturer makes representations of standby mode and off mode energy consumption, then testing must also include the provisions of this appendix, or appendix P as it appeared at 10 CFR part 430, subpart B revised as of January 1, 2021, related to standby mode and off mode energy consumption.

1. Definitions

Active electrical power means the maximum electrical power consumption in active mode for an electric pool heater.

Active mode means the condition during the pool heating season in which the pool heater is connected to the power source, and the main burner, electric resistance element, or heat pump is activated to heat pool water.

Coefficient of performance (COP), as applied to heat pump pool heaters, means the ratio of heat output in kW to the total power input in kW.

Electric heat pump pool heater means an appliance designed for heating nonpotable water and employing a compressor, water-cooled condenser, and outdoor air coil.

Electric resistance pool heater means an appliance designed for heating nonpotable water and employing electric resistance heating elements.

Fossil fuel-fired pool heater means an appliance designed for heating nonpotable water and employing gas or oil burners.

Hybrid pool heater means an appliance designed for heating nonpotable water and employing both a heat pump (compressor, water-cooled condenser, and outdoor air coil) and a fossil fueled burner as heating sources.

Input capacity means the maximum fuel input rate for a fossil fuel-fired pool heater.

Off mode means the condition during the pool non-heating season in which the pool heater is connected to the power source, and neither the main burner, nor the electric resistance elements, nor the heat pump is activated, and the seasonal off switch, if present, is in the ''off'' position.

Output capacity for an electric pool or spa heater means the maximum rate at which energy is transferred to the water.

Seasonal off switch means a switch that results in different energy consumption in off mode as compared to standby mode.

Standby mode means the condition during the pool heating season in which the pool heater is connected to the power source, and neither the main burner, nor the electric resistance elements, nor the heat pump is activated.

* * * * *

5.2 *Average annual fossil fuel energy for pool heaters.* For electric resistance and electric heat pump pool heaters, the average annual fuel energy for pool heaters, $E_F = 0$.

For fossil fuel-fired pool heaters, the average annual fuel energy for pool heaters, E_F, is defined as:

$$E_F = BOH\ Q_{IN} + (POH - BOH)\ Q_{PR} + (8760 - POH)\ Q_{off,R}$$

where:

BOH = average number of burner operating hours = 104 h,

POH = average number of pool operating hours = 4,464 h,

Q_{IN} = input capacity, in Btu/h, calculated as the quantity $CF \times Q \times H$ in the equation for thermal efficiency in Section 2.10.1 of ANSI Z21.56 (incorporated by reference; see § 430.3) and divided by 0.5 h (For electric resistance and electric heat pump pool heaters, $Q_{IN} = 0$.),

Q_{PR} = average energy consumption rate of continuously operating pilot light, if employed, = (Q_P/1 h),

Q_P = energy consumption of continuously operating pilot light, if employed, as measured in section 4.2 of this appendix, in Btu,

8760 = number of hours in one year,

$Q_{off,R}$ = average off mode fossil fuel energy consumption rate = Q_{off}/(1 h), and

Q_{off} = off mode energy consumption as defined in section 4.3 of this appendix.

5.3 *Average annual electrical energy consumption for pool heaters.* The average annual electrical energy consumption for pool heaters, E_{AE}, is expressed in Btu and defined as:

(1) $E_{AE} = E_{AE,active} + E_{AE,standby,off}$

(2) $E_{AE,active} = BOH * PE$

(3) $E_{AE,standby,off} = (POH - BOH) P_{W,SB}(Btu/h) + (8760 - POH) P_{W,OFF}(Btu/h)$

where:

$E_{AE,active}$ = electrical consumption in the active mode,

$E_{AE,standby,off}$ = auxiliary electrical consumption in the standby mode and off mode,

PE = active electrical power, calculated as:

= $2E_c$, for fossil fuel-fired heaters tested according to $_S$Section 2.10.1 of ANSI Z21.56 and for electric resistance pool heaters, in Btu/h,

= 3.412 $PE_{aux,rated}$, for fossil fuel-fired heaters tested according to Section 2.10.2 of ANSI Z21.56, in Btu/h,

= $E_{c,HP} * (60/t_{HP})$, for electric heat pump pool heaters, in Btu/h.

E_c = electrical consumption in Btu per 30 min. This includes the electrical consumption (converted to Btus) of the pool heater and, if present, a recirculating pump during the 30-minute thermal efficiency test. The 30-minute thermal efficiency test is defined in section 2.10.1 of ANSI Z21.56 for fossil fuel-fired pool heaters and Section 9.1.4 of ASHRAE 146 (incorporated by reference; see § 430.3) for electric resistance pool heaters.

2 = conversion factor to convert unit from per 30 min. to per h.

$PE_{aux,rated}$ = nameplate rating of auxiliary electrical equipment of heater, in Watts

$E_{c,HP}$ = electrical consumption of the electric heat pump pool heater (converted to equivalent unit of Btu), including the electrical energy to the recirculating pump if used, during the thermal efficiency test, as defined in Section 9.1 of ASHRAE 146, in Btu. t_{HP} = elapsed time of data recording during the thermal efficiency test on electric heat pump pool heater, as defined in Section 9.1 of ASHRAE 146, in minutes.

BOH = as defined in section 5.2 of this appendix,

POH = as defined in section 5.2 of this appendix,

$P_{W,SB}$(Btu/h) = electrical energy consumption rate during standby mode expressed in Btu/h = 3.412 $P_{W,SB}$, Btu/h,

$P_{W,SB}$ = as defined in section 4.2 of this appendix,

$P_{W,OFF}$(Btu/h) = electrical energy consumption rate during off mode expressed in Btu/h = 3.412 $P_{W,OFF}$, Btu/h, and

$P_{W,OFF}$ = as defined in section 4.3 of this appendix.

* * * * *

5.5 *Output capacity for electric pool heaters.*

5.5.1 Calculate the output capacity of an electric heat pump pool heater as:

$Q_{OUT,HP} = k * W * (T_{ohp} - T_{ihp}) * (60/t_{HP})$

where k is the specific heat of water, W is the mass of water collected during the test, T_{ohp} is the average outlet water temperature during the standard rating test, T_{ihp} is the average inlet water temperature during the standard rating test, all as defined in Section 11.2 of ASHRAE 146, and t_{HP} is the elapsed time in minutes of data recording during the thermal efficiency test on electric heat pump pool heater, as defined in Section 9.1 of ASHRAE 146.

5.5.2 Calculate the output capacity of an electric resistance pool heater as:

$Q_{OUT,ER} = k * W * (T_{mo} - T_{mi}) * (60/30)$

where k is the specific heat of water, W is the mass of water collected during the test, T_{mo} is the average outlet water temperature recorded during the primary test, and T_{mi} is the average inlet water temperature record during the primary test, all as defined in Section 11.1 of ASHRAE 146, and 60/30 is the conversion factor to convert unit from per 30 minutes to per hour.

■ 6. Section 430.32 is amended by revising paragraph (k) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(k) *Pool heaters.* (1) Gas-fired pool heaters manufactured on and after April 16, 2013 and before [DATE 5 YEARS AFTER PUBLICATION OF FINAL RULE], shall have a thermal efficiency not less than 82%.

(2) Gas-fired pool heaters and electric pool heaters manufactured on and after [DATE 5 YEARS AFTER PUBLICATION OF FINAL RULE], shall have an integrated thermal efficiency not less than the following:

Product Class	Integrated Thermal Efficiency (percent)[1]
(i) Gas-fired Pool Heater	$\frac{84(Q_{IN} + 491)}{Q_{IN} + 2{,}536}$
(ii) Electric Pool Heater	$\frac{600\ PE}{PE + 1{,}619}$

[1] Q_{IN} is the certified input capacity of a gas-fired pool heater basic model, in Btu/h, and PE is the certified active electrical power of an electric pool heater, in Btu/h.

* * * * *

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 413

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2023; Request for Information on Revising the Requirements for Long-Term Care Facilities To Establish Mandatory Minimum Staffing Levels; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS–1765–P]

RIN 0938–AU76

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2023; Request for Information on Revising the Requirements for Long-Term Care Facilities To Establish Mandatory Minimum Staffing Levels

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would update: Payment rates; forecast error adjustment; diagnosis code mappings; the Patient Driven Payment Model (PDPM) parity adjustment, the SNF Quality Reporting Program (QRP), SNF Value-Based Purchasing (VBP) Program. It also proposes to establish a permanent cap policy. This proposed rule also includes a request for information related to long-term care (LTC) facilities. CMS requests comments on these proposals as well as on related subjects and announces the application of a risk adjustment for the SNF Readmission Measure for COVID–19 beginning in FY 2023.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, by June 10, 2022.

ADDRESSES: In commenting, please refer to file code CMS–1765–P.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *https://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1765–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1765–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: *PDPM@cms.hhs.gov* for issues related to the SNF PPS.

Heidi Magladry, (410) 786–6034, for information related to the skilled nursing facility quality reporting program.

Alexandre Laberge, (410) 786–8625, for information related to the skilled nursing facility value-based purchasing program.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

Availability of Certain Tables Exclusively Through the Internet on the CMS Website

As discussed in the FY 2014 SNF PPS final rule (78 FR 47936), tables setting forth the Wage Index for Urban Areas Based on CBSA Labor Market Areas and the Wage Index Based on CBSA Labor Market Areas for Rural Areas are no longer published in the **Federal Register**. Instead, these tables are available exclusively through the internet on the CMS website. The wage index tables for this proposed rule can be accessed on the SNF PPS Wage Index home page, at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html.*

Readers who experience any problems accessing any of these online SNF PPS wage index tables should contact Kia Burwell at (410) 786–7816.

To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

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I. Executive Summary

A. Purpose

This proposed rule would update the SNF prospective payment rates for fiscal year (FY) 2023, as required under section 1888(e)(4)(E) of the Social Security Act (the Act). It also responds to section 1888(e)(4)(H) of the Act, which requires the Secretary to provide for publication of certain specified information relating to the payment update (see section II.C. of this proposed rule) in the **Federal Register**, before the August 1 that precedes the start of each FY. In addition, this proposed rule proposes requirements for the Skilled Nursing Facility Quality Reporting Program (SNF QRP) and the Skilled Nursing Facility Value-Based Purchasing Program (SNF VBP), including proposals to adopt new quality measures for the SNF VBP Program. The SNF QRP includes proposals to adopt one new measure to promote patient safety, begin collection of information which is expected to improve quality of care for all SNF patients, and revise associated regulation text. The proposal also seeks comment on several subjects related to the SNF QRP including principles for measuring healthcare quality disparities and developing measures of healthcare equity in the SNF QRP. This proposed rule also seeks comment on numerous issues related to the SNF VBP Program, including additional measures on staffing turnover and COVID–19 vaccination for healthcare personnel, the Program's exchange function, validation, and the SNF VBP Program's approach to health equity. This proposed rule also includes a request for information on revising the requirements for long-term care (LTC) facilities to establish mandatory minimum staffing levels.

B. Summary of Major Provisions

In accordance with sections 1888(e)(4)(E)(ii)(IV) and (e)(5) of the Act, the Federal rates in this proposed rule would reflect an update to the rates that we published in the SNF PPS final rule for FY 2022 (86 FR 42424, August 4, 2021). In addition, the proposed rule includes a proposed forecast error adjustment for FY 2023, proposes updates to the diagnosis code mappings used under the Patient Driven Payment Model (PDPM), and includes a proposed recalibration of the PDPM parity adjustment. Additionally, this proposed rule solicits comments on criteria related to patient isolation for active infection in a SNF. This proposed rule also proposes to establish a permanent cap policy to smooth the impact of year-to-year changes in SNF payments related to changes in the SNF wage index.

This proposed rule proposes requirements for the SNF QRP, including the adoption of one new measure beginning with the FY 2025 SNF QRP: The Influenza Vaccination Coverage among Healthcare Personnel (HCP) (NQF #0431) measure. We are also proposing to revise the compliance date for the Transfer of Health Information measures and certain standardized patient assessment data elements. In addition, we are proposing to revise regulation text that pertains to data submission requirements for the SNF QRP. Finally, we are seeking comment on three subjects: Future measure concepts for the SNF QRP, overarching principles for measuring equity and healthcare disparities across CMS programs, including the SNF QRP, and the inclusion of the CoreQ: Short Stay Discharge Measure in the SNF QRP.

Additionally, we are proposing several updates for the SNF VBP Program, including a policy to suppress the Skilled Nursing Facility 30-Day All-Cause Readmission Measure (SNFRM) for the FY 2023 SNF VBP Program Year for scoring and payment adjustment purposes. We are also proposing to add two new measures to the SNF VBP Program beginning with the FY 2026 SNF VBP program year and one new measure beginning with the FY 2027 program year. We are also proposing several updates to the scoring methodology beginning with the FY 2026 program year and requesting public comments on several other measures we are considering for future rulemaking including a measure of staff turnover, whether we should update the exchange function, issues related to validation of SNF VBP data, and issues related to health equity. We are also proposing to revise our regulation text in accordance with our proposals.

C. Summary of Cost and Benefits

TABLE 1: Cost and Benefits

Provision Description	Total Transfers/Costs
FY 2023 SNF PPS payment rate update	The overall economic impact of this proposed rule is an estimated decrease of $320 million in aggregate payments to SNFs during FY 2023.
FY 2023 SNF QRP changes	The overall economic impact of this proposed rule is an estimated increase in aggregate cost to SNFs of $30,949,079.36.
FY 2023 SNF VBP changes	The overall economic impact of the SNF VBP Program is an estimated reduction of $185.55 million in aggregate payments to SNFs during FY 2023.

D. Advancing Health Information Exchange

The Department of Health and Human Services (HHS) has a number of initiatives designed to encourage and support the adoption of interoperable health information technology and to promote nationwide health information exchange to improve health care and patient access to their digital health information.

To further interoperability in post-acute care settings, CMS and the Office of the National Coordinator for Health

Information Technology (ONC) participate in the Post-Acute Care Interoperability Workgroup (PACIO) to facilitate collaboration with industry stakeholders to develop Health Level Seven International® (HL7) Fast Healthcare Interoperability Resource® (FHIR) standards. These standards could support the exchange and reuse of patient assessment data derived from the post-acute care (PAC) setting assessment tools, such as the minimum data set (MDS), inpatient rehabilitation facility-patient assessment instrument (IRF–PAI), long-Term Care Hospital (LTCH) continuity assessment record and evaluation (CARE) Data Set (LCDS), outcome and assessment information set (OASIS), and other sources.[1] [2] The PACIO Project has focused on HL7 FHIR implementation guides for: Functional status, cognitive status and new use cases on advance directives, re-assessment timepoints, and Speech, language, swallowing, cognitive communication and hearing (SPLASCH) pathology.[3] We encourage PAC provider and health IT vendor participation as the efforts advance.

The CMS Data Element Library (DEL) continues to be updated and serves as a resource for PAC assessment data elements and their associated mappings to health IT standards such as Logical Observation Identifiers Names and Codes (LOINC) and Systematized Nomenclature of Medicine Clinical Terms (SNOMED).[4] The DEL furthers CMS' goal of data standardization and interoperability. Standards in the DEL can be referenced on the CMS website and in the ONC Interoperability Standards Advisory (ISA). The 2022 ISA is available at *https://www.healthit.gov/isa/sites/isa/files/inline-files/2022-ISA-Reference-Edition.pdf.*

The 21st Century Cures Act (Cures Act) (Pub. L. 114–255, enacted December 13, 2016) required HHS and ONC to take steps to promote adoption and use of electronic health record (EHR) technology.[5] Specifically, section 4003(b) of the Cures Act required ONC to take steps to advance interoperability through the development of a Trusted Exchange Framework and Common Agreement aimed at establishing a universal floor of interoperability across the country. On January 18, 2022, ONC announced a significant milestone by releasing the Trusted Exchange Framework[6] and Common Agreement Version 1.[7] The Trusted Exchange Framework is a set of non-binding principles for health information exchange, and the Common Agreement is a contract that advances those principles. The Common Agreement and the Qualified Health Information Network Technical Framework Version 1 (incorporated by reference into the Common Agreement) establish the technical infrastructure model and governing approach for different health information networks and their users to securely share clinical information with each other, all under commonly agreed to terms. The technical and policy architecture of how exchange occurs under the Trusted Exchange Framework and the Common Agreement follows a network-of-networks structure, which allows for connections at different levels and is inclusive of many different types of entities at those different levels, such as health information networks, healthcare practices, hospitals, public health agencies, and Individual Access Services (IAS) Providers.[8] For more information, we refer readers to *https://www.healthit.gov/topic/interoperability/trusted-exchange-framework-and-common-agreement.*

We invite providers to learn more about these important developments and how they are likely to affect SNFs.

II. Background on SNF PPS

A. Statutory Basis and Scope

As amended by section 4432 of the Balanced Budget Act of 1997 (BBA 1997) (Pub. L. 105–33, enacted August 5, 1997), section 1888(e) of the Act provides for the implementation of a PPS for SNFs. This methodology uses prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services defined in section 1888(e)(2)(A) of the Act. The SNF PPS is effective for cost reporting periods beginning on or after July 1, 1998, and covers all costs of furnishing covered SNF services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities and bad debts. Under section 1888(e)(2)(A)(i) of the Act, covered SNF services include post-hospital extended care services for which benefits are provided under Part A, as well as those items and services (other than a small number of excluded services, such as physicians' services) for which payment may otherwise be made under Part B and which are furnished to Medicare beneficiaries who are residents in a SNF during a covered Part A stay. A comprehensive discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252). In addition, a detailed discussion of the legislative history of the SNF PPS is available online at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Downloads/Legislative_History_2018-10-01.pdf.*

Section 215(a) of the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93, enacted April 1, 2014) added section 1888(g) to the Act requiring the Secretary to specify an all-cause all-condition hospital readmission measure and an all-condition risk-adjusted potentially preventable hospital readmission measure for the SNF setting. Additionally, section 215(b) of PAMA added section 1888(h) to the Act requiring the Secretary to implement a VBP program for SNFs. Finally, section 2(c)(4) of the IMPACT Act amended section 1888(e)(6) of the Act, which requires the Secretary to implement a QRP for SNFs under which SNFs report data on measures and resident assessment data. Finally, section 111 of the Consolidated Appropriations Act, 2021 (CAA) updated section 1888(h) of the Act, authorizing the Secretary to apply up to nine additional measures to the VBP program for SNFs.

[1] HL7 FHIR Release 4. Available at *https://www.hl7.org/fhir/.*

[2] HL7 FHIR. PACIO Functional Status Implementation Guide. Available at *https://paciowg.github.io/functional-status-ig/.*

[3] PACIO Project. Available at *http://pacioproject.org/about/.*

[4] Centers for Medicare & Medicaid Services. Newsroom. Fact sheet: CMS Data Element Library Fact Sheet. June 21, 2018. Available at *https://www.cms.gov/newsroom/fact-sheets/cms-data-element-library-fact-sheet.*

[5] Sections 4001 through 4008 of Public Law 114–255. Available at *https://www.govinfo.gov/content/pkg/PLAW-114publ255/html/PLAW-114publ255.htm.*

[6] The Trusted Exchange Framework (TEF): Principles for Trusted Exchange (Jan. 2022). Available at *https://www.healthit.gov/sites/default/files/page/2022-01/Trusted_Exchange_Framework_0122.pdf.*

[7] Common Agreement for Nationwide Health Information Interoperability Version 1 (Jan. 2022). Available at *https://www.healthit.gov/sites/default/files/page/2022-01/Common_Agreement_for_Nationwide_Health_Information_Interoperability_Version_1.pdf.*

[8] The Common Agreement defines Individual Access Services (IAS) as ''with respect to the Exchange Purposes definition, the services provided utilizing the Connectivity Services, to the extent consistent with Applicable Law, to an Individual with whom the QHIN, Participant, or Subparticipant has a Direct Relationship to satisfy that Individual's ability to access, inspect, or obtain a copy of that Individual's Required Information that is then maintained by or for any QHIN, Participant, or Subparticipant.'' The Common Agreement defines ''IAS Provider'' as: ''Each QHIN, Participant, and Subparticipant that offers Individual Access Services.'' *See* Common Agreement for Nationwide Health Information Interoperability Version 1, at 7 (Jan. 2022), *https://www.healthit.gov/sites/default/files/page/2022-01/Common_Agreement_for_Nationwide_Health_Information_Interoperability_Version_1.pdf.*

B. Initial Transition for the SNF PPS

Under sections 1888(e)(1)(A) and (e)(11) of the Act, the SNF PPS included an initial, three-phase transition that blended a facility-specific rate (reflecting the individual facility's historical cost experience) with the Federal case-mix adjusted rate. The transition extended through the facility's first 3 cost reporting periods under the PPS, up to and including the one that began in FY 2001. Thus, the SNF PPS is no longer operating under the transition, as all facilities have been paid at the full Federal rate effective with cost reporting periods beginning in FY 2002. As we now base payments for SNFs entirely on the adjusted Federal per diem rates, we no longer include adjustment factors under the transition related to facility-specific rates for the upcoming FY.

C. Required Annual Rate Updates

Section 1888(e)(4)(E) of the Act requires the SNF PPS payment rates to be updated annually. The most recent annual update occurred in a final rule that set forth updates to the SNF PPS payment rates for FY 2022 (86 FR 42424, August 4, 2021).

Section 1888(e)(4)(H) of the Act specifies that we provide for publication annually in the **Federal Register** the following:

- The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the upcoming FY.
- The case-mix classification system to be applied for these services during the upcoming FY.
- The factors to be applied in making the area wage adjustment for these services.

Along with other revisions discussed later in this preamble, this proposed rule provides the required annual updates to the per diem payment rates for SNFs for FY 2023.

III. Proposed SNF PPS Rate Setting Methodology and FY 2023 Update

A. Federal Base Rates

Under section 1888(e)(4) of the Act, the SNF PPS uses per diem Federal payment rates based on mean SNF costs in a base year (FY 1995) updated for inflation to the first effective period of the PPS. We developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporated a Part B add-on, which is an estimate of the amounts that, prior to the SNF PPS, would be payable under Part B for covered SNF services furnished to individuals during the course of a covered Part A stay in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of the PPS (the 15-month period beginning July 1, 1998) using a SNF market basket index, and then standardized for geographic variations in wages and for the costs of facility differences in case-mix. In compiling the database used to compute the Federal payment rates, we excluded those providers that received new provider exemptions from the routine cost limits, as well as costs related to payments for exceptions to the routine cost limits. Using the formula that the BBA 1997 prescribed, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas, and adjusted the portion of the Federal rate attributable to wage-related costs by a wage index to reflect geographic variations in wages.

B. SNF Market Basket Update

1. SNF Market Basket Index

Section 1888(e)(5)(A) of the Act requires us to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. Accordingly, we have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. In the SNF PPS final rule for FY 2018 (82 FR 36548 through 36566), we rebased and revised the market basket index, which included updating the base year from FY 2010 to 2014. In the SNF PPS final rule for FY 2022 (86 FR 42444 through 42463), we rebased and revised the market basket index, which included updating the base year from 2014 to 2018.

The SNF market basket index is used to compute the market basket percentage change that is used to update the SNF Federal rates on an annual basis, as required by section 1888(e)(4)(E)(ii)(IV) of the Act. This market basket percentage update is adjusted by a forecast error correction, if applicable, and then further adjusted by the application of a productivity adjustment as required by section 1888(e)(5)(B)(ii) of the Act and described in section III.B. of this proposed rule.

For this proposed rule, we propose a FY 2023 SNF market basket percentage of 2.8 percent based on IHS Global Inc.'s (IGI's) fourth quarter 2021 forecast of the 2018-based SNF market basket (before application of the forecast error adjustment and productivity adjustment). We also propose that if more recent data subsequently become available (for example, a more recent estimate of the market basket and/or the productivity adjustment), we would use such data, if appropriate, to determine the FY 2023 SNF market basket percentage change, labor-related share relative importance, forecast error adjustment, or productivity adjustment in the SNF PPS final rule.

In section III.B.5. of this proposed rule, we discuss the 2 percent reduction applied to the market basket update for those SNFs that fail to submit measures data as required by section 1888(e)(6)(A) of the Act.

2. Use of the SNF Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index from the midpoint of the previous FY to the midpoint of the current FY. For the Federal rates set forth in this proposed rule, we use the percentage change in the SNF market basket index to compute the update factor for FY 2023. This factor is based on the FY 2023 percentage increase in the 2018-based SNF market basket index reflecting routine, ancillary, and capital-related expenses. As stated previously, in this proposed rule, the SNF market basket percentage update is estimated to be 2.8 percent for FY 2023 based on IGI's fourth quarter 2021 forecast.

3. Forecast Error Adjustment

As discussed in the June 10, 2003 supplemental proposed rule (68 FR 34768) and finalized in the August 4, 2003 final rule (68 FR 46057 through 46059), § 413.337(d)(2) provides for an adjustment to account for market basket forecast error. The initial adjustment for market basket forecast error applied to the update of the FY 2003 rate for FY 2004 and took into account the cumulative forecast error for the period from FY 2000 through FY 2002, resulting in an increase of 3.26 percent to the FY 2004 update. Subsequent adjustments in succeeding FYs take into account the forecast error from the most recently available FY for which there is final data, and apply the difference between the forecasted and actual

change in the market basket when the difference exceeds a specified threshold. We originally used a 0.25 percentage point threshold for this purpose; however, for the reasons specified in the FY 2008 SNF PPS final rule (72 FR 43425), we adopted a 0.5 percentage point threshold effective for FY 2008 and subsequent FYs. As we stated in the final rule for FY 2004 that first issued the market basket forecast error adjustment (68 FR 46058), the adjustment will reflect both upward and downward adjustments, as appropriate.

For FY 2021 (the most recently available FY for which there is final data), the forecasted or estimated increase in the SNF market basket index was 2.2 percent, and the actual increase for FY 2021 is 3.7 percent, resulting in the actual increase being 1.5 percentage point higher than the estimated increase. Accordingly, as the difference between the estimated and actual amount of change in the market basket index exceeds the 0.5 percentage point threshold, under the policy previously described (comparing the forecasted and actual increase in the market basket), the FY 2023 market basket percentage change of 2.8 percent, would be adjusted upward to account for the forecast error correction of 1.5 percentage point, resulting in a SNF market basket percentage change of 3.9 percent after reducing the market basket update by the productivity adjustment of 0.4 percentage point, discussed later in this section of the preamble.

Table 2 shows the forecasted and actual market basket increases for FY 2021.

TABLE 2: Difference Between the Actual and Forecasted Market Basket Increases for FY 2021

Index	Forecasted FY 2021 Increase*	Actual FY 2021 Increase**	FY 2021 Difference
SNF	2.2	3.7	1.5

*Published in **Federal Register**; based on second quarter 2020 IGI forecast (2014-based index).
**Based on the fourth quarter 2021 IGI forecast

4. Productivity Adjustment

Section 1888(e)(5)(B)(ii) of the Act, as added by section 3401(b) of the Patient Protection and Affordable Care Act (Affordable Care Act) (Pub. L. 111–148, enacted March 23, 2010) requires that, in FY 2012 and in subsequent FYs, the market basket percentage under the SNF payment system (as described in section 1888(e)(5)(B)(i) of the Act) is to be reduced annually by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Section 1886(b)(3)(B)(xi)(II) of the Act, in turn, defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide, private nonfarm business multifactor productivity (MFP) (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost-reporting period, or other annual period). The U.S. Department of Labor's Bureau of Labor Statistics (BLS) publishes the official measure of productivity for the U.S. We note that previously the productivity measure referenced in section 1886(b)(3)(B)(xi)(II) of the Act was published by BLS as private nonfarm business multifactor productivity. Beginning with the November 18, 2021 release of productivity data, BLS replaced the term multifactor productivity (MFP) with total factor productivity (TFP). BLS noted that this is a change in terminology only and will not affect the data or methodology. As a result of the BLS name change, the productivity measure referenced in section 1886(b)(3)(B)(xi)(II) of the Act is now published by BLS as private nonfarm business total factor productivity. However, as mentioned above, the data and methods are unchanged. We refer readers to the BLS website at *www.bls.gov* for the BLS historical published TFP data.

A complete description of the TFP projection methodology is available on our website at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch.* In addition, in the FY 2022 SNF final rule (86 FR 42429) we noted that, effective with FY 2022 and forward, we are changing the name of this adjustment to refer to it as the ''productivity adjustment,'' rather than the ''MFP adjustment.''

a. Incorporating the Productivity Adjustment Into the Market Basket Update

Per section 1888(e)(5)(A) of the Act, the Secretary shall establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. Section 1888(e)(5)(B)(ii) of the Act, added by section 3401(b) of the Affordable Care Act, requires that for FY 2012 and each subsequent FY, after determining the market basket percentage described in section 1888(e)(5)(B)(i) of the Act, the Secretary shall reduce such percentage by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Section 1888(e)(5)(B)(ii) of the Act further states that the reduction of the market basket percentage by the productivity adjustment may result in the market basket percentage being less than zero for a FY, and may result in payment rates under section 1888(e) of the Act being less than such payment rates for the preceding fiscal year. Thus, if the application of the productivity adjustment to the market basket percentage calculated under section 1888(e)(5)(B)(i) of the Act results in a productivity-adjusted market basket percentage that is less than zero, then the annual update to the unadjusted Federal per diem rates under section 1888(e)(4)(E)(ii) of the Act would be negative, and such rates would decrease relative to the prior FY.

Based on the data available for this FY 2023 SNF PPS proposed rule, the current proposed productivity adjustment (the 10-year moving average of TFP for the period ending September 30, 2023) is projected to be 0.4 percentage point.

Consistent with section 1888(e)(5)(B)(i) of the Act and § 413.337(d)(2), as discussed previously in this section of the preamble, the market basket percentage for FY 2023 for the SNF PPS is based on IGI's fourth quarter 2021 forecast of the SNF market basket percentage, which is estimated to be 2.8 percent. This market basket percentage is then increased by 1.5 percentage point, due to application of the forecast error adjustment discussed earlier in this section of the preamble. Finally, as discussed earlier in this section of the preamble, we are applying a 0.4 percentage point productivity adjustment to the FY 2023 SNF market basket percentage. The resulting

productivity-adjusted FY 2023 SNF market basket update is, therefore, equal to 3.9 percent, or 2.8 percent plus 1.5 percentage point to account for forecast error and less 0.4 percentage point to account for the productivity adjustment.

5. Market Basket Update Factor for FY 2023

Sections 1888(e)(4)(E)(ii)(IV) and (e)(5)(i) of the Act require that the update factor used to establish the FY 2023 unadjusted Federal rates be at a level equal to the market basket index percentage change. Accordingly, we determined the total growth from the average market basket level for the period of October 1, 2021 through September 30, 2022 to the average market basket level for the period of October 1, 2022 through September 30, 2023. This process yields a percentage change in the 2018-based SNF market basket of 2.8 percent.

As further explained in section III.B.3. of this proposed rule, as applicable, we adjust the market basket percentage change by the forecast error from the most recently available FY for which there is final data and apply this adjustment whenever the difference between the forecasted and actual percentage change in the market basket exceeds a 0.5 percentage point threshold in absolute terms. Since the actual FY 2021 SNF market basket percentage change exceeded the forecasted FY 2021 SNF market basket percentage change (FY 2021 is the most recently available FY for which there is historical data) by more than the 0.5 percentage point threshold, we propose to adjust the FY 2023 market basket percentage change upward by the forecast error correction. Applying the 1.5 percentage point forecast error correction results in an adjusted FY 2023 SNF market basket percentage change of 4.3 percent (2.8 percent market basket update plus 1.5 percentage point forecast error adjustment).

Section 1888(e)(5)(B)(ii) of the Act requires us to reduce the market basket percentage change by the productivity adjustment (10-year moving average of changes in TFP for the period ending September 30, 2023) which is estimated to be 0.4 percentage point, as described in section III.B.4. of this proposed rule. Thus, we apply a net SNF market basket update factor of 3.9 percent in our determination of the FY 2022 SNF PPS unadjusted Federal per diem rates, which reflects a market basket increase factor of 2.8 percent, plus the 1.5 percentage point forecast error correction and less the 0.4 percentage point productivity adjustment.

We note that if more recent data become available (for example, a more recent estimate of the SNF market basket and/or productivity adjustment), we would use such data, if appropriate, to determine the FY 2023 SNF market basket percentage change, labor-related share relative importance, forecast error adjustment, or productivity adjustment in the FY 2023 SNF PPS final rule.

We also note that section 1888(e)(6)(A)(i) of the Act provides that, beginning with FY 2018, SNFs that fail to submit data, as applicable, in accordance with sections 1888(e)(6)(B)(i)(II) and (III) of the Act for a fiscal year will receive a 2.0 percentage point reduction to their market basket update for the fiscal year involved, after application of section 1888(e)(5)(B)(ii) of the Act (the productivity adjustment) and section 1888(e)(5)(B)(iii) of the Act (the 1 percent market basket increase for FY 2018). In addition, section 1888(e)(6)(A)(ii) of the Act states that application of the 2.0 percentage point reduction (after application of section 1888(e)(5)(B)(ii) and (iii) of the Act) may result in the market basket index percentage change being less than zero for a fiscal year, and may result in payment rates for a fiscal year being less than such payment rates for the preceding fiscal year. Section 1888(e)(6)(A)(iii) of the Act further specifies that the 2.0 percentage point reduction is applied in a noncumulative manner, so that any reduction made under section 1888(e)(6)(A)(i) of the Act applies only to the fiscal year involved, and that the reduction cannot be taken into account in computing the payment amount for a subsequent fiscal year.

6. Unadjusted Federal Per Diem Rates for FY 2023

As discussed in the FY 2019 SNF PPS final rule (83 FR 39162), in FY 2020 we implemented a new case-mix classification system to classify SNF patients under the SNF PPS, the PDPM. As discussed in section V.B.1. of that final rule (83 FR 39189), under PDPM, the unadjusted Federal per diem rates are divided into six components, five of which are case-mix adjusted components (Physical Therapy (PT), Occupational Therapy (OT), Speech-Language Pathology (SLP), Nursing, and Non-Therapy Ancillaries (NTA)), and one of which is a non-case-mix component, as existed under the previous RUG–IV model. We proposed to use the SNF market basket, adjusted as described previously, to adjust each per diem component of the Federal rates forward to reflect the change in the average prices for FY 2023 from the average prices for FY 2022. We propose to further adjust the rates by a wage index budget neutrality factor, described later in this section. Further, in the past, we used the revised Office of Management and Budget (OMB) delineations adopted in the FY 2015 SNF PPS final rule (79 FR 45632, 45634), with updates as reflected in OMB Bulletin Nos. 15–01 and 17–01, to identify a facility's urban or rural status for the purpose of determining which set of rate tables would apply to the facility. As discussed in the FY 2021 SNF PPS proposed and final rules, we adopted the revised OMB delineations identified in OMB Bulletin No. 18–04 (available at *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf*) to identify a facility's urban or rural status effective beginning with FY 2021.

Tables 3 and 4 reflect the updated unadjusted Federal rates for FY 2023, prior to adjustment for case-mix.

TABLE 3: FY 2023 Unadjusted Federal Rate Per Diem—URBAN

Rate Component	PT	OT	SLP	Nursing	NTA	Non-Case-Mix
Per Diem Amount	$65.34	$60.83	$24.39	$113.91	$85.94	$102.01

TABLE 4: FY 2023 Unadjusted Federal Rate Per Diem—RURAL

Rate Component	PT	OT	SLP	Nursing	NTA	Non-Case-Mix
Per Diem Amount	$74.48	$68.41	$30.74	$108.83	82.10	$103.89

C. Case-Mix Adjustment

Under section 1888(e)(4)(G)(i) of the Act, the Federal rate also incorporates an adjustment to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. The statute specifies that the adjustment is to reflect both a resident classification system that the Secretary establishes to account for the relative resource use of different patient types, as well as resident assessment data and other data that the Secretary considers appropriate. In the FY 2019 final rule (83 FR 39162, August 8, 2018), we finalized a new case-mix classification model, the PDPM, which took effect beginning October 1, 2019. The previous RUG–IV model classified most patients into a therapy payment group and primarily used the volume of therapy services provided to the patient as the basis for payment classification, thus creating an incentive for SNFs to furnish therapy regardless of the individual patient's unique characteristics, goals, or needs. PDPM eliminates this incentive and improves the overall accuracy and appropriateness of SNF payments by classifying patients into payment groups based on specific, data-driven patient characteristics, while simultaneously reducing the administrative burden on SNFs.

The PDPM uses clinical data from the MDS to assign case-mix classifiers to each patient that are then used to calculate a per diem payment under the SNF PPS, consistent with the provisions of section 1888(e)(4)(G)(i) of the Act. As discussed in section IV.A. of this proposed rule, the clinical orientation of the case-mix classification system supports the SNF PPS's use of an administrative presumption that considers a beneficiary's initial case-mix classification to assist in making certain SNF level of care determinations. Further, because the MDS is used as a basis for payment, as well as a clinical assessment, we have provided extensive training on proper coding and the timeframes for MDS completion in our Resident Assessment Instrument (RAI) Manual. As we have stated in prior rules, for an MDS to be considered valid for use in determining payment, the MDS assessment should be completed in compliance with the instructions in the RAI Manual in effect at the time the assessment is completed. For payment and quality monitoring purposes, the RAI Manual consists of both the Manual instructions and the interpretive guidance and policy clarifications posted on the appropriate MDS website at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/MDS30RAIManual.html.*

Under section 1888(e)(4)(H) of the Act, each update of the payment rates must include the case-mix classification methodology applicable for the upcoming FY. The FY 2023 payment rates set forth in this proposed rule reflect the use of the PDPM case-mix classification system from October 1, 2022, through September 30, 2023. The case-mix adjusted PDPM payment rates for FY 2023 are listed separately for urban and rural SNFs, in Tables 5 and 6 with corresponding case-mix values.

Given the differences between the previous RUG–IV model and PDPM in terms of patient classification and billing, it was important that the format of Tables 5 and 6 reflect these differences. More specifically, under both RUG–IV and PDPM, providers use a Health Insurance Prospective Payment System (HIPPS) code on a claim to bill for covered SNF services. Under RUG–IV, the HIPPS code included the three-character RUG–IV group into which the patient classified as well as a two-character assessment indicator code that represented the assessment used to generate this code. Under PDPM, while providers still use a HIPPS code, the characters in that code represent different things. For example, the first character represents the PT and OT group into which the patient classifies. If the patient is classified into the PT and OT group ''TA'', then the first character in the patient's HIPPS code would be an A. Similarly, if the patient is classified into the SLP group ''SB'', then the second character in the patient's HIPPS code would be a B. The third character represents the Nursing group into which the patient classifies. The fourth character represents the NTA group into which the patient classifies. Finally, the fifth character represents the assessment used to generate the HIPPS code.

Tables 5 and 6 reflect the PDPM's structure. Accordingly, Column 1 of Tables 5 and 6 represents the character in the HIPPS code associated with a given PDPM component. Columns 2 and 3 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant PT group. Columns 4 and 5 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant OT group. Columns 6 and 7 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant SLP group. Column 8 provides the nursing case-mix group (CMG) that is connected with a given PDPM HIPPS character. For example, if the patient qualified for the nursing group CBC1, then the third character in the patient's HIPPS code would be a ''P.'' Columns 9 and 10 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant nursing group. Finally, columns 11 and 12 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant NTA group.

Tables 5 and 6 do not reflect adjustments which may be made to the SNF PPS rates as a result of the SNF VBP Program, discussed in section VII. of this proposed rule, or other adjustments, such as the variable per diem adjustment. Further, in the past, we used the revised OMB delineations adopted in the FY 2015 SNF PPS final rule (79 FR 45632, 45634), with updates as reflected in OMB Bulletin Nos, 15–01 and 17–01, to identify a facility's urban or rural status for the purpose of determining which set of rate tables would apply to the facility. As discussed in the FY 2021 SNF PPS final rule (85 FR 47594), we adopted the revised OMB delineations identified in OMB Bulletin No. 18–04 (available at *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf*) to identify a facility's urban or rural status effective beginning with FY 2021.

As we noted in the FY 2022 SNF PPS final rule (86 FR 42434), we continue to monitor the impact of PDPM implementation on patient outcomes and program outlays. Because of this analysis, in section V.C. of this

proposed rule, we propose to recalibrate the PDPM parity adjustment discussed in the FY 2020 SNF PPS final rule (84 FR 38734). Following the methodology of this proposed change, Tables 5 and 6 incorporate the proposed recalibration of the PDPM parity adjustment.

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TABLE 5: PDPM Case-Mix Adjusted Federal Rates and Associated Indexes—URBAN (Including the Proposed Parity Adjustment Recalibration)

PDPM Group	PT CMI	PT Rate	OT CMI	OT Rate	SLP CMI	SLP Rate	Nursing CMG	Nursing CMI	Nursing Rate	NTA CMI	NTA Rate
A	1.45	$94.74	1.41	$85.77	0.64	$15.61	ES3	3.84	$437.41	3.06	$262.98
B	1.61	$105.20	1.54	$93.68	1.72	$41.95	ES2	2.90	$330.34	2.39	$205.40
C	1.78	$116.31	1.60	$97.33	2.52	$61.46	ES1	2.77	$315.53	1.74	$149.54
D	1.82	$118.92	1.45	$88.20	1.38	$33.66	HDE2	2.27	$258.58	1.26	$108.28
E	1.34	$87.56	1.33	$80.90	2.21	$53.90	HDE1	1.88	$214.15	0.91	$78.21
F	1.52	$99.32	1.51	$91.85	2.82	$68.78	HBC2	2.12	$241.49	0.68	$58.44
G	1.58	$103.24	1.55	$94.29	1.93	$47.07	HBC1	1.76	$200.48	-	-
H	1.10	$71.87	1.09	$66.30	2.7	$65.85	LDE2	1.97	$224.40	-	-
I	1.07	$69.91	1.12	$68.13	3.34	$81.46	LDE1	1.64	$186.81	-	-
J	1.34	$87.56	1.37	$83.34	2.83	$69.02	LBC2	1.63	$185.67	-	-
K	1.44	$94.09	1.46	$88.81	3.5	$85.37	LBC1	1.35	$153.78	-	-
L	1.03	$67.30	1.05	$63.87	3.98	$97.07	CDE2	1.77	$201.62	-	-
M	1.20	$78.41	1.23	$74.82	-	-	CDE1	1.53	$174.28	-	-
N	1.40	$91.48	1.42	$86.38	-	-	CBC2	1.47	$167.45	-	-
O	1.47	$96.05	1.47	$89.42	-	-	CA2	1.03	$117.33	-	-
P	1.02	$66.65	1.03	$62.65	-	-	CBC1	1.27	$144.67	-	-
Q	-	-	-	-	-	-	CA1	0.89	$101.38	-	-
R	-	-	-	-	-	-	BAB2	0.98	$111.63	-	-
S	-	-	-	-	-	-	BAB1	0.94	$107.08	-	-
T	-	-	-	-	-	-	PDE2	1.48	$168.59	-	-
U	-	-	-	-	-	-	PDE1	1.39	$158.33	-	-
V	-	-	-	-	-	-	PBC2	1.15	$131.00	-	-
W	-	-	-	-	-	-	PA2	0.67	$76.32	-	-
X	-	-	-	-	-	-	PBC1	1.07	$121.88	-	-
Y	-	-	-	-	-	-	PA1	0.62	$70.62	-	-

TABLE 6: PDPM Case-Mix Adjusted Federal Rates and Associated Indexes—RURAL (Including the Proposed Parity Adjustment Recalibration)

PDPM Group	PT CMI	PT Rate	OT CMI	OT Rate	SLP CMI	SLP Rate	Nursing CMG	Nursing CMI	Nursing Rate	NTA CMI	NTA Rate
A	1.45	$108.00	1.41	$96.46	0.64	$19.67	ES3	3.84	$417.91	3.06	$251.23
B	1.61	$119.91	1.54	$105.35	1.72	$52.87	ES2	2.90	$315.61	2.39	$196.22
C	1.78	$132.57	1.60	$109.46	2.52	$77.46	ES1	2.77	$301.46	1.74	$142.85
D	1.82	$135.55	1.45	$99.19	1.38	$42.42	HDE2	2.27	$247.04	1.26	$103.45
E	1.34	$99.80	1.33	$90.99	2.21	$67.94	HDE1	1.88	$204.60	0.91	$74.71
F	1.52	$113.21	1.51	$103.30	2.82	$86.69	HBC2	2.12	$230.72	0.68	$55.83
G	1.58	$117.68	1.55	$106.04	1.93	$59.33	HBC1	1.76	$191.54	-	-
H	1.10	$81.93	1.09	$74.57	2.7	$83.00	LDE2	1.97	$214.40	-	-
I	1.07	$79.69	1.12	$76.62	3.34	$102.67	LDE1	1.64	$178.48	-	-
J	1.34	$99.80	1.37	$93.72	2.83	$86.99	LBC2	1.63	$177.39	-	-
K	1.44	$107.25	1.46	$99.88	3.5	$107.59	LBC1	1.35	$146.92	-	-
L	1.03	$76.71	1.05	$71.83	3.98	$122.35	CDE2	1.77	$192.63	-	-
M	1.20	$89.38	1.23	$84.14	-	-	CDE1	1.53	$166.51	-	-
N	1.40	$104.27	1.42	$97.14	-	-	CBC2	1.47	$159.98	-	-
O	1.47	$109.49	1.47	$100.56	-	-	CA2	1.03	$112.09	-	-
P	1.02	$75.97	1.03	$70.46	-	-	CBC1	1.27	$138.21	-	-
Q	-	-	-	-	-	-	CA1	0.89	$96.86	-	-
R	-	-	-	-	-	-	BAB2	0.98	$106.65	-	-
S	-	-	-	-	-	-	BAB1	0.94	$102.30	-	-
T	-	-	-	-	-	-	PDE2	1.48	$161.07	-	-
U	-	-	-	-	-	-	PDE1	1.39	$151.27	-	-
V	-	-	-	-	-	-	PBC2	1.15	$125.15	-	-
W	-	-	-	-	-	-	PA2	0.67	$72.92	-	-
X	-	-	-	-	-	-	PBC1	1.07	$116.45	-	-
Y	-	-	-	-	-	-	PA1	0.62	$67.47	-	-

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D. Wage Index Adjustment

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the Federal rates to account for differences in area wage levels, using a wage index that the Secretary determines appropriate. Since the inception of the SNF PPS, we have used hospital inpatient wage data in developing a wage index to be applied to SNFs. We propose to continue this practice for FY 2023, as we continue to believe that in the absence of SNF-specific wage data, using the hospital inpatient wage index data is appropriate and reasonable for the SNF PPS. As explained in the update notice for FY 2005 (69 FR 45786), the SNF PPS does not use the hospital area wage index's occupational mix adjustment, as this adjustment serves specifically to define the occupational categories more clearly in a hospital setting; moreover, the collection of the occupational wage data under the inpatient prospective payment system (IPPS) also excludes any wage data related to SNFs. Therefore, we believe that using the updated wage data exclusive of the occupational mix adjustment continues to be appropriate for SNF payments. As in previous years, we would continue to use the pre-reclassified IPPS hospital wage data, without applying the occupational mix, rural floor, or outmigration adjustment, as the basis for the SNF PPS wage index. For FY 2023, the updated wage data are for hospital cost reporting periods beginning on or after October 1, 2018 and before October 1, 2019 (FY 2019 cost report data).

We note that section 315 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554, enacted December 21, 2000) authorized us to establish a geographic reclassification procedure that is specific to SNFs, but only after collecting the data necessary to establish a SNF PPS wage index that is based on wage data from nursing homes. However, to date, this has proven to be unfeasible due to the volatility of existing SNF wage data and the significant amount of resources that would be required to improve the quality of the data. More specifically, auditing all SNF cost reports, similar to the process used to audit inpatient hospital cost reports for purposes of the IPPS wage index, would place a burden on providers in terms of recordkeeping and completion of the cost report worksheet. In addition, adopting such an approach would require a significant commitment of resources by CMS and the Medicare Administrative Contractors, potentially far in excess of those required under the IPPS, given that there are nearly five times as many SNFs as there are inpatient hospitals. While we continue to believe that the development of such an audit process could improve SNF cost reports in such a manner as to permit us to establish a SNF-specific wage index, we do not believe this undertaking is feasible at this time. Therefore, as discussed above in this section, in the absence of a SNF-specific wage index, we believe the use of the pre-reclassified and pre-floor hospital wage data (without the occupational mix adjustment) continue to be an appropriate and reasonable proxy for the SNF PPS.

In addition, we propose to continue to use the same methodology discussed in the SNF PPS final rule for FY 2008 (72 FR 43423) to address those geographic areas in which there are no hospitals, and thus, no hospital wage index data on which to base the calculation of the FY 2022 SNF PPS wage index. For rural geographic areas that do not have hospitals and, therefore, lack hospital wage data on which to base an area wage adjustment, we proposed to continue using the average wage index from all contiguous Core-Based Statistical Areas (CBSAs) as a reasonable proxy. For FY 2023, there are no rural geographic areas that do not have hospitals, and thus, this methodology will not be applied. For rural Puerto Rico, we proposed not to apply this methodology due to the distinct economic circumstances that exist there (for example, due to the close proximity to one another of almost all of Puerto Rico's various urban and non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas); instead, we would continue using the most recent wage index previously available for that area. For urban areas without specific hospital wage index data, we proposed that we would use the average wage indexes of all of the urban areas within the State to serve as a reasonable proxy for the wage index of that urban CBSA. For FY 2023, the only urban area without wage index data available is CBSA 25980, Hinesville-Fort Stewart, GA.

The wage index applicable to FY 2023 is set forth in Tables A and B available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html.*

In the SNF PPS final rule for FY 2006 (70 FR 45026, August 4, 2005), we adopted the changes discussed in OMB Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for MSAs and the creation of micropolitan statistical areas and combined statistical areas. In adopting the CBSA geographic designations, we provided for a 1-year transition in FY 2006 with a blended wage index for all providers. For FY 2006, the wage index for each provider consisted of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index (both using FY 2002 hospital data). We referred to the blended wage index as the FY 2006 SNF PPS transition wage index. As discussed in the SNF PPS final rule for FY 2006 (70 FR 45041), after the expiration of this 1-year transition on September 30, 2006, we used the full CBSA-based wage index values.

In the FY 2015 SNF PPS final rule (79 FR 45644 through 45646), we finalized changes to the SNF PPS wage index based on the newest OMB delineations, as described in OMB Bulletin No. 13–01, beginning in FY 2015, including a 1-year transition with a blended wage index for FY 2015. OMB Bulletin No. 13–01 established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas in the United States and Puerto Rico based on the 2010 Census, and provided guidance on the use of the delineations of these statistical areas using standards published in the June 28, 2010 **Federal Register** (75 FR 37246 through 37252). Subsequently, on July 15, 2015, OMB issued OMB Bulletin No. 15–01, which provided minor updates to and superseded OMB Bulletin No. 13–01 that was issued on February 28, 2013. The attachment to OMB Bulletin No. 15–01 provided detailed information on the update to statistical areas since February 28, 2013. The updates provided in OMB Bulletin No. 15–01 were based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2012 and July 1, 2013 and were adopted under the SNF PPS in the FY 2017 SNF PPS final rule (81 FR 51983, August 5, 2016). In addition, on August 15, 2017, OMB issued Bulletin No. 17–01 which announced a new urban CBSA, Twin Falls, Idaho (CBSA 46300) which was adopted in the SNF PPS final rule for FY 2019 (83 FR 39173, August 8, 2018).

As discussed in the FY 2021 SNF PPS final rule (85 FR 47594), we adopted the revised OMB delineations identified in OMB Bulletin No. 18–04 (available at *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf*) beginning October 1, 2020, including a 1-year transition for FY 2021 under which we applied a 5 percent cap on any decrease in a hospital's wage index compared to its wage index for the prior fiscal year (FY 2020). The updated OMB delineations more accurately reflect the contemporary urban and rural nature of areas across the country, and the use of such delineations allows us to determine more accurately the appropriate wage index and rate tables to apply under the SNF PPS. For FY 2023 and subsequent years, we are proposing to apply a permanent 5 percent cap on any decreases to a provider's wage index from its wage index in the prior year, regardless of the circumstances causing the decline, which is further discussed in section V.A. of this proposed rule.

As we previously stated in the FY 2008 SNF PPS proposed and final rules (72 FR 25538 through 25539, and 72 FR 43423), this and all subsequent SNF PPS rules and notices are considered to incorporate any updates and revisions set forth in the most recent OMB bulletin that applies to the hospital wage data used to determine the current SNF PPS wage index. We note that on March 6, 2020, OMB issued Bulletin No. 20–01, which provided updates to and superseded OMB Bulletin No. 18–04 that was issued on September 14, 2018. The attachments to OMB Bulletin No. 20–01 provided detailed information on the updates (available on the web at *https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf*). In the FY 2021 SNF PPS final rule (85 FR 47611), we stated that we intended to propose any updates from OMB Bulletin No. 20–01 in the FY 2022 SNF PPS proposed rule. After reviewing OMB Bulletin No. 20–01, we have determined that the changes in OMB Bulletin 20–01 encompassed delineation changes that do not impact the CBSA-based labor market area delineations adopted in FY 2021. Therefore, while we proposed to adopt the updates set forth in OMB Bulletin No. 20–01 consistent with our longstanding policy of adopting OMB delineation updates, we noted that specific wage index updates would not be necessary for FY 2022 as a result of adopting these OMB updates and for these reasons CMS is likewise not making such a proposal for FY 2023.

The proposed wage index applicable to FY 2023 is set forth in Tables A and B and is available on the CMS website at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html.*

Once calculated, we would apply the wage index adjustment to the labor-related portion of the Federal rate. Each year, we calculate a revised labor-related share, based on the relative importance of labor-related cost categories (that is, those cost categories that are labor-intensive and vary with the local labor market) in the input price index. In the SNF PPS final rule for FY 2018 (82 FR 36548 through 36566), we finalized a proposal to revise the labor-related share to reflect the relative importance of the 2014-based SNF market basket cost weights for the following cost categories: Wages and Salaries; Employee Benefits; Professional Fees: Labor-Related; Administrative and Facilities Support

Services; Installation, Maintenance, and Repair Services; All Other: Labor-Related Services; and a proportion of Capital-Related expenses. Effective beginning FY 2022 (86 FR 42437), we rebased and revised the labor-related share to reflect the relative importance of the 2018-based SNF market basket cost weights for the following cost categories: Wages and Salaries; Employee Benefits; Professional Fees: Labor-Related; Administrative and Facilities Support services; Installation, Maintenance, and Repair Services; All Other: Labor-Related Services; and a proportion of Capital-Related expenses. The methodology for calculating the labor-related portion beginning in FY 2022 is discussed in detail in the FY 2022 SNF PPS final rule (86 FR 42424).

We calculate the labor-related relative importance from the SNF market basket, and it approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2023. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2023 than the base year weights from the SNF market basket. We calculate the labor-related relative importance for FY 2023 in four steps. First, we compute the FY 2023 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY 2023 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2023 relative importance for each cost category by multiplying this ratio by the base year (2018) weight. Finally, we add the FY 2023 relative importance for each of the labor-related cost categories (Wages and Salaries; Employee Benefits; Professional Fees: Labor-Related; Administrative and Facilities Support Services; Installation, Maintenance, and Repair Services; All Other: Labor-Related Services; and a portion of Capital-Related expenses) to produce the FY 2023 labor-related relative importance.

Table 7 summarizes the proposed labor-related share for FY 2023, based on IGI's fourth quarter 2021 forecast of the 2018-based SNF market basket, compared to the labor-related share that was used for the FY 2022 SNF PPS final rule.

TABLE 7: Labor-Related Share, FY 2022 and Proposed FY 2023

	Relative importance, labor-related share, FY 2022 21:2 forecast[1]	Relative importance, Proposed labor-related share, FY 2023 21:4 forecast[2]
Wages and salaries	51.4	51.9
Employee benefits	9.5	9.4
Professional fees: Labor-related	3.5	3.5
Administrative & facilities support services	0.6	0.6
Installation, maintenance & repair services	0.4	0.4
All other: Labor-related services	2.0	2.0
Capital-related (.391)	3.0	2.9
Total	70.4	70.7

1. Published in the **Federal Register**; Based on the second quarter 2021 IHS Global Inc. forecast of the 2018-based SNF market basket.

2. Based on the fourth quarter 2021 IHS Global Inc. forecast of the 2018-based SNF market basket.

To calculate the labor portion of the case-mix adjusted per diem rate, we would multiply the total case-mix adjusted per diem rate, which is the sum of all five case-mix adjusted components into which a patient classifies, and the non-case-mix component rate, by the FY 2023 labor-related share percentage provided in Table 7. The remaining portion of the rate would be the non-labor portion. Under the previous RUG–IV model, we included tables which provided the case-mix adjusted RUG–IV rates, by RUG–IV group, broken out by total rate, labor portion and non-labor portion, such as Table 9 of the FY 2019 SNF PPS final rule (83 FR 39175). However, as we discussed in the FY 2020 final rule (84 FR 38738), under PDPM, as the total rate is calculated as a combination of six different component rates, five of which are case-mix adjusted, and given the sheer volume of possible combinations of these five case-mix adjusted components, it is not feasible to provide tables similar to those that existed in the prior rulemaking.

Therefore, to aid stakeholders in understanding the effect of the wage index on the calculation of the SNF per diem rate, we have included a hypothetical rate calculation in Table 9.

Section 1888(e)(4)(G)(ii) of the Act also requires that we apply this wage index in a manner that does not result in aggregate payments under the SNF PPS that are greater or less than would otherwise be made if the wage adjustment had not been made. For FY 2023 (Federal rates effective October 1, 2022), we apply an adjustment to fulfill the budget neutrality requirement. We meet this requirement by multiplying each of the components of the unadjusted Federal rates by a budget neutrality factor, equal to the ratio of the weighted average wage adjustment factor for FY 2022 to the weighted average wage adjustment factor for FY 2023. For this calculation, we would use the same FY 2021 claims utilization data for both the numerator and denominator of this ratio. We define the wage adjustment factor used in this calculation as the labor portion of the rate component multiplied by the wage index plus the non-labor portion of the rate component. The proposed budget

neutrality factor for FY 2023 as set forth in this proposed rule is 1.0011.

We note that if more recent data become available (for example, revised wage data), we would use such data, as appropriate, to determine the wage index budget neutrality factor in the SNF PPS final rule.

E. SNF Value-Based Purchasing Program

Beginning with payment for services furnished on October 1, 2018, section 1888(h) of the Act requires the Secretary to reduce the adjusted Federal per diem rate determined under section 1888(e)(4)(G) of the Act otherwise applicable to a SNF for services furnished during a fiscal year by 2 percent, and to adjust the resulting rate for a SNF by the value-based incentive payment amount earned by the SNF based on the SNF's performance score for that fiscal year under the SNF VBP Program. To implement these requirements, we finalized in the FY 2019 SNF PPS final rule the addition of § 413.337(f) to our regulations (83 FR 39178).

Please see section VII. of this proposed rule for further discussion of our policies and proposals for the SNF VBP Program.

F. Adjusted Rate Computation Example

Tables 8 through 10 provide examples generally illustrating payment calculations during FY 2023 under PDPM for a hypothetical 30-day SNF stay, involving the hypothetical SNF XYZ, located in Frederick, MD (Urban CBSA 23224), for a hypothetical patient who is classified into such groups that the patient's HIPPS code is NHNC1. Table 8 shows the adjustments made to the Federal per diem rates (prior to application of any adjustments under the SNF VBP Program as discussed previously and taking into account the proposed parity adjustment discussed in section V.C. of this proposed rule) to compute the provider's case-mix adjusted per diem rate for FY 2023, based on the patient's PDPM classification, as well as how the variable per diem (VPD) adjustment factor affects calculation of the per diem rate for a given day of the stay. Table 9 shows the adjustments made to the case-mix adjusted per diem rate from Table 8 to account for the provider's wage index. The wage index used in this example is based on the FY 2023 SNF PPS wage index that appears in Table A available on the CMS website at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html.* Finally, Table 10 provides the case-mix and wage index adjusted per-diem rate for this patient for each day of the 30-day stay, as well as the total payment for this stay. Table 10 also includes the VPD adjustment factors for each day of the patient's stay, to clarify why the patient's per diem rate changes for certain days of the stay. As illustrated in Table 8, SNF XYZ's total PPS payment for this particular patient's stay would equal $20,112.27.

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TABLE 8: PDPM Case-Mix Adjusted Rate Computation Example

Per Diem Rate Calculation				
Component	**Component Group**	**Component Rate**	**VPD Adjustment Factor**	**VPD Adj. Rate**
PT	N	$91.48	1.00	$91.48
OT	N	$86.38	1.00	$86.38
SLP	H	$65.85	1.00	$65.85
Nursing	N	$167.45	1.00	$167.45
NTA	C	$149.54	3.00	$448.62
Non-Case-Mix	-	$102.01	-	$102.01
Total PDPM Case-Mix Adj. Per Diem				$961.79

TABLE 9: Wage Index Adjusted Rate Computation Example

PDPM Wage Index Adjustment Calculation						
HIPPS Code	**PDPM Case-Mix Adjusted Per Diem**	**Labor Portion**	**Wage Index**	**Wage Index Adjusted Rate**	**Non-Labor Portion**	**Total Case Mix and Wage Index Adj. Rate**
NHNC1	$961.79	$679.99	0.9577	$651.23	$281.80	$933.03

TABLE 10: Adjusted Rate Computation Example

Day of Stay	NTA VPD Adjustment Factor	PT/OT VPD Adjustment Factor	Case Mix and Wage Index Adjusted Per Diem Rate
1	3.0	1.0	$933.03
2	3.0	1.0	$933.03
3	3.0	1.0	$933.03
4	1.0	1.0	$642.89
5	1.0	1.0	$642.89
6	1.0	1.0	$642.89
7	1.0	1.0	$642.89
8	1.0	1.0	$642.89
9	1.0	1.0	$642.89
10	1.0	1.0	$642.89
11	1.0	1.0	$642.89
12	1.0	1.0	$642.89
13	1.0	1.0	$642.89
14	1.0	1.0	$642.89
15	1.0	1.0	$642.89
16	1.0	1.0	$642.89
17	1.0	1.0	$642.89
18	1.0	1.0	$642.89
19	1.0	1.0	$642.89
20	1.0	1.0	$642.89
21	1.0	0.98	$639.44
22	1.0	0.98	$639.44
23	1.0	0.98	$639.44
24	1.0	0.98	$639.44
25	1.0	0.98	$639.44
26	1.0	0.98	$639.44
27	1.0	0.98	$639.44
28	1.0	0.96	$635.99
29	1.0	0.96	$635.99
30	1.0	0.96	$635.99
Total Payment			$20,112.27

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IV. Additional Aspects of the SNF PPS

A. SNF Level of Care—Administrative Presumption

The establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage. However, because the case-mix classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures with the existing resident assessment process and case-mix classification system discussed in section III.C. of this proposed rule. This approach includes an administrative presumption that utilizes a beneficiary's correct assignment, at the outset of the SNF stay, of one of the case-mix classifiers designated for this purpose to assist in making certain SNF level of care determinations.

In accordance with § 413.345, we include in each update of the Federal payment rates in the **Federal Register** a discussion of the resident classification system that provides the basis for case-mix adjustment. We also designate those specific classifiers under the case-mix classification system that represent the required SNF level of care, as provided in 42 CFR 409.30. This designation reflects an administrative presumption that those beneficiaries who are correctly assigned one of the designated case-mix classifiers on the initial Medicare assessment are automatically classified as meeting the SNF level of care definition up to and including the assessment reference date (ARD) for that assessment.

A beneficiary who does not qualify for the presumption is not automatically classified as either meeting or not meeting the level of care definition, but instead receives an individual determination on this point using the existing administrative criteria. This presumption recognizes the strong likelihood that those beneficiaries who are correctly assigned one of the designated case-mix classifiers during the immediate post-hospital period would require a covered level of care, which would be less likely for other beneficiaries.

In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the case-mix classification structure. The FY 2018 final rule (82 FR 36544) further specified that we would henceforth disseminate the standard description of the administrative presumption's designated groups via the SNF PPS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/*

index.html (where such designations appear in the paragraph entitled ''Case Mix Adjustment''), and would publish such designations in rulemaking only to the extent that we actually intend to propose changes in them. Under that approach, the set of case-mix classifiers designated for this purpose under PDPM was finalized in the FY 2019 SNF PPS final rule (83 FR 39253) and is posted on the SNF PPS website (*https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/index.html*), in the paragraph entitled ''Case Mix Adjustment.''

However, we note that this administrative presumption policy does not supersede the SNF's responsibility to ensure that its decisions relating to level of care are appropriate and timely, including a review to confirm that any services prompting the assignment of one of the designated case-mix classifiers (which, in turn, serves to trigger the administrative presumption) are themselves medically necessary. As we explained in the FY 2000 SNF PPS final rule (64 FR 41667), the administrative presumption is itself rebuttable in those individual cases in which the services actually received by the resident do not meet the basic statutory criterion of being reasonable and necessary to diagnose or treat a beneficiary's condition (according to section 1862(a)(1) of the Act). Accordingly, the presumption would not apply, for example, in those situations where the sole classifier that triggers the presumption is itself assigned through the receipt of services that are subsequently determined to be not reasonable and necessary. Moreover, we want to stress the importance of careful monitoring for changes in each patient's condition to determine the continuing need for Part A SNF benefits after the ARD of the initial Medicare assessment.

B. Consolidated Billing

Sections 1842(b)(6)(E) and 1862(a)(18) of the Act (as added by section 4432(b) of the BBA 1997) require a SNF to submit consolidated Medicare bills to its Medicare Administrative Contractor (MAC) for almost all of the services that its residents receive during the course of a covered Part A stay. In addition, section 1862(a)(18) of the Act places the responsibility with the SNF for billing Medicare for physical therapy, occupational therapy, and speech-language pathology services that the resident receives during a noncovered stay. Section 1888(e)(2)(A) of the Act excludes a small list of services from the consolidated billing provision (primarily those services furnished by physicians and certain other types of practitioners), which remain separately billable under Part B when furnished to a SNF's Part A resident. These excluded service categories are discussed in greater detail in section V.B.2. of the May 12, 1998 interim final rule (63 FR 26295 through 26297).

A detailed discussion of the legislative history of the consolidated billing provision is available on the SNF PPS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Downloads/Legislative_History_2018-10-01.pdf.* In particular, section 103 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA 1999) (Pub. L. 106–113, enacted November 29, 1999) amended section 1888(e)(2)(A)(iii) of the Act by further excluding a number of individual high-cost, low probability services, identified by HCPCS codes, within several broader categories (chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices) that otherwise remained subject to the provision. We discuss this BBRA 1999 amendment in greater detail in the SNF PPS proposed and final rules for FY 2001 (65 FR 19231 through 19232, April 10, 2000, and 65 FR 46790 through 46795, July 31, 2000), as well as in Program Memorandum AB–00–18 (Change Request #1070), issued March 2000, which is available online at *www.cms.gov/transmittals/downloads/ab001860.pdf.*

As explained in the FY 2001 proposed rule (65 FR 19232), the amendments enacted in section 103 of the BBRA 1999 not only identified for exclusion from this provision a number of particular service codes within four specified categories (that is, chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices), but also gave the Secretary the authority to designate additional, individual services for exclusion within each of these four specified service categories. In the proposed rule for FY 2001, we also noted that the BBRA 1999 Conference report (H.R. Rep. No. 106–479 at 854 (1999) (Conf. Rep.)) characterizes the individual services that this legislation targets for exclusion as high-cost, low probability events that could have devastating financial impacts because their costs far exceed the payment SNFs receive under the PPS. According to the conferees, section 103(a) of the BBRA 1999 is an attempt to exclude from the PPS certain services and costly items that are provided infrequently in SNFs. By contrast, the amendments enacted in section 103 of the BBRA 1999 do not designate for exclusion any of the remaining services within those four categories (thus, leaving all of those services subject to SNF consolidated billing), because they are relatively inexpensive and are furnished routinely in SNFs.

As we further explained in the final rule for FY 2001 (65 FR 46790), and as is consistent with our longstanding policy, any additional service codes that we might designate for exclusion under our discretionary authority must meet the same statutory criteria used in identifying the original codes excluded from consolidated billing under section 103(a) of the BBRA 1999: They must fall within one of the four service categories specified in the BBRA 1999; and they also must meet the same standards of high cost and low probability in the SNF setting, as discussed in the BBRA 1999 Conference report. Accordingly, we characterized this statutory authority to identify additional service codes for exclusion as essentially affording the flexibility to revise the list of excluded codes in response to changes of major significance that may occur over time (for example, the development of new medical technologies or other advances in the state of medical practice) (65 FR 46791).

Effective with items and services furnished on or after October 1, 2021, section 134 in Division CC of the CAA established an additional category of excluded codes in section 1888(e)(2)(A)(iii)(VI) of the Act, for certain blood clotting factors for the treatment of patients with hemophilia and other bleeding disorders along with items and services related to the furnishing of such factors under section 1842(o)(5)(C) of the Act. Like the provisions enacted in the BBRA 1999, new section 1888(e)(2)(A)(iii)(VI) of the Act gives the Secretary the authority to designate additional items and services for exclusion within the category of items and services described in that section.

In this proposed rule, we specifically invite public comments identifying HCPCS codes in any of these five service categories (chemotherapy items, chemotherapy administration services, radioisotope services, customized prosthetic devices, and blood clotting factors) representing recent medical advances that might meet our criteria for exclusion from SNF consolidated billing. We may consider excluding a particular service if it meets our criteria for exclusion as specified previously. We request that commenters identify in their comments the specific HCPCS code that is associated with the service in question, as well as their rationale for

requesting that the identified HCPCS code(s) be excluded.

We note that the original BBRA amendment and the CAA identified a set of excluded items and services by means of specifying individual HCPCS codes within the designated categories that were in effect as of a particular date (in the case of the BBRA 1999, July 1, 1999, and in the case of the CAA, July 1, 2020), as subsequently modified by the Secretary. In addition, as noted above in this section of the preamble, the statute (sections 1888(e)(2)(A)(iii)(II) through (VI) of the Act) gives the Secretary authority to identify additional items and services for exclusion within the categories of items and services described in the statute, which are also designated by HCPCS code. Designating the excluded services in this manner makes it possible for us to utilize program issuances as the vehicle for accomplishing routine updates to the excluded codes to reflect any minor revisions that might subsequently occur in the coding system itself, such as the assignment of a different code number to a service already designated as excluded, or the creation of a new code for a type of service that falls within one of the established exclusion categories and meets our criteria for exclusion.

Accordingly, in the event that we identify through the current rulemaking cycle any new services that would actually represent a substantive change in the scope of the exclusions from SNF consolidated billing, we would identify these additional excluded services by means of the HCPCS codes that are in effect as of a specific date (in this case, October 1, 2022). By making any new exclusions in this manner, we could similarly accomplish routine future updates of these additional codes through the issuance of program instructions. The latest list of excluded codes can be found on the SNF Consolidated Billing website at *https://www.cms.gov/Medicare/Billing/SNFConsolidatedBilling.*

C. Payment for SNF-Level Swing-Bed Services

Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute- or SNF-level care, as needed. For critical access hospitals (CAHs), Part A pays on a reasonable cost basis for SNF-level services furnished under a swing-bed agreement. However, in accordance with section 1888(e)(7) of the Act, SNF-level services furnished by non-CAH rural hospitals are paid under the SNF PPS, effective with cost reporting periods beginning on or after July 1, 2002. As explained in the FY 2002 final rule (66 FR 39562), this effective date is consistent with the statutory provision to integrate swing-bed rural hospitals into the SNF PPS by the end of the transition period, June 30, 2002.

Accordingly, all non-CAH swing-bed rural hospitals have now come under the SNF PPS. Therefore, all rates and wage indexes outlined in earlier sections of this proposed rule for the SNF PPS also apply to all non-CAH swing-bed rural hospitals. As finalized in the FY 2010 SNF PPS final rule (74 FR 40356 through 40357), effective October 1, 2010, non-CAH swing-bed rural hospitals are required to complete an MDS 3.0 swing-bed assessment which is limited to the required demographic, payment, and quality items. As discussed in the FY 2019 SNF PPS final rule (83 FR 39235), revisions were made to the swing bed assessment to support implementation of PDPM, effective October 1, 2019. A discussion of the assessment schedule and the MDS effective beginning FY 2020 appears in the FY 2019 SNF PPS final rule (83 FR 39229 through 39237). The latest changes in the MDS for swing-bed rural hospitals appear on the SNF PPS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/index.html.*

D. Revisions to the Regulation Text

We propose to make certain revisions in the regulation text itself. Specifically, we propose to revise § 413.337(b)(4) and add new paragraphs (b)(4)(i) through (iii). These proposed revisions reflect that the application of the wage index would be made on the basis of the location of the facility in an urban or rural area as defined in § 413.333, and that starting on October 1, 2022, we would apply a cap on decreases to the wage index such that the wage index applied to a SNF is not less than 95 percent of the wage index applied to that SNF in the prior FY, as discussed in section V.A. of this proposed rule.

V. Other SNF PPS Issues

A. Proposed Permanent Cap on Wage Index Decreases

As discussed above in section III.D. of this rule, we have proposed and finalized temporary transition policies in the past to mitigate significant changes to payments due to changes to the SNF PPS wage index. Specifically, for FY 2015 (79 FR 45644 through 45646), we implemented a 50/50 blend for all geographic areas consisting of the wage index values computed using the then-current OMB area delineations and the wage index values computed using new area delineations based on OMB Bulletin No. 13–01. In FY 2021 (85 FR 47594, 47617), we implemented a 1-year transition to mitigate any negative effects of wage index changes by applying a 5 percent cap on any decrease in a SNF's wage index from the final wage index from FY 2020. We explained that we believed the 5-percent cap would provide greater transparency and would be administratively less complex than the prior methodology of applying a 50/50 blended wage index. We indicated that no cap would be applied to the reduction in the wage index for FY 2022, and we noted that this transition approach struck an appropriate balance by providing a transition period to mitigate the resulting short-term instability and negative impacts on providers and time for them to adjust to their new labor market area delineations and wage index values.

In the FY 2022 final rule (86 FR 42424, 42439), commenters recommended CMS extend the transition period adopted in the FY 2021 SNF PPS final rule so that SNFs could offset the enormous cuts scheduled for FY 2022. Because we did not propose to modify the transition policy that was finalized in the FY 2021 SNF PPS final rule, we did not extend the transition period for FY 2022. However, we acknowledged that certain changes to wage index policy may significantly affect Medicare payment. In addition, we reiterated that our policy principles with regard to the wage index include generally using the most current data and information available and providing that data and information, as well as any approaches to addressing any significant effects on Medicare payments resulting from these potential scenarios, in notice and comment rulemaking. With these policy principles in mind for this FY 2023 proposed rule, we considered how best to address the potential scenarios about which commenters raised concerns in the FY 2022 final rule around SNF payment volatility; that is, scenarios in which changes to wage index policy may significantly affect Medicare payments.

In the past, we have established transition policies of limited duration to phase in significant changes to labor market. In taking this approach in the past, we have sought to strike an appropriate balance between maintaining the accuracy of the overall labor market area wage index system and mitigating short-term instability and negative impacts on providers due to

wage index changes. In accordance with the requirements of the SNF PPS wage index regulations at § 413.337(a)(1), we use an appropriate wage index based on the best available data, including the best available labor market area delineations, to adjust SNF PPS payments for wage differences. We have previously stated that, because the wage index is a relative measure of the value of labor in prescribed labor market areas, we believe it is important to implement new labor market area delineations with as minimal a transition as is reasonably possible. However, we recognize that changes to the wage index have the potential to create instability and significant negative impacts on certain providers even when labor market areas do not change. In addition, year-to-year fluctuations in an area's wage index can occur due to external factors beyond a provider's control, such as the COVID–19 public health emergency (PHE). For an individual provider, these fluctuations can be difficult to predict. So, we also recognize that predictability in Medicare payments is important to enable providers to budget and plan their operations.

In light of these considerations, we are proposing a permanent approach to smooth year-to-year changes in providers' wage indexes. We are proposing a policy that we believe increases the predictability of SNF PPS payments for providers, and mitigates instability and significant negative impacts to providers resulting from changes to the wage index.

As previously discussed, we believed applying a 5-percent cap on wage index decreases for FY 2021 provided greater transparency and was administratively less complex than prior transition methodologies. In addition, we believed this methodology mitigated short-term instability and fluctuations that can negatively impact providers due to wage index changes. Lastly, we have noted that we believed the 5-percent cap we applied to all wage index decreases for FY 2021 provided an adequate safeguard against significant payment reductions related to the adoption of the revised CBSAs. However, we recognize there are circumstances that a one-year mitigation policy, like the one adopted for FY 2021, would not effectively address future years where providers continue to be negatively affected by significant wage index decreases.

Typical year-to-year variation in the SNF PPS wage index has historically been within 5 percent, and we expect this will continue to be the case in future years. For FY 2023, the provider level impact analysis indicates that approximately 97 percent of SNFs will experience a wage index change within 5 percent. Because providers are usually experienced with this level of wage index fluctuation, we believe applying a 5-percent cap on all wage index decreases each year, regardless of the reason for the decrease, would effectively mitigate instability in SNF PPS payments due to any significant wage index decreases that may affect providers in any year. We believe this approach would address concerns about instability that commenters raised in the FY 2022 SNF PPS rule. Additionally, we believe that applying a 5-percent cap on all wage index decreases would support increased predictability about SNF PPS payments for providers, enabling them to more effectively budget and plan their operations. Lastly, because applying a 5-percent cap on all wage index decreases would represent a small overall impact on the labor market area wage index system we believe it would ensure the wage index is a relative measure of the value of labor in prescribed labor market wage areas. As discussed in further detail in section XI.A.4. of this proposed rule, we estimate that applying a 5-percent cap on all wage index decreases will have a very small effect on the wage index budget neutrality factor for FY 2023. Because the wage index is a measure of the value of labor (wage and wage-related costs) in a prescribed labor market area relative to the national average, we anticipate that in the absence of proposed policy changes most providers will not experience year-to-year wage index declines greater than 5 percent in any given year. We also believe that when the 5-percent cap would be applied under this proposal, it is likely that it would be applied similarly to all SNFs in the same labor market area, as the hospital average hourly wage data in the CBSA (and any relative decreases compared to the national average hourly wage) would be similar. While this policy may result in SNFs in a CBSA receiving a higher wage index than others in the same area (such as situations when delineations change), we believe the impact would be temporary. Therefore, we anticipate that the impact to the wage index budget neutrality factor in future years would continue to be minimal.

The Secretary has broad authority to establish appropriate payment adjustments under the SNF PPS, including the wage index adjustment. As discussed earlier in this section, the SNF PPS regulations require us to use an appropriate wage index based on the best available data. For the reasons discussed earlier in this section, we believe that a 5-percent cap on wage index decreases would be appropriate for the SNF PPS. Therefore, for FY 2023 and subsequent years, we are proposing to apply a permanent 5-percent cap on any decrease to a provider's wage index from its wage index in the prior year, regardless of the circumstances causing the decline. That is, we are proposing that a SNF's wage index for FY 2023 would not be less than 95 percent of its final wage index for FY 2022, regardless of whether the SNF is part of an updated CBSA, and that for subsequent years, a provider's wage index would not be less than 95 percent of its wage index calculated in the prior FY. This means, if a SNF's prior FY wage index is calculated with the application of the 5-percent cap, then the following year's wage index would not be less than 95 percent of the SNF's capped wage index in the prior FY. For example, if a SNF's wage index for FY 2023 is calculated with the application of the 5-percent cap, then its wage index for FY 2024 would not be less than 95 percent of its capped wage index in FY 2023. Lastly, we propose that a new SNF would be paid the wage index for the area in which it is geographically located for its first full or partial FY with no cap applied, because a new SNF would not have a wage index in the prior FY. As we have discussed in this proposed rule, we believe this proposed methodology would maintain the SNF PPS wage index as a relative measure of the value of labor in prescribed labor market areas, increase the predictability of SNF PPS payments for providers, and mitigate instability and significant negative impacts to providers resulting from significant changes to the wage index. In section XI. of this proposed rule, we estimate the impact to payments for providers in FY 2023 based on this proposed policy. We also note that we would examine the effects of this policy on an ongoing basis in the future in order to assess its continued appropriateness.

Subject to the aforementioned proposal becoming final, we are also proposing to revise the regulation text at § 413.337(a)(1) to provide that starting October 1, 2022, we will apply a cap on decreases to the wage index such that the wage index applied is not less than 95 percent of the wage index applied to that SNF in the prior year.

We invite public comments on this proposal.

B. Technical Updates to PDPM ICD–10 Mappings

In the FY 2019 SNF PPS final rule (83 FR 39162), we finalized the

implementation of the Patient Driven Payment Model (PDPM), effective October 1, 2019. The PDPM utilizes International Classification of Diseases, Version 10 (ICD–10) codes in several ways, including to assign patients to clinical categories under several PDPM components, specifically the PT, OT, SLP and NTA components. The ICD–10 code mappings and lists used under PDPM are available on the PDPM website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/PDPM.*

Each year, the ICD–10 Coordination and Maintenance Committee, a Federal interdepartmental committee that is chaired by representatives from the National Center for Health Statistics (NCHS) and by representatives from CMS, meets biannually and publishes updates to the ICD–10 medical code data sets in June of each year. These changes become effective October 1 of the year in which these updates are issued by the committee. The ICD–10 Coordination and Maintenance Committee also has the ability to make changes to the ICD–10 medical code data sets effective on April 1 of each year.

In the FY 2020 SNF PPS final rule (84 FR 38750), we outlined the process by which we maintain and update the ICD–10 code mappings and lists associated with the PDPM, as well as the SNF Grouper software and other such products related to patient classification and billing, so as to ensure that they reflect the most up to date codes possible. Beginning with the updates for FY 2020, we apply nonsubstantive changes to the ICD–10 codes included on the PDPM code mappings and lists through a subregulatory process consisting of posting updated code mappings and lists on the PDPM website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/PDPM.* Such nonsubstantive changes are limited to those specific changes that are necessary to maintain consistency with the most current ICD–10 medical code data set. On the other hand, substantive changes, or those that go beyond the intention of maintaining consistency with the most current ICD–10 medical code data set, will be proposed through notice and comment rulemaking. For instance, changes to the assignment of a code to a comorbidity list or other changes that amount to changes in policy are considered substantive changes for which we would undergo notice and comment rulemaking.

We are proposing several changes to the PDPM ICD–10 code mappings and lists. We would note that, in the case of any diagnoses that are either currently mapped to ''Return to Provider'' or that we are proposing to classify into this category, this is not intended to reflect any judgment on the importance of recognizing and treating these conditions, but merely that there are more specific diagnoses than those mapped to ''Return to Provider'' or that we do not believe that the diagnosis should serve as the primary diagnosis for a Part-A covered SNF stay. Our proposed changes are as follows:

On October 1, 2021, D75.839 ''Thrombocytosis, unspecified,'' took effect and was mapped to the clinical category of ''Cardiovascular and Coagulations.'' However, there are more specific codes to indicate why a patient with thrombocytosis would require SNF care. If the cause is unknown, the SNF could use D47.3, ''Essential (hemorrhagic) thrombocythemia'' or D75.838, ''other thrombocytosis'' which is a new code that took effect on October 1, 2021. Further, elevated platelet count without other symptoms is not reason enough for SNF skilled care so this would not be used as a primary diagnosis. For this reason, we proposed to change the assignment of D75.839 to ''Return to Provider.''

On October 1, 2021, D89.44, ''Hereditary alpha tryptasemia'' went into effect and was mapped to the clinical category, ''Medical Management.'' However, this is not a diagnosis that would be treated as a primary condition in the SNF, rather it would be treated in the outpatient setting. Therefore, we propose to change the assignment of D89.44 to ''Return to Provider.''

On October 1, 2021, F32.A, ''Depression, unspecified'' went into effect and was mapped to ''Medical Management.'' However, there are more specific codes that would more adequately capture the diagnosis of depression. Further, while we believe that SNFs serve an important role in providing services to those beneficiaries suffering from mental illness, the SNF setting is not the setting that would be most appropriate to treat a patient whose primary diagnosis is depression. For this reason, we propose to change the assignment of F32.A to ''Return to Provider.''

On October 1, 2021, G92.9, ''Unspecified toxic encephalopathy'' took effect and was mapped to the clinical category of ''Acute Neurologic.'' However, there are more specific codes that should be used to describe encephalopathy treated in a SNF. Therefore, we propose to change the assignment of G92.9 to ''Return to Provider.''

On October 1, 2021, M54.50, ''Low back pain, unspecified'' went into effect and was mapped to the clinical category of ''Non-surgical Orthopedic/Musculoskeletal.'' However, if low back pain were the primary diagnosis, the SNF should have a greater understanding of what is causing the pain. There are more specific codes to address this condition. Therefore, we propose to change the assignment of M54.50 to ''Return to Provider.''

In the FY 2022 proposed rule (86 FR 19984 through 19985), we proposed to reclassify K20.81, ''Other esophagitis with bleeding,'' K20.91, ''Esophagitis, unspecified with bleeding,'' and K21.01, ''Gastro-esophageal reflux disease with esophagitis, with bleeding'' from ''Return to Provider'' to ''Medical Management.'' Our rationale for the change was a recognition that these codes represent these esophageal conditions with more specificity than originally considered because of the bleeding that is part of the conditions and that they would more likely be found in SNF patients. We received one comment suggesting additional changes to similar ICD–10 code mappings and comorbidity lists that at the time were outside the scope of rulemaking. This commenter suggested that we consider remapping the following similar diagnosis codes that frequently require SNF skilled care, from ''Return to Provider'' to ''Medical Management'': K22.11, ''Ulcer of esophagus with bleeding;'' K25.0, ''Acute gastric ulcer with hemorrhage;'' K25.1, ''Acute gastric ulcer with perforation;'' K25.2, ''Acute gastric ulcer with both hemorrhage and perforation;'' K26.0, ''Acute duodenal ulcer with hemorrhage;'' K26.1, ''Acute duodenal ulcer with perforation;'' K26.2, ''Acute duodenal ulcer with both hemorrhage and perforation;'' K27.0 ''Acute peptic ulcer, site unspecified with hemorrhage;'' K27.1, ''Acute peptic ulcer, site unspecified with perforation;'' K27.2, ''Acute peptic ulcer, site unspecified with both hemorrhage and perforation;'' K28.0, ''Acute gastrojejunal ulcer with hemorrhage;'' K28.1, ''Acute gastrojejunal ulcer with perforation;'' K28.2, ''Acute gastrojejunal ulcer with both hemorrhage and perforation;'' and K29.01, ''Acute gastritis with bleeding.'' Upon review of these codes, we recognize that they represent conditions with more specificity than originally considered because of the bleeding (or perforation) that is part of the conditions and that they would more likely be found in SNF patients.'' Therefore, we propose to remap these

ICD–10 codes to ''Medical Management.''

We also received a comment requesting we consider remapping M62.81, ''Muscle weakness (generalized)'' from ''Return to Provider'' to ''Non-orthopedic Surgery'' with the rationale that there is currently no sequela or late-effects ICD–10 code available when patients require skilled nursing and therapy due to late effects of resolved infections such as pneumonia or urinary tract infections. We considered the request and determined that muscle weakness (generalized) is nonspecific and if the original condition is resolved, but the resulting muscle weakness persists as a result of the known original diagnosis, there are more specific codes that exist that would account for why the muscle weakness is on-going, such as muscle wasting or atrophy. Therefore, we are not proposing this specific remapping. This commenter also requested that that we consider remapping R62.7, ''Adult failure to thrive'' from ''Return to Provider'' to ''Medical Management.'' According to this commenter, physicians often diagnose adult failure to thrive when a resident has been unable to have oral intake sufficient for survival. Typically, this diagnosis is appended when the physician has determined that a feeding tube should be considered to provide sufficient intake for survival. According to the commenter, it would then appropriately become the primary diagnosis for a skilled stay. We considered this request and believe that R6.2 is a nonspecific code and SNF primary diagnoses should be coded to the highest level of specificity. If the patient has been unable to have oral intake, the primary diagnosis (for example, Ulcerative Colitis) for admission to a SNF should explain why the patient is unable to have oral intake sufficient for survival. Therefore, we are not proposing this specific remapping.

We invite comments on the proposed substantive changes to the ICD–10 code mappings discussed previously in this section, as well as comments on additional substantive and non-substantive changes that commenters believe are necessary.

C. Recalibrating the PDPM Parity Adjustment

1. Background

On October 1, 2019, we implemented the Patient Driven Payment Model (PDPM) under the SNF PPS, a new case-mix classification model that replaced the prior case-mix classification model, the Resource Utilization Groups, Version IV (RUG–IV). As discussed in the FY 2019 SNF PPS final rule (83 FR 39256), as with prior system transitions, we proposed and finalized implementing PDPM in a budget neutral manner. This means that the transition to PDPM, along with the related policies finalized in the FY 2019 SNF PPS final rule, were not intended to result in an increase or decrease in the aggregate amount of Medicare Part A payment to SNFs. We believe ensuring parity is integral to the process of providing ''for an appropriate adjustment to account for case mix'' that is based on appropriate data in accordance with section 1888(e)(4)(G)(i) of the Act. Section V.I. of the FY 2019 SNF PPS final rule (83 FR 39255 through 39256) discusses the methodology that we used to implement PDPM in a budget neutral manner. Specifically, we multiplied each of the PDPM case-mix indexes (CMIs) by an adjustment factor that was calculated by comparing total payments under RUG–IV using FY 2017 claims and assessment data (the most recent final claims data available at the time) to what we expected total payments would be under PDPM based on that same FY 2017 claims and assessment data. In the FY 2020 SNF PPS final rule (84 FR 38734 through 38735), we finalized an updated standardization multiplier and parity adjustment based on FY 2018 claims and assessment data. This analysis resulted in an adjustment factor of 1.46, by which all the PDPM CMIs were multiplied so that total estimated payments under PDPM would be equal to total actual payments under RUG–IV, assuming no changes in the population, provider behavior, and coding. By multiplying each CMI by 1.46, the CMIs were inflated by 46 percent to achieve budget neutrality.

We used a similar type of parity adjustment in FY 2011 when we transitioned from RUG–III to RUG–IV. As discussed in the FY 2012 SNF PPS final rule (76 FR 48492 through 48500), we observed that once actual RUG–IV utilization data became available, the actual RUG–IV utilization patterns differed significantly from those we had projected using the historical data that grounded the RUG–IV parity adjustment. We then used actual FY 2011 RUG–IV utilization data to recalibrate the RUG–IV parity adjustment and decreased the nursing CMIs for all RUG–IV therapy groups from an adjustment factor of 61 percent to an adjustment factor of 19.84 percent, while maintaining the original 61 percent total nursing CMI increase for all non-therapy RUG–IV groups. As a result of this recalibration, FY 2012 SNF PPS rates were reduced by 12.5 percent, or $4.47 billion, in order to achieve budget neutrality under RUG–IV prospectively.

Since PDPM implementation, we have closely monitored SNF utilization data to determine if the parity adjustment finalized in the FY 2020 SNF PPS final rule (84 FR 38734 through 38735) provided for a budget neutral transition between RUG–IV and PDPM as intended. Similar to what occurred in FY 2011 with RUG–IV implementation, we have observed significant differences between the expected SNF PPS payments and case-mix utilization based on historical data, and the actual SNF PPS payments and case-mix utilization under PDPM, based on FY 2020 and FY 2021 utilization data. As discussed in the FY 2022 SNF PPS final rule (86 FR 42466 through 42469), it appears that PDPM may have inadvertently triggered a significant increase in overall payment levels under the SNF PPS of approximately 5 percent and that recalibration of the parity adjustment may be warranted.

Following the methodology utilized in calculating the initial PDPM parity adjustment, we would typically use claims and assessment data for a given year to classify patients under both the current system and the prior system to compare aggregate payments and determine an appropriate adjustment factor to achieve parity. However, we acknowledge that the typical methodology for recalibrating the parity adjustment may not provide an accurate recalibration under PDPM for a number of reasons. First, the ongoing COVID–19 PHE has had impacts on nursing home care protocols and many other aspects of SNF operations that affected utilization data in FY 2020 and FY 2021. Second, given the significant differences in payment incentives and patient assessment requirements between RUG–IV and PDPM, using the same methodology that we have used in the past to calculate a recalibrated PDPM parity adjustment could lead to a potential overcorrection in the recalibration.

In the FY 2022 SNF PPS proposed rule (86 FR 19987 through 19989), we solicited comments from stakeholders on a potential methodology for recalibrating the PDPM parity adjustment to account for these potential effects without compromising the accuracy of the adjustment. After considering the feedback and recommendations received, summarized in the FY 2022 SNF PPS final rule (86 FR 42469 through 42471), we are proposing an updated recalibration methodology. We also present results

from our data monitoring efforts to provide transparency on our efforts to parse out the effects of PDPM implementation from the effects of the COVID–19 PHE. We invite comments on this proposal for recalibrating the PDPM parity adjustment, that is discussed throughout the subsequent sections of this proposed rule, to ensure that PDPM is implemented in a budget neutral manner, as originally intended.

2. Methodology for Recalibrating the PDPM Parity Adjustment

a. Effect of COVID–19 Public Health Emergency

FY 2020 was a year of significant change under the SNF PPS. In addition to implementing PDPM on October 1, 2019, a national COVID–19 PHE was declared beginning January 27, 2020. With the announcement of the COVID–19 PHE, and under authority granted us by section 1812(f) of the Act, we issued two temporary modifications to the limitations of section 1861(i) of the Act beginning March 1, 2020 that affected SNF coverage. The 3-day prior hospitalization modification allows a SNF to furnish Medicare Part A services without requiring a 3-day qualifying hospital stay, and the benefit period exhaustion modification allows a one-time renewal of benefits for an additional 100 days of Part A SNF coverage without a 60-day break in spell of illness. These COVID–19 PHE-related modifications allowed coverage for beneficiaries who would not typically be able to access the Part A SNF benefit, such as community and long-term care nursing home patients without a prior qualifying hospitalization.

We acknowledge that the COVID–19 PHE had significant impacts on nursing home care protocols and many other aspects of SNF operations. For months, infection and mortality rates were high among nursing home residents. Additionally, facilities were often unable to access testing and affordable personal protective equipment (PPE), and were required to be closed to visitors and barred from conducting communal events to help control infections (March 2021 MedPAC Report to Congress, 204, available at *https://www.medpac.gov/wp-content/uploads/2021/10/mar21_medpac_report_ch7_sec.pdf*). As described in the FY 2022 SNF PPS final rule (86 FR 42427), many commenters voiced concerns about additional costs due to the COVID–19 PHE that could be permanent due to changes in patient care, infection control staff and equipment, personal protective equipment, reporting requirements, increased wages, increased food prices, and other necessary costs. Some commenters who received CARES Act Provider Relief funds indicated that those funds were not enough to cover these additional costs. Additionally, a few commenters from rural areas stated that their facilities were heavily impacted from the additional costs, particularly the need to raise wages, and that this could affect patients' access to care.

However, we note that the relevant issue for a recalibration of the PDPM parity adjustment is whether or not the COVID–19 PHE caused changes in the SNF case-mix distribution. In other words, the issue is whether patient classification, or the relative percentages of beneficiaries in each PDPM group, was different than what it would have been if not for the COVID–19 PHE. We remind commenters that the parity adjustment refers only to the transition between case-mix classification models (in this case, from RUG–IV to PDPM) and is not intended to include other unrelated SNF policies such as the market basket increase, which is intended to address such issues as the additional costs described previously. A key aspect of our recalibration methodology, described in further detail later in this section, involves parsing out the impacts of the COVID–19 PHE and the PHE-related modifications from those which occurred solely, or at least principally, due to the implementation of PDPM.

b. Effect of PDPM Implementation

As discussed in the FY 2022 SNF PPS final rule (86 FR 42467), we presented evidence that the transition to PDPM impacted certain aspects of SNF patient classification and care provision prior to the beginning of the COVID–19 PHE. For example, according to the latest data available, SNF patients received an average of approximately 93 therapy minutes per utilization day in FY 2019. Between October 2019 and December 2019, the 3 months after PDPM implementation and before the onset of the COVID–19 PHE, the average number of therapy minutes SNF patients received per day dropped to approximately 68 minutes per utilization day, a decrease of approximately 27 percent. Given this reduction in therapy provision since PDPM implementation, we found that using patient assessment data collected under PDPM would lead to a significant underestimation of what RUG–IV case-mix and payments would have been (for example, the Ultra-High and Very-High Rehabilitation assignments are not nearly as prevalent using PDPM-reported data), which would in turn lead to an overcorrection in the parity adjustment. Additionally, there were significant changes in the patient assessment schedule such as the removal of the Change of Therapy Other Medicare Required Assessment. Without having an interim assessment between the 5-day assessment and the patient's discharge from the facility, we are unable to determine if the RUG–IV group into which the patient classified on the 5-day assessment changed during the stay, or if the patient continued to receive an amount of therapy services consistent with the initial RUG–IV classification.

Therefore, given the significant differences in payment incentives and patient assessment requirements between RUG–IV and PDPM, using the same methodology that we have used in the past to calculate a recalibrated PDPM parity adjustment could lead to a potential overcorrection in the recalibration. In the FY 2022 SNF PPS proposed rule (86 FR 19988), we described an alternative recalibration methodology that used FY 2019 RUG–IV case-mix distribution as a proxy for what total RUG–IV payments would have been absent PDPM implementation. We believed that this methodology provides a more accurate representation of what RUG–IV payments would have been, were it not for the changes precipitated by PDPM implementation, than using data reported under PDPM to reclassify these patients under RUG–IV. We solicited comments from stakeholders on this aspect of our potential methodology for recalibrating the PDPM parity adjustment and they were generally receptive to our approach.

c. FY 2022 SNF PPS Proposed Rule Potential Parity Adjustment Methodology and Comments

In the FY 2022 SNF PPS proposed rule (86 FR 19986 through 19987), we presented a potential methodology that attempted to account for the effects of the COVID–19 PHE by removing those stays with a COVID–19 diagnosis and those stays using a PHE-related modification from our data set, and we solicited comment on how stakeholders believed the COVID–19 PHE affected the distribution of patient case-mix in ways that were not sufficiently captured by our subset population methodology. According to the latest data available, 10 percent of SNF stays in FY 2020 and 17 percent of SNF stays in FY 2021 included a COVID–19 ICD–10 diagnosis code either as a primary or secondary diagnosis, while 17 percent of SNF stays in FY 2020 and 27 percent of SNF stays in FY 2021 utilized a PHE-related

modification (with the majority of these cases using the prior hospitalization modification), as identified by the presence of a ''Disaster Relief (DR)'' condition code on the SNF claim. As compared to prior years, when approximately 98 percent of SNF beneficiaries had a qualifying prior hospital stay, approximately 86 percent and 81 percent of SNF beneficiaries had a qualifying prior hospitalization in FY 2020 and FY 2021, respectively. These general statistics are important, as they highlight that while the PHE for COVID–19 certainly impacted many aspects of nursing home operations, the large majority of SNF beneficiaries entered into Part A SNF stays in FY 2020 and FY 2021 as they would have in any other year; that is, without using a PHE-related modification, with a prior hospitalization, and without a COVID–19 diagnosis.

Moreover, as discussed FY 2022 SNF PPS proposed rule (86 FR 19988), we found that even after removing those using a PHE-related modification and those with a COVID–19 diagnosis from our data set, the observed inadvertent increase in SNF payments since PDPM was implemented was approximately the same. To calculate expected total payments under RUG–IV, we used the percentage of stays in each RUG–IV group in FY 2019 and multiplied these percentages by the total number of FY 2020 days of service. We then multiplied the number of days for each RUG–IV group by the RUG–IV per diem rate, which we obtained by inflating the FY 2019 SNF PPS RUG–IV rates by the FY 2020 market basket update factor. The total payments under RUG–IV also accounted for the human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) add-on of a 128 percent increase in the PPS per diem payment under RUG–IV, and a provider's FY 2020 urban or rural status. To calculate the actual total payments under PDPM, we used data reported on FY 2020 claims. Specifically, we used the Health Insurance Prospective Payment System (HIPPS) code on the SNF claim to identify the patient's case-mix assignment and associated CMIs, utilization days on the claim to calculate stay payments and the variable per diem adjustment, the presence of an HIV diagnosis on the claim to account for the PDPM AIDS add-on of 18 percent to the nursing component, and the highest point value (8 points) to the NTA component, and a provider's urban or rural status. Using this approach, and as described in the FY 2022 SNF PPS proposed rule (86 FR 19988), we identified a 5.3 percent increase in aggregate spending under PDPM as compared to expected total payments under RUG–IV for FY 2020 when considering the full SNF population, and a 5 percent increase in aggregate spending under PDPM for FY 2020 when considering the subset population. This finding suggests that a large portion of the changes observed in SNF utilization are due to PDPM and not the PHE for COVID–19, as the ''new'' population of SNF beneficiaries (that is, COVID–19 patients and those using a PHE-related modification) did not appear to be the main cause of the increase in SNF payments after implementation of PDPM. Although these results are similar, we believed it would be more appropriate to pursue a potential recalibration using the subset population.

Some commenters agreed with our approach, stating that our subset population was a reasonable method to account for the effect of the COVID–19 PHE, and made a few suggestions for improvements. They stated that our analysis may have undercounted COVID–19 patients because there was no COVID–19 specific diagnosis code available before April 2020 and a shortage of tests at the beginning of the PHE led to SNFs being unable to report COVID–19 cases. To address these issues, commenters suggested that CMS consider using non-specific respiratory diagnoses or depression as proxies for COVID–19 cases. We considered this option, though we believe that such a change would overestimate the population to be excluded due to the non-specific nature of those diagnoses. Additionally, because we did not provide our COVID–19 population definition in the FY 2022 SNF PPS proposed or final rules, commenters were concerned that our methodology did not include COVID–19 diagnoses from the Minimum Data Set (MDS) patient assessments in addition to SNF claims. Commenters were also concerned that we did not exclude transitional stays resulting from CMS' instruction to assess all patients anew in October 2019 using the PDPM MDS assessment, even though some patients were in the middle or end of their Medicare Part A coverage. We address these concerns by sharing a revised COVID–19 population definition in section V.C.2.d. of this rule.

However, many commenters expressed concern that our subset population methodology would not accurately represent what the SNF patient case-mix would look like outside of the COVID–19 PHE environment, stating that data collected during the PHE was entirely too laden with COVID–19 related effects on the entire SNF population to be utilized and pointing to multiple reasons for greater clinical acuity even among our subset population. For example, because elective surgeries were halted, those admitted were the most compromised who could not be cared for at home. Additionally, limitations regarding visitation and other infection control protocols led to higher levels of mood distress, cognitive decline, functional decline, compromised skin integrity, change in appetite, and weight loss requiring diet modifications. In response to these comments, we have conducted comprehensive data analysis and monitoring to identify changes in provider behavior and payments since implementing PDPM, and present a revised parity adjustment methodology in section V.C.2.d. of this rule that we believe more accurately accounts for these changes while excluding the effect of the COVID–19 PHE on the SNF population.

d. FY 2023 SNF PPS Proposed Parity Adjustment Methodology

In this section, we propose a revised methodology for the calculating the parity adjustment that takes into account the comments received in response to the potential methodology described in the FY 2022 SNF PPS proposed rule (86 FR 19986 through 19987). In response to the comments received about the subset population methodology, we modified our definition of COVID–19, which we derived from the Centers for Disease Control and Prevention (CDC) coding guidelines, to align with the definition used by publicly available datasets from CMS's Office of Enterprise Data and Analytics (OEDA) and found no significant impact on our calculations. For the FY 2022 SNF proposed rule, we defined the COVID–19 population to include stays that have either the interim COVID–19 code B97.29 recorded as a primary or secondary diagnosis in addition to one of the symptom codes J12.89, J20.8, J22, or J80, or the new COVID–19 code U07.1 recorded as a primary or secondary diagnosis on their SNF claims or MDS 5-day admission assessments. For the FY 2023 SNF proposed rule, we define the COVID–19 population to include stays that have the interim COVID–19 code B97.29 from January 1, 2020 to March 31, 2020 or the new COVID–19 code U07.1 from April 1, 2020 onward recorded as a primary or secondary diagnosis on their SNF claims, MDS 5-day admission assessments, or MDS interim payment assessments. Both FY

2022 and FY 2023 definitions of the COVID–19 population exclude transitional stays. We note that we found no significant impact on our calculations, as the COVID–19 population definition change only increased the stay count of our subset population by less than 1 percent.

In response to the comments described previously and based on additional data collection through FY 2021, we have identified a recalibration methodology that we believe better accounts for COVID–19 related effects. We propose to use the same type of subset population discussed earlier in section V.C.2.c.of this proposed rule, which excludes stays that either used a section 1812(f) of the Act modification or that included a COVID–19 diagnosis, with a 1-year ''control period'' derived from both FY 2020 and FY 2021 data. Specifically, we used 6 months of FY 2020 data from October 2019 through March 2020 and 6 months of FY 2021 data from April 2021 through September 2021 (which our data suggests were periods with relatively low COVID–19 prevalence) to create a full 1-year period with no repeated months to account for seasonality effects. As shown in Table 11, we believe this combined approach provides the most accurate representation of what the SNF case-mix distribution would look like under PDPM outside of a COVID–19 PHE environment. While using the subset population method alone for FY 2020 and FY 2021 data results in differences of 0.31 percent and 0.40 percent between the full and subset populations, respectively, introducing the control period closes the gap between the full and subset population adjustment factors to 0.02 percent, suggesting that the control period captures additional COVID–19 related effects on patient acuity that the subset population method alone does not. Accordingly, the combined methodology of using the subset population with data from the control period results in the lowest parity adjustment factor. Table 12 shows that while using the subset population method would lead to a 4.9 percent adjustment factor ($1.8 billion) using FY 2020 data and a 5.3 percent adjustment factor ($1.9 billion) using FY 2021 data, introducing the control period reduces the adjustment factor to 4.6 percent ($1.7 billion). The robustness of the control period approach is further demonstrated by the fact that using data from the control period, with either the full or subset population, would lead to approximately the same parity adjustment factor of 4.58 percent as compared to 4.6 percent. We invite comments on our proposed combined methodology of using the subset population and data from the control period for the purposes of calculating the recalibrated parity adjustment factor.

TABLE 11: Adjustment Factors Based on Population and Data Period

Data Period	Full SNF Population	Subset SNF Population	Difference
FY 2020-based Adjustment Factor	5.21%	4.90%	-0.31%
FY 2021-based Adjustment Factor	5.65%	5.25%	-0.40%
Control Period-based Adjustment Factor	4.58%	4.60%	0.02%

TABLE 12: Budget Impact Based on Subset Population and Data Period

Data Period and Population	Adjustment Factor	Budget Impact (Reduction)
FY 2020 Data, Subset Population	4.9%	$1.8 billion
FY 2021 Data, Subset Population	5.3%	$1.9 billion
Control Period Data, Subset Population	4.6%	$1.7 billion

Our data analysis and monitoring efforts provides further support for the accuracy and appropriateness of a 4.6 percent parity adjustment factor, as we have identified numerous changes that demonstrate the different impacts of PDPM implementation and the COVID–19 PHE on reported patient clinical acuity. As described earlier, commenters stated that limitations regarding visitation and other infection control protocols due to the PHE led to higher levels of mood distress, cognitive decline, functional decline, compromised skin integrity, change in appetite, and weight loss requiring diet modifications among the non-COVID population. However, our data shows that most of these metrics, with the exception of functional decline and compromised skin integrity, had already exhibited clear changes concurrent with PDPM implementation and well before the start of the COVID–19 PHE. For example, in regard to higher levels of mood distress and cognitive decline, we observed an average of 4 percent of stays with depression and 40 percent of stays with cognitive impairment, with an average mood score of 1.9, in the fiscal year prior to PDPM implementation (FY 2019). In the 3 months directly following PDPM implementation and before the start of the COVID–19 PHE (October 2019 to December 2019), these averages increased to 11 percent of stays with depression and 44 percent of stays with cognitive impairment, with an average mood scale of 2.9. As for change in appetite and weight loss requiring diet modifications, we observed an average of 15 percent of stays with any SLP comorbidity, 5 percent of stays with a swallowing disorder, and 22 percent of stays with a mechanically altered diet in FY 2019. In the 3 months directly following PDPM implementation, these averages increased to 19 percent of stays with any SLP comorbidity, 17 percent of stays with a swallowing disorder, and 25 percent of stays with a mechanically altered diet. Notably, we also observed that the percentage of stays with a swallowing disorder that did not also receive a mechanically altered diet increased from 1 percent in FY 2019 to 5 percent in the 3 months directly

following PDPM implementation. While many of these metrics increased further after the start of the COVID–19 PHE, they remained elevated at around their post-PDPM implementation levels even during periods of low COVID–19 prevalence. As a result, our parity adjustment calculations remained much the same even during months when rates of COVID–19 cases were quite low, suggesting that patient case mix classification has stabilized independent of the ongoing COVID–19 PHE.

Another reason that commenters cited to explain the greater clinical acuity among the subset population is that, because elective surgeries were halted, patients who were admitted were more severely ill and could not be treated at home. We acknowledge that the subset population methodology, or any method predicated on data from the COVID–19 PHE period, may not accurately represent what SNF patient case-mix would look like outside of the COVID–19 PHE environment because while we can remove data that we believe are due to COVID impacts, it is more difficult to add data back in that was missing due to the COVID–19 PHE.

However, we believe that the addition of the control period to the subset population methodology helps to resolve this issue. For example, there likely would have been more joint replacements were it not for the COVID–19 PHE. Our data show that the rate of major joint replacement or spinal surgery decreased from 7.6 percent of stays in FY 2019, to 5.5 percent of stays in FY 2021, to 5.2 percent of stays in FY 2022. Similarly, rates of orthopedic surgery decreased from 9.1 percent of stays in FY 2019, to 9.0 percent of stays in FY 2021, to 8.8 percent of stays in FY 2022. Using the control period, which excludes the periods of highest COVID–19 prevalence and lowest rates of elective surgeries, we arrive at rates of 6.4 percent of stays with major joint replacement or spinal surgery, and 9.5 percent of stays with orthopedic surgery. Therefore, we believe that using the control period is a closer representation of SNF patient case-mix outside of a COVID–19 PHE environment than using either FY 2021 or FY 2022 data alone.

Given the results of our data analyses, we propose adopting the methodology based upon the subset population during the control period, and lowering the PDPM parity adjustment factor from 46 percent to 38 percent for each of the PDPM case-mix adjusted components. If we applied this methodology for FY 2023, we estimated a reduction in aggregate SNF spending of 4.6 percent, or approximately $1.7 billion. We note that the parity adjustment is calculated and applied at a systemic level to all facilities paid under the SNF PPS, and there may be variation between facilities based on their unique patient population, share of non-case-mix component payment, and urban or rural status. We invite comments on the methodology described in this section of the proposed rule for recalibrating the PDPM parity adjustment, as well as the findings of our analysis described throughout this section. To assist commenters in providing comments on this issue, we have also posted a file on the CMS website, at *https://www.cms.gov/medicare/medicare-fee-for-service-payment/snfpps,* which provides the FY 2019 RUG IV case-mix distribution and calculation of total payments under RUG–IV, as well as PDPM case-mix utilization data at the case mix group and component level to demonstrate the calculation of total payments under PDPM.

3. Methodology for Applying the Recalibrated PDPM Parity Adjustment

As discussed in the FY 2022 SNF PPS proposed rule (86 FR 19988), we believe it would be appropriate to apply the recalibrated parity adjustment across all PDPM CMIs in equal measure, as the initial increase to the PDPM CMIs to achieve budget neutrality was applied equally, and therefore, this method would properly implement and maintain the integrity of the PDPM classification methodology as it was originally designed. Tables 5 and 6 in section III.C. of this proposed rule set forth what the PDPM CMIs and case-mix adjusted rates would be if we apply the recalibration methodology in equal measure in FY 2023.

We acknowledge that we received several comments in response to last year's rule objecting to this approach given that our data analysis, presented in Table 23 of the FY 2022 SNF PPS proposed rule (86 FR 19987), showed significant increases in the average CMI for the SLP, Nursing, and NTA components for both the full and subset FY 2020 populations as compared to what was expected, with increases of 22.6 percent, 16.8 percent, and 5.6 percent, respectively, for the full FY 2020 SNF population. As described in the FY 2022 SNF PPS final rule (86 FR 42471), some commenters disagreed with adjusting the CMIs across all case-mix adjusted components in equal measure, suggesting that this approach would harm patient care by further reducing PT and OT therapy minutes. Instead, the commenters recommended a targeted approach that focuses the parity adjustment on the SLP, Nursing, and NTA components in proportion to how they are driving the unintended increase observed under PDPM.

We considered these comments but believe that it would be most appropriate to propose applying the parity adjustment across all components equally. First, as described earlier, the initial increase to the PDPM CMIs to achieve budget neutrality was applied across all components, and therefore, it would be appropriate to implement a revision to the CMIs in the same way. Second, the reason we do not observe the same magnitude of change in the PT and OT components is that, in designing the PDPM payment system, the data used to help determine what payment groups SNF patients would classify into under PDPM was collected under the prior payment model (RUG–IV), which included incentives that encouraged significant amounts of PT and OT. Given that PT and OT were furnished in such high amounts under RUG–IV, we had already assumed that a significant portion of patients would be classified into the higher paying PT and OT groups corresponding to having a Section GG function score of 10 to 23. Therefore, this left little room for additional increases in PT and OT classification after PDPM implementation. In other words, the PT and OT components results were as expected according to the original design of PDPM, while the SLP, Nursing, and NTA results were not.

However, to fully explore the alternative targeted approach that commenters suggested, we have updated our analysis of the average CMI by PDPM component from Table 23 of the FY 2022 SNF PPS proposed rule (86 FR 19987) and found that a similar pattern still holds when comparing the expected average CMIs for FY 2019 and the expected actual CMIs for the subset population during the control period. Table 13 shows significant increases in average case-mix of 18.6 percent for the SLP component and the 10.8 percent for the Nursing component, a moderate increase of 3.0 percent for the NTA component, and a slight increase of 0.4 percent for the PT and OT components, respectively. We also provide Table 14 to show the potential impact of applying the recalibrated PDPM parity adjustment to the PDPM CMIs in a targeted manner, instead of an equal approach as presented in Tables 5 and 6 in section III.C. of this proposed rule. We invite comments on whether stakeholders believe a targeted approach is preferable to our proposed equal approach.

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TABLE 13: Average Case-Mix Index, Expected and Actual, by PDPM Component

Component	Expected Average CMI (FY 2019 Estimate, Subset Population)	Actual CMI per Stay (Control Period, Subset Population)	Percentage Difference
PT	1.51	1.52	0.4%
OT	1.51	1.52	0.4%
SLP	1.40	1.66	18.6%
Nursing	1.45	1.60	10.8%
NTA	1.16	1.20	3.0%

TABLE 14: PDPM Case-Mix Adjusted Federal Rates and Associated Indexes

PDPM Group	PT CMI	OT CMI	SLP CMI	Nursing CMG	Nursing CMI	NTA CMI
A	1.53	1.49	0.62	ES3	3.72	2.97
B	1.70	1.63	1.67	ES2	2.81	2.32
C	1.88	1.69	2.45	ES1	2.68	1.69
D	1.92	1.53	1.34	HDE2	2.20	1.22
E	1.42	1.41	2.14	HDE1	1.82	0.88
F	1.61	1.60	2.73	HBC2	2.05	0.66
G	1.67	1.64	1.87	HBC1	1.70	-
H	1.16	1.15	2.62	LDE2	1.90	-
I	1.13	1.18	3.23	LDE1	1.58	-
J	1.42	1.45	2.74	LBC2	1.58	-
K	1.52	1.54	3.39	LBC1	1.31	-
L	1.09	1.11	3.86	CDE2	1.71	-
M	1.27	1.30	-	CDE1	1.48	-
N	1.48	1.50	-	CBC2	1.42	-
O	1.55	1.55	-	CA2	1.00	-
P	1.08	1.09	-	CBC1	1.23	-
Q	-	-	-	CA1	0.86	-
R	-	-	-	BAB2	0.95	-
S	-	-	-	BAB1	0.91	-
T	-	-	-	PDE2	1.44	-
U	-	-	-	PDE1	1.35	-
V	-	-	-	PBC2	1.12	-
W	-	-	-	PA2	0.65	-
X	-	-	-	PBC1	1.03	-
Y	-	-	-	PA1	0.60	-

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4. Delayed and Phased Implementation

As we noted in the FY 2012 SNF PPS final rule (76 FR 48493), we believe it is imperative that we act in a well-considered but expedient manner once excess payments are identified, as we did in FY 2012. However, we acknowledged that applying a reduction in payments without time to prepare could create a financial burden for providers, particularly considering the ongoing COVID–19 PHE. Therefore, in the FY 2022 SNF PPS proposed rule (86 FR 19988 through 19990), we solicited comments on two potential mitigation strategies to ease the transition to prospective budget neutrality: Delayed implementation and phased implementation, both of which are described later in this section. We noted that for either of these options, the adjustment would be applied prospectively, and the CMIs would not be adjusted to account for deviations from budget neutrality in years before the payment adjustments are implemented.

A delayed implementation strategy would mean that we would implement the reduction in payment in a later year than the year the reduction is finalized. For example, considering the 4.6 percent reduction discussed previously in this preamble, if this reduction is finalized in FY 2023 with a 1-year delayed implementation, this would mean that the full 4.6 percent reduction

will be applied prospectively applied to the PDPM CMIs in FY 2024. By comparison, a phased implementation strategy would mean that the amount of the reduction would be spread out over some number of years. For example, if we were to use a 2-year phased implementation approach to the 4.6 percent reduction discussed previously in this proposed rule with no delayed implementation, this would mean that the PDPM CMIs would be reduced by 2.3 percent in the first year of implementation in FY 2023 and then reduced by the remaining 2.3 percent in the second and final year of implementation in FY 2024. We could also use a combination of both mitigation strategies, such as a 1-year delayed implementation with a 2-year phased approach, would mean that the PDPM CMIs would be reduced by 2.3 percent in the first year of implementation in FY 2024 and then reduced by the remaining 2.3 percent in the second and final year of implementation in FY 2025.

In the FY 2022 SNF PPS proposed rule (86 FR 19988 through 19990), we solicited comments on the possibility of combining the delayed and phased implementation approaches and what stakeholders believe would be appropriate to appropriately mitigate the impact of the reduction in SNF PPS payments. As described in the FY 2022 SNF PPS final rule (86 FR 42470 through 42471), the majority of commenters supported combining both mitigation strategies of delayed implementation of 2 years and a gradual phase-in of no more than 1 percent per year. In its comments to the FY 2022 SNF PPS proposed rule, MedPAC supported delayed implementation, but did not believe a phased-in approach was warranted given the high level of aggregate payment to SNFs.

As stated in the FY 2022 SNF PPS proposed rule (86 FR 19989) and FY 2022 SNF PPS final rule (86 FR 42471), we believe it is imperative that we act in a well-considered but expedient manner once excess payments are identified. Additionally, we stated that we would consider whether the delayed and phased implementation approaches were warranted to mitigate potential negative impacts on providers resulting from implementation of such a reduction in the SNF PPS rates entirely within a single year. After careful consideration, we are proposing to recalibrate the parity adjustment in FY 2023 with no delayed implementation or phase-in period, particularly after considering that we have already granted a 1-year delayed implementation by not proposing or finalizing the parity adjustment in the FY 2022 SNF PPS proposed and final rules. This proposal would lead to a prospective reduction in Medicare Part A SNF payments of approximately 4.6 percent (−$1.7 billion) in FY 2023. We would note that this reduction would be substantially mitigated by the proposed FY 2023 net SNF market basket update factor of 3.9 percent, which reflects a market basket increase factor of 2.8 percent, adjusted upward to account for the 1.5 percentage point forecast error correction and adjusted downward to account for the 0.4 percentage point productivity adjustment, as discussed in section III.B. of this proposed rule. Taken together, the preliminary net budget impact in FY 2023 would be an estimated decrease of $320 million in aggregate payment to SNFs if the parity adjustment is implemented in one year.

While we note many commenters supported both mitigation strategies of delayed implementation and phased implementation, we emphasize that we have already granted a 1-year delayed implementation by not proposing or finalizing the parity adjustment in the FY 2022 SNF PPS proposed and final rules, and instead taking a year to solicit and consider comments on our parity adjustment methodology. As stated in the FY 2022 final rule, we estimated a reduction in SNF spending of 5 percent, or approximately $1.7 billion, if we had implemented the parity adjustment in FY 2022 (86 FR 42471). Moreover, in light of the potential reduction in payments associated with each possible option outlined in Table 2, the SNF PPS has been paying in excess of budget neutrality at a rate of approximately $1.7 billion per year since PDPM was implemented in FY 2020. We therefore believe that delaying the implementation of the proposed recalibration or phasing the recalibration in over some amount of time would only serve to prolong these payments in excess of the intended policy.

Further, MedPAC's March 2022 Report to Congress (available at *https://www.medpac.gov/wp-content/uploads/2022/03/Mar22_MedPAC_ReportToCongress_Ch7_SEC.pdf*) has found that since 2000, the aggregate Medicare margin for freestanding SNFs has consistently been above 10 percent each year. In 2020, the aggregate Medicare margin was 16.5 percent, a sizable increase from 11.9 percent in 2019. Additionally, the aggregate Medicare margin in 2020 increased to an estimated 19.2 percent when including Federal relief funds for the COVID–19 PHE (March 2022 MedPAC Report to Congress, 251–252). Given these high Medicare margins, we do not believe that a delayed implementation or a phase-in approach is needed. Rather, these mitigation strategies would continue to pay facilities at levels that significantly exceed intended SNF payments, had PDPM been implemented in a budget neutral manner as finalized by CMS in the FY 2019 SNF PPS final rule (83 FR 39256). It is also important to note that the parity adjustment recalibration would serve to remove an unintended increase in payments from moving to a new case mix classification system, rather than decreasing an otherwise appropriate payment amount. Thus, we do not believe that the recalibration should negatively affect facilities, beneficiaries, and quality of care, or create an undue hardship on providers.

We continue to believe that in implementing PDPM, it is essential that we stabilize the baseline as quickly as possible without creating a significant adverse effect on the industry or to beneficiaries. We invite comments on our proposal to recalibrate the parity adjustment by 4.6 percent in FY 2023, and whether stakeholders believe delayed implementation or phase-in period is warranted or not, in light of the data analysis and policy considerations presented previously.

D. Request for Information: Infection Isolation

Under the SNF PPS, various patient characteristics are used to classify patients in Medicare-covered SNF stays into payment groups. One of these characteristics is isolation due to an active infection. In order for a patient to qualify to be coded as being isolated for an active infectious disease, the patient must meet all of the following criteria:

1. The patient has active infection with highly transmissible or epidemiologically significant pathogens that have been acquired by physical contact or airborne or droplet transmission.

2. Precautions are over and above standard precautions. That is, transmission-based precautions (contact, droplet, and/or airborne) must be in effect.

3. The patient is in a room alone because of active infection and cannot have a roommate. This means that the resident must be in the room alone and not cohorted with a roommate regardless of whether the roommate has a similar active infection that requires isolation.

4. The patient must remain in his or her room. This requires that all services be brought to the resident (for example, rehabilitation, activities, dining, etc.).

Being coded for infection isolation can have a significant impact on the Medicare payment rate for a patient's SNF stay. The increase in a SNF patient's payment rate as a result of being coded under infection isolation is driven by the increase in the relative costliness of treating a patient who must be isolated due to an infection. More specifically, in 2005, we initiated a national nursing home staff time measurement (STM) study, the Staff Time and Resource Intensity Verification (STRIVE) Project. The STRIVE project was the first nationwide time study for nursing homes in the United States to be conducted since 1997, and the data collected were used to establish payment systems for Medicare skilled nursing facilities (SNFs) as well as Medicaid nursing facilities (NFs).

In the STRIVE project final report, titled ''Staff Time and Resource Intensity Verification Project Phase II'' section 4.8 (available at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/TimeStudy*), we discussed how infection isolation was categorized into the Extensive Services RUG–III category based on the high resource intensity that was required for treating patients for whom facilities would code this category on the MDS. The significant increase in payment associated with this item is intended to account for the increase in relative resource utilization and costs associated with treating a patient isolated due to an active infection, as well as the PPE and additional protocols which must be followed treating such a patient, which are significantly greater than treating patients outside of such an environment.

During the COVID–19 PHE, a number of stakeholders raised concerns with the definition of ''infection isolation'', as it relates to the treatment of SNF patients being cohorted due to either the diagnosis or suspected diagnosis of COVID–19. Specifically, stakeholders took issue with criterion 1, which requires that the patient have an active infection, rather than suspicion of an active infection, and criterion 3, which requires that the patient be in the room alone, rather than being cohorted with other patients. To this point, we have maintained that the definition of ''infection isolation'' is appropriate and should not be changed in response to the circumstances of the COVID–19 PHE. Due to the ubiquitous nature of the PHE and precautions that are being taken throughout SNFs with regard to PPE and other COVID–19 related needs, we understand that the general costs for treating all SNF patients may have increased. However, as the case-mix classification model is intended to adjust payments based on relative differences in the cost of treating different SNF patients, we are unclear on if the relative increase in resource intensity for each patient being treated within a cohorted environment is the same relative increase as it would be for treating a single patient isolated due to an active infection.

We would like to take this opportunity to invite the public to submit their comments about isolation due to active infection and how the PHE has affected the relative staff time resources necessary for treating these patients. Specifically, we invite comments on whether or not the relative increase in resource utilization for each of the patients within a cohorted room, all with an active infection, is the same or comparable to that of the relative increase in resource utilization associated with a patient that is isolated due to an active infection.

VI. Skilled Nursing Facility Quality Reporting Program (SNF QRP)

A. Background and Statutory Authority

The Skilled Nursing Facility Quality Reporting Program (SNF QRP) is authorized by section 1888(e)(6) of the Act, and it applies to freestanding SNFs, SNFs affiliated with acute care facilities, and all non-critical access hospital (CAH) swing-bed rural hospitals. Section 1888(e)(6)(A)(i) of the Act requires the Secretary to reduce by 2 percentage points the annual market basket percentage update described in section 1888(e)(5)(B)(i) of the Act applicable to a SNF for a fiscal year, after application of section 1888(e)(5)(B)(ii) of the Act (the productivity adjustment) and section 1888(e)(5)(B)(iii) of the Act, in the case of a SNF that does not submit data in accordance with sections 1888(e)(6)(B)(i)(II) and (III) of the Act for that fiscal year. For more information on the requirements we have adopted for the SNF QRP, we refer readers to the FY 2016 SNF PPS final rule (80 FR 46427 through 46429), FY 2017 SNF PPS final rule (81 FR 52009 through 52010), FY 2018 SNF PPS final rule (82 FR 36566 through 36605), FY 2019 SNF PPS final rule (83 FR 39162 through 39272), and FY 2020 SNF PPS final rule (84 FR 38728 through 38820).

B. General Considerations Used for the Selection of Measures for the SNF QRP

For a detailed discussion of the considerations we use for the selection of SNF QRP quality, resource use, or other measures, we refer readers to the FY 2016 SNF PPS final rule (80 FR 46429 through 46431).

1. Quality Measures Currently Adopted for the FY 2023 SNF QRP

The SNF QRP currently has 15 measures for the FY 2023 SNF QRP, which are outlined in Table 15. For a discussion of the factors used to evaluate whether a measure should be removed from the SNF QRP, we refer readers to § 413.360(b)(3).

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TABLE 15: Quality Measures Currently Adopted for the FY 2023 SNF QRP

Short Name	Measure Name & Data Source
Resident Assessment Instrument Minimum Data Set (Assessment-Based)	
Pressure Ulcer/Injury	Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury.
Application of Falls	Application of Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay) (NQF #0674).
Application of Functional Assessment/Care Plan	Application of Percent of Long-Term Care Hospital (LTCH) Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (NQF #2631).
Change in Mobility Score	Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634).
Discharge Mobility Score	Application of IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636).
Change in Self-Care Score	Application of the IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633).
Discharge Self-Care Score	Application of IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635).
DRR	Drug Regimen Review Conducted With Follow-Up for Identified Issues–Post Acute Care (PAC) Skilled Nursing Facility (SNF) Quality Reporting Program (QRP).
TOH-Provider*	Transfer of Health (TOH) Information to the Provider Post-Acute Care (PAC).
TOH-Patient*	Transfer of Health (TOH) Information to the Patient Post-Acute Care (PAC).
Claims-Based	
MSPB SNF	Medicare Spending Per Beneficiary (MSPB)–Post Acute Care (PAC) Skilled Nursing Facility (SNF) Quality Reporting Program (QRP).
DTC	Discharge to Community (DTC)–Post Acute Care (PAC) Skilled Nursing Facility (SNF) Quality Reporting Program (QRP) (NQF #3481).
PPR	Potentially Preventable 30-Day Post-Discharge Readmission Measure for Skilled Nursing Facility (SNF) Quality Reporting Program (QRP).
SNF HAI	SNF Healthcare-Associated Infections (HAI) Requiring Hospitalization
NHSN	
HCP COVID-19 Vaccine	COVID-19 Vaccination Coverage among Healthcare Personnel (HCP)

*In response to the public health emergency (PHE) for the Coronavirus Disease 2019 (COVID-19), CMS released an Interim Final Rule (85 FR 27595 through 27597) which delayed the compliance date for collection and reporting of the Transfer of Health (TOH) Information measures for at least 2 full fiscal years after the end of the PHE.

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C. SNF QRP Quality Measure Proposals Beginning With the FY 2025 SNF QRP

Section 1899B(h)(1) of the Act permits the Secretary to remove, suspend, or add quality measures or resource use or other measures described in sections 1899B(c)(1) and (d)(1) of the Act, respectively, so long as the Secretary publishes in the **Federal Register** (with a notice and comment period) a justification for such removal, suspension or addition. Section 1899B(a)(1)(B) of the Act requires that all of the data that must be reported in accordance with section 1899B(a)(1)(A) of the Act (including resource use or other measure data under section 1899B(d)(1) of the Act) be standardized and interoperable to allow for the exchange of the information among post-acute care (PAC) providers and other providers and the use by such providers of such data to enable access to longitudinal information and to facilitate coordinated care.

We propose to adopt one new measure for the SNF QRP beginning with the FY 2025 SNF QRP: The Influenza Vaccination Coverage among Healthcare Personnel (HCP) (NQF #0431) measure as an ''other measure'' under section 1899B(d)(1) of the Act. In accordance with section 1899B(a)(1)(B) of the Act, the data used to calculate this measure are standardized and interoperable. The proposed measure supports the ''Preventive Care'' Meaningful Measure area and the ''Promote Effective Prevention and Treatment of Chronic Disease'' healthcare priority.[9] The Influenza Vaccination Coverage among HCP measure is a process measure, developed by the Centers for Disease Control and Prevention (CDC), and reports on the percentage of HCP who receive the influenza vaccination. This measure is currently used in other post-acute care (PAC) Quality Reporting Programs (QRPs), including the Inpatient Rehabilitation Facility (IRF) QRP and the Long-Term Care Hospital (LTCH) QRP. The measure is described in more detail in section VI.C.1. of this proposed rule.

In addition, we propose to revise the compliance date for the collection of the Transfer of Health (TOH) Information to the Provider-PAC measure, the TOH Information to the Patient-PAC measure, and certain standardized patient assessment data elements from October 1st of the year that is at least 2 full fiscal years after the end of the COVID–19

[9] CMS Measures Inventory Tool. (2022). Influenza Vaccination Coverage among Healthcare Personnel. Retrieved from *https://cmit.cms.gov/CMIT_public/ReportMeasure?measureId=854.*

PHE to October 1, 2023. We believe the COVID–19 PHE revealed why the TOH Information measures and standardized patient assessment data elements are important to the SNF QRP. The new data elements will facilitate communication and coordination across care settings as well as provide information to support our mission of analyzing the impact of the COVID–19 PHE on patients to improve the quality of care in SNFs. We describe this proposal in more detail in section VI.C.2. of this proposed rule.

Finally, we propose to make certain revisions to regulation text at § 413.360 to include a new paragraph to reflect all the data completion thresholds required for SNFs to meet the compliance threshold for the annual payment update, as well as certain conforming revisions. We describe this proposal in more detail in section VI.C.3. of this proposed rule.

1. Influenza Vaccination Coverage Among Healthcare Personnel (NQF #0431) Measure Beginning With the FY 2025 SNF QRP

a. Background

The CDC Advisory Committee on Immunization Practices (ACIP) recommends that all persons 6 months of age and older, including HCP and persons training for professions in health care, should be vaccinated annually against influenza.[10] The basis of this recommendation stems from the spells of illness, hospitalizations, and mortality associated with the influenza virus. Between 2010 and 2020, the influenza virus resulted in 12,000 to 52,000 deaths in the United States each year, depending on the severity of the strain.[11] [12] Preliminary estimates from the CDC revealed 35 million cases, 380,000 hospitalizations, and 20,000 deaths linked to influenza in the United States during the 2019 to 2020 influenza season.[13] Persons aged 65 years and older are at higher risk for experiencing burdens related to severe influenza due to the changes in immune defenses that come with increasing age.[14] [15] The CDC estimates that 70 to 85 percent of seasonal influenza-related deaths occur among people aged 65 years and older, and 50 to 70 percent of influenza-related hospitalizations occur among this age group.[16] Residents of long-term care facilities, who are often of older age, have greater susceptibility for acquiring influenza due to general frailty and comorbidities, close contact with other residents, interactions with visitors, and exposure to staff who rotate between multiple facilities.[17] [18] [19] Therefore, monitoring and reporting influenza vaccination rates among HCP is important as HCP are at risk for acquiring influenza from residents and exposing influenza to residents.[20] For example, one early report of HCP influenza infections during the 2009 H1N1 influenza pandemic estimated 50 percent of HCP had contracted the influenza virus from patients or coworkers within the health care setting.[21]

Despite the fact that influenza commonly spreads between HCP and SNF residents, vaccine hesitancy and organizational barriers often prevent influenza vaccination. For example, although the CDC emphasizes the importance for HCP to receive the influenza vaccine, the 2017 to 2018 influenza season shows higher influenza vaccination coverage among HCP working in hospitals (approximately 92 percent) and lower coverage among those working in long-term care facilities (approximately 68 percent).[22] [23] HCP working in long-term care facilities, including SNFs, have expressed concerns about the influenza vaccine's effectiveness and safety, fearing potential side effects and adverse reactions.[24] Other HCP believe healthy individuals are not susceptible to infection and therefore find vaccination unnecessary.[25] In addition, many HCP do not prioritize influenza vaccination, expressing a lack of time to get vaccinated.[26] Lower HCP influenza vaccination in long-term care facilities also stems from organizational barriers, such as inadequate vaccine record keeping, frequent staff turnover, an

[10] Grohskopf, L.A., Alyanak, E., Broder, K.R., Walter, E.B., Fry, A.M., & Jernigan, D.B. (2019). Prevention and Control of Seasonal Influenza with Vaccines: Recommendations of the Advisory Committee on Immunization Practices—United States, 2019–20 Influenza Season. *MMWR Recomm Rep,* 68(No. RR–3), 1–21. *https://www.cdc.gov/mmwr/volumes/68/rr/rr6803a1.htm?s_cid=rr6803a1_w.*

[11] Centers for Disease Control and Prevention (CDC). (2021). Disease Burden of Flu. Retrieved from *https://www.cdc.gov/flu/about/burden/index.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fflu%2Fabout%2Fdisease%2Fus_flu-related_deaths.htm.*

[12] Frentzel, E., Jump, R., Archbald-Pannone, L., Nace, D.A., Schweon, S.J., Gaur, S., Naqvi, F., Pandya, N., Mercer, W., & Infection Advisory Subcommittee of AMDA, The Society for Post-Acute and Long-Term Care Medicine (2020). Recommendations for Mandatory Influenza Vaccinations for Health Care Personnel From AMDA's Infection Advisory Subcommittee. *Journal of the American Medical Directors Association,* 21(1), 25–28.e2. *https://doi.org/10.1016/j.jamda.2019.11.008.*

[13] Centers for Disease Control and Prevention (CDC). (2021). Estimated Flu-Related Illnesses, Medical visits, Hospitalizations, and Deaths in the United States—2019–2020 Flu Season. Retrieved from *https://www.cdc.gov/flu/about/burden/2019-2020.html.*

[14] Centers for Disease Control and Prevention (CDC). (2021). Retrieved from Flu & People 65 Years and Older: *https://www.cdc.gov/flu/highrisk/65over.htm?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fflu%2Fabout%2Fdisease%2F65over.htm.*

[15] Frentzel, E., Jump, R., Archbald-Pannone, L., Nace, D.A., Schweon, S.J., Gaur, S., Naqvi, F., Pandya, N., Mercer, W., & Infection Advisory Subcommittee of AMDA, The Society for Post-Acute and Long-Term Care Medicine (2020). Recommendations for Mandatory Influenza Vaccinations for Health Care Personnel From AMDA's Infection Advisory Subcommittee. *Journal of the American Medical Directors Association,* 21(1), 25–28.e2. *https://doi.org/10.1016/j.jamda.2019.11.008.*

[16] Centers for Disease Control and Prevention (CDC). (2021). Retrieved from Flu & People 65 Years and Older: *https://www.cdc.gov/flu/highrisk/65over.htm?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fflu%2Fabout%2Fdisease%2F65over.htm.*

[17] Lansbury, L.E., Brown, C.S., & Nguyen-Van-Tam, J.S. (2017). Influenza in long-term care facilities. *Influenza Other Respir Viruses,* 11(5), 356–366. *https://dx.doi.org/10.1111%2Firv.12464.*

[18] Pop-Vicas, A., & Gravenstein, S. (2011). Influenza in the elderly: A mini-review. *Gerontology,* 57(5), 397–404. *https://doi.org/10.1159/000319033.*

[19] Strausbaugh, L.J., Sukumar, S.R., & Joseph, C.L. (2003). Infectious disease outbreaks in nursing homes: an unappreciated hazard for frail elderly persons. *Clinical infectious diseases: an official publication of the Infectious Diseases Society of America,* 36(7), 870–876. *https://doi.org/10.1086/368197.*

[20] Wilde, J.A., McMillan, J.A., Serwint, J., Butta, J., O'Riordan, M.A., & Steinhoff, M.C. (1999). Effectiveness of influenza vaccine in health care professionals: a randomized trial. *JAMA,* 281(10), 908–913. *https://doi.org/10.1001/jama.281.10.908.*

[21] Harriman K, Rosenberg J, Robinson S, et al. (2009). Novel influenza A (H1N1) virus infections among health-care personnel—United States, April–May 2009. *MMWR Morb Mortal Wkly Rep,* 58(23), 641–645. Retrieved from *https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5823a2.htm.*

[22] Black, C.L., Yue, X., Ball, S.W., Fink, R.V., de Perio, M.A., Laney, A.S., Williams, W.W., Graitcer, S.B., Fiebelkorn, A.P., Lu, P.J., & Devlin, R. (2018). Influenza Vaccination Coverage Among Health Care Personnel—United States, 2017–18 Influenza Season. MMWR. *Morbidity and mortality weekly report,* 67(38), 1050–1054. *https://doi.org/10.15585/mmwr.mm6738a2.*

[23] Jaklevic M.C. (2020). Flu Vaccination Urged During COVID–19 Pandemic. *JAMA.* 324(10),926–927. *https://doi.org/10.1001/jama.2020.15444.*

[24] Frentzel, E., Jump, R., Archbald-Pannone, L., Nace, D.A., Schweon, S.J., Gaur, S., Naqvi, F., Pandya, N., Mercer, W., & Infection Advisory Subcommittee of AMDA, The Society for Post-Acute and Long-Term Care Medicine (2020). Recommendations for Mandatory Influenza Vaccinations for Health Care Personnel From AMDA's Infection Advisory Subcommittee. *Journal of the American Medical Directors Association,* 21(1), 25–28.e2. *https://doi.org/10.1016/j.jamda.2019.11.008.*

[25] Kenny, E., McNamara, Á., Noone, C., & Byrne, M. (2020). Barriers to seasonal influenza vaccine uptake among health care workers in long-term care facilities: A cross-sectional analysis. *British journal of health psychology,* 25(3), 519–539. *https://doi.org/10.1111/bjhp.12419.*

[26] Kose, S., Mandiracioglu, A., Sahin, S., Kaynar, T., Karbus, O., & Ozbel, Y. (2020). Vaccine hesitancy of the COVID–19 by health care personnel. *Int J Clin Pract,* 75(5), e13917. *https://doi.org/10.1111/ijcp.13917.*

absence of influenza vaccine mandates, a lack of communication about vaccination rates, and a lack of incentives encouraging HCP flu vaccination.[27] Given the fact that influenza vaccination coverage among HCP is typically lower in long-term care settings, such as SNFs, when compared to other care settings, we believe the proposed measure has the potential to increase influenza vaccination coverage in SNFs, promote patient safety, and increase the transparency of quality of care in the SNF setting.

Although concerns about vaccine effectiveness often prevent some HCP from getting the influenza vaccine, the CDC notes that higher influenza vaccination rates reduce the risk of influenza-related illness between 40 to 60 percent among the overall population during seasons when the circulating influenza virus is well-matched to viruses used to make influenza vaccines.[28] During the 2019 to 2020 influenza season, vaccinations prevented 7.5 million influenza-related illnesses, 105,000 influenza-related hospitalizations, and 6,300 deaths.[29] Additionally, among adults with influenza-associated hospitalization, influenza vaccination is also associated with a 26 percent lower risk of intensive care unit admission, and 31 percent lower risk of influenza-related deaths compared to individuals who were unvaccinated against influenza.[30] Several cluster-randomized trials comparing HCP influenza vaccination groups to control groups demonstrate reductions in long-term care resident mortality rates as related to HCP influenza vaccination.[31 32 33 34] To reduce vaccine hesitancy and organizational barriers to influenza vaccination, several strategies can be used to increase influenza vaccination among HCP. These include availability of on-site influenza vaccinations and educational campaigns about influenza risks and vaccination benefits.[35 36 37]

Addressing HCP influenza vaccination in SNFs is particularly important as vulnerable populations often reside in SNFs. Vulnerable populations are less likely to receive the influenza vaccine, and thus, are susceptible to contracting the virus. For example, not only are Black residents more likely to receive care from facilities with lower overall influenza vaccination rates, but Black residents are also less likely to be offered and receive influenza vaccinations in comparison to White residents.[38 39 40 41] Racial and ethnic disparities in influenza vaccination, specifically among Black and Hispanic populations, are also higher among short-stay residents receiving care for less than 100 days in the nursing home.[42] Additionally, Medicare fee-for-service beneficiaries of Black, Hispanic, rural, and lower-income populations are less likely to receive inactivated influenza vaccines, and non-White beneficiaries are generally less likely to receive high-dose influenza vaccines in comparison to White beneficiaries.[43 44 45] Therefore, the proposed measure has the potential to increase influenza vaccination coverage of HCP in SNFs, as well as prevent the spread of the influenza virus to vulnerable populations who are less likely to receive influenza vaccinations.

The COVID–19 pandemic has exposed the importance of implementing infection prevention strategies, including the promotion of HCP influenza vaccination. Activity of the influenza virus has been lower during the COVID–19 pandemic as several strategies to reduce the spread of COVID–19 have also reduced the spread of influenza, including mask mandates, social distancing, and increased hand hygiene.[46] However, even though more

[27] Ofstead, C.L., Amelang, M.R., Wetzler, H.P., & Tan, L. (2017). Moving the needle on nursing staff influenza vaccination in long-term care: Results of an evidence-based intervention. *Vaccine,* 35(18), 2390–2395. *https://doi.org/10.1016/j.vaccine.2017.03.041.*

[28] Centers for Disease Control and Prevention (CDC). (2021). Retrieved from Vaccine Effectiveness: How Well Do Flu Vaccines Work?: *https://www.cdc.gov/flu/vaccines-work/vaccineeffect.htm.*

[29] Centers for Disease Control and Prevention (CDC). (2021). Retrieved from Vaccine Effectiveness: How Well Do Flu Vaccines Work?: *https://www.cdc.gov/flu/vaccines-work/vaccineeffect.htm.*

[30] Ferdinands, J.M., Thompson, M.G., Blanton, L., Spencer, S., Grant, L., & Fry, A.M. (2021). Does influenza vaccination attenuate the severity of breakthrough infections? A narrative review and recommendations for further research. *Vaccine,* 39(28), 3678–3695. *https://doi.org/10.1016/j.vaccine.2021.05.011.*

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[33] Lemaitre, M., Meret, T., Rothan-Tondeur, M., Belmin, J., Lejonc, J.L., Luquel, L., Piette, F., Salom, M., Verny, M., Vetel, J.M., Veyssier, P., & Carrat, F. (2009). Effect of influenza vaccination of nursing home staff on mortality of residents: a cluster-randomized trial. *Journal of the American Geriatrics Society, 57*(9), 1580–1586. *https://doi.org/10.1111/j.1532-5415.2009.02402.x.*

[34] Potter, J., Stott, D.J., Roberts, M.A., Elder, A.G., O'Donnell, B., Knight, P.V., & Carman, W.F. (1997). Influenza vaccination of health care workers in long-term-care hospitals reduces the mortality of elderly patients. *The Journal of infectious diseases, 175*(1), 1–6. *https://doi.org/10.1093/infdis/175.1.1.*

[35] Bechini, A., Lorini, C., Zanobini, P., Mandò Tacconi, F., Boccalini, S., Grazzini, M., Bonanni, P., & Bonaccorsi, G. (2020). Utility of Healthcare System-Based Interventions in Improving the Uptake of Influenza Vaccination in Healthcare Workers at Long-Term Care Facilities: A Systematic Review. *Vaccines,* 8(2), 165. *https://doi.org/10.3390/vaccines8020165.*

[36] Ofstead, C.L., Amelang, M.R., Wetzler, H.P., & Tan, L. (2017). Moving the needle on nursing staff influenza vaccination in long-term care: Results of an evidence-based intervention. *Vaccine,* 35(18), 2390–2395. *https://doi.org/10.1016/j.vaccine.2017.03.041.*

[37] Yue, X., Black, C., Ball, S., Donahue, S., de Perio, M.A., Laney, A.S., & Greby, S. (2019). Workplace Interventions and Vaccination-Related Attitudes Associated With Influenza Vaccination Coverage Among Healthcare Personnel Working in Long-Term Care Facilities, 2015–2016 Influenza Season. *Journal of the American Medical Directors Association,* 20(6), 718–724. *https://doi.org/10.1016/j.jamda.2018.11.029.*

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[41] Travers, J.L., Dick, A.W., & Stone, P.W. (2018). Racial/Ethnic Differences in Receipt of Influenza and Pneumococcal Vaccination among Long-Stay Nursing Home Residents. *Health services research,* 53(4), 2203–2226. *https://doi.org/10.1111/1475-6773.12759.*

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[43] Hall, L.L., Xu, L., Mahmud, S.M., Puckrein, G.A., Thommes, E.W., & Chit, A. (2020). A Map of Racial and Ethnic Disparities in Influenza Vaccine Uptake in the Medicare Fee-for-Service Program. *Advances in therapy,* 37(5), 2224–2235. *https://doi.org/10.1007/s12325-020-01324-y.*

[44] Inactivated vaccines use the killed version of the germ that causes a disease. Inactivated vaccines usually don't provide immunity (protection) that is as strong as the live vaccines. For more information regarding inactivated vaccines we refer readers to the following web page: *https://hhs.gov/immunization/basics/types/index.html.*

[45] High dose flu vaccines contain four times the amount of antigen (the inactivated virus that promotes a protective immune response) as a regular flu shot. It is associated with a stronger immune response following vaccination. For more information regarding high dose flu vaccines, we refer readers to the following web page: *https://www.cdc.gov/flu/highrisk/65over.htm.*

[46] Wang, X., Kulkarni, D., Dozier, M., Hartnup, K., Paget, J., Campbell, H., Nair, H., & Usher Network for COVID–19 Evidence Reviews (UNCOVER) group

Continued

people are receiving COVID–19 vaccines, it is still important to encourage annual HCP influenza vaccination to prevent health care systems from getting overwhelmed by the co-circulation of COVID–19 and influenza viruses. A 2020 literature search revealed several studies in which those with severe cases of COVID–19, requiring hospitalization, were less likely to be vaccinated against influenza.[47] HCP vaccinations against influenza may prevent the spread of illness between HCP and residents, thus reducing resident morbidities associated with influenza and pressure on already stressed health care systems. In fact, several thousand nursing homes voluntarily reported weekly influenza vaccination coverage through an NHSN module based on the NQF #0431 measure during the overlapping 2020 to 2021 influenza season and COVID–19 pandemic. Even after the COVID–19 pandemic ends, promoting HCP influenza vaccination is important in preventing morbidity and mortality associated with influenza.

Variation in influenza vaccination coverage rates indicate the proposed measure's usability and use. A CDC analysis during the 2020 to 2021 influenza season revealed that among 16,535 active, CMS-certified nursing homes, 17.3 percent voluntarily submitted data for the proposed measure through the National Healthcare Safety Network (NHSN). Average staff influenza vaccination coverage was approximately 64 percent, ranging from 0.3 percent to 100 percent with an interquartile range of 40 to 93.9 percent. Variation in influenza vaccination coverage rates by facility demonstrates the utility of the measure for resident choice of facility. Variation in influenza vaccination rates by type of HCP demonstrates the utility of the proposed measure for targeted quality improvement efforts.

For these reasons, we propose to adopt the CDC developed Influenza Vaccination Coverage among Healthcare Personnel (NQF #0431) measure for the SNF QRP, as collected through the CDC's NHSN, to report the percentage of HCP who receive the influenza vaccine. We believe this measure will encourage HCP to receive the influenza vaccine, resulting in fewer cases, less hospitalizations, and lower mortality associated with the virus.

b. Stakeholder Input and Pilot Testing

In the development and specification of this measure, a transparent process was employed to seek input from stakeholders and national experts and engage in a process that allows for pre-rulemaking input in accordance with section 1890A of the Act. To meet this requirement, opportunities were provided for stakeholder input by a Delphi panel and Steering Committee through the measure's pilot testing. The measure's pilot testing assessed reliability and validity among 234 facilities and five facility types (that is, long-term care facilities, acute care hospitals, ambulatory surgery centers, physician practices, and dialysis centers) across four jurisdictions (that is, California, New Mexico, New York City, and western Pennsylvania) between 2010 and 2011.[48] [49]

Two methods were used to conduct reliability testing, including interrater reliability testing and the use of case studies. Interrater reliability was assessed among 96 facilities, including 19 long-term care facilities, by comparing agreement between two raters: Facility staff and project staff. Project staff reviewed individual-level records from randomly selected facilities to assess agreement with how facility staff classified HCP into numerator and denominator categories. For more information regarding numerator and denominator definitions, refer to section VI.C.1.e. of this proposed rule. Interrater reliability results demonstrated high adjusted agreement between facility and project staff for numerator data (91 percent) and denominator data (96 percent). Most numerator disagreements resulted from health care facilities reporting verbal declinations in the ''declined vaccination'' numerator rather than categorizing verbal declinations as ''missing/unknown'' as there was no written documentation of the declination. There was also numerator disagreement related to contraindications as HCP did not properly cite true medical contraindications. Adhering to true medical contraindications and tracking declinations of the influenza vaccine among HCP should additionally improve reliability.

Case studies were also used to assess reliability. Facilities received a series of 23 vignettes, in which they were instructed to select appropriate numerator and denominator categories for the hypothetical cases described in each vignette. Most numerator and denominator elements were categorized correctly. For example, 95.6 percent of facility staff correctly categorized employees that were vaccinated at the facility, 88.6 percent correctly categorized employees vaccinated elsewhere, etc.[50] However, problematic denominator elements included poor facility understanding of how to classify physician-owners of health care facilities who work part-time and physicians who were credentialed by a facility but had not admitted patients in the past 12 months. Problematic numerator elements were related to confusion about reporting persistent deferrals of vaccination and verbal vaccine declinations for non-medical reasons.

Two methods were also used for validity testing: Convergent validity assessments and face validity assessment. Convergent validity examined the association between the number of evidence-based strategies used by a health care facility to promote influenza vaccination and the facility's reported vaccination rate among each HCP denominator group. The association between employee vaccination rates and the number of strategies used was borderline significant. The association between credentialed non-employee vaccination rates and the number of strategies used was significant, and the association between other non-employee vaccination rates and the number of strategies used was also significant, demonstrating convergent validity.

Face validity was assessed through a Delphi panel, which convened in June 2011 and provided stakeholder input on the proposed measure. The Delphi panel, comprised of nine experts in influenza vaccination measurement and quality improvement from several public and private organizations, rated elements of the proposed measure using a Likert scale. The Delphi panel

(2020). Influenza vaccination strategies for 2020–21 in the context of COVID–19. *Journal of global health,* 10(2), 021102. *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7719353/.*

[47] Del Riccio, M., Lorini, C., Bonaccorsi, G., Paget, J., & Caini, S. (2020). The Association between Influenza Vaccination and the Risk of SARS-CoV–2 Infection, Severe Illness, and Death: A Systematic Review of the Literature. *International journal of environmental research and public health,* 17(21), 7870. *https://doi.org/10.3390/ijerph17217870.*

[48] Libby T.E., Lindley M.C., Lorick S.A., MacCannell T., Lee S.J., Smith C, Geevarughese A., Makvandi M., Nace D.A., Ahmed F. (2013). Reliability and validity of a standardized measure of influenza vaccination coverage among healthcare personnel. *Infect Control Hosp Epidemiol,* 34(4),335–45. *https://doi.org/10.1086/669859.*

[49] The Libby et al. (2013) article (preceding footnote) is referenced throughout the entirety of section VI.C.1.b. of this rule.

[50] For a full list of case study categorization results, please refer to the following study: Libby T.E., Lindley M.C., Lorick S.A., MacCannell T., Lee S.J., Smith C., Geevarughese A., Makvandi M., Nace D.A., Ahmed F. (2013). Reliability and validity of a standardized measure of influenza vaccination coverage among healthcare personnel. *Infect Control Hosp Epidemiol,* 34(4),335–45. *https://doi.org/10.1086/669859.*

discussed pilot testing results from the first round of ratings during a one-hour moderated telephone conference. After the conference concluded, panelists individually rated a revised set of elements. Ultimately, the Delphi panel reached a consensus that the majority of the proposed measure's numerator definitions had strong face validity. However, the panel raised concerns regarding the accuracy of self-reported data and deemed validity lowest for denominator categories of credentialed and other nonemployees of the facility.

After the conclusion of measure testing, the proposed measure's specifications were revised in alignment with the Delphi panel's ratings and with guidance from a Steering Committee. The CDC-convened Steering Committee was comprised of representatives from several institutions, including CMS, the Joint Commission, the Federation of American Hospitals, the American Osteopathic Association, the American Medical Association, and others. To address concerns raised through pilot testing and to reduce institutional barriers to reporting, denominator specifications were revised to include a more limited number of HCP among whom vaccination could be measured with greater reliability and accuracy: Employees, licensed independent practitioners, and adult students/trainees and volunteers. The measure was also revised to require vaccinations received outside of the facility to be documented, but allow for self-report of declinations and medical contraindications. Verbal declinations were assigned to the ''declined'' numerator category, and an ''unknown'' category was added to give facilities actionable data on unvaccinated HCP who may not have purposefully declined. For more information regarding pilot testing results and measure input from the Delphi panel and Steering Committee, refer to the article published in the Infection Control & Hospital Epidemiology journal by the measure developer.[51]

c. Measure Applications Partnership (MAP) Review

Our pre-rulemaking process includes making publicly available a list of quality and efficiency measures, called the Measures under Consideration (MUC) List that the Secretary is considering adopting through the Federal rulemaking process for use in Medicare programs. This allows multi-stakeholder groups to provide recommendations to the Secretary on the measures included in the list.

We included the Influenza Vaccination Coverage among HCP measure under the SNF QRP Program in the publicly available ''List of Measures Under Consideration for December 1, 2021'' (MUC List).[52] Shortly after, several National Quality Forum (NQF)-convened Measures Applications Partnership (MAP) workgroups met virtually to provide input on the proposed measure. First, the MAP Rural Health Workgroup convened on December 8, 2021. Members generally agreed that the proposed measure would be suitable for use by rural providers within the SNF QRP program, noting the measure's rural relevance. Likewise, the MAP Health Equity workgroup met on December 9, 2021, in which the majority of voting members agreed that the proposed measure has potential for decreasing health disparities. The MAP Post-Acute Care/Long-Term Care (PAC/LTC) workgroup met on December 16, 2021, in which the majority of voting workgroup members supported rulemaking of the proposed measure. Finally, the MAP Coordinating Committee convened on January 19, 2022, in which the committee agreed with the MAP's preliminary measure recommendation of support for rulemaking.

In addition to receiving feedback from MAP workgroup and committee members, NQF received four comments by industry stakeholders during the proposed measure's MAP pre-rulemaking process. Commenters were generally supportive of the measure as SNF QRP adoption would promote measure interoperability, encourage vaccination, and likely decrease the spread of infection. One commenter was not supportive of the measure due to burdens of NHSN data submission.

Overall, the MAP offered support for rulemaking, noting that the measure aligns with the IRF and LTCH PAC QRPs and adds value to the current SNF QRP measure set since influenza vaccination among HCP is not currently addressed within the SNF QRP program. The MAP noted the importance of vaccination coverage among HCP as an actionable strategy that can decrease viral transmission, morbidity, and mortality within SNFs. The final MAP report is available at *https://www.qualityforum.org/Publications/2022/03/MAP_2021-2022_Considerations_for_Implementing_Measures_Final_Report_-_Clinicians,_Hospitals,_and_PAC-LTC.aspx.*

d. Competing and Related Measures

Section 1899B(e)(2)(A) of the Act requires that, absent an exception under section 1899B(e)(2)(B) of the Act, each measure specified under section 1899B of the Act be endorsed by the entity with a contract under section 1890(a) of the Act, currently the NQF. In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed, section 1899B(e)(2)(B) of the Act permits the Secretary to specify a measure that is not so endorsed, as long as due consideration is given to the measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

The proposed Influenza Vaccination Coverage among HCP measure initially received NQF endorsement in 2008 as NQF #0431. Measure endorsement was renewed in 2017, and the measure is due for maintenance in the spring 2022 cycle. The measure was originally tested in nursing homes and has been endorsed by NQF for use in nursing home settings since the measure was first endorsed. No additional modifications were made to the proposed measure for the spring 2022 measure maintenance cycle, but as noted in section VI.C.1.a. of this proposed rule that several thousand nursing homes voluntarily reported weekly influenza vaccination coverage through an NHSN module based on the NQF #0431 measure during the overlapping 2020 to 2021 influenza season and COVID–19 pandemic. The measure is currently used in several of our programs, including the Hospital Inpatient and Prospective Payment System (PPS)-Exempt Cancer Hospital QRPs. Among PAC programs, the proposed measure is also reported in the IRF and LTCH QRPs as adopted in the FY 2014 IRF PPS final rule (78 FR 47905 through 47906) and the FY 2013 Inpatient Prospective Payment System (IPPS)/LTCH PPS final rule (77 FR 53630 through 53631), respectively.

After review of the NQF's consensus-endorsed measures, we were unable to identify any NQF-endorsed measures for SNFs focused on capturing influenza vaccinations among HCP. For example, although the Percent of Residents or Patients Who Were Assessed and Appropriately Given the Seasonal Influenza Vaccine (Short Stay) (NQF #0680) and the Percent of Residents

[51] Libby T.E,. Lindley M.C., Lorick S.A., MacCannell T, Lee S.J., Smith C., Geevarughese A., Makvandi M., Nace D.A., Ahmed F. (2013). Reliability and validity of a standardized measure of influenza vaccination coverage among healthcare personnel. *Infect Control Hosp Epidemiol,* 34(4),335–45. *https://doi.org/10.1086/669859.*

[52] Centers for Medicare and Medicaid Services. (2021). List of Measures Under Consideration for December 1, 2021. CMS.gov. *https://www.cms.gov/files/document/measures-under-consideration-list-2020-report.pdf.*

Assessed and Appropriately Given the Seasonal Influenza Vaccine (Long Stay) (NQF #0681) measures are both NQF-endorsed and assess rates of influenza vaccination, they assess vaccination rates among residents in the nursing home rather than HCP in the SNF. Additionally, the Percent of Programs of All-Inclusive Care for the Elderly (PACE) Healthcare Personnel with Influenza Immunization measure resembles the proposed measure since it assesses influenza vaccination among HCP; however, it is not NQF endorsed and is not specific to the SNF setting.

Therefore, after consideration of other available measures, we find the NQF endorsed Influenza Vaccination Coverage among HCP measure appropriate for the SNF QRP, and are proposing the measure beginning with the FY 2025 SNF QRP. Application of the Influenza Vaccination Coverage among HCP measure within the SNF QRP promotes measure harmonization across quality reporting programs that also report this measure. This proposed measure has the potential to generate actionable data on vaccination rates that can be used to target quality improvement among SNF providers.

e. Quality Measure Calculation

The Influenza Vaccination Coverage among HCP measure is a process measure developed by the CDC to track influenza vaccination coverage among HCP in facilities such as SNFs. The measure reports on the percentage of HCP who receive influenza vaccination. The term ''healthcare personnel'' refers to all paid and unpaid persons working in a health care setting, contractual staff not employed by the health care facility, and persons not directly involved in patient care but potentially exposed to infectious agents that can be transmitted to and from HCP. Since the proposed measure is a process measure, rather than an outcome measure, it does not require risk-adjustment.

The proposed measure's denominator is the number of HCP who are physically present in the health care facility for at least 1 working day between October 1 and March 31 of the following year, regardless of clinical responsibility or patient contact. The proposed measure's reporting period is October 1 through March 31; this reporting period refers to the proposed measure's denominator only. The denominator would be calculated separately for three required categories: Employees, meaning all persons who receive a direct paycheck from the reporting facility (that is, on the SNF's payroll); Licensed independent practitioners,[53] such as physicians, advanced practice nurses, and physician assistants who are affiliated with the reporting facility, who do not receive a direct paycheck from the reporting facility; and Adult students/trainees and volunteers who do not receive a direct paycheck from the reporting facility. A denominator can be calculated for an optional category as well: Other contract personnel, defined as persons providing care, treatment, or services at the facility through a contract who do not fall into any of the three required denominator categories.

The proposed measure's numerator consists of all HCP included in the denominator population who received an influenza vaccine any time from when it first became available (such as August or September) through March 31 of the following year and who fall into one of the following categories: (a) Received an influenza vaccination administered at the health care facility; (b) reported in writing (paper or electronic) or provided documentation that an influenza vaccination was received elsewhere, (c) were determined to have a medical contraindication/condition of severe allergic reaction to eggs or other component(s) of the vaccine, or a history of Guillain-Barre (GBS) within 6 weeks after a previous influenza vaccination; (d) were offered but declined the influenza vaccination; or (e) had an unknown vaccination status or did not meet any of the definitions of the other numerator categories (a through d). As described in the FY 2014 IRF PPS final rule, measure numerator data is required based on data collected from October 1st or whenever the vaccine becomes available.[54] Therefore, if the vaccine is available prior to October 1st, any vaccine given before October 1st is credited towards vaccination coverage. Likewise, if the vaccine becomes available after October 1st, the vaccination counts are to begin as soon as possible after October 1st.

We propose that SNFs submit data for the measure through the CDC/NHSN data collection and submission framework.[55] In alignment with the data submission frameworks utilized for this measure in the IRF and LTCH QRPs, SNFs would use the HCP influenza data reporting module in the NHSN HPS Component and complete two forms. SNFs would complete the first form (CDC 57.203) to indicate the type of data they plan on reporting to the NHSN by selecting the ''Influenza Vaccination Summary'' option under ''Healthcare Personnel Vaccination Module'' to create a reporting plan. SNFs would then complete a second form (CDC 57.214) to report the number of HCP who have worked at the health care facility for at least 1 day between October 1 and March 31 (denominator) and the number of HCP who fall into each numerator category. To meet the minimum data submission requirements, SNFs would enter a single influenza vaccination summary report at the conclusion of the measure reporting period. If SNFs submit data more frequently, such as on a monthly basis, the information would be used to calculate one summary score for the proposed measure which would be publicly reported on Care Compare. For more information regarding proposed data submission requirements for this measure and its public reporting plan, we refer readers to sections VI.G.2. and VI.H.2. of this proposed rule. Details related to the use of NHSN for data submission can be found at the CDC's NHSN Healthcare Personnel Safety (HPS) Component web page at *https://www.cdc.gov/nhsn/hps/vaccination/index.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fnhsn%2Finpatient-rehab%2Fvaccination%2Findex.html.*

We invite public comment on our proposal to add a new measure, Influenza Vaccination Coverage among Healthcare Personnel (NQF #0431), to the SNF QRP beginning with the FY 2025 SNF QRP.

2. Revised Compliance Date for Certain Skilled Nursing Facility Quality Reporting Program Requirements Beginning With the FY 2024 SNF QRP

a. Background

Section 1888(d)(6)(B)(i)(III) of the Act requires that, for FY 2019 and each subsequent year, SNFs must report standardized patient assessment data required under section 1899B(b)(1) of the Act. Section 1899B(a)(1)(C) of the Act requires, in part, the Secretary to modify the PAC assessment instruments in order for PAC providers, including SNFs, to submit standardized patient assessment data under the Medicare program. In the FY 2020 SNF PPS final rule (84 FR 38755 through 38817), we

[53] Refer to the proposed measure's specifications in The National Healthcare Safety Network (NSHN) Manual Healthcare Personnel Safety Component Protocol—Healthcare Personnel Vaccination Module: Influenza Vaccination Summary linked at *https://www.cdc.gov/nhsn/pdfs/hps-manual/vaccination/hps-flu-vaccine-protocol.pdf* for an exhaustive list of those included in the licensed independent practitioners definition.

[54] 78 FR 47906.

[55] Centers for Disease Control and Prevention (CDC). (2021) *https://www.cdc.gov/nhsn/hps/weekly-covid-vac/index.html.* Healthcare Personnel Safety Component (HPS). *CDC.gov.*

adopted two TOH Information quality measures as well as standardized patient assessment data that would satisfy five categories defined by section 1899B(c)(1). The TOH Information to the Provider—Post-Acute Care (PAC) measure and the TOH Information to the Patient—PAC measure are process-based measures that assess whether or not a current reconciled medication list is given to the subsequent provider when a patient is discharged or transferred from his or her current PAC setting or is given to the patient, family, or caregiver when the patient is discharged from a PAC setting to a private home/apartment, a board and care home, assisted living, a group home, or transitional living. Section 1899B(b)(1)(B) of the Act defines standardized patient assessment data as data required for at least the quality measures described in section 1899B(c)(1) of the Act and that is with respect to the following categories: (1) Functional status; (2) cognitive function; (3) special services, treatments, and interventions; (4) medical conditions and comorbidities; (5) impairments, and (6) other categories deemed necessary and appropriate by the Secretary.

The interim final rule with comment period that appeared in the May 8, 2020 **Federal Register** (85 FR 27550) (hereafter referred to as the ''May 8th COVID–19 IFC''), delayed the compliance date for certain reporting requirements under the SNF QRP (85 FR 27596 through 27597). Specifically, we delayed the requirement for SNFs to begin reporting the TOH Information to Provider—PAC and the TOH Information to Patient—PAC measures and the requirement for SNFs to begin reporting certain standardized patient assessment data elements from October 1, 2020, to October 1st of the year that is at least 2 full fiscal years after the end of the COVID–19 PHE. We also delayed the adoption of the updated version of the Minimum Data Set (MDS) 3.0 v1.18.1 [56] which SNFs would have used to report the TOH Information measures and certain standardized patient assessment data elements.

Currently, SNFs must use the MDS 3.0 v1.18.11 to begin collecting data on the two TOH Information measures beginning with discharges on October 1st of the year that is at least 2 full fiscal years after the end of the COVID–19 PHE. SNFs must also begin collecting data on certain standardized patient assessment data elements on the MDS 3.0 v1.18.11, beginning with admissions and discharges (except for the preferred language, need for interpreter services, hearing, vision, race, and ethnicity standardized patient assessment data elements, which would be collected at admission only) on October 1st of the year that is at least 2 full fiscal years after the end of the COVID–19 PHE. This delay to begin collecting data for these measures was intended to provide relief to SNFs from the added burden of implementing an updated instrument during the COVID–19 PHE. We wanted to provide maximum flexibilities for SNFs to respond to the public health threats posed by the COVID–19 PHE, and to reduce the burden in administrative efforts associated with attending trainings, training their staff, and working with their vendors to incorporate the updated assessment instruments into their operations.

At the time the May 8th COVID–19 IFC was published, we believed this delay would not have a significant impact on the SNF QRP. However, we were in the initial months of the COVID–19 PHE, and very little was known about the SARS–CoV–2 virus. Additionally, we believed the delay in the collection of the TOH Information measures and standardized patient assessment data elements were necessary to allow SNFs to focus on patient care and staff safety. However, the COVID–19 PHE has illustrated the important need for these TOH Information measures and standardized patient assessment data elements under the SNF QRP. The PHE's disproportionate impact among non-Hispanic Black, or Hispanic or Latino persons [57 58 59 60 61 62 63] demonstrates the importance of analyzing this impact in order to improve quality of care within SNFs especially during a crisis. One important strategy for addressing these important inequities is by improving data collection to allow for better measurement and reporting on equity across post-acute care programs and policies. The information will inform our Meaningful Measures framework.

b. Current Assessment of SNFs' Capabilities

To accommodate the COVID–19 PHE, we provided additional guidance and flexibilities, and as a result SNFs have had the opportunity to adopt new processes and modify existing processes to accommodate the significant health crisis presented by the COVID–19 PHE. For example, we held regular ''Office Hours'' conference calls to provide SNFs regular updates on the availability of supplies, as well as answer questions about delivery of care, reporting, and billing. We also supported PAC providers, including SNFs, by providing flexibilities in the delivery of care in response to the PHE,[64] such as waiving the requirements at § 483.30 for physician and non-physician practitioners to perform in-person visits, allowing them to use telehealth methods where deemed appropriate. We also waived the nurse aide training and certification requirements § 483.35(d) (with the exception of § 483.35(d)(1)(i)), allowing SNFs to employ nurse aides for longer than 4 months even when they have yet not met the standard training and certification requirements, and we waived the requirement at § 483.95(g)(1) for nursing aides to receive at least 12 hours of in-service training annually. To reduce provider burden, we waived the Pre-Admission Screening and Annual Resident Review (PASARR) at § 483.20(k), allowing SNFs more flexibility in scheduling Level 1 assessments. We narrowed the scope of requirements for a SNF's Quality Assurance and Performance

[56] The MDS version referred to in IFC–2 was MDS 3.0 v1.18.1. This version number, MDS 3.0 v1.18.11, reflects the version which would be implemented if the proposal is finalized.

[57] Bhumbra S, Malin S, Kirkpatrick L, et al. Clinical Features of Critical Coronavirus Disease 2019 in Children. Pediatric Critical Care Medicine. 2020;02:02. DOI: *https://doi.org/10.1097/PCC.0000000000002511.*

[58] Ebinger JE, Achamallah N, Ji H, Claggett BL, Sun N, Botting P, et al. Pre-existing Traits Associated with Covid-19 Illness Severity. PLoS ONE [Electronic Resource]. 2020;15(7):e0236240. DOI: *https://doi.org/10.1101/2020.04.29.20084533.*

[59] Gold JAW, Wong KK, Szablewski CM, Patel PR, Rossow J, da Silva J, et al. Characteristics and Clinical Outcomes of Adult Patients Hospitalized with COVID–19—Georgia, March 2020. MMWR Morb Mortal Wkly Rep. 2020;69(18):545–50. DOI: *http://dx.doi.org/10.15585/mmwr.mm6918e1.*

[60] Hsu HE, Ashe EM, Silverstein M, Hofman M, Lange SJ, Razzaghi H, et al. Race/Ethnicity, Underlying Medical Conditions, Homelessness, and Hospitalization Status of Adult Patients with COVID–19 at an Urban Safety-Net Medical Center—Boston, Massachusetts, 2020. MMWR Morb Mortal Wkly Rep. 2020;69(27):864–9. DOI: *http://dx.doi.org/10.15585/mmwr.mm6927a3.*

[61] Kim L, Whitaker M, O'Hallaran A, et al. Hospitalization Rates and Characteristics of Children Aged <18 Years Hospitalized with Laboratory-confirmed COVID–19—COVID–NET, 14 states, March 1–July 25, 2020. MMWR Morb Mortal Wkly Rep 2020;69:1081–1088. DOI: *http://dx.doi.org/10.15585/mmwr.mm6932e3.*

[62] Killerby ME, Link-Gelles R, Haight SC, Schrodt CA, England L, Gomes DJ, et al. Characteristics Associated with Hospitalization Among Patients with COVID–19—Metropolitan Atlanta, Georgia, March–April 2020. MMWR Morb Mortal Wkly Rep. 2020;69(25):790–4. DOI.

[63] Price-Haywood EG, Burton J, Fort D, Seoane L. Hospitalization and Mortality among Black Patients and White Patients with Covid-19. New England Journal of Medicine. 2020;382(26):2534–43. DOI: *https://doi.org/10.1056/NEJMsa2011686.*

[64] Centers for Medicare and Medicaid Services. COVID–19 Emergency Declaration Blanket waivers for Health Care Providers. Accessed 11/23/2021. Retrieved from *https://www.cms.gov/files/document/covid-19-emergency-declaration-waivers.pdf.*

Improvement (QAPI) program to the aspects of care most associated with COVID–19 (§ 483.75), that is infection control and adverse events. Additionally, we waived timeframe requirements on MDS assessments and transmission at § 483.20, along with waiving requirements for submitting staffing data through the Payroll-Based Journal (PBJ) system at § 483.70(q), to grant SNFs the greater flexibility needed to adapt to the rapidly evolving burdens of the PHE. While the MDS and PBJ requirements have since been terminated, many of these waivers for SNFs are still in effect today.

In addition, as of March 1, 2022, 86.2 percent of the population aged 12 and older (81.3 percent of those 5 and older) has received at least one vaccination.[65] Further, although there is a recent increase in COVID–19 cases, vaccinated individuals aged 18 years and older through March 4, 2022 were 3.2 times less likely to test positive, over 9 times less likely to be hospitalized, and experience 41 times lower risk of death, compared to unvaccinated individuals.[66] We also believe that SNFs have more information and interventions to deploy to effectively prevent and treat COVID–19 than they had at the time the May 8th COVID–19 IFC was finalized,[67 68 69 70] including three vaccines that are either approved or authorized in the United States to prevent COVID–19, and antiviral drugs that are approved or authorized to treat COVID–19.[71 72 73 74 75] Also, recent reports suggest that the rollout of COVID–19 vaccines have alleviated some of the burden on SNFs imposed by the PHE.[76 77]

Despite the COVID–19 PHE, we must maintain our commitment to the quality of care for all patients, and we continue to believe that the collection of the standardized patient assessment data elements and TOH Information measures will contribute to this effort. That includes an ongoing commitment to achieving health equity by improving data collection to better measure and analyze disparities across programs and policies.[78 79 80 81 82 83 84 85] We also note that in response to the ''Request for Information to Close the Health Equity Gap'' in the FY 2022 SNF PPS proposed rule (86 FR 20000), we heard from stakeholders that it is important to gather additional information about race, ethnicity, gender, language and other social determinants of health (SDOH). Some SNFs noted they had already begun to collect some of this information for use in their operations. Our commitment to the quality of care for all patients also includes improving the quality of care in SNFs through a reduction in preventable adverse events. Health information, such as medication information, that is incomplete or missing increases the likelihood of a patient or resident safety risk, and is often life-threatening.[86 87 88 89 90 91] Poor communication and coordination across health care settings contributes to patient complications, hospital readmissions, emergency department visits and medication errors.[92 93 94 95 96 97 98 99 100 101] Further

[65] CDC COVID Data Tracker. Accessed 3/4/2022. Retrieved from *https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-onedose-pop-5yr.*

[66] CDC COVID Data Tracker. Accessed 3/4/2022. Retrieved from *https://covid.cdc.gov/covid-data-tracker/#rates-by-vaccine-status.*

[67] COVID research: a year of scientific milestones. Nature. May 5, 2021. Retrieved from *https://www.nature.com/articles/d41586-020-00502-w.*

[68] CDC COVID Data Tracker. Accessed 2/10/2022. Retrieved from *https://covid.cdc.gov/covid-data-tracker/#datatracker-home.*

[69] Clinical trial of therapeutics for severely ill hospitalized COVID–19 patients begins. National Institutes of Health News Releases. April 22, 2021. Retrieved from *https://www.nih.gov/news-events/news-releases/clinical-trialtherapeutics-severely-ill-hospitalized-covid-19-patients-begins.*

[70] COVID–19 Treatment Guidelines. National Institutes of Health. Updated October 27, 2021. Retrieved from *https://www.covid19treatmentguidelines.nih.gov/whats-new/.*

[71] Here's Exactly Where We are with Vaccine and Treatments for COVID–19. Healthline. November 9, 2021. Retrieved from *https://www.healthline.com/health-news/heres-exactly-where-were-at-with-vaccines-and-treatments-forcovid-19.*

[72] U.S. Food and Drug Administration (2021). Janssen Biotech, Inc. COVID–19 Vaccine EUA Letter of Authorization. Available at *https://www.fda.gov/media/146303/download.* Accessed 9/9/2021.

[73] On January 31, 2021, FDA approved a second COVID–19 vaccine. Available at *https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-takes-key-action-approving-second-covid-19-vaccine.* Accessed 3/02/22. The Moderna COVID–19 Vaccine also continues to be available under EUA. U.S. Food and Drug Administration (2022). Spikevax and Moderna COVID–19 Vaccine. *https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/spikevax-and-moderna-covid-19-vaccineAccessed3/02/22.*

[74] FDA Approves First COVID–19 Vaccine √ FDA, available at *https://www.fda.gov/news-events/pressannouncements/fda-approves-first-covid-19-vaccine.* Accessed 9/03/21. The Pfizer-BioNTech vaccine also continues to be available under EUA. U.S. Food and Drug Administration (2021). Comirnaty and Pfizer-BioNTech COVID–19 Vaccine. Accessed 9/28/2021.

[75] FDA Approves First Treatment for COVID–19. October 22, 2020. Available at *https://www.fda.gov/newsevents/press-announcements/fda-approves-first-treatment-covid-19.* Accessed 9/9/2021.

[76] M. Domi, M. Leitson, D. Gifford, A. Nicolaou, K. Sreenivas, C. Bishnoi. The BNT162b2 vaccine is associated with lower new COVID–19 cases in nursing home residents and staff. *Journal of the American Geriatrics Society* (2021), 10.1111/jgs.17224.

[77] American Health Care Association and National Center for Assisted Living. COVID–19 Vaccines Helping Long Term Care Facilities Rebound From The Pandemic. May 25, 2021. Retrieved from *https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/COVID-19-Vaccines-Helping-Long-Term-Care-Facilities-Rebound-From-The-Pandemic.aspx.*

[78] COVID–19 Health Equity Interactive Dashboard. Emory University. Accessed January 12, 2022. Retrieved from *https://covid19.emory.edu/.*

[79] COVID–19 is affecting Black, Indigenous, Latinx, and other people of color the most. The COVID Tracking Project. March 7, 2021. Accessed January 12, 2022. Retrieved from *https://covidtracking.com/race.*

[80] Centers for Medicare & Medicaid Services. CMS Quality Strategy. 2016. Available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/Downloads/CMS-Quality-Strategy.pdf.*

[81] Report to Congress: Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014 Strategic Plan for Accessing Race and Ethnicity Data. January 5, 2017. Available at *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Research-Reports-2017-Report-to-Congress-IMPACT-ACT-of-2014.pdf.*

[82] Rural Health Research Gateway. Rural Communities: Age, Income, and Health Status. Rural Health Research Recap. November 2018.

[83] *https://www.minorityhealth.hhs.gov/assets/PDF/Update_HHS_Disparities_Dept-FY2020.pdf.*

[84] *www.cdc.gov/mmwr/volumes/70/wr/mm7005a1.htm.*

[85] Poteat TC, Reisner SL, Miller M, Wirtz AL. COVID–19 Vulnerability of Transgender Women With and Without HIV Infection in the Eastern and Southern U.S. Preprint. *medRxiv.* 2020;2020.07.21.20159327. Published 2020 Jul 24. doi:10.1101/2020.07.21.20159327.

[86] Kwan, J.L., Lo, L., Sampson, M., & Shojania, K.G., ''Medication reconciliation during transitions of care as a patient safety strategy: a systematic review,'' *Annals of Internal Medicine,* 2013, Vol. 158(5), pp. 397–403.

[87] Boockvar, K.S., Blum, S., Kugler, A., Livote, E., Mergenhagen, K.A., Nebeker, J.R., & Yeh, J., ''Effect of admission medication reconciliation on adverse drug events from admission medication changes,'' *Archives of Internal Medicine,* 2011, Vol. 171(9), pp. 860–861.

[88] Bell, C.M., Brener, S.S., Gunraj, N., Huo, C., Bierman, A.S., Scales, D.C., & Urbach, D.R., ''Association of ICU or hospital admission with unintentional discontinuation of medications for chronic diseases,'' *JAMA,* 2011, Vol. 306(8), pp. 840–847.

[89] Basey, A.J., Krska, J., Kennedy, T.D., & Mackridge, A.J., ''Prescribing errors on admission to hospital and their potential impact: a mixed-methods study,'' *BMJ Quality & Safety,* 2014, Vol. 23(1), pp. 17–25.

[90] Desai, R., Williams, C.E., Greene, S.B., Pierson, S., & Hansen, R.A., ''Medication errors during patient transitions into nursing homes: characteristics and association with patient harm,'' *The American Journal of Geriatric Pharmacotherapy,* 2011, Vol. 9(6), pp. 413–422.

[91] Boling, P.A., ''Care transitions and home health care,'' *Clinical Geriatric Medicine,* 2009, Vol. 25(1), pp. 135–48.

[92] Barnsteiner, J.H., ''Medication Reconciliation: Transfer of medication information across settings—keeping it free from error,''

[93] Arbaje, A.I., Kansagara, D.L., Salanitro, A.H., Englander, H.L., Kripalani, S., Jencks, S.F., & Lindquist, L.A., ''Regardless of age: incorporating principles from geriatric medicine to improve care transitions for patients with complex needs,'' *Journal of General Internal Medicine,* 2014, Vol. 29(6), pp. 932–939.

[94] Jencks, S.F., Williams, M.V., & Coleman, E.A., ''Rehospitalizations among patients in the Medicare fee-for-service program,'' *New England Journal of Medicine,* 2009, Vol. 360(14), pp. 1418–1428.

delaying the data collection has the potential to further exacerbate these issues. We believe the benefit of having this information available in a standardized format outweighs the potential burden of collecting this data, as data availability is a necessary step in addressing health disparities in SNFs.

Given the flexibilities described earlier in this section, SNFs' increased knowledge and interventions to deploy to effectively prevent and treat COVID–19, and the trending data on COVID–19, we believe that SNFs are in a better position to accommodate the reporting of the TOH Information measures and certain standardized patient assessment data elements. Specifically, we believe SNFs have learned how to adapt and now have the administrative capacity to attend training, train their staff, and work with their vendors to incorporate the updated assessment instruments into their operations. Moreover, these standardized patient assessment data elements are reflective of patient characteristic that providers may already be recording for their own purposes, such as preferred language, race, ethnicity, hearing, vision, health literacy, and cognitive function. It is also important to align the collection of this data with the IRFs and LTCHs who will begin collecting this information on October 1, 2022, and home health agencies (HHAs) who will begin collecting this information on January 1, 2023.[102]

c. Collection of the Transfer of Health (TOH) Information to Provider-PAC Measure, the Transfer of Health (TOH) Information to Patient-PAC Measure and Certain Standardized Patient Assessment Data Elements Beginning October 1, 2023

We propose to revise the compliance date from the May 8th COVID–19 IFC from October 1st of the year that is at least 2 full FYs after the end of the COVID–19 PHE to October 1, 2023. This revised date would begin the collection of data on the TOH Information to Provider-PAC measure and TOH Information to Patient-PAC measure, and certain standardized patient assessment data elements on the updated version of the MDS assessment instrument referred to as MDS 3.0 v1.18.11. We believe this revised date of October 1, 2023, which is a 3-year delay from the original compliance date finalized in the FY 2020 SNF PPS final rule (84 FR 38755 through 38764), balances the support that SNFs have needed during much of the COVID–19 PHE, the flexibilities we provided to support SNFs, and the time necessary to develop preventive and treatment options along with the need to collect this important data. We believe this date is sufficiently far in advance for SNFs to make the necessary preparations to begin reporting these data elements and the TOH Information measures. As described in the previous sections of this proposed rule, the need for the standardized patient assessment data elements and TOH Information measures have been shown to be even more pressing with issues of health inequities, exacerbated by the COVID–19 PHE. This data, which includes information on SDOH, provides information that is expected to improve quality of care for all, and is not already found in assessment or claims data currently available. Consequently, we propose to revise the compliance date to reflect this balance and assure that data collection begins on October 1, 2023.

As stated in the FY 2020 SNF PPS final rule (84 FR 38774), we will provide the training and education for SNFs to be prepared for this implementation date. In addition, if we adopt an October 1, 2023 compliance date, we would release a draft of the updated version of the MDS 3.0 v1.18.11 in early 2023 with sufficient lead time to prepare for the October 1, 2023 start date.

Based upon our evaluation, we propose that SNFs collect the TOH Information to Provider-PAC measure, the TOH Information to the Patient-PAC measure, and certain standardized patient assessment data elements beginning October 1, 2023. Accordingly, we propose that SNFs begin collecting data on the two TOH Information measures beginning with discharges on October 1, 2023. We also propose that SNFs begin collecting data on the six categories of standardized patient assessment data elements on the MDS 3.0 v1.18.11, beginning with admissions and discharges (except for the preferred language, need for interpreter services, hearing, vision, race, and ethnicity standardized patient assessment data elements, which would be collected at admission only) on October 1, 2023. We invite public comment on this proposal.

3. Proposed Revisions to the Regulation Text (§ 413.360)

The FY 2022 SNF PPS final rule (86 FR 42480 through 42489) added the COVID–19 Vaccination Coverage among Healthcare Personnel (HCP COVID–19 Vaccine) measure to the SNF QRP beginning with the FY 2024 QRP. The data submission method for the HCP COVID–19 Vaccine is the NHSN. The NHSN is a system maintained by the CDC, whose mission it is to protect the health security of the nation. The NHSN is used to collect and report on healthcare acquired infections, such as catheter associated urinary tract infections and central-line associated bloodstream infections. The NHSN also collects vaccination information since vaccines play a major role in preventing the spread of harmful infections. Healthcare acquired infections are a threat to beneficiaries, SNFs, and the public. Given the significance of the information collected through the NHSN, and the fact that infection prevention affects all beneficiaries, 100 percent of the information required to calculate the HCP COVID–19 Vaccine must be submitted to the NHSN. The HCP COVID–19 Vaccine measure is an important part of the nation's response to the COVID 19 public health emergency, and therefore 100 percent of the information is necessary to monitor the health and safety of beneficiaries.

For consistency in our regulations, we are proposing conforming revisions to the Requirements under the SNF QRP at § 413.360. Specifically, we propose to redesignate § 413.360(b)(2) to § 413.360(f)(2) and add a new paragraph (f) for the SNF QRP data completeness thresholds. The new paragraph would reflect all data completion thresholds required for SNFs to meet or exceed in order to avoid receiving a 2-percentage point reduction to their annual payment update for a given fiscal year.

At § 413.360(b), *Data submission requirement,* we propose to remove

[95] Institute of Medicine. ''Preventing medication errors: quality chasm series,'' Washington, DC: The National Academies Press 2007. Available at *https://www.nap.edu/read/11623/chapter/1.*

[96] Kitson, N.A., Price, M., Lau, F.Y., & Showler, G., ''Developing a medication communication framework across continuums of care using the Circle of Care Modeling approach,'' *BMC Health Services Research,* 2013, Vol. 13(1), pp. 1–10.

[97] Mor, V., Intrator, O., Feng, Z., & Grabowski, D.C., ''The revolving door of rehospitalization from skilled nursing facilities,'' *Health Affairs,* 2010, Vol. 29(1), pp. 57–64.

[98] Institute of Medicine. ''Preventing medication errors: quality chasm series,'' Washington, DC: The National Academies Press 2007. Available at *https://www.nap.edu/read/11623/chapter/1.*

[99] Kitson, N.A., Price, M., Lau, F.Y., & Showler, G., ''Developing a medication communication framework across continuums of care using the Circle of Care Modeling approach,'' *BMC Health Services Research,* 2013, Vol. 13(1), pp. 1–10.

[100] Forster, A.J., Murff, H.J., Peterson, J.F., Gandhi, T.K., & Bates, D.W., ''The incidence and severity of adverse events affecting patients after discharge from the hospital.'' *Annals of Internal Medicine,* 2003,138(3), pp. 161–167.

[101] King, B.J., Gilmore- Bykovsky, A.L., Roiland, R.A., Polnaszek, B.E., Bowers, B.J., & Kind, A.J. ''The consequences of poor communication during transitions from hospital to skilled nursing facility: a qualitative study,'' *Journal of the American Geriatrics Society,* 2013, Vol. 61(7), 1095–1102.

[102] Calendar Year 2020 Home Health final rule (86 FR 62385 through 62390).

paragraph (b)(2) and redesignate paragraph (b)(3) as paragraph (b)(2). At § 413.360, we propose to add a new paragraph (f), *Data completion thresholds.*

At § 413.360(f)(1), we propose to add new language to state that SNFs must meet or exceed two separate data completeness thresholds: One threshold set at 80 percent for completion of required quality measures data and standardized patient assessment data collected using the MDS submitted through the CMS-designated data submission system, beginning with FY 2018 and for all subsequent payment updates; and a second threshold set at 100 percent for measures data collected and submitted using the CDC NHSN, beginning with FY 2023 and for all subsequent payment updates.

At § 413.360(f)(2), we propose to add new language to state that these thresholds (80 percent for completion of required quality measures data and standardized patient assessment data on the MDS; 100 percent for CDC NHSN data) will apply to all measures and standardized patient assessment data requirements adopted into the SNF QRP.

At § 413.360(f)(3), we propose to add new language to state that a SNF must meet or exceed both thresholds to avoid receiving a 2-percentage point reduction to their annual payment update for a given fiscal year.

We invite public comment on this proposal.

D. SNF QRP Quality Measures Under Consideration for Future Years: Request for Information (RFI)

We are seeking input on the importance, relevance, and applicability of the concepts under consideration listed in Table 16 in the SNF QRP. More specifically, we are seeking input on a cross-setting functional measure that would incorporate the domains of self-care and mobility. Our measure development contractor for the cross-setting functional outcome measure convened a Technical Expert Panel (TEP) on June 15 and June 16, 2021 to obtain expert input on the development of a functional outcome measure for PAC. During this meeting, the possibility of creating one measure to capture both self-care and mobility was discussed. We are also seeking input on measures of health equity, such as structural measures that assess an organization's leadership in advancing equity goals or assess progress towards achieving equity priorities. Finally, we are seeking input on the value of a COVID–19 Vaccination Coverage measure that would assess whether SNF patients were up to date on their COVID–19 vaccine.

TABLE 16: Future Measures and Measure Concepts Under Consideration for the SNF QRP

Quality Concepts
Cross-Setting Function
Health Equity Measures
PAC – COVID-19 Vaccination Coverage among Patients

While we will not be responding to specific comments submitted in response to this RFI in the FY 2023 SNF PPS final rule, we intend to use this input to inform our future measure development efforts.

E. Overarching Principles for Measuring Equity and Healthcare Quality Disparities Across CMS Quality Programs—Request for Information (RFI)

Significant and persistent disparities in healthcare outcomes exist in the United States. Belonging to an underserved community is often associated with worse health outcomes.[103] [104] [105] [106] [107] [108] [109] [110] [111] With this in mind, we aim to advance health equity, by which we mean the attainment of the highest level of health for all people, where everyone has a fair and just opportunity to attain their optimal health regardless of race, ethnicity, disability, sexual orientation, gender identity, socioeconomic status, geography, preferred language, or other factors that affect access to care and health outcomes. We are working to advance health equity by designing, implementing, and operationalizing policies and programs that support health for all the people served by our programs, eliminating avoidable differences in health outcomes experienced by people who are disadvantaged or underserved, and providing the care and support that our beneficiaries need to thrive.[112]

We are committed to achieving equity in healthcare outcomes for our enrollees by supporting healthcare providers' quality improvement activities to reduce health disparities, enabling them to make more informed decisions, and promoting healthcare provider accountability for healthcare

[103] Joynt KE, Orav E, Jha AK. (2011). Thirty-day readmission rates for Medicare beneficiaries by race and site of care. JAMA, 305(7):675–681.

[104] Lindenauer PK, Lagu T, Rothberg MB, et al. (2013). Income inequality and 30 day outcomes after acute myocardial infarction, heart failure, and pneumonia: Retrospective cohort study. British Medical Journal, 346.

[105] Trivedi AN, Nsa W, Hausmann LRM, et al. (2014). Quality and equity of care in U.S. hospitals. New England Journal of Medicine, 371(24):2298–2308.

[106] Polyakova, M., et al. (2021). Racial disparities in excess all-cause mortality during the early COVID–19 pandemic varied substantially across states. Health Affairs, 40(2): 307–316.

[107] Rural Health Research Gateway. (2018). Rural communities: Age, Income, and Health status. Rural Health Research Recap. Available at *https://www.ruralhealthresearch.org/assets/2200-8536/rural-communities-age-income-health-status-recap.pdf.* Accessed February 3, 2022.

[108] U.S. Department of Health and Human Services. Office of the Secretary. Progress Report to Congress. HHS Office of Minority Health. 2020 Update on the Action Plan to Reduce Racial and Ethnic Health Disparities. FY 2020. Available at *https://www.minorityhealth.hhs.gov/assets/PDF/Update_HHS_Disparities_Dept-FY2020.pdf.* Accessed February 3, 2022.

[109] Centers for Disease Control and Prevention. Morbidity and Mortality Weekly Report (MMWR). Heslin, KC, Hall JE. Sexual Orientation Disparities in Risk Factors for Adverse COVID–19-Related Outcomes, by Race/Ethnicity—Behavioral Risk Factor Surveillance System, United States, 2017–2019. February 5, 2021/70(5); 149–154. Available at *https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a1.htm?s_cid=mm7005a1_w.* Accessed February 3, 2022.

[110] Poteat TC, Reisner SL, Miller M, Wirtz AL. (2020). COVID–19 vulnerability of transgender women with and without HIV infection in the Eastern and Southern U.S. preprint. medRxiv. 2020;2020.07.21. 20159327. doi:10.1101/2020.07.21.20159327.

[111] Milkie Vu et al. Predictors of Delayed Healthcare Seeking Among American Muslim Women, Journal of Women's Health 26(6) (2016) at 58; S.B. Nadimpalli, et al., The Association between Discrimination and the Health of Sikh Asian Indians.

[112] Centers for Medicare and Medicaid Services. Available at *https://www.cms.gov/pillar/health-equity.* Accessed February 9, 2022.

disparities.[113] Measuring healthcare disparities in quality measures is a cornerstone of our approach to advancing healthcare equity. Hospital performance results that illustrate differences in outcomes between patient populations have been reported to hospitals confidentially since 2015. We provide additional information about this program in section XI.E.1.a. of this proposed rule.

This RFI consists of three sections. The first section discusses a general framework that could be utilized across CMS quality programs to assess disparities in healthcare quality. The next section outlines the approaches that could be used in the SNF QRP to assess drivers of healthcare quality disparities in the SNF QRP. Additionally, this section discusses measures of health equity that could be adapted for use in the SNF QRP. Finally, the third section solicits public comment on the principles and approaches listed in the first two sections, as well as seeking other thoughts about disparity measurement guidelines for the SNF QRP.

1. Cross-Setting Framework To Assess Healthcare Quality Disparities

We have identified five key considerations that we could apply consistently across our programs when advancing the use of measurement and stratification as tools to address health care disparities and advance health equity. The remainder of this section describes each of these considerations.

a. Identification of Goals and Approaches for Measuring Healthcare Disparities and Using Measure Stratification Across CMS Quality Programs

By quantifying healthcare disparities through quality measure stratification (that is, measuring performance differences among subgroups of beneficiaries), we aim to provide useful tools for healthcare providers to drive improvement based on data. We hope that these results support healthcare provider efforts in examining the underlying drivers of disparities in their patients' care and to develop their own innovative and targeted quality improvement interventions. Quantification of health disparities can also support communities in prioritizing and engaging with healthcare providers to execute such interventions, as well as providing additional tools for accountability and decision-making.

There are several different conceptual approaches to reporting health disparities. In the acute care setting, two complementary approaches are already used to confidentially provide disparity information to hospitals for a subset of existing measures. The first approach, referred to as the ''within-hospital disparity method,'' compares measure performance results for a single measure between subgroups of patients with and without a given factor. This type of comparison directly estimates disparities in outcomes between subgroups and can be helpful to identify potential disparities in care. This type of approach can be used with most measures that include patient-level data. The second approach, referred to as the ''between-hospital disparity methodology,'' provides performance on measures for only the subgroup of patients with a particular social risk factor (SRF). These approaches can be used by a healthcare provider to compare their own measure performance on a particular subgroup of patients against subgroup-specific State and national benchmarks. Alone, each approach may provide an incomplete picture of disparities in care for a particular measure, but when reported together with overall quality performance, these approaches may provide detailed information about where differences in care may exist or where additional scrutiny may be appropriate. For example, the ''between-provider'' disparity method may indicate that a SNF underperformed (when compared to other facilities on average) for patients with a given SRF, which would signal the need to improve care for this population. However, if the SNF also underperformed for patients without that SRF (the ''within-hospital'' disparity, as described earlier in this section), the measured difference, or disparity in care, could be negligible even though performance for the group that has been historically marginalized remains poor. We refer readers to the technical report describing the CMS Disparity Methods in detail as well as the FY 2018 IPPS/LTCH PPS final rule (82 FR 38405 through 38407) and the posted Disparity Methods Updates and Specifications Report posted on the QualityNet website.[114]

We are interested in whether similar approaches to the two discussed in the previous paragraph could be used to produce confidential stratified measure results for selected SNF QRP measures, as appropriate and feasible. However, final decisions regarding disparity reporting will be made at the program-level, as we intend to tailor the approach used in each setting to achieve the greatest benefit and avoid unintentional consequences or biases in measurement that may exacerbate disparities in care.

b. Guiding Principles for Selecting and Prioritizing Measures for Disparity Reporting

We intend to expand our efforts to provide stratified reporting for additional clinical quality measures, provided they offer meaningful, actionable, and valid feedback to healthcare providers on their care for populations that may face social disadvantage or other forms of discrimination or bias. We are mindful, however, that it may not be possible to calculate stratified results for all quality measures, and that there may be situations where stratified reporting is not desired. To help inform prioritization of candidate measures for stratified reporting, we aim to receive feedback on several systematic principles under consideration that we believe will help us prioritize measures for disparity reporting across programs:

(1) Programs may consider stratification, among existing *clinical quality measures for further disparity reporting,* prioritizing recognized measures which have met industry standards for measure reliability and validity.

(2) Programs may consider measures for prioritization that show *evidence that a treatment or outcome being measured is affected by underlying healthcare disparities* for a specific social or demographic factor. Literature related to the measure or outcome should be reviewed to identify disparities related to the treatment or outcome, and should carefully consider both SRFs and patient demographics. In addition, analysis of Medicare-specific data should be done in order to demonstrate evidence of disparity in care for some or most healthcare providers that treat Medicare patients.

(3) Programs may consider establishing *statistical reliability and representation standards* (for example, the percent of patients with a SRF included in reporting facilities) prior to reporting results. They may also consider prioritizing measures that reflect performance on greater numbers of patients to ensure that the reported results of the disparity calculation are reliable and representative.

[113] CMS Quality Strategy. 2016. Available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Qualityinitiativesgeninfo/downloads/cms-quality-strategy.pdf.* Accessed February 3, 2022.

[114] Centers for Medicare & Medicaid Services (CMS), HHS. Disparity Methods Confidential Reporting. Available at *https://qualitynet.cms.gov/inpatient/measures/disparity-methods.* Accessed February 3, 2022.

(4) After completing stratification, programs may consider prioritizing *the reporting of measures that show differences in measure performance* between subgroups across healthcare providers.

c. Principles for Social Risk Factor (SRF) and Demographic Data Selection and Use

SRFs are the wide array of non-clinical drivers of health known to negatively impact patient outcomes. These include factors such as socioeconomic status, housing availability, and nutrition (among others), often inequitably affecting historically marginalized communities on the basis of race and ethnicity, rurality, sexual orientation and gender identity, religion, and disability.[115 116 117 118 119 120 121 122]

Identifying and prioritizing social risk or demographic variables to consider for disparity reporting can be challenging. This is due to the high number of variables that have been identified in the literature as risk factors for poorer health outcomes and the limited availability of many self-reported SRFs and demographic factors across the healthcare sector. Several proxy data sources, such as area-based indicators of social risk and imputation methods, may be used if individual patient-level data are not available. Each source of data has advantages and disadvantages for disparity reporting.

- *Patient-reported data* are considered to be the gold standard for evaluating quality of care for patients with SRFs.[123] While data sources for many SRFs and demographic variables are still developing among several CMS settings, demographic data elements collected through assessments already exist in SNFs. Beginning October 1, 2022, other PAC settings (86 FR 62345 through 62347, 62381 through 62390) will begin collecting additional standardized patient data elements about race, ethnicity, preferred language, transportation, health literacy, and social isolation. Data collection for these items in SNF has been proposed for October 1, 2023 (See section VI.C.2. of this proposed rule).
- *CMS Administrative Claims data* have long been used for quality measurement due to their availability and will continue to be evaluated for usability in measure development and or stratification. Using these existing data allows for high impact analyses with negligible healthcare provider burden. For example, dual eligibility for Medicare and Medicaid has been found to be an effective indicator of social risk in beneficiary populations.[124] There are, however, limitations in these data's usability for stratification analysis.
- *Area-based indicators of social risk* create approximations of patient risk based on neighborhood context. Several indexes, such as Agency for Healthcare Research and Quality (AHRQ) Socioeconomic Status (SES) Index,[125] the Centers for Disease Control and Prevention/Agency for Toxic Substances and Disease Registry (CDC/ATSDR) Social Vulnerability Index (SVI),[126] and the Health Resources and Services Administration (HRSA) Area Deprivation Index (ADI),[127] provide multifaceted contextual information about an area and may be considered as an efficient way to stratify measures that include many SRFs.
- *Imputed data sources* use statistical techniques to estimate patient-reported factors, including race and ethnicity. One such tool is the Medicare Bayesian Improved Surname Geocoding (MBISG) method (currently in version 2.1), which combines information from administrative data, surname, and residential location to estimate race and ethnicity of patients at a population level.[128]

d. Identifying Meaningful Performance Differences

While we aim to use standardized approaches where possible, differences in performance on stratified results will be identified at the program level due to contextual variations across programs and settings. We look forward to feedback on the benefits and limitations of the possible reporting approaches described in this section:

- *Statistical approaches* could be used to reliably group results, such as using confidence intervals, creating cut points based on standard deviations, or using a clustering algorithm.
- Programs could use a *ranked ordering and percentile approach,* ordering healthcare providers in a ranked system based on their performance on disparity measures to quickly allow them to compare their performance to other similar providers.
- SNFs could be categorized into groups based on their performance using *defined thresholds,* such as fixed intervals of results of disparity

[115] Joynt KE, Orav E, Jha AK. Thirty-day readmission rates for Medicare beneficiaries by race and site of care. JAMA. 2011;305(7):675–681.

[116] Lindenauer PK, Lagu T, Rothberg MB, et al. Income inequality and 30 day outcomes after acute myocardial infarction, heart failure, and pneumonia: Retrospective cohort study. BMJ. 2013 Feb 14;346:f521.

[117] Trivedi AN, Nsa W, Hausmann LRM, et al. Quality and equity of care in U.S. hospitals. N Engl J Med. 2014;371(24):2298–2308.

[118] Polyakova M, Udalova V, Kocks G, et al. Racial disparities in excess all-cause mortality during the early COVID–19 pandemic varied substantially across states. Health Affairs. 2021;40(2): 307–316.

[119] Rural Health Research Gateway. (2018). Rural communities: Age, Income, and Health status. Rural Health Research Recap. Available at *https://www.ruralhealthresearch.org/assets/2200-8536/rural-communities-age-income-health-status-recap.pdf.* Accessed February 3, 2022.

[120] HHS Office of Minority Health (2020). 2020 Update on the Action Plan to Reduce Racial and Ethnic Health Disparities. Available at *https://www.minorityhealth.hhs.gov/assets/PDF/Update_HHS_Disparities_Dept-FY2020.pdf* Accessed February 3, 2022.

[121] Poteat TC, Reisner SL, Miller M, Wirtz AL. COVID–19 vulnerability of transgender women with and without HIV infection in the Eastern and Southern U.S. medRxiv [Preprint]. 2020.07.21.20159327. doi: 10.1101/2020.07.21.20159327. PMID: 32743608; PMCID: PMC7386532.

[122] Vu M, Azmat A, Radejko T, Padela AI. Predictors of Delayed Healthcare Seeking Among American Muslim Women. Journal of Women's Health. 2016 Jun;25(6):586–593; Nadimpalli SB, Cleland CM, Hutchinson MK, et al. The Association between Discrimination and the Health of Sikh Asian Indians. Health Psychol. 2016 Apr;35(4):351–355.

[123] Jarrín OF, Nyandege AN, Grafova IB, Dong X, Lin H. Validity of race and ethnicity codes in Medicare administrative data compared with gold-standard self-reported race collected during routine home health care visits. Med Care. 2020;58(1):e1–e8. doi: 10.1097/MLR.0000000000001216. PMID: 31688554; PMCID: PMC6904433.

[124] Office of the Assistant Secretary for Planning and Evaluation. Report to Congress: Social Risk Factors and Performance Under Medicare's Value-Based Purchasing Program. December 20, 2016. Available at *https://www.aspe.hhs.gov/reports/report-congress-social-risk-factors-performance-under-medicares-value-based-purchasing-programs.* Accessed February 3, 2022.

[125] Bonito A., Bann C., Eicheldinger C., Carpenter L. *Creation of New Race-Ethnicity Codes and Socioeconomic Status (SES) Indicators for Medicare Beneficiaries.* Final Report, Sub-Task 2. (Prepared by RTI International for the Centers for Medicare & Medicaid Services through an interagency agreement with the Agency for Healthcare Research and Policy, under Contract No. 500–00–0024, Task No. 21) AHRQ Publication No. 08–0029–EF. Rockville, MD, Agency for Healthcare Research and Quality. January 2008. Available at *https://archive.ahrq.gov/research/findings/final-reports/medicareindicators/medicareindicators1.html.* Accessed February 7, 2022.

[126] Flanagan, B.E., Gregory, E.W., Hallisey, E.J., Heitgerd, J.L., Lewis, B. A social vulnerability index for disaster management. Journal of Homeland Security and Emergency Management. 2011;8(1):1–22. Available at *https://www.atsdr.cdc.gov/placeandhealth/svi/img/pdf/Flanagan_2011_SVIforDisasterManagement-508.pdf.* Accessed February 3, 2022.

[127] Center for Health Disparities Research. University of Wisconsin School of Medicine and Public Health. Neighborhood Atlas. Available at *https://www.neighborhoodatlas.medicine.wisc.edu/.* Accessed February 3, 2022.

[128] Haas A., Elliott MN, Dembosky JW, et al. Imputation of race/ethnicity to enable measurement of HEDIS performance by race/ethnicity. Health Serv Res. 2019;54(1):13–23. doi: 10.1111/1475–6773.13099. Epub 2018 Dec 3. PMID: 30506674; PMCID: PMC6338295. Available at *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6338295/pdf/HESR-54-13.pdf.* Accessed February 3, 2022.

measures, indicating different levels of performance.

- *Benchmarking* or comparing individual results to State or national average, is another potential reporting strategy.
- Finally, a ranking system is not appropriate for all programs and healthcare settings, and some programs may *only report disparity results.*

e. Guiding Principles for Reporting Disparity Measures

Reporting of the results as discussed previously in this section can be employed in several ways to drive improvements in quality. Confidential reporting, or reporting results privately to healthcare providers, is generally used for new programs or new measures recently adopted for programs through notice and comment rulemaking to give healthcare providers an opportunity to become more familiar with calculation methods and to improve before other forms of reporting are used. In addition, many results are reported publicly, in accordance with the statute. This method provides all stakeholders with important information on healthcare provider quality, and in turn, relies on market forces to incentivize healthcare providers to improve and become more competitive in their markets without directly influencing payment from us. One important consideration is to assess differential impact on SNFs, such as those located in rural or critical access areas, to ensure that reporting does not disadvantage already resource-limited settings. The type of reporting chosen by programs will depend on the program context.

Regardless of the methods used to report results, it is important to report stratified measure data alongside overall measure results. Review of both measures results along with stratified results can illuminate greater levels of detail about quality of care for subgroups of patients, providing important information to drive quality improvement. Unstratified quality measure results address general differences in quality of care between healthcare providers and promote improvement for all patients, but unless stratified results are available, it is unclear if there are subgroups of patients that benefit most from initiatives. Notably, even if overall quality measure scores improve, without identifying and measuring differences in outcomes between groups of patients, it is impossible to track progress in reducing disparity for patients with heightened risk of poor outcomes.

2. Approaches to Assessing Drivers of Healthcare Quality Disparities and Developing Measures of Healthcare Equity in the SNF QRP

This section presents information on two approaches for the SNF QRP. The first section presents information about a method that could be used to assist SNFs in identifying potential drivers of healthcare quality disparities. The second section describes measures of healthcare equity that might be appropriate for inclusion in the SNF QRP.

a. Performance Disparity Decomposition

In response to the FY 2022 SNF PPS proposed rule's RFI (86 FR 20000 through 20001), ''Closing the Health Equity Gap in Post-Acute Care Quality Reporting Programs,'' some stakeholders noted that, while stratified results provide more information about disparities compared to overall measure scores, they provide limited information towards understanding the drivers of these disparities. As a result, it is up to the SNFs to determine which factors are leading to performance gaps so that they can be addressed. Unfortunately, identifying which factors are contributing to the performance gaps may not always be straightforward, especially if the SNF has limited information or resources to determine the extent to which a patient's SDOH or other mediating factors (for example, health histories) explain a given disparity. An additional complicating factor is the reality that there are likely multiple SDOH and other mediating factors responsible for a given disparity, and it may not be obvious to the SNF which of these factors are the primary drivers.

Consequently, we may consider methods to use the data already available in enrollment, claims, and assessment data to estimate the extent to which various SDOH (for example, transportation, health literacy) and other mediating factors drive disparities in an effort to provide more actionable information. Researchers have utilized decomposition techniques to examine inequality in health care and, specifically, as a way to understand and explain the underlying causes of inequality.[129] At a high level, regression decomposition is a method that allows one to estimate the extent to which disparities (that is, differences) in measure performance between subgroups of patient populations are due to specific factors. These factors can be either non-clinical (for example, SDOH) or clinical. Similarly, we may utilize regression decomposition to identify and calculate the specific contribution of SDOHs and other mediating factors to observed disparities. This approach may better inform our understanding of the extent to which providers and policy-makers may be able to narrow the gap in health care outcomes. Additionally, provider-specific decomposition results could be shared through confidential feedback so that SNFs can see the disparities within their facility with more granularity, allowing them to set priority targets in some performance areas while knowing which areas of their care are already relatively equitable. Importantly, these results could help SNFs identify reasons for disparities that might not be obvious without having access to additional data sources (for example, the ability to link data across providers).

To more explicitly demonstrate the types of information that could be provided through decomposition of a measure disparity, consider the following example for a given SNF. Figures 1 through 3 depict an example (using hypothetical data) of how a disparity in a measure of Medicare Spending Per Beneficiary (MSPB) between dually eligible beneficiaries (that is, those enrolled in Medicare and Medicaid) and non-dually eligible beneficiaries (that is, those with Medicare only) could be decomposed among two mediating factors, one SDOH and one clinical factor: (1) Low health literacy; and (2) high-volume of emergency department (ED) use. These examples were selected because if they were shown to be drivers of disparity in their SNF, the healthcare provider could mitigate their effects. Additionally, high-volume ED use is used as a potential mediating factor that could be difficult for SNFs to determine on their own, as it would require having longitudinal data for patients across multiple facilities.

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[129] Rahimi E, Hashemi Nazari S. A detailed explanation and graphical representation of the Blinder-Oaxaca decomposition method with its application in health inequalities. *Emerg Themes Epidemiol.* 2021;18:12. *https://doi.org/10.1186/s12982-021-00100-9.* Accessed February 24, 2022.

FIGURE 1

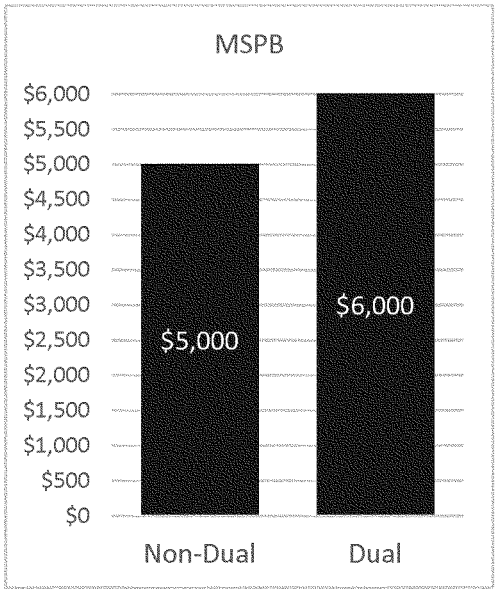


FIGURE 2

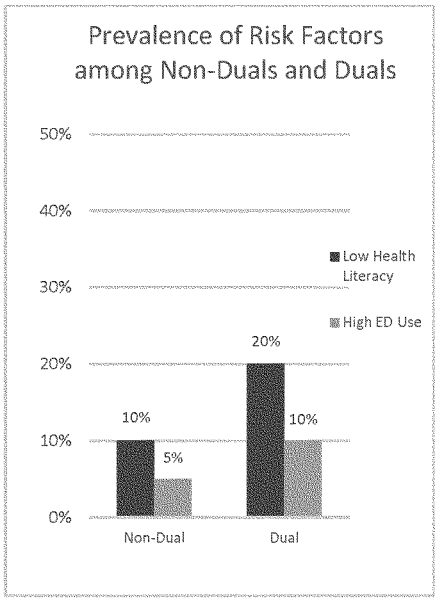
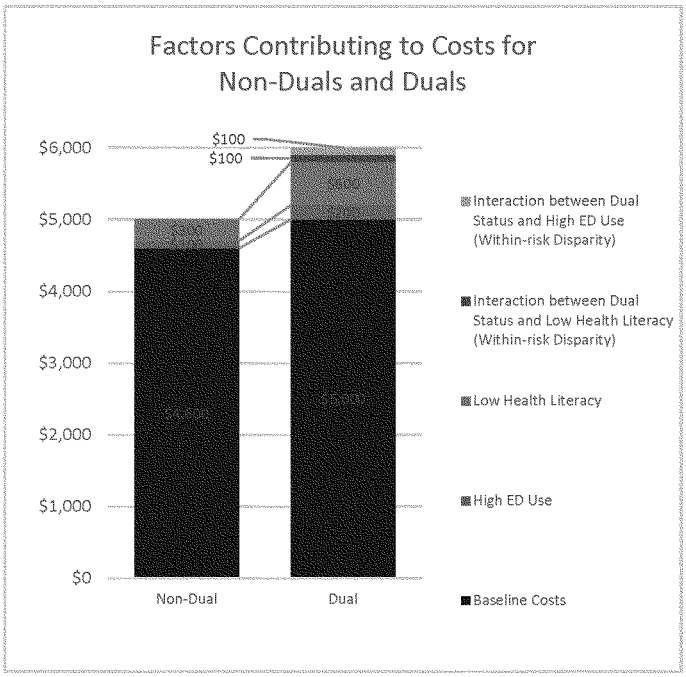


FIGURE 3



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In this example (Figure 1), the overall Medicare spending disparity is $1,000: Spending, on average, is $5,000 per non-dual beneficiary and $6,000 per dual beneficiary. We can also see from Figure 2 that in this SNF, the dual population has twice the prevalence of beneficiaries with low health literacy and high ED use compared to the non-dual population. Using regression techniques, the difference in overall spending between non-dual and dual beneficiaries can be divided into three causes: (1) A difference in the prevalence of mediating factors (for example, low health literacy and high ED use) between the two groups; (2) a difference in how much spending is observed for beneficiaries with these mediating factors between the two groups; and (3) differences in baseline spending that are not due to either (1) or (2). In Figure 3, the 'Non-Dual beneficiaries' column breaks down the overall spending per non-dual beneficiary, $5,000, into a baseline

spending of $4,600 plus the effects of the higher spending for the 10 percent of non-dual beneficiaries with low health literacy ($300) and the 5 percent with high ED use ($100). The 'Dual beneficiaries' column similarly decomposes the overall spending per dual beneficiary ($6,000) into a baseline spending of $5,000, plus the amounts due to dual beneficiaries' 20 percent prevalence of low health literacy ($600, twice as large as the figure for non-dual beneficiaries because the prevalence is twice as high), and dual beneficiaries' 10 percent prevalence of high-volume ED use ($200, similarly twice as high as for non-dual beneficiaries due to higher prevalence). This column also includes an additional $100 per risk factor because dual beneficiaries experience a higher cost than non-dual beneficiaries within the low health literacy risk factor, and similarly within the high ED use risk factor. Based on this information, a SNF can determine that the overall $1,000 disparity can be divided into differences simply due to risk factor prevalence ($300 + $100 = $400 or 40 percent of the total disparity), disparities in costs for beneficiaries with risk factors ($100 + $100 = $200 or 20 percent) and disparities that remain unexplained (differences in baseline costs: $400 or 40 percent).

In particular, the SNF can see that simply having more patients with low health literacy and high ED use accounts for a disparity of $400. In addition, there is still a $200 disparity stemming from differences in costs between non-dual and dual patients for a given risk factor, and another $400 that is not explained by either low health literacy or high ED use. These differences may instead be explained by other SDOH that have not yet been included in this breakdown, or by the distinctive pattern of care decisions made by providers for dual and non-dual beneficiaries. These cost estimates would provide additional information that facilities could use when determining where to devote resources aimed at achieving equitable health outcomes (for example, facilities may choose to focus efforts on the largest drivers of a disparity).

b. Measures Related to Health Equity

Beyond identifying disparities in individual health outcomes and by individual risk factors, there is interest in developing more comprehensive measures of health equity that reflect organizational performance. When determining which equity measures could be prioritized for development for SNF QRP, we will draw from its experience with the CMS Measures Management System (MMS) Blueprint [130] and may consider the following:

- Measures should be actionable in terms of quality improvement.
- Measures should help beneficiaries and their caregivers make informed healthcare decisions.
- Measures should not create incentives to lower the quality of care.
- Measures should adhere to high scientific acceptability standards.

We have developed measures assessing health equity, or designed to promote health equity, in other settings outside of the SNF. As a result, there may be measures that could be adapted for use in the SNF QRP. The remainder of this section discusses two such measures, beginning with the Health Equity Summary Score (HESS), and then a structural measure assessing the degree of hospital leadership engagement in health equity performance data.

(1) Health Equity Summary Score

The HESS measure was developed by the CMS Office of Minority Health (OMH) [131] to identify and to reward healthcare providers (that is, Medicare Advantage [MA] plans) that perform relatively well on measures of care provided to beneficiaries with SRFs, as well as to discourage the non-treatment of patients who are potentially high-risk, in the context of value-based purchasing. Additionally, a version of the HESS is in development for the Hospital Inpatient Quality Reporting (HIQR) program.[132] This composite measure provides a summary of equity of care delivery by combining performance and improvement across multiple measures and multiple at-risk groups. The HESS was developed with the following goals: Allow for ''multiple grouping variables, not all of which will be measurable for all plans;'' allow for ''disaggregation by grouping variable for nuanced insights;'' and allow for the future usage of additional and different SRFs for grouping.[133]

The HESS computes across-provider disparity in performance, as well as within-provider and across-provider disparity improvement in performance. Calculation starts with a cross-sectional score and an overall improvement score for each SRF of race/ethnicity and dual eligibility, for each plan. The overall improvement score is based on two separate improvement metrics: Within-plan improvement and nationally benchmarked improvement. Within-plan improvement is defined as how that plan improves the care of patients with SRFs relative to higher-performing patients between the baseline period and performance period, and is targeted at eliminating within-plan disparities. Nationally benchmarked improvement is improvement of care for beneficiaries with SRFs served by that MA plan, relative to the improvement of care for similar beneficiaries across all MA plans, and is targeted at improving the overall care of populations with SRFs. Within-plan improvement and nationally benchmarked improvement are then combined into an overall improvement score. Meanwhile, the cross-sectional score measures overall measure performance among beneficiaries with SRFs during the performance period, regardless of improvement.

To calculate a provider's overall score, the HESS uses a composite of five clinical quality measures based on Healthcare Effectiveness Data and Information Set (HEDIS) data and seven MA Consumer Assessment of Healthcare Providers and Systems (CAHPS) patient experience measures. A provider's overall HESS score is calculated once using only CAHPS-based measures and once using only HEDIS-based measures, due to incompatibility between the two data sources. The HESS uses a composite of these measures to form a cross-sectional score, a nationally benchmarked improvement score, and a within-plan improvement score, one for each SRF. These scores are combined to produce a SRF-specific blended score, which is then combined with the blended score for another SRF to produce the overall HESS.

[130] Centers for Medicare & Medicaid Services. CMS Measures Management System Blueprint. Version 17.0. September 2021. Available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/MMS/Downloads/Blueprint.pdf.*

[131] Agniel D, Martino SC, Burkhart Q, et al. Incentivizing excellent care to at-risk groups with a health equity summary score. J Gen Intern Med. 2021;36(7):1847–1857. doi: 10.1007/s11606–019–05473–x. Epub 2019 Nov 11. PMID: 31713030; PMCID: PMC8298664. Available at *https://link.springer.com/content/pdf/10.1007/s11606-019-05473-x.pdf.* Accessed February 3, 2022.

[132] Centers for Medicare & Medicaid Services, FY 2022 IPPS/LTCH PPS Proposed Rule. 88 FR 25560. May 10, 2021.

[133] Centers for Medicare & Medicaid Services Office of Minority Health (CMS OMH). 2021b. ''Health Equity as a 'New Normal': CMS Efforts to Address the Causes of Health Disparities.'' Presented at CMS Quality Conference, March 2 to 3, 2021.

(2) Degree of Hospital Leadership Engagement in Health Equity Performance Data

We have developed a structural measure for use in acute care hospitals assessing the degree to which hospital leadership is engaged in the collection of health equity performance data, with the motivation that that organizational leadership and culture can play an essential role in advancing equity goals. This structural measure, entitled the Hospital Commitment to Health Equity measure (MUC 2021–106), was included on the CMS List of Measures Under Consideration (MUC List) [134] and assesses hospital commitment to health equity using a suite of equity-focused organizational competencies aimed at achieving health equity for racial and ethnic minorities, people with disabilities, sexual and gender minorities, individuals with limited English proficiency, rural populations, religious minorities, and people facing socioeconomic challenges. The measure will include five attestation-based questions, each representing a separate domain of commitment. A hospital will receive a point for each domain where it attests to the corresponding statement (for a total of 5 points). At a high level, the five domains cover the following: (1) Strategic plan to reduce health disparities; (2) approach to collecting valid and reliable demographic and SDOH data; (3) analyses performed to assess disparities; (4) engagement in quality improvement activities; [135] and (5) leadership involvement in activities designed to reduce disparities. The specific questions asked within each domain, as well as the detailed measure specification are found in the CMS MUC List for December 2021 at *https://www.cms.gov/files/document/measures-under-consideration-list-2021-report.pdf.* A SNF could receive a point for each domain where data are submitted through a CMS portal to reflect actions taken by the SNF for each corresponding domain (for a point total).

We believe this type of organizational commitment structural measure may complement the health disparities approach described in previous sections, and support SNFs in quality improvement, efficient, effective use of resources, and leveraging available data. As defined by AHRQ, structural measures aim to ''give consumers a sense of a healthcare provider's capacity, systems, and processes to provide high-quality care.'' [136] We acknowledge that collection of this structural measure may impose administrative and/or reporting requirements for SNFs.

We are interested in obtaining feedback from stakeholders on conceptual and measurement priorities for the SNF QRP to better illuminate organizational commitment to health equity.

3. Solicitation of Public Comment

The goal of this request for information is to describe some key principles and approaches that we will consider when advancing the use of quality measure development and stratification to address health care disparities and advance health equity across our programs.

We invite general comments on the principles and approaches described previously in this section of the rule, as well as additional thoughts about disparity measurement guidelines suitable for overarching consideration across CMS' QRP programs. Specifically, we invite comment on:

- *Identification of Goals and Approaches for Measuring Healthcare Disparities and Using Measure Stratification Across CMS Quality Reporting Programs:*

++ The use of the within- and between-provider disparity methods in SNFs to present stratified measure results.

++ The use of decomposition approaches to explain possible causes of measure performance disparities.

++ Alternative methods to identify disparities and the drivers of disparities.

- *Guiding Principles for Selecting and Prioritizing Measures for Disparity Reporting:*

++ Principles to consider for prioritization of health equity measures and measures for disparity reporting, including prioritizing stratification for validated clinical quality measures, those measures with established disparities in care, measures that have adequate sample size and representation among healthcare providers and outcomes, and measures of appropriate access and care.

- *Principles for SRF and Demographic Data Selection and Use:*

++ Principles to be considered for the selection of SRFs and demographic data for use in collecting disparity data including the importance of expanding variables used in measure stratification to consider a wide range of SRFs, demographic variables, and other markers of historic disadvantage. In the absence of patient-reported data we will consider use of administrative data, area-based indicators, and imputed variables as appropriate.

- *Identification of Meaningful Performance Differences:*

++ Ways that meaningful difference in disparity results should be considered.

- *Guiding Principles for Reporting Disparity Measures:*

++ Guiding principles for the use and application of the results of disparity measurement.

- *Measures Related to Health Equity:*

++ The usefulness of a HESS score for SNFs, both in terms of provider actionability to improve health equity, and in terms of whether this information would support Care Compare website users in making informed healthcare decisions.

++ The potential for a structural measure assessing a SNF's commitment to health equity, the specific domains that should be captured, and options for reporting these data in a manner that would minimize burden.

++ Options to collect facility-level information that could be used to support the calculation of a structural measure of health equity.

++ Other options for measures that address health equity.

While we will not be responding to specific comments submitted in response to this RFI in the FY 2023 SNF PPS final rule, we will actively consider all input as we develop future regulatory proposals or future subregulatory policy guidance. Any updates to specific program requirements related to quality measurement and reporting provisions would be addressed through separate and future notice-and-comment rulemaking, as necessary.

[134] Centers for Medicare & Medicaid Services. List of Measures Under Consideration for December 1, 2021. Available at *https://www.cms.gov/files/document/measures-under-consideration-list-2021-report.pdf.* Accessed March 1, 2022.

[135] Quality is defined by the National Academy of Medicine as the degree to which health services for individuals and populations increase the likelihood of desired health outcomes and are consistent with current professional knowledge. Quality improvement is the framework used to systematically improve care. Quality improvement seeks to standardize processes and structure to reduce variation, achieve predictable results, and improve outcomes for patients, healthcare systems, and organizations. Structure includes things like technology, culture, leadership, and physical capital; process includes knowledge capital (for example, standard operating procedures) or human capital (for example, education and training). Available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/MMS/Quality-Measure-and-Quality-Improvement-.* Accessed March 1, 2022.

[136] Agency for Healthcare Research and Quality. Types of Health Care Quality Measures. 2015. Available at *https://www.ahrq.gov/talkingquality/measures/types.html.* Accessed February 3, 2022.

F. Inclusion of the CoreQ: Short Stay Discharge Measure in a Future SNF QRP Program Year—Request for Information (RFI)

1. Background

The SNF QRP furthers our mission to improve the quality of health care for beneficiaries through measurement, transparency, and public reporting of data. The SNF QRP and CMS' other quality programs are foundational for contributing to improvements in health care, enhancing patient outcomes, and informing consumer choice. In October 2017, we launched the Meaningful Measures Framework. This framework captures our vision to address health care quality priorities and gaps, including emphasizing digital quality measurement, reducing measurement burden, and promoting patient perspectives, while also focusing on modernization and innovation.[137] Meaningful Measures 2.0 builds on the initial framework by establishing a goal of increasing Patient Reported Outcomes Measures (PROMs) by 50 percent.[138] Ensuring that patients and families are engaged as partners in their care can be an effective way to measure the quality of patient care.

2. Potential Future Inclusion of the CoreQ: Short Stay Discharge Measure

Collecting satisfaction information from SNF patients is more important now than ever. There has been a philosophical change in healthcare that now includes the patient and their preferences as an integral part of the system of care. The Institute of Medicine (IOM) endorsed this change by putting the patient as central to the care system (IOM, 2001).[139] To achieve the goal of patient-centered care, there must be a way to measure patient satisfaction since it is necessary to understand patient preferences. Measuring patients' satisfaction can also help organizations identify deficiencies that other quality metrics may struggle to identify, such as communication between a patient and the healthcare provider.

We define a Patient Reported Outcome (PRO) as any report of the status of a patient's health condition or health behavior that comes directly from the patient, without interpretation of the patient's response by a clinician or anyone else.[140] Therefore, they are an important component of assessing whether healthcare providers are improving the health and well-being of patients. We have demonstrated interest in consumers' perspective on quality of care in nursing homes by supporting the development of the CAHPS survey for patients in nursing facilities,[141] and adding provisions for comprehensive person-centered care planning and quality of life to the nursing home requirements of participation at §§ 483.21 and 483.24 respectively effective November 28, 2017.

In the FY 2022 SNF PPS proposed rule (86 FR 19998), we sought comments on potential future PROMs for the SNF QRP. We summarized the comments received in the FY 2022 SNF PPS final rule (86 FR 42490 through 42491). In this year's proposed rule, we are requesting stakeholder feedback specifically on the inclusion of the CoreQ: Short Stay Discharge measure in the SNF QRP in future program years, including whether there are any challenges or impacts we should consider for a potential future proposal.

Collection of patient experience data aligns with the person-centered care domain of CMS's Meaningful Measures 2.0 Framework,[142] and addresses an aspect of patient experience that is not currently included in the SNF QRP. We believe collecting and assessing satisfaction data from SNF patients is important for understanding patient experiences and preferences, while ensuring the patient can easily and discretely share their information and provide information to help consumers choose a trusted SNF. PRO data could be incorporated into QAPI strategies to help facilities improve their quality of care.

3. Overview of the CoreQ: Short Stay Discharge Measure in a Future SNF QRP Program Year

The CoreQ: Short Stay Discharge Measure calculates the percentage of individuals discharged in a 6-month period from a SNF, within 100 days of admission, who are satisfied with their SNF stay. This patient-reported outcome measure is based on the CoreQ: Short Stay Discharge questionnaire that utilizes four items: (1) In recommending this facility to your friends and family, how would you rate it overall; (2) Overall, how would you rate the staff; (3) How would you rate the care you receive; (4) How would you rate how well your discharge needs were met. The CoreQ questionnaire uses a 5-point Likert Scale: Poor (1); Average (2); Good (3); Very Good (4); and Excellent (5).

The numerator is the sum of the individuals in the facility that have an average satisfaction score of greater than or equal to 3 for the four questions on the CoreQ: Short Stay Discharge questionnaire. The denominator includes all patients, regardless of payer, that are admitted to the SNF for post-acute care and are discharged within 100 days, receive the survey and who respond to the CoreQ: Short Stay Discharge questionnaire within two months of receiving the questionnaire.

The CoreQ: Short Stay Discharge Measure excludes certain patients from the denominator, such as patients who die during their SNF stay, patients discharged to another hospital, another SNF, psychiatric facility, IRF or LTCH, patients with court appointed legal guardians for all decisions, patients who have dementia impairing their ability to answer the questionnaire,[143] patients discharged on hospice, and patients who left the SNF against medical device. For additional information about the CoreQ: Short Stay Discharge Measure, please visit *https://cmit.cms.gov/CMIT_public/ViewMeasure?MeasureId=3436.*

4. Measure Application Partnership (MAP) Review

The CoreQ: Short Stay Discharge Measure (NQF #2614) was endorsed by the National Quality Forum (NQF) in 2016 and achieved re-endorsement in 2020. We included the CoreQ: Short Stay Discharge Measure (NQF #2614) under the SNF QRP Program in the publicly available ''List of Measures

[137] Meaningful Measures 2.0: Moving from Measure Reduction to Modernization. Available at *https://www.cms.gov/meaningful-measures-20-moving-measure-reduction-modernization.*

[138] 2021 CMS Quality Conference. CMS Quality Measurement Action Plan. March 2021. Available at *https://www.cms.gov/files/document/2021-cms-quality-conference-cms-quality-measurement-action-plan-march-2021.pdf.*

[139] Institute of Medicine (US) Committee on Quality of Health Care in America. Crossing the Quality Chasm: A New Health System for the 21st Century. Washington (DC): National Academies Press (US); 2001. ISBN–10: 0–309–07280–8.

[140] Patient Reported Outcome Measures. Supplemental Material to the CMS MMS Blueprint. Available at *https://www.cms.gov/files/document/blueprint-patient-reported-outcome-measures.pdf.*

[141] Sangl, J., Buchanan, J., Cosenza C., Bernard S., Keller, S., Mitchell, N., Brown, J., Castle, N., Sekscenski, E., Larwood, D. The Development of a CAHPS Instrument for Nursing Home Residents (NHCAHPS). J Aging Soc Policy. 2007;19(2):63–82. doi: 10.1300/J031v19n02_04.

[142] Centers for Medicare & Medicaid Services. Meaningful Measures 2.0: Moving from Measure Reduction to Modernization. Available at *https://www.cms.gov/meaningful-measures-20-moving-measure-reduction-modernization.*

[143] Patients who have dementia impairment their ability to answer the questionnaire are defined as having a Brief Interview of Mental Status (BIMS) score on the MDS 3.0 as 7 or lower. Available at *https://cmit.cms.gov/CMIT_public/ViewMeasure?MeasureId=3436.*

Under Consideration for December 1, 2017'' (MUC List).[144] The NQF-convened Measure Applications Partnership (MAP) Post-Acute Care/Long-Term Care (PACLTC) workgroup met on December 13, 2017 and provided input on the measure. The MAP offered support of the CoreQ Short Stay Discharge Measure (NQF #2614) for rulemaking, noting that it adds value by adding addressing a gap area for the QRP. The MAP reiterated the value of resident-reported outcomes and noted that this measure could reflect quality of care from the resident's perspective, but also noted the potential burden of collecting the data and cautioned the implementation of a new data collection requirement should be done with the least possible burden to the facility. We refer readers to the final MAP report available at *https://www.qualityforum.org/Publications/2018/02/MAP_2018_Considerations_for_Implementing_Measures_in_Federal_Programs_-_PAC-LTC.aspx.*

5. Data Sources

CoreQ is administered by customer satisfaction vendors that have added CoreQ to their questionnaires. Currently, nearly 40 customer satisfaction vendors have incorporated or will incorporate CoreQ into their surveys when asked by clients. For information on customer satisfaction vendors that have added CoreQ to their questionnaires, we refer readers to *http://www.CoreQ.org.* For more information about administering CoreQ, we encourage readers to visit *http://www.CoreQ.org* and review the CoreQ Satisfaction Questionnaire and User's Manual available at *http://www.coreq.org/CoreQ%20Satisfaction%20Questionnaire%20and%20User%20Manual.pdf.*

6. Solicitation of Public Comment

In this proposed rule, we are requesting stakeholder feedback on future adoption and implementation of the CoreQ: Short Stay Discharge Measure into the SNF QRP.

Specifically, we seek comment on the following:

- Would you support utilizing the CoreQ to collect PROs?
- Do SNFs believe the questions asked in the CoreQ would add value to their patient engagement and quality of care goals?
- Should CMS establish a minimum number of surveys to be collected per reporting period or a waiver for small providers?
- How long would facilities and customer satisfaction vendors need to accommodate data collection and reporting for all participating SNFs?
- What specific challenges do SNFs anticipate for collecting the CoreQ: Short Stay Discharge measure? What are potential solutions for those challenges?

G. Form, Manner, and Timing of Data Submission Under the SNF QRP

1. Background

We refer readers to the regulatory text at § 413.360(b) for information regarding the current policies for reporting SNF QRP data.

2. Proposed Schedule for Data Submission of the Influenza Vaccination Coverage Among Healthcare Personnel (NQF #0431) Measure Beginning With the FY 2025 SNF QRP

As discussed in section VI.C.1. of this proposed rule, we are proposing to adopt the Influenza Vaccination Coverage among HCP quality measure beginning with the FY 2025 SNF QRP. The CDC has determined that the influenza vaccination season begins on October 1st (or when the vaccine becomes available) and ends on March 31st of the following year. Therefore, we propose an initial data submission period from October 1, 2022 through March 31, 2023. In subsequent years, data collection for this measure will be from October 1 through March 31 of the following year.

This measure requires that the provider submit a minimum of one report to the NHSN by the data submission deadline of May 15 for each influenza season following the close of the data collection period each year to meet our requirements. Although facilities may edit their data after May 15, the revised data will not be shared with us.[145] SNFs would submit data for the measure through the CDC/NHSN web-based surveillance system. SNFs would use the Influenza Vaccination Summary option under the NHSN HPS Component to report the number of HCP who receive the influenza vaccination (numerator) among the total number of HCP in the facility for at least 1 working day between October 1 and March 31 of the following year, regardless of clinical responsibility or patient contact (denominator).

We invite public comment on this proposal.

H. Policies Regarding Public Display of Measure Data for the SNF QRP

1. Background

Section 1899B(g) of the Act requires the Secretary to establish procedures for making the SNF QRP data available to the public, including the performance of individual SNFs, after ensuring that SNFs have the opportunity to review their data prior to public display. SNF QRP measure data are currently displayed on the *Nursing homes including rehab services* website within Care Compare and the Provider Data Catalog. Both Care Compare and the Provider Data Catalog replaced Nursing Home Compare and Data.Medicare.gov, which were retired in December 2020. For a more detailed discussion about our policies regarding public display of SNF QRP measure data and procedures for the opportunity to review and correct data and information, we refer readers to the FY 2017 SNF PPS final rule (81 FR 52045 through 52048).

2. Public Reporting of the Influenza Vaccination Coverage Among Healthcare Personnel (NQF #0431) Measure Beginning With the FY 2025 SNF QRP

We propose to publicly report the Influenza Vaccination Coverage among HCP (NQF #0431) measure beginning with the October 2023 Care Compare refresh or as soon as technically feasible using data collected from October 1, 2022 through March 31, 2023. If finalized as proposed, a SNF's Influenza Vaccination Coverage among HCP rate would be displayed based on 6 months of data. Provider preview reports would be distributed in July 2023. Thereafter, Influenza Vaccination Coverage among HCP rates would be displayed based on 6 months of data, reflecting the reporting period of October 1 through March 31, updated annually. We invite public comment on this proposal for the public display of the Influenza Vaccination Coverage among Healthcare Personnel (NQF #0431) measure on Care Compare.

VII. Skilled Nursing Facility Value-Based Purchasing (SNF VBP) Program

A. Statutory Background

Section 215(b) of the Protecting Access to Medicare Act of 2014 (Pub. L. 113–93) authorized the SNF VBP Program (the ''Program'') by adding section 1888(h) to the Act. Additionally, section 111 of the Consolidated

[144] Centers for Medicare & Medicaid Services. List of Measures Under Consideration for December 1, 2017. Available at *https://www.cms.gov/files/document/2017amuc-listclearancerpt.pdf.*

[145] Centers for Disease Control and Prevention (CDC). (2021). HCP Influenza Vaccination Summary Reporting FAQs. Retrieved from *https://www.cdc.gov/nhsn/faqs/vaccination/faq-influenza-vaccination-summary-reporting.html#:~:text=To%20meet%20CMS%20reporting%20requirements,not%20be%20shared%20with%20CMS.*

Appropriations Act, 2021 authorized the Secretary to apply additional measures to the SNF VBP Program for payments for services furnished on or after October 1, 2023. The SNF VBP Program applies to freestanding SNFs, SNFs affiliated with acute care facilities, and all non-CAH swing bed rural hospitals. We believe the SNF VBP Program has helped to transform how payment is made for care, moving increasingly towards rewarding better value, outcomes, and innovations instead of merely rewarding volume.

As a prerequisite to implementing the SNF VBP Program, in the FY 2016 SNF PPS final rule (80 FR 46409 through 46426), we adopted an all-cause, all-condition hospital readmission measure, as required by section 1888(g)(1) of the Act and discussed other policies to implement the Program such as performance standards, the performance period and baseline period, and scoring. SNF VBP Program policies have been codified in our regulations at 42 CFR 413.338. For additional background information on the SNF VBP Program, including an overview of the SNF VBP Report to Congress and a summary of the Program's statutory requirements, we refer readers to the following prior final rules:

- In the FY 2017 SNF PPS final rule (81 FR 51986 through 52009), we adopted an all-condition, risk-adjusted potentially preventable hospital readmission measure for SNFs, as required by section 1888(g)(2) of the Act, adopted policies on performance standards, performance scoring, and sought comment on an exchange function methodology to translate SNF performance scores into value-based incentive payments, among other topics.
- In the FY 2018 SNF PPS final rule (82 FR 36608 through 36623), we adopted additional policies for the Program, including an exchange function methodology for disbursing value-based incentive payments.
- In the FY 2019 SNF PPS final rule (83 FR 39272 through 39282), we adopted more policies for the Program, including a scoring adjustment for low-volume facilities.
- In the FY 2020 SNF PPS final rule (84 FR 38820 through 38825), we adopted additional policies for the Program, including a change to our public reporting policy and an update to the deadline for the Phase One Review and Correction process. We also adopted a data suppression policy for low-volume SNFs.
- In the FY 2021 SNF PPS final rule (85 FR 47624 through 47627), we amended regulatory text definitions at § 413.338(a)(9) and (11) to reflect the definition of Performance Standards and the updated Skilled Nursing Facility Potentially Preventable Readmissions after Hospital Discharge measure name, respectively. We also updated the Phase One Review and Correction deadline and codified that update at § 413.338(e)(1). Additionally, we codified the data suppression policy for low-volume SNFs at § 413.338(e)(3)(i) through (iii) and amended § 413.338(e)(3) to reflect that SNF performance information will be publicly reported on the Nursing Home Compare website and/or successor website (84 FR 38823 through 38824), which since December 2020 is the Provider Data Catalog website (*https://data.cms.gov/provider-data/*).
- In the September 2nd interim final rule with comment (IFC) (85 FR 54837), we revised the performance period for the FY 2022 SNF VBP Program to be April 1, 2019 through December 31, 2019 and July 1, 2020 through September 30, 2020, in response to the COVID–19 Public Health Emergency (PHE).
- In the FY 2022 SNF PPS final rule (86 FR 42502 through 42517), we adopted additional policies for the Program, including a measure suppression policy to offer flexibility in response to the COVID–19 PHE. We adopted policies to suppress the SNFRM for scoring and payment purposes for the FY 2022 SNF VBP program year, to revise the SNFRM risk adjustment lookback period for the FY 2023 SNF VBP program year, and to use FY 2019 data for the baseline period for the FY 2024 SNF VBP program year. We also updated the Phase One Review and Correction process and updated the instructions for requesting an Extraordinary Circumstances Exception (ECE). Finally, we finalized a special scoring policy assigning all SNFs a performance score of zero, effectively ranking all SNFs equally in the FY 2022 SNF VBP program year. This policy was codified at § 413.338(g) of our regulations.

To improve the clarity of our regulations, we propose to update and renumber the ''Definitions'' used in § 413.338 by revising paragraphs (a)(1) and (4) through (17). We seek public comment on these proposed updates.

B. SNF VBP Program Measures

For background on the measures we have adopted for the SNF VBP Program, we refer readers to the FY 2016 SNF PPS final rule (80 FR 46419), where we finalized the Skilled Nursing Facility 30-Day All-Cause Readmission Measure (SNFRM) (NQF #2510) that we are currently using for the SNF VBP Program. We also refer readers to the FY 2017 SNF PPS final rule (81 FR 51987 through 51995), where we finalized the Skilled Nursing Facility 30-Day Potentially Preventable Readmission Measure (SNFPPR) that we will use for the SNF VBP Program instead of the SNFRM as soon as practicable, as required by statute. The SNFPPR measure's name is now ''Skilled Nursing Facility Potentially Preventable Readmissions after Hospital Discharge measure'' (§ 413.338(a)(11)). We intend to submit the SNFPPR measure for NQF endorsement review as soon as practicable, and to assess transition timing of the SNFPPR measure to the SNF VBP Program after NQF endorsement review is complete.

1. Proposal To Suppress the SNFRM for the FY 2023 Program Year

a. Background

We remain concerned about the effects of the PHE for COVID–19 on our ability to assess performance on the SNFRM in the SNF VBP Program. As of mid-December 2021, more than 50 million COVID–19 cases and 800,000 COVID–19 deaths have been reported in the United States (U.S.) [146] COVID–19 has overtaken the 1918 influenza pandemic as the deadliest disease in American history.[147] Moreover, the individual and public health ramifications of COVID–19 extend beyond the direct effects of COVID–19 infections. Several studies have demonstrated significant mortality increases in 2020, beyond those attributable to COVID–19 deaths. One paper quantifies the net impact (direct and indirect effects) of the pandemic on the U.S. population during 2020 using three metrics: Excess deaths, life expectancy, and total years of life lost. The findings indicate there were 375,235 excess deaths, with 83 percent attributable to direct effects, and 17 percent attributable to indirect effects, of COVID–19. The decrease in life expectancy was 1.67 years, translating to a reversion of 14 years in historical life expectancy gains. Total years of life lost in 2020 was 7,362,555 across the U.S. (73 percent directly attributable, 27 percent indirectly attributable to COVID–19), with considerable heterogeneity at the individual State level.[148]

[146] *https://covid.cdc.gov/covid-data-tracker/#datatracker-home.*

[147] *https://www.statnews.com/2021/09/20/covid-19-set-to-overtake-1918-spanish-flu-as-deadliest-disease-in-american-history/.*

[148] Chan, E.Y.S., Cheng, D., & Martin, J. (2021). Impact of COVID–19 on excess mortality, life expectancy, and years of life lost in the United

Continued

b. Proposed Suppression of the SNFRM for the FY 2023 SNF VBP Program Year

In the FY 2022 SNF PPS final rule (86 FR 42503 through 42505), we adopted a quality measure suppression policy for the duration of the PHE for COVID–19 that would enable us to suppress the use of the SNFRM for purposes of scoring and payment adjustments in the SNF VBP Program if we determine that circumstances caused by the PHE for COVID–19 have affected the measure and the resulting performance scores significantly.

We also adopted a series of Measure Suppression Factors to guide our determination of whether to propose to suppress the SNF readmission measure for one or more program years that overlap with the PHE for COVID–19. The Measure Suppression Factors that we adopted are:

- Measure Suppression Factor 1: Significant deviation in national performance on the measure during the PHE for COVID–19, which could be significantly better or significantly worse compared to historical performance during the immediately preceding program years.
- Measure Suppression Factor 2: Clinical proximity of the measure's focus to the relevant disease, pathogen, or health impacts of the PHE for COVID–19.
- Measure Suppression Factor 3: Rapid or unprecedented changes in:
  - ++ Clinical guidelines, care delivery or practice, treatments, drugs, or related protocols, or equipment or diagnostic tools or materials; or
  - ++ The generally accepted scientific understanding of the nature or biological pathway of the disease or pathogen, particularly for a novel disease or pathogen of unknown origin.
- Measure Suppression Factor 4: Significant national shortages or rapid or unprecedented changes in:
  - ++ Healthcare personnel.
  - ++ Medical supplies, equipment, or diagnostic tools or materials.
  - ++ Patient case volumes or facility-level case mix.

We refer readers to the FY 2022 SNF PPS final rule (86 FR 42503 through 42505) for additional details on this policy, including summaries of the public comments that we received and our responses.

Additionally, in the FY 2022 SNF PPS final rule (86 FR 42505 through 42507), we suppressed the SNFRM for the FY 2022 SNF VBP program year under Measure Suppression Factor (4): Significant national shortages or rapid or unprecedented changes in healthcare personnel and patient case volumes or facility-level case mix. We refer readers to that final rule for additional discussion of the analyses we conducted of SNFRM performance during the PHE for COVID–19, how the measure's reliability changed, how its current risk-adjustment model does not factor in COVID–19, and how the PHE affected different regions of the country at different times, as well as summaries of the public comments that we received on that proposal and our responses.

The PHE for COVID–19 has had direct, significant, and continuing effects on our ability to measure SNFs' performance on the SNFRM. SNFs are experiencing a significant downward trend in admissions compared with their pre-COVID–19 admission rates. For the FY 2021 program year, a total of 1,566,540 SNF admissions were eligible for inclusion in the SNFRM (based on FY 2019 data). We have estimated that approximately 1,069,789 admissions would be eligible for inclusion for the FY 2023 program year (based on currently available data, which ranged from July 1, 2020 through June 30, 2021), representing a volume decrease of approximately 32 percent. Based on this lower number of eligible SNF admissions, we have estimated that only 75.2 percent of SNFs would be eligible to be scored on the SNFRM for FY 2021, compared with 82.4 percent that were eligible to be scored for FY 2019. Given the significant decrease in SNF admissions during FY 2021, we are concerned that using FY 2021 data to calculate SNFRM rates for the FY 2023 program year would have significant negative impacts on the measure's reliability. Our contractor's analysis using FY 2019 data showed that such changes may lead to a 15 percent decrease in the measure reliability, assessed by the intra-class correlation coefficient (ICC).

We also remain concerned that the pandemic's disparate effects on different regions of the country throughout the PHE have presented challenges to our assessments of performance on the SNFRM. According to CDC data,[149] for example, new COVID–19 cases at the beginning of FY 2021 (October 1, 2020) were highest in Texas (3,534 cases), California (3,062 cases), and Wisconsin (3,000 cases). By April 1, 2021, however, new cases were highest in Michigan (6,669 cases), Florida (6,377 cases), and New Jersey (5,606 cases). This variation in COVID–19 case rates throughout the PHE has also been demonstrated in several studies. For example, studies have found widespread geographic variation in county-level COVID–19 cases across the U.S.[150] [151] [152] Specifically, one study found that, across US census regions, counties in the Midwest had the greatest cumulative rate of COVID–19 cases.[153] Another study found that U.S. counties with more immigrant residents, as well as more Central American or Black residents, have more COVID–19 cases.[154] These geographic variations in COVID–19 case rates are often linked to a wide range of county-level characteristics, including sociodemographic and health-related factors.[155] In addition, these studies have found evidence of temporal variation in county-level COVID–19 cases. For example, one study found that while many county-level factors show persistent effects on COVID–19 severity over time, some factors have varying effects on COVID–19 severity over time.[156] The significant variation in COVID–19 case rates across the U.S. can affect the validity of performance data. Therefore, we do not believe it would be fair or equitable to assess SNFs' performance on the measure using FY

States. *PloS one, 16*(9), e0256835. *https://pubmed.ncbi.nlm.nih.gov/34469474/.*

[149] ''United States COVID–19 Cases and Deaths by State,'' Centers for Disease Control. Retrieved from *https://data.cdc.gov/Case-Surveillance/United-States-COVID-19-Cases-and-Deaths-by-State-o/9mfq-cb36/data* on March 22, 2022.

[150] Desmet, K., & Wacziarg, R. (2022). JUE Insight: Understanding spatial variation in COVID–19 across the United States. *Journal of Urban Economics, 127,* 103332. *https://doi.org/10.1016/j.jue.2021.103332.*

[151] Messner, W., & Payson, SE (2020). Variation in COVID–19 outbreaks at the US State and county levels. *Public Health, 187,* 15–18. *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7396895/pdf/main.pdf.*

[152] Khan, S.S., Krefman, A.E., McCabe, M.E., Petito, L.C., Yang, X., Kershaw, K.N., Pool, L.R., & Allen, N.B. (2022). Association between county-level risk groups and COVID–19 outcomes in the United States: a socioecological study. *BMC Public Health, 22,* 81. *https://doi.org/10.1186/s12889-021-12469-y.*

[153] Khan, S.S., Krefman, A.E., McCabe, M.E., Petito, L.C., Yang, X., Kershaw, K.N., Pool, L.R., & Allen, N.B. (2022). Association between county-level risk groups and COVID–19 outcomes in the United States: A socioecological study. *BMC Public Health, 22,* 81. *https://doi.org/10.1186/s12889-021-12469-y.*

[154] Strully, K., Yang, T–C., & Lui, H. (2021). Regional variation in COVID–19 disparities: connections with immigrant and Latinx communities in U.S. counties. *Annals of Epidemiology, 53,* 56–62. *https://doi.org/10.1016/j.annepidem.2020.08.016.*

[155] CDC COVID–19 Response Team. (2020). Geographic Differences in COVID–19 Cases, Deaths, and Incidence—United States, February 12–April 7, 2020. *MMWR Morbidity and Mortality Weekly Report, 69*(15), 465–471. *http://dx.doi.org/10.15585/mmwr.mm6915e4.*

[156] Desmet, K., & Wacziarg, R. (2022). JUE Insight: Understanding spatial variation in COVID–19 across the United States. *Journal of Urban Economics, 127,* 103332. *https://doi.org/10.1016/j.jue.2021.103332.*

2021 data, which has been affected by these variations in COVID–19 case rates.

Increases in the number of COVID–19 cases are typically followed by an increase in the number of COVID–19 related hospitalizations, especially among the unvaccinated. Although COVID–19 vaccines began to come available in December of 2020, it was only readily available in early summer 2021 resulting in less than half of eligible Americans being fully vaccinated by the beginning of the fourth quarter of FY 2021. In addition, the vaccination rates were not evenly distributed across the country. Regions with significantly lower vaccination rates experienced higher hospitalization and ICU rates making them more prone to capacity challenges. Hospital capacity challenges have the potential to influence decisions that impact their downstream post-acute partners. As a result, for the first three quarters of FY 2021 performance year, low vaccinated regions' SNFs could have faced care coordination challenges with their partnering hospitals that regions with high vaccination rates did not experience. The continuation of the pandemic into 2021 did not necessarily impact all measures in the post-acute space, but measures related to hospital care may be impacted because of how closely the surge in COVID–19 cases was related to the surge in COVID–19 related hospital cases. Unlike other value-based purchasing programs that have multiple measures, the SNF VBP Program's single-measure requirement, currently the SNFRM, means that suppression of the measure will directly impact the payment adjustment.

The combination of fewer admissions to SNFs, regional differences in the prevalence of COVID–19 throughout the PHE and changes in hospitalization patterns in FY 2021 has impacted our ability to use the SNFRM to calculate payments for the FY 2023 program year.

Based on the significant and continued decrease in the number of patients admitted to SNFs, which likely reflects shifts in utilization patterns due to the risk of spreading COVID–19 in SNFs, we are proposing to suppress the SNFRM for the FY 2023 SNF VBP program year under Measure Suppression Factor (4): Significant national shortages or rapid or unprecedented changes in: Healthcare personnel, and Patient case volumes or facility-level case mix.

As with the suppression policy that we adopted for the FY 2022 SNF VBP Program, under this proposal for the FY 2023 SNF VBP Program we would use the previously finalized performance period (FY 2021) and baseline period (FY 2019) to calculate each SNF's RSRR for the SNFRM. Then, we would suppress the use of SNF readmission measure data for purposes of scoring and payment adjustments. We would assign all participating SNFs a performance score of zero in the FY 2023 SNF VBP Program Year. This assignment would result in all participating SNFs receiving an identical performance score, as well as an identical incentive payment multiplier.

Under this proposed policy, we would reduce each participating SNF's adjusted Federal per diem rate for FY 2023 by 2 percentage points and award each participating SNF 60 percent of that 2 percent withhold, resulting in a 1.2 percent payback for the FY 2023 SNF VBP Program Year. We believe this continued application of the 2 percent withhold is required under section 1888(h)(5)(C)(ii)(III) of the Act and that a payback percentage that is spread evenly across all participating SNFs is the most equitable way to reduce the impact of the withhold in light of our proposal to award a performance score of zero to all SNFs.

However, as discussed more fully in section VII.E.3.a. of this proposed rule, beginning with the FY 2023 program year, we are proposing to remove the low-volume adjustment policy from the SNF VBP Program and instead, implement case and measure minimums that SNFs must meet in order to be eligible to participate in the SNF VBP for a program year.

Under this proposal, SNFs that do not report a minimum of 25 eligible stays for the SNFRM for the FY 2023 program year would not be included in the SNF VBP for that program year. As a result, the payback percentage for FY 2023 would remain at 60.00 percent.

For the FY 2023 program year, we are also proposing to provide quarterly confidential feedback reports to SNFs and to publicly report the SNFRM rates for the FY 2023 SNF VBP Program Year. However, we would make clear in the public presentation of those data that the measure has been suppressed for purposes of scoring and payment adjustments because of the effects of the PHE for COVID–19 on the data used to calculate the measure. The public presentation would be limited to SNFs that reported the minimum number of eligible stays. Finally, we are proposing to codify these proposals for the FY 2023 SNF VBP in our regulation text at § 413.338(i).

We continue to be concerned about effects of the COVID–19 PHE, but are encouraged by the rollout of COVID–19 vaccinations and treatment for those diagnosed with COVID–19 and believe that SNFs are better prepared to adapt to this virus. Our measure suppression policy focuses on a short-term, equitable approach during this unprecedented PHE, and it was not intended for indefinite application. Additionally, we want to emphasize the importance of value-based care and incentivizing quality care tied to payment. The SNF VBP Program is an example of our effort to link payments to healthcare quality in the SNF setting. We understand that the COVID–19 PHE is ongoing and unpredictable in nature; however, we believe that 2022 presents a more promising outlook in the fight against COVID–19. Over the course of the pandemic, providers have gained experience managing the disease, surges of COVID–19 infection, and supply chain fluctuations.[157] While COVID–19 cases among nursing home staff reached a recent peak in January of 2022, those case counts dropped significantly by the week ending February 6, 2022, to 22,206.[158] COVID–19 vaccinations and boosters have also been taken up by a significant majority of nursing home residents, and according to CDC, by February 6, 2022, more than 68 percent of completely vaccinated nursing home residents had received boosters.[159] Finally, the Biden-Harris Administration has mobilized efforts to distribute home test kits,[160] N–95 masks,[161] and increase COVID–19 testing in schools.[162] In light of this

[157] McKinsey and Company. (2021). How COVID–19 is Reshaping Supply Chains. Available at *https://www.mckinsey.com/business-functions/operations/our-insights/how-covid-19-is-reshaping-supply-chains.*

[158] ''Nursing Home Covid-19 Data Dashboard.'' Centers for Disease Control, retrieved from *https://www.cdc.gov/nhsn/covid19/ltc-report-overview.html* on February 14, 2022.

[159] ''Nursing Home Covid-19 Data Dashboard.'' Centers for Disease Control, retrieved from *https://www.cdc.gov/nhsn/covid19/ltc-report-overview.html* on February 14, 2022.

[160] The White House. (2022). Fact Sheet: The Biden Administration to Begin Distributing At-Home, Rapid COVID-19 Tests to Americans for Free. Available at *https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/14/fact-sheet-the-biden-administration-to-begin-distributing-at-home-rapid-covid-19-tests-to-americans-for-free/.*

[161] Miller, Z. 2021. *The Washington Post.* Biden to give away 400 million N95 masks starting next week. Available at *https://www.washingtonpost.com/politics/biden-to-give-away-400-million-n95-masks-starting-next-week/2022/01/19/5095c050-7915-11ec-9dce-7313579de434_story.html.*

[162] The White House. (2022). FACT SHEET: Biden-Harris Administration Increases COVID-19 Testing in Schools to Keep Students Safe and Schools Open. Available at *https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/12/fact-sheet-biden-harris-administration-increases-covid-19-testing-in-schools-to-keep-students-safe-and-schools-open/.*

more promising outlook, we intend to resume the use of the SNFRM for scoring and payment adjustment purposes beginning with the FY 2024 program year. That is, for FY 2024, for each SNF, we would calculate measure scores in the SNF VBP Program. We would then calculate a SNF performance score for each SNF and convert the SNF performance scores to value-based incentive payments.

We invite public comment on this proposal to suppress the SNFRM for the FY 2023 program year and to codify our scoring and payment proposals for FY 2023 in our regulation text.

2. Technical Updates to the SNFRM to Risk Adjust for COVID–19 Patients Beginning With the FY 2023 Program Year

The emergence of the COVID–19 PHE, along with the high prevalence of COVID–19 in patients admitted to SNFs, has prompted us to examine whether we should develop an adjustment to the SNFRM that would properly account for COVID–19 patients. As detailed in this section, we considered four options that such an adjustment could take. After careful examination of each of the four options, we are updating the technical specifications of the SNFRM such that COVID–19 patients (diagnosed at any time within 12 months prior to or during the prior proximal hospitalization [PPH]) will remain in the measure's cohort, but we will add a variable to the risk adjustment model that accounts for the clinical differences in outcomes for these patients. We believe this change is technical in nature and does not substantively change the SNFRM.

In order to determine whether and how to update the SNFRM, we first sought to understand the frequency of COVID–19 diagnoses in patients admitted to a SNF between July 1, 2020 and June 30, 2021. Of the 1,069,789 SNF stays included in the year of data, 134,674 (13 percent) had a primary or secondary diagnosis of COVID–19. Of those patients with COVID–19, 108,859 (81 percent) had a primary or secondary COVID–19 diagnosis during the PPH and 25,815 (19 percent) had a COVID–19 diagnosis in their history only (within 12 months of the SNF admission).

We then compared clinical and demographic characteristics between patients with and without COVID–19 between July 1, 2020, and June 30, 2021. When compared to the 30-day readmission rate for patients without COVID–19 (20.2 percent), the observed 30-day readmission rate was noticeably higher for patients with COVID–19 during the PPH (23.4 percent) and patients with a history of COVID–19 (26.9 percent). Both groups also experienced higher 30-day mortality rates compared to patients without COVID–19 (14.9 percent versus 8.8 percent and 10.7 percent versus 8.8 percent, respectively). Admissions for patients with COVID–19 during the PPH or a history of COVID–19 were also much more likely to be for patients who were dual-eligible (40.3 percent versus 28.9 percent and 45.2 percent versus 28.9 percent, respectively) and for patients who were non-white (21.1 percent vs. 15.2 percent and 24.4 percent versus 15.2 percent, respectively).

Next, we compared readmission odds ratios for patients with COVID–19 during the PPH and for patients with a history of COVID–19. Patients with COVID–19 during the PPH had significantly higher odds of readmission (1.18), while patients with a history of COVID–19 but no COVID–19 during the PPH had significantly lower odds of readmission (0.84), after adjusting for all other variables in the SNFRM risk-adjustment model.

Although patients with only a history of COVID–19 had higher observed readmission rates than patients with COVID–19 during the PPH (26.9 percent versus 23.4 percent), they experienced lower readmission odds ratios (0.84 versus 1.18). This is because patients with a history of COVID–19 during the 12 months prior to the SNF admission are generally much sicker and have a substantially higher number of average comorbidities (15) compared to patients with COVID–19 during the PPH (10). We expect unadjusted readmission rates for patients with a history of COVID–19 to be higher because they are suffering from many more comorbidities, making it more likely they will be readmitted to the hospital. After adjusting for all their other comorbidities, we concluded that COVID–19 is not a significant reason for why they return to the hospital. Instead, their other comorbidities are a more significant cause of their readmission; that is, patients with a history of COVID–19 but no COVID–19 during the PPH have lower odds of being readmitted to a hospital once they've been admitted to the SNF. However, we believed it was important to keep the history of COVID–19 variable in the model for two reasons: (1) To address any potential concerns with the face validity of the measure if it did not adjust for history of COVID–19; and (2) to account for long COVID and other possible long-term effects of the virus. On the other hand, patients with a COVID–19 diagnosis during the PPH remain at higher odds of readmission even after accounting for their other comorbidities. Even when all other comorbidities are taken into account in the current risk adjustment model, a COVID–19 diagnosis during the PPH still raises a patient's odds of being readmitted compared to patients who did not have any COVID–19 diagnosis during the PPH.

After having examined the prevalence of COVID–19 in SNF patients and the differences between patients with and without COVID–19, we then evaluated several options for how to account for COVID–19 in the measure. We evaluated four options.

- Under Option 1, we considered and tested whether to add a binary risk-adjustment variable for patients who had a primary or secondary diagnosis of COVID–19 during the PPH.
- Under Option 2, we considered and tested whether to add a binary risk-adjustment variable for patients who had a history of COVID–19 in the 12 months prior to the PPH.
- Under Option 3, we combined the first 2 options into a categorical risk-adjustment variable. The reference category is patients without a history of COVID–19 and no COVID–19 diagnosis during the PPH. The first comparison category is patients who had a history of COVID–19 in the 12 months prior to the PPH and no COVID–19 diagnosis during the PPH. The second comparison category is patients who had a primary or secondary diagnosis of COVID–19 during the PPH. If a patient had both a history of COVID–19 and a COVID–19 diagnosis during the PPH, they would be included in the second comparison category.
- Under Option 4, we considered and tested removing patients with a COVID–19 diagnosis during the PPH from the measure cohort.

We compared how well the model predicted whether patients were readmitted or not (model fit and performance) for these four options to a reference period (FY 2019) that predated COVID–19. Ideally, whichever option we chose would perform as similarly as possible to the reference period, providing us with confidence that the emergence of COVID–19 has not caused the model to perform worse.

The percentage of SNFs that would receive a measure score (75 percent), measure reliability (0.45), and C-statistic (0.66) was identical for the first 3 risk-adjustment options. The percentage of SNFs with a measure score, measure reliability score, and C-statistic values was 71 percent, 0.41, and 0.67 for Option 4 (excluding COVID–19 patients), respectively. The percentage

of SNFs with a measure score was lower for the first 3 options than the baseline period (75 percent versus 82 percent), but the measure reliability was nearly identical (0.45 versus 0.46), as was the C-statistic (0.66 versus 0.68).

We also considered removing readmissions from the outcome for patients with a primary or secondary diagnosis of COVID–19 during the readmission hospital stay, but decided it would not be appropriate for this measure. Community spread of COVID–19 in SNFs is a possible marker of poor infection control and patients who are admitted to a SNF without any COVID–19 diagnoses but then potentially acquire COVID–19 in a SNF should not be excluded from the readmission outcome.

After careful examination, we are selecting Option 3 and modifying the SNFRM beginning with the FY 2023 SNF VBP program year by adding a risk-adjustment variable for both COVID–19 during the PPH and patients with a history of COVID–19. This option both maintains the integrity of the model (as demonstrated by nearly identical measure reliability and C-statistic values) and allows the measure to appropriately adjust for SNF patients with COVID–19. We believe this approach will continue to maintain the validity and reliability of the SNFRM. This approach will retain COVID–19 patients in the measure cohort and prevent a further decrease in the sample size, which would harm the measure's reliability.

As discussed further in section VII.B.2.c. of this proposed rule, though we believe risk-adjusting the SNFRM for COVID–19 is an important step in maintaining the validity and reliability of the SNFRM, this risk-adjustment alone is not sufficient for ensuring a reliable SNF performance score in light of the overall decrease in SNF admissions in FY 2021. That is, the risk-adjustment is designed to maintain the scientific reliability of the measure, but it does not mitigate the effects of the PHE on patient case volumes and the resulting impact on the validity of the SNFRM.

3. Quality Measure Proposals for the SNF VBP Expansion Beginning With the FY 2026 Program Year

a. Background

Section 1888(h)(2)(A)(ii) of the Act (as amended by section 111(a)(2)(C) of the Consolidated Appropriations Act, 2021 (Pub. L. 116–120)) allows the Secretary to add up to nine new measures to the SNF VBP Program with respect to payments for services furnished on or after October 1, 2023. These measures may include measures of functional status, patient safety, care coordination, or patient experience. Section 1888(h)(2)(A)(ii) of the Act also requires that the Secretary consider and apply, as appropriate, quality measures specified under section 1899B(c)(1) of the Act.

Currently, the SNF VBP Program includes only a single quality measure, the SNFRM, which we intend to transition to the SNFPPR as soon as practicable. Both the SNFRM and the SNFPPR assess the rate of hospital readmissions. In considering which measures might be appropriate to add to the SNF VBP Program, we requested public comment on potential future measures to include in the expanded SNF VBP Program in the FY 2022 SNF PPS proposed rule (86 FR 20009 through 20011). We refer readers to summaries of stakeholder input in the FY 2022 SNF PPS final rule (86 FR 42507 through 42511). We considered this input as we developed our quality measure proposals for this proposed rule.

Based on the input we received, and for reasons discussed in sections VII.B.3.b. and VII.B.3.c. of this proposed rule, we are proposing to adopt two new quality measures for the SNF VBP Program beginning with the FY 2026 program year: (1) Skilled Nursing Facility (SNF) Healthcare Associated Infections (HAI) Requiring Hospitalization (SNF HAI) measure; and (2) Total Nursing Hours per Resident Day Staffing (Total Nurse Staffing) measure. We are also proposing to adopt an additional quality measure for the SNF VBP Program beginning with the FY 2027 program year: Discharge to Community (DTC)—Post-Acute Care (PAC) Measure for Skilled Nursing Facilities (NQF #3481), which we discuss in section VII.B.3.d. of this proposed rule.

We note that although none of these quality measures have been specified under section 1899B(c)(1) of the Act, we determined after consideration of those measures that none are appropriate for adoption into the SNF VBP Program until, at a minimum, we have had sufficient time to review their specifications and conduct further analyses to ensure that they are suited for meeting the objectives of the SNF VBP Program. We are currently reviewing measures of patient falls and functional status, which are both specified under section 1899B(c)(1) of the Act, to determine whether any of them would be appropriate for the SNF VBP Program. We also believe it is important to cover the full range of SNF services in the SNF VBP Program, which includes measure topics beyond those specified under section 1899B(c)(1) of the Act. Since we have determined that the measures specified under section 1899B(c)(1) of the Act are not yet appropriate for the SNF VBP Program, we are proposing to begin the Program expansion with measures that address other important indicators of SNF care quality, including measures that align with the topics listed under section 1888(h)(2)(A)(ii) of the Act and align with HHS priorities.

The proposed SNF HAI measure is a patient safety measure, and the proposed DTC PAC SNF measure is a care coordination measure. With regard to the proposed Total Nurse Staffing measure, many studies have found that the level of nurse staffing is associated with patient safety,[163] patient functional status,[164] [165] and patient experience.[166] [167] Nursing home staffing, including SNF staffing, is also a high priority for the Department of Health and Human Services (HHS) and the Biden-Harris Administration because of its central role in the quality of care for Medicare beneficiaries.[168]

We believe that adopting these measures to begin affecting SNF payments in the FY 2026 program year would provide SNFs with sufficient time to prepare and become familiar with the quality measures, as well as with the numerous other programmatic changes that would take effect in the FY 2023 program year, if our proposals in this proposed rule are finalized.

As we discuss in section VII.H.1 of this proposed rule, we are also considering and requesting public comment on additional quality measures for potential adoption in the SNF VBP through future rulemaking.

[163] Horn SD, Buerhaus P, Bergstrom N, et al. RN staffing time and outcomes of long-stay nursing home residents: Pressure ulcers and other adverse outcomes are less likely as RNs spend more time on direct patient care. Am J Nurs 2005 6:50–53. *https://pubmed.ncbi.nlm.nih.gov/16264305/.*

[164] Centers for Medicare and Medicaid Services. 2001 Report to Congress: Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Phase II. Baltimore, MD: Centers for Medicare and Medicaid Services. *http://phinational.org/wp-content/uploads/legacy/clearinghouse/PhaseIIVolumeIofIII.pdf.*

[165] Bostick JE, Rantz MJ, Flesner MK, Riggs CJ. Systematic review of studies of staffing and quality in nursing homes. J Am Med Dir Assoc. 2006;7:366–376. *https://pubmed.ncbi.nlm.nih.gov/16843237/.*

[166] *https://www.wolterskluwer.com/en/expert-insights/study-patient-satisfaction-grows-with-nurse-staffing.*

[167] *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8522577/.*

[168] *https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/.*

We propose to update our regulations at § 413.338(d)(5) to note that, for a given fiscal year, CMS will specify the measures for the SNF VBP Program.

b. Proposal To Adopt the Skilled Nursing Facility Healthcare-Associated Infections (HAI) Requiring Hospitalization Measure Beginning With the FY 2026 SNF VBP Program Year

As part of the SNF VBP Program expansion authorized under the CAA, we are proposing to adopt the SNF HAI measure for the FY 2026 SNF VBP Program and subsequent years. The SNF HAI measure is an outcome measure that estimates the risk-standardized rate of HAIs that are acquired during SNF care and result in hospitalization using 1 year of Medicare fee-for-service (FFS) claims data. The proposed SNF HAI measure assesses SNF performance on infection prevention and management, which would align the Program with the Patient Safety domain of CMS's Meaningful Measures 2.0 Framework. In addition, the SNF HAI measure is currently part of the SNF Quality Reporting Program (QRP) measure set. For more information on this measure in the SNF QRP, please visit *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/skilled-nursing-facility-quality-reporting-program/snf-quality-reporting-program-measures-and-technical-information.* We also refer readers to the SNF HAI Measure Technical Report for the measure specifications, which we are proposing to adopt as the SNF HAI measure specifications for the SNF VBP Program.

(1) Background

Healthcare-associated infections (HAIs) are defined as infections acquired while receiving care at a health care facility that were not present or incubating at the time of admission.[169] HAIs are a particular concern in the SNF setting, and thus, monitoring the occurrence of HAIs among SNF residents can provide valuable information about a SNF's quality of care. A 2014 report from the Office of the Inspector General (OIG) estimated that one in four adverse events among SNF residents is due to HAIs, and approximately half of all HAIs are potentially preventable.[170] In addition, analyses from FY 2019 found a wide variation in facility-level HAI rates among SNF providers with 25 or more stays, which indicates a performance gap. Specifically, among the 14,102 SNFs included in the sample, the FY 2019 facility-level, risk-adjusted rate of SNF HAIs requiring hospitalization ranged from 2.36 percent to 17.62 percent.[171]

While HAIs are not considered ''never events,'' or serious adverse errors in the provision of health care services that should never occur, most are preventable.[172] HAIs are most often the result of poor processes and structures of care. Specifically, evidence suggests that inadequate patient management following a medical intervention, such as surgery or device implantation, and poor adherence to infection control protocols and antibiotic stewardship guidelines contribute to the occurrence of HAIs.[173 174 175] In addition, several provider characteristics relate to the occurrence of HAIs, including staffing levels (for example, low staff-to-resident ratios), facility structure characteristics (for example, high occupancy rates), and adoption, or lack thereof, of infection surveillance and prevention policies.[176 177 178 179 180 181]

Inadequate prevention and treatment of HAIs is likely to result in poor health care outcomes for SNF residents, as well as wasteful resource use. Specifically, studies find that HAIs are associated with longer lengths of stay, use of higher-intensity care (for example, critical care services and hospital readmissions), increased mortality, and higher health care costs.[182 183 184 185] Addressing HAIs in SNFs is particularly important as several factors place SNF residents at increased risk for infections, including increased age, cognitive and functional decline, use of indwelling devices, frequent care transitions, and close contact with other residents and healthcare workers.[186 187] Further, infection prevention and control

[169] World Health Organization. (2010). The burden of health care-associated infections worldwide. Retrieved from *https://www.who.int/news-room/feature-stories/detail/the-burden-of-health-care-associated-infection-worldwide.*

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[171] *https://www.cms.gov/files/document/snf-hai-technical-report.pdf.*

[172] CMS. (2006). Eliminating Serious Preventable, and Costly Medical Errors—Never Events. Retrieved from *https://www.cms.gov/newsroom/fact-sheets/eliminating-serious-preventable-and-costly-medical-errors-never-events.*

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[174] Cooper, D., McFarland, M., Petrilli, F., & Shells, C. (2019). Reducing Inappropriate Antibiotics for Urinary Tract Infections in LongTerm Care: A Replication Stud-y. *Journal of Nursing Care Quality,* 34(1), 1621. *https://doi.org/10.1097/NCQ.0000000000000343.*

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[178] Dick, A.W., Bell, J.M., Stone, N.D., Chastain, A.M., Sorbero, M., & Stone, P.W. (2019). Nursing home adoption of the National Healthcare Safety Network Long-term Care Facility Component. *American Journal of Infection Control,* 47(1), 59–64. *http://dx.doi.org/10.1016/j.ajic.2018.06.018.*

[179] Cooper, D., McFarland, M., Petrilli, F., & Shells, C. (2019). Reducing inappropriate antibiotics for urinary tract infections in long-term care: A replication study. *Journal of Nursing Care Quality,* 34(1), 16–21. *http://dx.doi.org/10.1097/NCQ.0000000000000343.*

[180] Gucwa, A.L., Dolar, V., Ye, C., & Epstein, S. (2016). Correlations between quality ratings of skilled nursing facilities and multidrug-resistant urinary tract infections. *American Journal of Infection Control,* 44(11), 1256–1260. *http://dx.doi.org/10.1016/j.ajic.2016.03.015.*

[181] Travers, J.L., Stone, P.W., Bjarnadottir, R.I., Pogorzelska-Maziarz, M., Castle, N.G., & Herzig, C.T. (2016). Factors associated with resident influenza vaccination in a national sample of nursing homes. *American Journal of Infection Control,* 44(9), 1055–1057. *http://dx.doi.org/10.1016/j.ajic.2016.01.019.*

[182] CMS. (2006). Eliminating Serious Preventable, and Costly Medical Errors—Never Events. Retrieved from *https://www.cms.gov/newsroom/fact-sheets/eliminating-serious-preventable-and-costly-medical-errors-never-events.*

[183] Centers for Disease Control and Prevention (2009). The Direct Medical Costs of Healthcare Associated Infections in U.S. Hospitals and the Benefits of Prevention. Retrieved from *https://www.cdc.gov/hai/pdfs/hai/scott_costpaper.pdf.*

[184] Ouslander, J.G., Diaz, S., Hain, D., & Tappen, R. (2011). Frequency and diagnoses associated with 7- and 30-day readmission of skilled nursing facility patients to a nonteaching community hospital. *Journal of the American Medical Directors Association,* 12(3), 195–203. *http://dx.doi.org/10.1016/j.jamda.2010.02.015.*

[185] Zimlichman, E., Henderson, D., Tamir, O., Franz, C., Song, P., Yamin, C.K., Keohane, C., Denham, C.R., & Bates, D.W. (2013). Health Care-Associated Infections: A Meta-analysis of Costs and Financial Impact on the US Health Care System. *JAMA Internal Medicine,* 173(22), 2039–2046. *https://doi.org/10.1001/jamainternmed.2013.9763.*

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[187] U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion. (2013). Chapter 8: Long-Term Care Facilities (p. 194–239) in National Action Plan to Prevent Health Care-Associated Infections: Road Map to Elimination. Retrieved from *https://health.gov/sites/default/files/2019-09/hai-action-plan-ltcf.pdf.*

deficiencies are consistently among the most frequently cited deficiencies in surveys conducted to assess SNF compliance with Federal quality standards.[188] Infection prevention and control deficiencies can include practices directly related to the occurrence and risks of HAIs, such as inconsistent use of hand hygiene practices or improper use of protective equipment or procedures during an infectious disease outbreak, which further underscores the importance of efforts to improve practices to reduce the prevalence of HAIs.

Given the effects of HAIs, preventing and reducing their occurrence in SNFs is critical to delivering safe and high-quality care. We believe the proposed SNF HAI measure aligns with this goal by monitoring the occurrence of HAIs and assessing SNFs on their performance on infection prevention and control efforts. In doing so, we believe the proposed measure would promote patient safety and increase the transparency of care quality in the SNF setting, which would align the SNF VBP Program with the Patient Safety domain of CMS's Meaningful Measures 2.0 Framework. Prevention and reduction of HAIs has also been a priority at Federal, State, and local levels. For example, the HHS Office of Disease Prevention and Health Promotion has created a National Action Plan to Prevent HAIs, with specific attention to HAIs in long-term care facilities. We refer readers to additional information on the National Action Plan available at *https://www.hhs.gov/oidp/topics/healthcareassociatedinfections/haiactionplan/index.html.*

Evidence suggests there are several interventions that SNFs may utilize to effectively reduce HAI rates among their residents and thus, improve quality of care. These interventions include adoption of infection surveillance and prevention policies, safety procedures, antibiotic stewardship, and staff education and training programs.[189] [190] [191] [192] [193] [194] [195] In addition, infection prevention and control programs with core components in education, monitoring, and feedback have been found to be successful in reducing HAI rates.[196] The effectiveness of these interventions suggest improvement of HAI rates among SNF residents is possible through modification of provider-led processes and interventions, which supports the overall goal of the SNF VBP Program.

(2) Overview of Measure

The proposed SNF HAI measure, which was finalized for adoption in the SNF QRP in the FY 2022 SNF PPS final rule (86 FR 42473 through 42480), is an outcome measure that estimates the risk-standardized rate of HAIs that are acquired during SNF care and result in hospitalization using 1 year of Medicare FFS claims data. A HAI is defined, for the purposes of this measure, as an infection that is likely to be acquired during SNF care and severe enough to require hospitalization, or an infection related to invasive (not implanted) medical devices (for example, catheters, insulin pumps, and central lines). Several types of infections are excluded from the measure. We discuss those exclusions in detail in section VII.B.2.b.(5) of this proposed rule. In addition, all SNF stays with an admission date during the 1-year period are included in the measure cohort, except those meeting the exclusion criteria, which we also discuss in section VII.B.2.b.(5) of this proposed rule.

Unlike other HAI measures that target specific infections, this proposed measure targets all HAIs serious enough to require admission to an acute care hospital.

Validity and reliability testing has been conducted for this proposed measure. For example, split-half testing on the SNF HAI measure indicated moderate reliability. In addition, validity testing showed good model discrimination as the HAI model can accurately predict HAI cases while controlling for differences in resident case-mix. We refer readers to the SNF HAI Measure Technical Report for further details on the measure testing results available at *https://www.cms.gov/files/document/snf-hai-technical-report.pdf.*

(a) Measure Applications Partnership (MAP) Review

The SNF HAI measure was included as a SNF VBP measure under consideration in the publicly available ''List of Measures Under Consideration for December 1, 2021.'' [197]

The MAP offered conditional support of the SNF HAI measure for rulemaking, contingent upon NQF endorsement, noting that the measure would add value to the Program due to the addition of an overall measurement of all HAIs acquired within SNFs requiring hospitalization. We refer readers to the final 2021–2022 MAP report available at *https://www.qualityforum.org/Publications/2022/03/MAP_2021-2022_Considerations_for_Implementing_Measures_Final_Report_-_Clinicians,_Hospitals,_and_PAC-LTC.aspx.* We intend to submit the SNF HAI measure for NQF endorsement, consistent with the MAP recommendation.

(3) Data Sources

The proposed SNF HAI measure uses Medicare FFS claims data to estimate the risk-adjusted rate of HAIs that are acquired during SNF care and result in hospitalization. Specifically, this measure uses data from the Medicare Enrollment Database (EDB), as well as Medicare SNF and inpatient hospital claims from the CMS Common Working File (CWF). HAIs are identified using the principal diagnosis code and the Present on Admission (POA) indicators on the Medicare inpatient rehospitalization claim within a specified incubation window. We refer readers to the SNF HAI Measure Technical Report for further details on how these data components are utilized in calculating the SNF HAI measure

[188] Infection Control Deficiencies Were Widespread and Persistent in Nursing Homes Prior to COVID–19 Pandemic (GAO–20–576R), May, 2020. *https://www.gao.gov/products/gao-20–576r.*

[189] Office of Inspector General. (2014). Adverse events in skilled nursing facilities: National incidence among Medicare beneficiaries. Retrieved from *https://oig.hhs.gov/oei/reports/oei-06-11-00370.pdf.*

[190] Beganovic, M. and Laplante, K. (2018). Communicating with Facility Leadership; Metrics for Successful Antimicrobial Stewardship Programs (ASP) in Acute Care and Long-Term Care Facilities. *Rhode Island Medical Journal,* 101(5), 45–49. *http://www.rimed.org/rimedicaljournal/2018/06/2018-06-45-antimicrobial-beganovic.pdf.*

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[192] Freeman-Jobson, J.H., Rogers, J.L., & Ward-Smith, P. (2016). Effect of an Education Presentation On the Knowledge and Awareness of Urinary Tract Infection among Non-Licensed and Licensed Health Care Workers in Long-Term Care Facilities. Urologic Nursing, 36(2), 67–71. Retrieved from *https://pubmed.ncbi.nlm.nih.gov/27281862/.*

[193] Hutton, D.W., Krein, S.L., Saint, S., Graves, N., Kolli, A., Lynem, R., & Mody, L. (2018). Economic Evaluation of a Catheter-Associated Urinary Tract Infection Prevention Program in Nursing Homes. Journal of the American Geriatrics Society, 66(4), 742–747. *http://dx.doi.org/10.1111/jgs.15316.*

[194] Nguyen, H.Q., Tunney, M.M., & Hughes, C.M. (2019). Interventions to Improve Antimicrobial Stewardship for Older People in Care Homes: A Systematic Review. *Drugs & aging,* 36(4), 355–369. *https://doi.org/10.1007/s40266-019-00637-0.*

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[196] Lee, M.H., Lee GA, Lee S.H., & Park Y.H. (2019). Effectiveness and core components of infection prevention and control programs in long-term care facilities: A systematic review. *https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2819%2930091-X.*

[197] *https://www.cms.gov/files/document/measures-under-consideration-list-2021-report.pdf.*

available at *https://www.cms.gov/files/document/snfhaitechnicalreport.pdf.* We note that the proposed SNF HAI measure is calculated entirely using administrative data and therefore, it would not impose any additional data collection or submission burden for SNF providers.

(4) Inclusion and Exclusion Criteria

The measure's cohort includes all Part A FFS Medicare SNF residents 18 years and older who have a SNF admission date during the 1-year measure period and who do not meet any of the exclusion criteria, which we describe next. Additionally, the hospital admission must occur during the time period which begins on day 4 after SNF admission and ends 3 days after SNF discharge. We note that residents who died during the SNF stay or during the post-discharge window (3 days after SNF discharge), and residents with a missing discharge date (or have ''active'' SNF stays) are included in the measure's cohort.

There are several scenarios in which a SNF stay is excluded from the measure cohort and thus, excluded from the measure denominator. Specifically, any SNF stay that meets one or more of the following criteria is excluded from the cohort and measure denominator:

- Resident is less than 18 years old at SNF admission.
- The SNF length of stay was shorter than 4 days.
- Residents who were not continuously enrolled in Part A FFS Medicare during the SNF stay, 12 months prior to the measure period, and 3 days after the end of the SNF stay.
- Residents who did not have a Part A short-term acute care hospital stay within 30 days prior to the SNF admission date. The short-term stay must have positive payment and positive length of stay.
- Residents who were transferred to a Federal hospital from a SNF as determined by the discharge status code on the SNF claim.
- Residents who received care from a provider located outside the U.S., Puerto Rico, or another U.S. territory as determined from the first two characters of the SNF CMS Certification Number.
- SNF stays in which data were missing on any variable used in the measure calculation or risk adjustment. This also included stays where Medicare did not pay for the stay, which is identified by non-positive payment on the SNF claim.

The measure numerator includes several HAI conditions. We refer readers to Appendix A of the SNF HAI Measure Technical Report, available at *https://www.cms.gov/files/document/snf-hai-technical-report.pdf,* for a complete list of the ICD–10 codes that correspond to the HAI conditions included in the measure numerator. There are also several types of HAIs that are excluded from the proposed measure numerator. For example, HAIs reported during emergency department visits and observations stays are excluded from the numerator. In addition, the HAI definition excludes infections that meet any of the following criteria:

- Chronic infections (for example, chronic viral hepatitis B).
- Infections that typically require a long period of time to present (for example, typhoid arthritis).
- Infections that are likely related to the prior hospital stay (for example, postprocedural retroperitoneal abscess).
- Sequela (a condition which is the consequence of a previous disease or injury) and subsequent encounter codes.
- Codes that include ''cause disease classified elsewhere.''
- Codes likely to represent secondary infection, where the primary infection would likely already be coded (for example, pericarditis, myocarditis, or cardiomyopathy).
- Infections likely to be community acquired.
- Infections common in other countries and/or acquired through animal contact.
- Preexisting infections that fall within the CDC's National Healthcare Safety Network (NHSN) Repeat Infection Timeframe (RIT) of 14 days. We refer readers to the SNF HAI Measure Technical Report for additional information on the repeat infection timeframe (RIT) and conditions that are considered preexisting (*https://www.cms.gov/files/document/snf-hai-technical-report.pdf*).

(5) Risk Adjustment

Risk adjustment is a statistical process used to account for risk factor differences across SNF residents. By controlling for these differences in resident case-mix, we can better isolate the proposed measure's outcome and its relationship to the quality of care delivered by SNFs. For the proposed SNF HAI measure, the measure's numerator and denominator are both risk-adjusted. Specifically, the denominator is risk-adjusted for resident characteristics excluding the SNF effect. The numerator is risk-adjusted for resident characteristics, as well as a statistical estimate of the SNF effect beyond resident case -mix. The SNF effect, or the provider-specific behaviors that influence a SNF's HAI rates, accounts for clustering of patients within the same SNF and captures variation in the measure outcome across SNFs, which helps isolate differences in measure performance. The risk adjustment model for this proposed measure includes the following resident characteristic variables:

- Age and sex category.
- Original reason for Medicare entitlement.
- Surgery or procedure category from the prior proximal inpatient (IP) stay.
- Dialysis treatment, but not end-stage renal disease (ESRD) on the prior proximal IP claim.
- Principal diagnosis on the prior proximal IP hospital claim.
- Hierarchical Condition Categories (HCC) comorbidities.
- Length of stay of the prior proximal IP stay.
- Prior intensive care or coronary care utilization during the prior proximal IP stay.
- The number of prior IP stays within a 1-year lookback period from SNF admission.

(6) Measure Calculation

(a) Numerator

The risk-adjusted numerator is the estimated number of SNF stays predicted to have a HAI that is acquired during SNF care and results in hospitalization. This estimate begins with the unadjusted, observed count of the measure outcome, or the raw number of stays with a HAI acquired during SNF care and resulting in hospitalization. The unadjusted, observed count of the measure outcome is then risk-adjusted for resident characteristics and a statistical estimate of the SNF effect beyond resident case -mix, which we discussed in section VII.B.3.b.(5) of this proposed rule.

(b) Denominator

The risk-adjusted denominator is the expected number of SNF stays with the measure outcome, which represents the predicted number of SNF stays with the measure outcome if the same SNF residents were treated at an ''average'' SNF. The calculation of the risk-adjusted denominator begins with the total eligible Medicare Part A FFS SNF stays during the measurement period and then applying risk adjustment for resident characteristics, excluding the SNF effect, as we discussed in section VII.B.3.b.(5) of this proposed rule.

The SNF HAI measure rate, which is reported at the facility-level, is the risk-standardized rate of HAIs that are acquired during SNF care and result in hospitalization. This risk-adjusted HAI rate is calculated by multiplying the

standardized risk ratio (SRR) for a given SNF by the national average observed rate of HAIs for all SNFs. The SRR is a ratio that measures excess HAIs and is the predicted number of HAIs (adjusted numerator) divided by the expected number of HAIs (adjusted denominator). A lower measure score for the SNF HAI measure indicates better performance in prevention and management of HAIs. For technical information on the proposed measure's calculation, we refer readers to the SNF HAI Measure Technical Report available at *https://www.cms.gov/files/document/snf-hai-technical-report.pdf.*

Because a ''lower is better'' rate could cause confusion among SNFs and the public, we propose to invert SNF HAI measure rates, similar to the approach used for the SNFRM, for scoring. Specifically, we propose to invert SNF HAI measure rates using the following calculation:

SNF HAI Inverted Rate = 1 − *Facility's SNF HAI rate.*

This calculation would invert SNFs' HAI measure rates such that higher SNF HAI measure rates would reflect better performance. We believe this inversion is important to incentivize improvement in a clear and understandable manner, so that ''higher is better'' for all measure rates included in the Program.

(7) Proposed Confidential Feedback Reports and Public Reporting

We refer readers to the FY 2017 SNF PPS final rule (81 FR 52006 through 52007) for discussion of our policy to provide quarterly confidential feedback reports to SNFs on their measure performance. We also refer readers to the FY 2022 SNF PPS final rule (86 FR 42516 through 42517) for a summary of our two-phase review and corrections policy for SNFs' quality measure data. Furthermore, we refer readers to the FY 2018 SNF PPS final rule (82 FR 36622 through 36623) and the FY 2021 SNF PPS final rule (85 FR 47626) where we finalized our policy to publicly report SNF measure performance information under the SNF VBP Program on the Provider Data Catalog website currently hosted by HHS and available at *https://data.cms.gov/provider-data/.* We are proposing to update and redesignate the confidential feedback report and public reporting policies, which are currently codified at § 413.338(e)(1) through (3), to § 413.338(f), to include the SNF HAI measure.

We invite public comment on our proposal to adopt the SNF HAI measure beginning with the FY 2026 SNF VBP program year.

c. Proposal To Adopt the Total Nursing Hours per Resident Day Staffing Measure Beginning With the FY 2026 SNF VBP Program Year

We are proposing to adopt the Total Nursing Hours per Resident Day Staffing (Total Nurse Staffing) measure for the FY 2026 program year and subsequent years. The Total Nurse Staffing measure is a structural measure that uses auditable electronic data reported to CMS's Payroll Based Journal (PBJ) system to calculate total nursing hours per resident day. Given the well-documented impact of nurse staffing on patient outcomes and quality of care, this proposed measure would align the Program with the Person-Centered Care domain of CMS's Meaningful Measures 2.0 Framework. In addition, the Total Nurse Staffing measure is currently included in the Five -Star Quality Rating System. For more information on the Five -Star Quality Rating System, see *https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandComplianc/FSQRS.*

(1) Background

Staffing is a crucial component of quality care for nursing home residents. Numerous studies have explored the relationship between nursing home staffing levels and quality of care. The findings and methods of these studies have varied, but most have found a strong, positive relationship between staffing and quality outcomes.[198] [199] [200] [201] [202] Specifically, studies have shown an association between nurse staffing levels and hospitalizations,[203] [204] pressure ulcers,[205] [206] [207] weight loss,[208] [209] functional status,[210] [211] and survey deficiencies,[212] [213] among other quality and clinical outcomes. The strongest relationships have been identified for registered nurse (RN) staffing; several studies have found that higher RN staffing is associated with better care quality.[214] [215] We recognize that the relationship between nurse staffing and quality of care is multi-faceted, with elements such as staff turnover playing a critical role.[216] We refer readers to additional discussion of staffing turnover in section VII.B.3. of this proposed rule.

The PHE due to COVID–19 has further underscored the critical importance of sufficient staffing to quality and clinical outcomes. Several recent studies have found that higher staffing is associated with lower COVID–19 incidence and fewer deaths.[217] [218] [219]

[198] Bostick JE, Rantz MJ, Flesner MK, Riggs CJ. Systematic review of studies of staffing and quality in nursing homes. J Am Med Dir Assoc. 2006;7:366–376. *https://pubmed.ncbi.nlm.nih.gov/16843237/.*

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[202] Spilsbury et al.

[203] Centers for Medicare and Medicaid Services. 2001 Report to Congress: Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Phase II. Baltimore, MD: Centers for Medicare and Medicaid Services. *http://phinational.org/wp-content/uploads/legacy/clearinghouse/PhaseIIVolumeIofIII.pdf.*

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[207] Bostick et al.

[208] Centers for Medicare and Medicaid Services. 2001 Report to Congress: Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Phase II. Baltimore, MD: Centers for Medicare and Medicaid Services. *http://phinational.org/wp-content/uploads/legacy/clearinghouse/PhaseIIVolumeIofIII.pdf.*

[209] Bostick et al.

[210] Centers for Medicare and Medicaid Services. 2001 Report to Congress: Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Phase II. Baltimore, MD: Centers for Medicare and Medicaid Services. *http://phinational.org/wp-content/uploads/legacy/clearinghouse/PhaseIIVolumeIofIII.pdf.*

[211] Bostick et al.

[212] Castle NG, Wagner LM, Ferguson-Rome JC, Men A, Handler SM. Nursing home deficiency citations for infection control. Am J Infect Control. 2011 May;39(4):263–9. doi: 10.1016/j.ajic.2010.12.010. PMID: 21531271.

[213] Castle N, Wagner L, Ferguson J, Handler S. Hand hygiene deficiency citations in nursing homes. J Appl Gerontol. 2014 Feb;33(1):24–50. doi: 10.1177/0733464812449903. Epub 2012 Aug 1. PMID: 24652942. *https://pubmed.ncbi.nlm.nih.gov/24652942/.*

[214] Backhaus R, Verbeek H, van Rossum E, Capezuti E, Hamer JPH. Nursing staffing impact on quality of care in nursing homes: A systemic review of longitudinal studies. J Am Med Dir Assoc. 2014;15(6):383–393. *https://pubmed.ncbi.nlm.nih.gov/24529872/.*

[215] Dellefield ME, Castle NG, McGilton KS, Spilsbury K. The relationship between registered nurses and nursing home quality: An integrative review (2008–2014). Nurs Econ. 2015;33(2):95–108, 116. *https://pubmed.ncbi.nlm.nih.gov/26281280/.*

[216] Bostick et al.

[217] R. Tamara Konetzka, Elizabeth M. White, Alexander Pralea, David C. Grabowski, Vincent

Continued

Multiple Institute of Medicine (IOM) reports have examined the complex array of factors that influence care quality in nursing homes, including staffing variables such as staffing levels and turnover.[220] [221] In the 2004 report, ''Keeping Patients Safe: Transforming the Work Environment of Nurses,'' the IOM's Committee on the Work Environment for Nurses and Patient Safety highlighted the positive relationships between higher nursing staffing levels, particularly RN levels, and better patient outcomes, and recognized the need for minimum staffing standards to support appropriate levels of nursing staff in nursing homes.[222]

Previously published Phase I and Phase II ''Reports to Congress on the Appropriateness of Minimum Staffing Ratios in Nursing Homes'' further studied the relationship between quality and nurse staffing levels and provided compelling evidence of the relationship between staffing ratios and quality of care.[223] [224] The Phase II report, completed in 2001, identified staffing thresholds that maximized quality outcomes, demonstrating a pattern of incremental benefits of increased nurse staffing until a threshold was reached. Specifically, the Phase II study used Medicaid Cost Report data from a representative sample of 10 states, including over 5,000 facilities, to identify staffing thresholds below which quality of care was compromised and above which there was no further benefit of additional staffing with respect to quality. The study found evidence of a relationship between higher staffing and better outcomes for total nurse staffing levels up to 4.08 hours per resident day and RN staffing levels up to 0.75 RN hours per resident day. In the 2001 study, minimum staffing levels at any level up to these thresholds were associated with incremental quality improvements, and no significant quality improvements were observed for staffing levels above these thresholds. The findings were also supported by case studies of individual facilities, units, and residents.

We have long identified staffing as one of the vital components of a nursing home's ability to provide quality care and used staffing data to gauge its impact on quality of care in nursing homes more accurately and effectively. In 2003, the National Quality Forum Nursing Home Steering Committee recommended that a nurse staffing quality measure be included in the set of nursing home quality measures that are publicly reported by CMS. The proposed Total Nurse Staffing measure is currently used in the Nursing Home Five-Star Quality Rating System, as one of two measures that comprise the staffing domain. For more information on the Five-Star Quality Rating System, we refer readers to *https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandComplianc/FSQRS.*

Current Federal requirements for nurse staffing are outlined in the long-term care facility requirements for participation (requirements).[225] The regulations at 42 CFR 483.35 specify, in part, that every facility must have sufficient nursing staff with the appropriate competencies and skill sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment required at § 483.70(e). We adopted this competency-based approach to sufficient staffing to ensure every nursing home provides the staffing levels needed to meet the specific needs of their resident population, including their person-centered care goals. We also note that current regulations require (unless these requirements are waived) facilities to have an RN onsite at least 8 consecutive hours a day, 7 days a week and around-the-clock services from licensed nursing staff under sections 1819(b)(4)(C) and 1919(b)(4)(C) of the Act, and § 483.35(a) and (b).

Section 1128I(g) of the Act requires facilities to electronically submit direct care staffing information (including agency and contract staff) based on payroll and other auditable data. In August 2015, we amended the requirements for long term care facilities at § 483.70(q) to require the electronic submission of payroll-based staffing data, which includes RNs, licensed practical nurses (LPNs) or vocational nurses, certified nursing assistants, and other types of medical personnel as specified by us, along with census data, data on agency and contract staff, and information on turnover, tenure and hours of care provided by each category of staff per resident day.[226] We developed the PBJ system to enable facilities to submit the required staffing information in a format that is auditable to ensure accuracy. Development of the PBJ system built on several earlier studies that included extensive testing of payroll-based staffing measures. The first mandatory PBJ reporting period began July 1, 2016.

We post staffing information publicly to help consumers understand staffing levels and how they differ across nursing homes. See sections 1819(i)(1)(A)(i) and 1919(i)(1)(A)(i) of the Act. However, there are currently no staffing measures in the SNF VBP Program.

Given the strong evidence regarding the relationship between sufficient staffing levels and improved care for patients, inclusion of this measure in the SNF VBP Program adds an important new dimension to provide a more comprehensive assessment of and accountability for the quality of care provided to residents and serves to drive improvements in staffing that are likely to translate into better resident care. PBJ data show that there is variability across SNFs in performance on the proposed measure, and that there is an opportunity and potential for many SNFs to improve their staffing levels. For Q4 CY 2020, average total

Mor, A systematic review of long-term care facility characteristics associated with COVID–19 outcomes, Journal of the American Geriatrics Society, 10.1111/jgs.17434, 69, 10, (2766–2777), (2021). *https://agsjournals.onlinelibrary.wiley.com/doi/10.1111/jgs.17434.*

[218] Williams, CS, Zheng Q, White A, Bengtsson A, Shulman ET, Herzer KR, Fleisher LA. The association of nursing home quality ratings and spread of COVID–19. Journal of the American Geriatrics Society, 10.1111/jgs. 17309, 69, 8, (2070–2078), 2021. *https://doi.org/10.1111/jgs.17309.*

[219] Gorges, RJ and Konetzka, RT. Staffing Levels and COVID–19 Cases and Outbreaks in U.S. Nursing Homes. Journal of the American Geriatrics Society, 10.1111/jgs. 16787, 68, 11, (2462–2466), 2020. *https://agsjournals.onlinelibrary.wiley.com/doi/full/10.1111/jgs.16787.*

[220] Institute of Medicine. 1996. *Nursing Staff in Hospitals and Nursing Homes: Is It Adequate?* Washington, DC: The National Academies Press. *https://doi.org/10.17226/5151.*

[221] Institute of Medicine 2004. Keeping Patients Safe: Transforming the Work Environment of Nurses. Washington, DC: The National Academies Press. *https://doi.org/10.17226/10851.*

[222] IOM, 2004.

[223] Centers for Medicare and Medicaid Services. Report to Congress: Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Phase I (2000). Baltimore, MD: Centers for Medicare and Medicaid Services. *https://phinational.org/wp-content/uploads/legacy/clearinghouse/Phase_I_VOL_I.pdf.*

[224] Centers for Medicare and Medicaid Services. 2001 Report to Congress: Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Phase II. Baltimore, MD: Centers for Medicare and Medicaid Services. *http://phinational.org/wp-content/uploads/legacy/clearinghouse/PhaseIIVolumeIofIII.pdf.*

[225] FY 2017 Consolidated Medicare and Medicaid Requirements for Participation for Long-Term Care Facilities Final Rule (81 FR 68688 through 68872). *https://www.govinfo.gov/content/pkg/FR-2016-10-04/pdf/2016-23503.pdf.*

[226] 80 FR 46390, Aug. 4, 2015 (*https://www.govinfo.gov/content/pkg/FR-2015-08-04/pdf/2015-18950.pdf*).

nurse staffing was 4.09 hours per resident day for the case-mix adjusted Total Nurse Staffing measure, with considerable variability across facilities ranging from 2.81 hours per resident day to 5.93 hours per resident day. Staffing levels increased after April 2018, when we first reported PBJ-based staffing measures on Nursing Home Compare and using them in the Five-Star Quality Rating System. Average nursing staffing hours per resident day increased from 3.85 in Q4 CY 2017 (publicly reported in April 2018) to 4.08 for Q4 CY 2020 (publicly reported in April 2021).

Inclusion of this measure in the SNF VBP Program also aligns with our current priorities and focus areas for the Program and optimizing the use of measures that SNFs are already reporting to CMS. Because the measure is currently used in the Nursing Home Five-Star Quality Rating System, inclusion of this measure in the Program does not add reporting or administrative burden to SNFs. Recognizing the importance of staffing to supporting and advancing person-centered care needs, this proposed measure would align the Program with the Person-Centered Care domain of CMS's Meaningful Measures 2.0 Framework.

(2) Overview of Measure

The proposed measure is a structural measure that uses auditable electronic data reported to CMS's PBJ system to calculate total nursing hours, which includes RNs, LPNs, and certified nurse aides (CNA), per resident day. The measure uses a count of daily resident census derived from Minimum Data Set (MDS) resident assessments and is case-mix adjusted based on the distribution of MDS resident assessments by Resource Utilization Groups, version IV (RUG–IV groups). The proposed measure was specified and originally tested at the facility level with SNFs as the care setting. The proposed measure is not currently NQF endorsed; however, we plan to submit it for endorsement in the next 1 to 2 years.

Data on the proposed measure have been publicly reported on the Provider Data Catalog website currently hosted by HHS, available at *https://data.cms.gov/provider-data/,* for many years and have been used in the Nursing Home Five Star Quality Rating System since its inception in 2008. The data source for the measure changed in 2018, when we started collecting payroll-based staffing data through the PBJ system. Since April 2018, we have been using PBJ and the MDS as the data sources for this measure for public reporting and for use in the Five-Star Quality Rating System. For more information, see the Proposed Specifications for the SNF VBP Program Total Nursing Hours per Resident Day Measure, at *https://www.cms.gov/medicare/providerenrollmentandcertification/certificationandcomplianc/downloads/usersguide.pdf.*

The CMS report ''Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Phase II,'' described earlier in this section, showed the relationship between quality and nurse staffing levels using several methods, establishing the face validity of the Total Nurse Staffing measure. The study included an analysis of data from 10 states including over 5,000 facilities and found evidence of a relationship between staffing ratios and the quality of nursing home care.

We note that payroll data are considered the gold standard for nurse staffing measures and a significant improvement over the manual data previously used, wherein staffing information was calculated based on a form (CMS–671) filled out manually by the facility.[227] In contrast, PBJ staffing data are electronically submitted and are auditable back to payroll and other verifiable sources. Analyses of PBJ-based staffing measures show a relationship between higher nurse staffing levels and higher ratings for other dimensions of quality such as health inspection survey results and quality measures.[228]

(a) Stakeholder and TEP Input

In considering whether the total nurse staffing measure would be appropriate for the SNF VBP program, we looked at the developmental history of the measure in which we employed a transparent process that provided stakeholders and national experts the opportunity to provide pre-rulemaking input. We convened stakeholder meetings and offered engagement opportunities at all phases of measure development, from 2004 through 2019. Stakeholder calls and meetings have included patient/consumer advocates and a wide range of facilities throughout the country including large and small, rural and urban, independently owned facilities and national chains. In addition to input obtained through stakeholder meetings, we solicited input through a dedicated email address (*NHStaffing@cms.hhs.gov*).

(b) MAP Review

The Total Nurse Staffing measure was included in the publicly available ''List of Measures Under Consideration for December 1, 2021.'' [229] The MAP conditionally supported the Total Nurse Staffing measure for rulemaking, pending NQF endorsement. We refer readers to the final 2021–2022 MAP report available at *https://www.qualityforum.org/Publications/2022/03/MAP_2021-2022_Considerations_for_Implementing_Measures_Final_Report_-_Clinicians,_Hospitals,_and_PAC-LTC.aspx.*

(3) Data Sources

The proposed measure is calculated using auditable, electronic staffing data submitted by each SNF for each quarter through the PBJ system, along with daily resident census information derived from Minimum Data Set, Version 3.0 (MDS 3.0) standardized patient assessments. We refer readers to the Proposed Specifications for the SNF VBP Program Total Nursing Hours per Resident Day Measure, at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/SNF-VBP/Measure.* We note that the proposed Total Nurse Staffing measure is already reported on the Provider Data Catalog website and used as part of the Five-Star Quality Rating System and thus, there would be no additional data collection or submission burdens for SNF providers.

(4) Inclusion and Exclusion Criteria

The target population for the measure is all SNFs to whom the SNF VBP applies and that are not excluded for the reasons listed below. A set of exclusion criteria are used to identify facilities with highly improbable staffing data and these facilities are excluded. The exclusion criteria are as follows:

- Total nurse staffing, aggregated over all days in the quarter that the facility reported both residents and staff is excessively low (<1.5 hours per resident day).
- Total nurse staffing, aggregated over all days in the quarter that the facility reported both residents and staff is excessively high (>12 hours per resident day).
- Nurse aide staffing, aggregated over all days in the quarter that the facility reported both residents and staff is excessively high (>5.25 hours per resident day).

[227] *https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO18-17-NH.pdf.*

[228] *https://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=96520.*

[229] *https://www.cms.gov/files/document/measures-under-consideration-list-2021-report.pdf.*

(5) Measure Calculation and Case-Mix Adjustment

We are proposing to calculate case-mix adjusted hours per resident day for each facility for each staff type using this formula:

$$\text{Hours}_{\text{Adjusted}} = (\text{Hours}_{\text{Reported}}/\text{Hours}_{\text{CaseMix}}) * \text{Hours}_{\text{National Average}}$$

The reported hours are those reported by the facility through PBJ. National average hours for a given staff type represent the national mean of case-mix hours across all facilities active on the last day of the quarter that submitted valid nurse staffing data for the quarter.

The measure is case-mix adjusted based on the distribution of MDS assessments by RUG–IV groups. The CMS Staff Time Resource Intensity Verification (STRIVE) Study measured the average number of RN, LPN, and NA minutes associated with each RUG–IV group (using the 66-group version of RUG–IV).[230] We refer to these as ''case-mix hours.'' The case-mix values for each facility are based on the daily distribution of residents by RUG–IV group in the quarter covered by the PBJ reported staffing and estimates of daily RN, LPN, and NA hours from the CMS STRIVE Study. This adjustment is based on the distribution of MDS assessments by RUG–IV groups to account for differences in acuity, functional status, and care needs of residents, and therefore is appropriate for the SNF VBP program. For more information, see the Proposed Specifications for the SNF VBP Program Total Nursing Hours per Resident Day Measure, at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/SNF-VBP/Measure.*

(a) Numerator

The proposed numerator for the measure is total nursing hours (RN + LPN + NA hours). RN hours include the RN director of nursing, RNs with administrative duties, and RNs. LPN hours include licensed practical and licensed vocational nurses with administrative duties and licensed practical and licensed vocational nurses. NA hours include certified nurse aides (CNAs), aides in training, and medication aides/technicians. We note that the proposed PBJ staffing data include both facility employees (full-time and part-time) and individuals under an organization (agency) contract or an individual contract. The proposed PBJ staffing data do not include ''private duty'' nursing staff reimbursed by a resident or his/her family. Also, hospice staff and feeding assistants are not included.

(b) Denominator

The proposed denominator for the measure is a count of daily resident census derived from MDS resident assessments. It is calculated by: (1) Identifying the reporting period (quarter) for which the census will be calculated; (2) extracting MDS assessment data for all residents of a facility beginning one year prior to the reporting period to identify all residents that may reside in the facility (*i.e.,* any resident with an MDS assessment); and (3) identifying discharged or deceased residents using specified criteria. For any date, residents whose assessments do not meet the criteria for being identified as discharged or deceased prior to that date are assumed to reside in the facility. The count of these residents is the census for that particular day. We refer readers to the Proposed Specifications for the SNF VBP Program Total Nursing Hours per Resident Day Measure for more information on the calculation of daily resident census used in the denominator of the reported nurse staffing ratios, at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/SNF-VBP/Measure.*

The currently publicly reported Total Nurse Staffing measure is reported on a quarterly basis. To align with other quality measures for the expanded SNF VBP Program, we are proposing to report the measure rate for the SNF VBP Program for each SNF as a simple average rate of total nurse staffing per resident day across available quarters in the 1-year performance period.

(6) Proposed Confidential Feedback Reports and Public Reporting

We refer readers to the FY 2017 SNF PPS final rule (81 FR 52006 through 52007) for discussion of our policy to provide quarterly confidential feedback reports to SNFs on their measure performance. We also refer readers to the FY 2022 SNF PPS final rule (86 FR 42516 through 42517) for a summary of our two-phase review and corrections policy for SNFs' quality measure data. Furthermore, we refer readers to the FY 2018 SNF PPS final rule (82 FR 36622 through 36623) and the FY 2021 SNF PPS final rule (85 FR 47626) where we finalized our policy to publicly report SNF measure performance information under the SNF VBP Program on the Provider Data Catalog website currently hosted by HHS and available at *https://data.cms.gov/provider-data/.* We are proposing to update and redesignate the confidential feedback report and public reporting policies, which are currently codified at § 413.338(e)(1) through (3) as § 413.338(f), to include the Total Nurse Staffing measure.

We invite public comment on our proposal to adopt the Total Nurse Staffing measure beginning with the FY 2026 SNF VBP program year.

d. Proposal To Adopt the DTC—PAC Measure for SNFs (NQF #3481) Beginning With the FY 2027 SNF VBP Program Year

As part of the SNF VBP Program expansion authorized under the CAA, we are proposing to adopt the DTC PAC SNF measure for the FY 2027 SNF VBP Program and subsequent years. The DTC PAC SNF measure (NQF #3481) is an outcome measure that assesses the rate of successful discharges to community from a SNF setting, using 2 years of Medicare FFS claims data. This proposed measure addresses an important health care outcome for many SNF residents (returning to a previous living situation and avoiding further institutionalization) and would align the Program with the Seamless Care Coordination domain of CMS's Meaningful Measures 2.0 Framework. In addition, the DTC PAC SNF measure is currently part of the SNF QRP measure set.[231] For more information on this measure in the SNF QRP, see *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.*

(1) Background

We believe it is an important goal in post-acute care settings to return patients to their previous levels of independence and functioning with discharge to community being one of the primary goals for post-acute patients. We also believe it is important to improve access to community discharge options for SNF residents. Discharge to community is considered a valuable outcome to measure because it provides important information about patient outcomes after being discharged from a SNF and is a multifaceted measure that captures the patient's functional status, cognitive capacity,

[230] *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/TimeStudy.*

[231] We note that the SNF QRP refers to this measure as the ''Discharge to Community—PAC SNF QRP'' measure. Though we are using a different measure short name (''DTC PAC SNF''), we are proposing to adopt the same measure the SNF QRP uses for purposes of the SNF VBP program.

physical ability, and availability of social support at home.

In 2019, 1.5 million of Medicare's FFS beneficiaries (4 percent of all Medicare FFS beneficiaries) utilized Medicare coverage for a SNF stay.[232] However, almost half of the older adults that are admitted to SNFs are not discharged to the community, and for a significant proportion of those that are discharged back to the community, it may take up to 365 days.[233] [234] In 2017, the SNF QRP and other PAC QRP programs adopted this measure; however, there remains considerable variation in performance on this measure. In 2019, the lowest performing SNFs had risk-adjusted rates of successful discharge to the community at or below 39.5 percent, while the best performing SNFs had rates of 53.5 percent or higher, indicating considerable room for improvement.[235]

In addition to being an important outcome from a resident and family perspective, residents discharged to community settings, on average, incur lower costs over the recovery episode, compared with those discharged to institutional settings.[236] [237] We believe including this measure in the SNF VBP Program will further encourage SNFs to prepare residents for discharge to community, when clinically appropriate, which may have significant cost-saving implications for the Medicare program given the high costs of care in institutional settings. Also, providers have discovered that successful discharge to community is a key factor in their ability to achieve savings, where capitated payments for post-acute care were in place.[238] For residents who require long-term care due to persistent disability, discharge to community could result in lower long-term care costs for Medicaid and for residents' out-of-pocket expenditures.[239]

Discharge to community is also an actionable health care outcome, as targeted interventions have been shown to successfully increase discharge to community rates in a variety of post-acute settings. Many of these interventions involve discharge planning or specific rehabilitation strategies, such as addressing discharge barriers and improving medical and functional status.[240] [241] [242] [243] Other factors that have shown positive associations with successful discharge to community include patient safety culture within the SNF and availability of home and community-based services.[244] [245] The effectiveness of these interventions suggests that improvement in discharge to community rates among post-acute care residents is possible through modifying provider-led processes and interventions. Therefore, including the DTC PAC SNF measure in the SNF VBP Program may provide further incentive for providers to continue improving on current interventions or implement new interventions.

(2) Overview of Measure

This measure, which was finalized for adoption under the SNF QRP (81 FR 52021 through 52029), reports a SNF's risk-standardized rate of Medicare FFS residents who are discharged to the community following a SNF stay, do not have an unplanned readmission to an acute care hospital or LTCH in the 31 days following discharge to community, and remain alive during the 31 days following discharge to community. Community, for this measure, is defined as home or selfcare, with or without home health services. We are proposing to adopt this measure beginning with the FY 2027 program year. We note that including this measure in the FY 2027 program year would provide advanced notice for facilities to prepare for the inclusion of this measure in the SNF VBP program. This also provides the necessary time to incorporate the operational processes associated with including this two-year measure in the SNF VBP program.

(a) Stakeholder and TEP Input

In considering the selection of this measure for the SNF VBP Program, we reviewed the developmental history of the measure, which employed a transparent process that provided stakeholders and national experts the opportunity to provide pre-rulemaking input. Our measure development contractor convened a TEP, which was strongly supportive of the importance of measuring discharge to community outcomes and implementing the measure, Discharge to Community PAC SNF QRP in the SNF QRP. The panel provided input on the technical specifications of this measure, including the feasibility of implementing the measure, as well as the overall measure reliability and validity. We refer readers to the FY 2017 SNF PPS final rule (81 FR 52023), as well as a summary of the TEP proceedings available on the PAC Quality Initiatives Downloads and Videos website available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos* for additional information.

(b) MAP Review

The DTC PAC SNF measure was included in the publicly available ''List of Measures Under Consideration for

[232] *https://www.medpac.gov/wp-content/uploads/2021/10/mar21_medpac_report_ch7_sec.pdf.*

[233] *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3711511/.*

[234] *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4706779/.*

[235] March 2021 MedPAC Report to Congress: *https://www.medpac.gov/wp-content/uploads/import_data/scrape_files/docs/default-source/reports/mar21_medpac_report_to_the_congress_sec.pdf.*

[236] Dobrez D, Heinemann AW, Deutsch A, Manheim L, Mallinson T. Impact of Medicare's prospective payment system for inpatient rehabilitation facilities on stroke patient outcomes. American Journal of Physical Medicine & Rehabilitation. 2010;89(3):198–204. *https://doi.org/10.1097/PHM.0b013e3181c9fb40https://doi.org/10.1097/PHM.0b013e3181c9fb40.*

[237] Gage B, Morley M, Spain P, Ingber M. Examining Post Acute Care Relationships in an Integrated Hospital System. Final Report. RTI International;2009. *https://aspe.hhs.gov/sites/default/files/private/pdf/75761/report.pdf.*

[238] Doran JP, Zabinski SJ. Bundled payment initiatives for Medicare and non-Medicare total joint arthroplasty patients at a community hospital: Bundles in the real world. The journal of arthroplasty. 2015;30(3):353–355. *https://doi.org/10.1016/j.arth.2015.01.035.*

[239] Newcomer RJ, Ko M, Kang T, Harrington C, Hulett D, Bindman AB. Health Care Expenditures After Initiating Long-term Services and Supports in the Community Versus in a Nursing Facility. Medical Care. 2016; 54(3):221–228. *https://doi.org/10.1097/MLR.0000000000000491https://doi.org/10.1097/MLR.0000000000000491.*

[240] Kushner DS, Peters KM, Johnson-Greene D. Evaluating Siebens Domain Management Model for Inpatient Rehabilitation to Increase Functional Independence and Discharge Rate to Home in Geriatric Patients. Archives of physical medicine and rehabilitation. 2015;96(7):1310–1318. *https://doi.org/10.1016/j.apmr.2015.03.011.*

[241] Wodchis WP, Teare GF, Naglie G, et al. Skilled nursing facility rehabilitation and discharge to home after stroke. Archives of physical medicine and rehabilitation. 2005;86(3):442–448. *https://doi.org/10.1016/j.apmr.2004.06.067.*

[242] Berkowitz RE, Jones RN, Rieder R, et al. Improving disposition outcomes for patients in a geriatric skilled nursing facility. Journal of the American Geriatrics Society. 2011;59(6):1130–1136. *https://doi.org/10.1111/j.1532-5415.2011.03417.*

[243] Kushner DS, Peters KM, Johnson-Greene D. Evaluating use of the Siebens Domain Management Model during inpatient rehabilitation to increase functional independence and discharge rate to home in stroke patients. PM & R: The journal of injury, function, and rehabilitation. 2015;7(4):354–364. *https://doi.org/10.1016/j.pmrj.2014.10.010.*

[244] *https://doi.org/10.1111/j.1532-5415.2011.03417* Wenhan Guo, Yue Li, Helena Temkin-Greener, Community Discharge Among Post-Acute Nursing Home Residents: An Association With Patient Safety Culture?, Journal of the American Medical Directors Association, Volume 22, Issue 11, 2021, Pages 2384–2388.e1, ISSN 1525–8610, *https://doi.org/10.1016/j.jamda.2021.04.022.*

[245] *https://doi.org/10.1016/j.pmrj.2014.10.010* Wang, S., Temkin-Greener, H., Simning, A., Konetzka, R.T. and Cai, S. (2021), Outcomes after Community Discharge from Skilled Nursing Facilities: The Role of Medicaid Home and Community-Based Services. Health Serv Res, 56: 16–16. *https://doi.org/10.1111/1475-6773.13737.*

December 1, 2021,'' [246] and the MAP supported the DTC PAC SNF measure for rulemaking for the SNF VBP Program. We refer readers to the final MAP report available at *https://www.qualityforum.org/Publications/2022/03/MAP_2021-2022_Considerations_for_Implementing_Measures_Final_Report_-_Clinicians,_Hospitals,_and_PAC-LTC.aspx.*

(3) Data Sources

We are proposing to use data from the Medicare FFS claims and Medicare eligibility files to calculate this measure. We would use data from the ''Patient Discharge Status Code'' on Medicare FFS claims to determine whether a resident was discharged to a community setting for calculation of this measure. The eligibility files provide information such as date of birth, date of death, sex, reasons for Medicare eligibility, periods of Part A coverage, and periods in the Medicare FFS program. The data elements from the Medicare FFS claims are those basic to the operation of the Medicare payment systems and include data such as date of admission, date of discharge, diagnoses, procedures, indicators for use of dialysis services, and indicators of whether the Part A benefit was exhausted. The inpatient claims data files contain patient-level PAC and other hospital records. SNFs would not need to report additional data in order for us to calculate this measure.[247]

We refer readers to the FY 2017 SNF PPS final rule where we adopted the DTC measure for use in the SNF QRP (81 FR 52021 through 52029). In that rule, we provided an analysis related to the accuracy of using the ''Patient Discharge Status Code'' in determining discharge to a community setting. Specifically, in all PAC settings, we tested the accuracy of determining discharge to a community setting using the ''Patient Discharge Status Code'' on the PAC claim by examining whether discharge to community coding based on PAC claim data agreed with discharge to community coding based on PAC assessment data. We found agreement between the two data sources in all PAC settings, ranging from 94.6 percent to 98.8 percent. Specifically, in the SNF setting, using 2013 data, we found 94.6 percent agreement in discharge to community codes when comparing discharge status codes on claims and the Discharge Status (A2100) on the Minimum Data Set (MDS) 3.0 discharge assessment, when the claims and MDS assessment had the same discharge date. We further examined the accuracy of the ''Patient Discharge Status Code'' on the PAC claim by assessing how frequently discharges to an acute care hospital were confirmed by follow-up acute care claims. We discovered that 88 percent to 91 percent of IRF, LTCH, and SNF claims with acute care discharge status codes were followed by an acute care claim on the day of, or day after, PAC discharge. We believe these data support the use of the claims ''Patient Discharge Status Code'' for determining discharge to a community setting for this measure. In addition, this measure can feasibly be implemented in the SNF VBP Program because all data used for measure calculation are derived from Medicare FFS claims and eligibility files, which are already available to CMS.

(4) Inclusion and Exclusion Criteria

We are proposing that the DTC PAC SNF measure would use the same specifications under the SNF VBP Program as the Discharge to Community—PAC SNF QRP measure used in the SNF QRP, which are available at *https://www.cms.gov/files/zip/snf-qrp-measure-calculations-and-reporting-users-manual-v301-addendum-effective-10-01-2020.zip.* The target population for the measure is the group of Medicare FFS residents who are admitted to a SNF and are not excluded for the reasons listed in this paragraph. The measure exclusion criteria are determined by processing Medicare claims and eligibility data to determine whether the individual exclusion criteria are met. All measure exclusion criteria are based on administrative data. Only SNF stays that are preceded by a short-term acute care stay in the 30 days prior to the SNF admission date are included in the measure. Stays ending in transfers to the same level of care are excluded. The measure excludes residents for which the following conditions are true:

- Age under 18 years;
- No short-term acute care stay within the 30 days preceding SNF admission;
- Discharges to a psychiatric hospital;
- Discharges against medical advice;
- Discharges to disaster alternative care sites or Federal hospitals;
- Discharges to court/law enforcement;
- Residents discharged to hospice and those with a hospice benefit in the post-discharge observation window;
- Residents not continuously enrolled in Part A FFS Medicare for the 12 months prior to the post-acute admission date, and at least 31 days after post-acute discharge date;
- Residents whose prior short-term acute care stay was for non-surgical treatment of cancer;
- Post-acute stays that end in transfer to the same level of care;
- Post-acute stays with claims data that are problematic (*e.g.,* anomalous records for stays that overlap wholly or in part, or are otherwise erroneous or contradictory);
- Planned discharges to an acute or LTCH setting;
- Medicare Part A benefits exhausted;
- Residents who received care from a facility located outside of the U.S., Puerto Rico or a U.S. territory; and
- Swing Bed Stays in Critical Access Hospitals.

This measure also excludes residents who had a long-term nursing facility stay in the 180 days preceding their hospitalization and SNF stay, with no intervening community discharge between the long-term nursing facility stay and qualifying hospitalization.

(5) Risk Adjustment

The measure is risk-adjusted for variables including demographic and eligibility characteristics, such as age and sex, principal diagnosis, types of surgery or procedures from the prior short-term acute care stay, comorbidities, length of stay and intensive care utilization from the prior short-term acute care stay, ventilator status, ESRD status, and dialysis, among other variables. For additional technical information about the proposed measure, including information about the measure calculation, risk adjustment, and denominator exclusions, we refer readers to the document titled, Final Specifications for SNF QRP Quality Measures and Standardized Patient Assessment Data Elements, available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Downloads/Final-Specifications-for-SNF-QRP-Quality-Measures-and-SPADEs.pdf.* We note that we are proposing to use the technical information and specifications found in this document for purposes of calculating this measure in the SNF VBP Program.

(6) Measure Calculation

We are proposing to adopt the DTC PAC SNF measure for the SNF VBP Program for FY 2027 and subsequent years. This measure is calculated using 2 years of data. Since Medicare FFS claims data are already reported to the

[246] *https://www.cms.gov/files/document/measures-under-consideration-list-2021-report.pdf.*

[247] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Downloads/Measure-Specifications-for-FY17-SNF-QRP-Final-Rule.pdf.*

Medicare program for payment purposes, and Medicare eligibility files are also available, SNFs will not be required to report any additional data to us for calculation of this measure.

(a) Numerator

The measure numerator is the risk-adjusted estimate of the number of residents who are discharged to the community, do not have an unplanned readmission to an acute care hospital or LTCH in the 31-day post-discharge observation window, and who remain alive during the post-discharge observation window. This estimate starts with the observed discharges to community and is risk-adjusted for patient/resident characteristics and a statistical estimate of the facility effect beyond case mix. A patient/resident who is discharged to the community is considered to have an unfavorable outcome if they have a subsequent unplanned readmission to an acute care hospital or LTCH in the post-discharge observation window, which includes the day of discharge and the 31 days following day of discharge. Discharge to community is determined based on the ''Patient Discharge Status Code'' from the PAC claim. Discharge to community is defined as discharge to home or self-care with or without home health services, which includes the following Patient Discharge Status Codes: 01 Discharged to home or self-care (routine discharge); 06 Discharged/transferred to home under care of organized home health service organization; 81 Discharged to home or self-care with a planned acute care hospital readmission; and 86 Discharged/transferred to home under care of organized home health service organization with a planned acute care hospital inpatient readmission. Residents who are discharged to the community are also considered to have an unfavorable outcome if they die in the post-discharge window, which includes the day of discharge and the 31 days following day of discharge. Death in the post-discharge window is identified based on date of death from Medicare eligibility files.

(b) Denominator

The denominator for the DTC PAC SNF measure is the risk-adjusted expected number of discharges to community. This estimate includes risk adjustment for patient/resident characteristics with the facility effect removed. The ''expected'' number of discharges to community is the predicted number of risk-adjusted discharges to community if the same residents were treated at the average facility appropriate to the measure.

(7) Proposed Confidential Feedback Reports and Public Reporting

We refer readers to the FY 2017 SNF PPS final rule (81 FR 52006 through 52007) for discussion of our policy to provide quarterly confidential feedback reports to SNFs on their measure performance. We also refer readers to the FY 2022 SNF PPS final rule (86 FR 42516 through 42517) for a summary of our two-phase review and corrections policy for SNFs' quality measure data. Furthermore, we refer readers to the FY 2018 SNF PPS final rule (82 FR 36622 through 36623) and the FY 2021 SNF PPS final rule (85 FR 47626) where we finalized our policy to publicly report SNF measure performance information under the SNF VBP Program on the Provider Data Catalog website currently hosted by HHS and available at *https://data.cms.gov/provider-data/*. We are proposing to update and redesignate the confidential feedback report and public reporting policies, which are currently codified at § 413.338(e)(1) through (3) to § 413.338(f), to include the DTC PAC SNF measure.

We invite public comment on our proposal to adopt the DTC PAC SNF measure beginning with the FY 2027 SNF VBP program year.

C. SNF VBP Performance Period and Baseline Period Proposals

1. Background

We refer readers to the FY 2016 SNF PPS final rule (80 FR 46422) for a discussion of our considerations for determining performance periods under the SNF VBP Program. In the FY 2019 SNF PPS final rule (83 FR 39277 through 39278), we adopted a policy whereby we will automatically adopt the performance period and baseline period for a SNF VBP Program Year by advancing the performance period and baseline period by 1 year from the previous program year. We also refer readers to the FY 2022 SNF PPS final rule, where we finalized our proposal to use FY 2019 data for the FY 2024 baseline period (86 FR 42512 through 42513).

2. Proposal To Revise the Baseline Period for the FY 2025 SNF VBP Program

Under the policy finalized in the FY 2019 SNF PPS final rule (83 FR 39277 through 39278), the baseline period for the SNFRM for the FY 2025 program year would be FY 2021. However, as more fully described in section VII.B.1. of this proposed rule, we have determined that the significant decrease in SNF admissions and staffing shortages associated with the PHE for COVID–19 in FY 2021 has impacted SNFRM validity and reliability. Because the baseline period for this measure is used to calculate the performance standards under the SNF VBP Program, we are concerned about using COVID–19 impacted data for the FY 2025 baseline period for scoring and payment purposes.

Therefore, we are proposing to use a baseline period of FY 2019 for the FY 2025 program year. We believe using data from this period will provide sufficiently valid and reliable data for evaluating SNF performance that can be used for FY 2025 scoring. We are also proposing to select this revised data period because it would capture a full year of data, including any seasonal effects.

We considered using FY 2020 as the baseline period for the FY 2025 program. However, under the ECE, SNF qualifying claims for a 6-month period in FY 2020 (January 1, 2020, through June 30, 2020) are excepted from the calculation of the SNFRM, which means that we will not have a full year of data to calculate the SNFRM for a FY 2020 baseline period.

We also considered using FY 2022 as the baseline period for the FY 2025 program year, which will be the baseline period for the FY 2026 program year for the SNFRM under the previously established policy for adopting baseline periods for future years (83 FR 39277). However, it is operationally infeasible for us to calculate performance standards using a FY 2022 baseline period for the FY 2025 program year because performance standards must be published at least 60 days prior to the start of the performance period, currently planned as FY 2023, as required under section 1888(h)(3)(C) of the Act. We invite public comment on our proposal to update the baseline period for the FY 2025 SNF VBP Program.

3. Proposed Performance Periods and Baseline Periods for the SNF HAI Measure Beginning With the FY 2026 SNF VBP Program

a. Proposed Performance Period for the SNF HAI Measure for the FY 2026 SNF VBP Program and Subsequent Years

In considering the appropriate performance period for the SNF HAI measure for the FY 2026 SNF VBP Program, we recognize that we must balance the length of the performance period with our need to calculate valid and reliable performance scores and

announce the resulting payment adjustments no later than 60 days prior to the program year involved, in accordance with section 1888(h)(7) of the Act. In our testing of the measure, we found that a 1-year performance period produced moderately reliable performance scores. We refer readers to the SNF HAI Measure Technical Report for further information on measure testing results, available at *https://www.cms.gov/files/document/snfhaitechnicalreport.pdf.* In addition, we refer readers to the FY 2017 SNF PPS final rule (81 FR 51998 through 51999) for a discussion of the factors we should consider when specifying performance periods for the SNF VBP Program, as well as our stated preference for 1-year performance periods. Based on these considerations, we believe that a 1-year performance period for the SNF HAI measure would be operationally feasible for the SNF VBP Program and would provide sufficiently accurate and reliable SNF HAI measure rates and resulting performance scores.

We also recognize that we must balance our desire to specify a performance period for a fiscal year as close to the fiscal year's start date as possible to ensure clear connections between quality measurement and value-based payment with our need to announce the net results of the Program's adjustments to Medicare payments not later than 60 days prior to the fiscal year involved, in accordance with section 1888(h)(7) of the Act. In considering these constraints, and in alignment with the SNFRM, we believe that a performance period that occurs 2 fiscal years prior to the applicable fiscal program year is most appropriate for the SNF HAI measure.

For these reasons, we are proposing to adopt a 1-year performance period for the SNF HAI measure. In addition, we are proposing to adopt FY 2024 (October 1, 2023 through September 30, 2024) as the performance period for the SNF HAI measure for the FY 2026 SNF VBP Program.

In alignment with the current Program measure, we are also proposing that, for the SNF HAI measure, we would automatically adopt the performance period for a SNF VBP program year by advancing the beginning of the performance period by 1 year from the previous program year.

We invite public comment on our proposals related to the performance period for the SNF HAI measure for the FY 2026 program year and subsequent years.

b. Proposed Baseline Period for the SNF HAI Measure for the FY 2026 SNF VBP Program and Subsequent Years

We discussed in the FY 2016 SNF PPS final rule (80 FR 46422) that, as with other Medicare quality programs, we generally adopt a baseline period for a fiscal year that occurs prior to the performance period for that fiscal year to establish measure performance standards. In the FY 2016 SNF PPS final rule (80 FR 46422), we also discussed our intent to adopt baseline periods that are as close as possible in duration as the performance period for a fiscal year as well as our intent to seasonally align baseline periods with the performance period to avoid any effects on quality measurement that may result from tracking SNF performance during different times in a year. Therefore, to align with the proposed performance period length for the SNF HAI measure, we believe a 1-year baseline period is most appropriate for the SNF HAI measure.

We also recognize that we are required to calculate and announce performance standards no later than 60 days prior to the start of the performance period, as required by section 1888(h)(3)(C) of the Act. Therefore, in alignment with the SNFRM baseline period, we believe that a baseline period that occurs 4 fiscal years prior to the applicable fiscal program year, and 2 fiscal years prior to the performance period, is most appropriate for the SNF HAI measure and would provide sufficient time to calculate and announce performance standards prior to the start of the performance period.

For these reasons, we are proposing to adopt a 1-year baseline period for the SNF HAI measure. In addition, we are proposing to adopt FY 2022 (October 1, 2021 through September 30, 2022) as the baseline period for the SNF HAI measure for the FY 2026 SNF VBP Program.

In alignment with the current Program measure, we are also proposing that for the SNF HAI measure, we would automatically adopt the baseline period for a SNF VBP program year by advancing the beginning of the baseline period by 1 year from the previous program year.

We invite public comment on our proposals related to the baseline period for the SNF HAI measure for the FY 2026 program year and subsequent years.

4. Proposed Performance Period and Baseline Period for the Total Nursing Hours per Resident Day Staffing Measure Beginning With the FY 2026 SNF VBP Program

a. Proposed Performance Period for the Total Nursing Hours per Resident Day Staffing Measure for the FY 2026 SNF VBP Program and Subsequent Years

In considering the appropriate performance period for the Total Nurse Staffing measure for the FY 2026 SNF VBP Program, we recognize that we must balance the length of the performance period with our need to calculate valid and reliable performance scores and announce the resulting payment adjustments no later than 60 days prior to the program year involved, in accordance with section 1888(h)(7) of the Act. The Total Nurse Staffing measure is currently reported on a quarterly basis for the Nursing Home Five-Star Quality Rating System. For purposes of inclusion in the SNF VBP Program, we are proposing that the measure rate would be calculated on an annual basis. To do so, we are proposing to aggregate the quarterly measure rates using a simple mean of the available quarterly case-mix adjusted scores in a 1-year performance period. We conducted testing of the measure and found that the quarterly measure rate and resident census are stable across quarters. Further, an unweighted yearly measure aligns the SNF VBP Program rates with rates reported on the Provider Data Catalog website currently hosted by HHS, available at *https://data.cms.gov/provider-data/.* It can also be easily understood by, and is transparent to, the public. In addition, we refer readers to the FY 2017 SNF PPS final rule (81 FR 51998 through 51999) for discussion of the factors we should consider when specifying performance periods for the SNF VBP Program as well as our preference for 1-year performance periods. Based on these considerations, we believe that a 1-year performance period for the Total Nurse Staffing measure would be operationally feasible under the SNF VBP Program and would provide sufficiently accurate and reliable Total Nurse Staffing measure rates and resulting performance scores.

We also recognize that we must balance our desire to specify a performance period for a fiscal year as close to the fiscal year's start date as possible to ensure clear connections between quality measurement and value-based payment with our need to announce the net results of the Program's adjustments to Medicare payments not later than 60 days prior to

the fiscal year involved, in accordance with section 1888(h)(7) of the Act. In considering these constraints, and in alignment with the SNFRM, we believe that a performance period that occurs 2 fiscal years prior to the applicable fiscal program year is most appropriate for the Total Nurse Staffing measure.

For these reasons, we are proposing to adopt a 1-year performance period for the Total Nurse Staffing measure. In addition, we are proposing to adopt FY 2024 (October 1, 2023 through September 30, 2024) as the performance period for the Total Nurse Staffing measure for the FY 2026 SNF VBP program year.

In alignment with the current Program measure, we are also proposing that for the Total Nurse Staffing measure, we would automatically adopt the performance period for a SNF VBP program year by advancing the beginning of the performance period by 1 year from the previous program year.

We invite public comment on our proposals related to the performance period for the Total Nurse Staffing measure for the FY 2026 program year and subsequent years.

b. Proposed Baseline Period for the Total Nursing Hours per Resident Day Staffing Measure for the FY 2026 SNF VBP Program and Subsequent Years

We discussed in the FY 2016 SNF PPS final rule (80 FR 46422) that, as with other Medicare quality programs, we generally adopt a baseline period for a fiscal year that occurs prior to the performance period for that fiscal year to establish measure performance standards. In the FY 2016 SNF PPS final rule (80 FR 46422), we also discussed our intent to adopt baseline periods that are as close as possible in duration as the performance period for a fiscal year, as well as our intent to seasonally align baseline periods with the performance period to avoid any effects on quality measurement that may result from tracking SNF performance during different times in a year. Therefore, to align with the proposed performance period length for the Total Nurse Staffing measure, we believe a 1-year baseline period is most appropriate.

We also recognize that we are required to calculate and announce performance standards no later than 60 days prior to the start of the performance period, as required by section 1888(h)(3)(C) of the Act. Therefore, in alignment with the SNFRM baseline period, we believe that a baseline period that occurs 4 fiscal years prior to the applicable fiscal program year, and 2 fiscal years prior to the performance period, is most appropriate for the Total Nurse Staffing measure and would provide sufficient time to calculate and announce performance standards prior to the start of the performance period.

For these reasons, we are proposing to adopt a 1-year baseline period for the Total Nurse Staffing measure. In addition, we are proposing to adopt FY 2022 (October 1, 2021 through September 30, 2022) as the baseline period for the Total Nurse Staffing measure for the FY 2026 SNF VBP Program.

In alignment with the current Program measure, we are also proposing that for the Total Nurse Staffing measure, we would automatically adopt the baseline period for a SNF VBP program year by advancing the beginning of the baseline period by 1 year from the previous program year.

We invite public comment on our proposals related to the baseline period for the Total Nurse Staffing measure for the FY 2026 program year and subsequent years.

5. Proposed Performance Periods and Baseline Periods for the DTC PAC Measure for SNFs for the FY 2027 SNF VBP Program and Subsequent Years

a. Proposed Performance Period for the DTC PAC SNF Measure for the FY 2027 SNF VBP Program and Subsequent Years

Under the SNF QRP, The Discharge to Community—PAC SNF QRP measure has a reporting period that uses 2 consecutive years to calculate the measure (83 FR 39217 through 39272). In alignment with the reporting period that applies to the measure under the SNF QRP, we are proposing to adopt a 2-year performance period for the DTC PAC SNF measure under the SNF VBP.

We are proposing to align our performance period with the performance period for the measure used by the SNF QRP to maintain streamlined data requirements and reduce any confusion for participating SNFs. In addition, we are proposing to adopt FY 2024 through FY 2025 (October 1, 2023 through September 30, 2025) as the performance period for the DTC PAC SNF measure for the FY 2027 SNF VBP Program.

We are also proposing that for the DTC PAC SNF measure, we would automatically adopt the performance period for a SNF VBP program year by advancing the beginning of the performance period by 1 year from the previous program year.

We invite public comment on our proposals related to the performance period for the DTC PAC SNF measure for FY 2027 program year and subsequent years.

b. Proposed Baseline Period for the DTC PAC SNF Measure for the FY 2027 SNF VBP Program Year and Subsequent Years

We discussed in the FY 2016 SNF PPS final rule (80 FR 46422) that, as with other Medicare quality programs, we generally adopt a baseline period for a fiscal year that occurs prior to the performance period for that fiscal year to establish measure performance standards. In the FY 2016 SNF PPS final rule (80 FR 46422), we also discussed our intent to adopt baseline periods that are as close as possible in duration as the performance period for a fiscal year, as well as our intent to seasonally align baseline periods with the performance period to avoid any effects on quality measurement that may result from tracking SNF performance during different times in a year. Therefore, to align with the proposed performance period length for the DTC PAC SNF measure, we believe a 2-year baseline period is most appropriate for this measure.

We also recognize that we are required to calculate and announce performance standards no later than 60 days prior to the start of the performance period, as required by section 1888(h)(3)(C) of the Act. Therefore, we believe that a baseline period that begins 6 fiscal years prior to the applicable fiscal program year, and 3 fiscal years prior to the performance period, is most appropriate for the DTC PAC SNF measure and would provide sufficient time to calculate and announce performance standards prior to the start of the performance period.

For these reasons, we are proposing to calculate the performance period for the DTC PAC SNF measure using two consecutive years of data. In addition, we are proposing to adopt FY 2021 through FY 2022 (October 1, 2020 through September 30, 2022) as the baseline period for the DTC PAC SNF measure for the FY 2027 SNF VBP Program.

In alignment with the current Program measure, we are also proposing that for the DTC PAC SNF measure, we would automatically adopt the baseline period for a SNF VBP program year by advancing the beginning of the baseline period by 1 year from the previous program year.

We invite public comment on our proposals related to the baseline period for the DTC PAC SNF measure for FY 2027 program year and subsequent years.

D. Performance Standards

1. Background

We refer readers to the FY 2017 SNF PPS final rule (81 FR 51995 through 51998) for a summary of the statutory provisions governing performance standards under the SNF VBP Program and our finalized performance standards policy. We adopted the final numerical values for the FY 2023 performance standards in the FY 2021 SNF PPS final rule (85 FR 47625) and adopted the final numerical values for the FY 2024 performance standards in the FY 2022 SNF PPS final rule (86 FR 42513). We also adopted a policy allowing us to correct the numerical values of the performance standards in the FY 2019 SNF PPS final rule (83 FR 39276 through 39277).

We are not proposing any changes to these performance standard policies in this proposed rule.

2. SNF VBP Performance Standards Correction Policy

In the FY 2019 SNF PPS final rule (83 FR 39276 through 39277), we finalized a policy to correct numerical values of performance standards for a program year in cases of errors. We also finalized that we will only update the numerical values for a program year one time, even if we identify a second error, because we believe that a one-time correction will allow us to incorporate new information into the calculations without subjecting SNFs to multiple updates. We stated that any update we make to the numerical values based on a calculation error will be announced via the CMS website, listservs, and other available channels to ensure that SNFs are made fully aware of the update. In the FY 2021 SNF PPS final rule (85 FR 47625), we amended the definition of ''Performance standards'' at § 413.338(a)(9), consistent with these policies finalized in the FY 2019 SNF PPS final rule, to reflect our ability to update the numerical values of performance standards if we determine there is an error that affects the achievement threshold or benchmark. To improve the clarity of this policy, we are proposing to amend the definition of ''Performance standards'' and redesignate it as § 413.338(a)(12), then add additional detail about the correction policy at § 413.338(d)(6).

We are not proposing any changes to the performance standards correction policy in this proposed rule. We seek public comment on our changes to the text at § 413.338(a)(12) and (d)(6).

3. Proposed Performance Standards for the FY 2025 Program Year

As discussed in section VII.C.2. of this proposed rule, we are proposing to use FY 2019 data as the baseline period for the FY 2025 program year. Based on this proposed updated baseline period and our previously finalized methodology for calculating performance standards (81 FR 51996 through 51998), the proposed estimated numerical values for the FY 2025 program year performance standards are shown in Table 18.

TABLE 18: Proposed Estimated FY 2025 SNF VBP Program Performance Standards

Measure ID	Measure Description	Achievement Threshold	Benchmark
SNFRM	SNF 30-Day All-Cause Readmission Measure (NQF #2510)	0.79270	0.83028

E. SNF VBP Performance Scoring

1. Background

We refer readers to the FY 2017 SNF PPS final rule (81 FR 52000 through 52005) for a detailed discussion of the scoring methodology that we have finalized for the Program. We also refer readers to the FY 2018 SNF PPS final rule (82 FR 36614 through 36616) for discussion of the rounding policy we adopted. We also refer readers to the FY 2019 SNF PPS final rule (83 FR 39278 through 39281), where we adopted: (1) A scoring policy for SNFs without sufficient baseline period data, (2) a scoring adjustment for low-volume SNFs, and (3) an extraordinary circumstances exception policy. Finally, we refer readers to the FY 2022 SNF PPS final rule (86 FR 42513 through 42515), where we adopted for FY 2022 a special scoring and payment policy due to the impact of the PHE for COVID–19.

2. Proposed Special Scoring Policy for the FY 2023 SNF VBP Program Due to the Impact of the PHE for COVID–19

In section VII.B.1. of this proposed rule, we are proposing to suppress the SNFRM for the FY 2023 program year due to the impacts of the PHE for COVID–19. Specifically, for FY 2023 scoring, we are proposing that, for all SNFs participating in the FY 2023 SNF VBP Program, we would use data from the previously finalized performance period (FY 2021) and baseline period (FY 2019) to calculate each SNF's RSRR for the SNFRM. Then, we would assign all SNFs a performance score of zero. This would result in all participating SNFs receiving an identical performance score, as well as an identical incentive payment multiplier. We also propose that SNFs that do not meet the proposed case minimum for FY 2023 (see VII.E.3.b. of this proposed rule) will be excluded from the Program for FY 2023. SNFs would not be ranked for the FY 2023 SNF VBP Program. We are also proposing to update our regulation text at § 413.338(i) to codify this scoring policy for FY 2023. As we noted in section VII.B.1. of this proposed rule, our goal is to continue the use of measure data for scoring and payment adjustment purposes beginning with the FY 2024 program year.

We invite public comment on our proposal to use a special scoring policy for the FY 2023 Program year.

3. Proposed Case Minimum and Measure Minimum Policies

a. Background

Section 111(a)(1) of Division CC of the CAA amended section 1888(h)(1) of the Act by adding paragraph (h)(1)(C), which established criteria for excluding SNFs from the SNF VBP Program. Specifically, with respect to payments for services furnished on or after October 1, 2022, paragraph (h)(1)(C) precludes the SNF VBP Program from applying to a SNF for which there are not a minimum number of cases (as determined by the Secretary) for the measures that apply to the SNF for the performance period for the applicable fiscal year, or a minimum number of measures (as determined by the Secretary) that apply to the SNF for the performance period for the applicable fiscal year.

To implement this provision, we are proposing to establish case and measure minimums that SNFs must meet to be included in the Program for a given

program year. These proposed case and measure minimum requirements would serve as eligibility criteria for determining whether a SNF is included in, or excluded from, the Program for a given program year. Inclusion in the Program for a program year means that a SNF would receive a SNF performance score and would be eligible to receive a value-based incentive payment. Exclusion from the Program for a program year means that, for the applicable fiscal year, a SNF would not be subject to the requirements under § 413.338 and would also not be subject to a payment reduction under § 413.337(f). Instead, the SNF would receive its full Federal per diem rate under § 413.337 for the applicable fiscal year.

We are proposing to establish a case minimum for each SNF VBP measure that SNFs must have during the performance period for the program year. We are also proposing that SNFs must have a minimum number of measures during the performance period for the applicable program year in order to be eligible to participate in the SNF VBP Program for that program year. We propose to codify these changes to the applicability of the SNF VBP beginning with FY 2023 at § 413.338(b).

We are proposing that the case and measure minimums would be based on statistical accuracy and reliability, such that only SNFs that have sufficient data would be included in the SNF VBP Program for a program year. We believe this would ensure that we apply program requirements only to SNFs for which we can calculate reliable measure rates and SNF performance scores.

Because the proposed case and measure minimum policies would ensure that SNFs participate in the program for a program year only if they have sufficient data for calculating accurate and reliable measure rates and SNF performance scores, we do not believe there is a continuing need to apply the low-volume adjustment (LVA) policy beginning with FY 2023. Accordingly, we are proposing to remove the LVA policy from the Program beginning with the FY 2023 program year in section VII.E.5. of this proposed rule.

b. Proposed Case Minimum During a Performance Period for the SNFRM Beginning With the FY 2023 SNF VBP Program Year

We are proposing that beginning with the FY 2023 program year, SNFs must have a minimum of 25 eligible stays for the SNFRM during the applicable 1-year performance period in order to be eligible to receive a score on that measure under the SNF VBP Program.

We believe this case minimum requirement for the SNFRM is appropriate and consistent with the findings of reliability tests conducted for the SNFRM, and it is also consistent with the case threshold we have applied under the LVA policy. The reliability testing results, which combined 2014 and 2015 calendar year (CY) SNFRM files, indicated that a minimum of 25 eligible stays for the SNFRM produced sufficiently reliable measure rates. In addition, the testing results found that approximately 85 percent of all SNFs met the 25-eligible stay minimum during the CY 2015 testing period. While excluding 15 percent of SNFs may seem high, we continue to believe that the 25-eligible stay minimum for the SNFRM appropriately balances quality measure reliability with our desire to allow as many SNFs as possible to participate in the Program. For further details on the measure testing, we refer readers to the minimum eligible stay threshold analysis for the SNFRM available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/Other-VBPs/SNFRM-Reliability-Testing-Memo.pdf.*

We believe this proposed case minimum requirement for the SNFRM would ensure that those SNFs included in the Program would receive a sufficiently accurate and reliable SNF performance score. However, we are also proposing changes to our scoring and payment policies for the FY 2023 SNF VBP Program in this proposed rule. If finalized, beginning with the FY 2023 SNF VBP program year, any SNF that does not meet this proposed case minimum requirement for the SNFRM during the applicable performance period would be excluded from the Program for the affected program year provided there are no other measures specified for the affected program year. Those SNFs would not be subject to any payment reductions under the Program and instead would receive their full Federal per diem rate.

We invite public comment on our proposal to adopt a case minimum requirement for the SNFRM beginning with the FY 2023 SNF VBP program year.

c. Proposed Case Minimums During a Performance Period for the SNF HAI, Total Nurse Staffing, and DTC PAC SNF Measures

In this proposed rule, we are proposing to adopt the SNF HAI and Total Nurse Staffing measures beginning with the FY 2026 program year, as well as the DTC PAC SNF measure beginning with the FY 2027 program year.

For the SNF HAI measure, we are proposing that SNFs must have a minimum of 25 eligible stays during the applicable 1-year performance period in order to be eligible to receive a score on the measure. We believe this case minimum requirement for the SNF HAI measure is appropriate and consistent with the findings of measure testing analyses. For example, testing results indicated that a 25-eligible stay minimum produced moderately reliable measure rates for purposes of public reporting under the SNF QRP. In addition, testing results found that 85 percent of SNFs met the 25-eligible stay minimum for public reporting under the SNF QRP. We believe these case minimum standards for public reporting purposes are also appropriate standards for establishing a case minimum for this measure under the SNF VBP Program. In addition, we believe these testing results for the 25-eligible stay minimum support our objective, which is to establish case minimums that appropriately balance quality measure reliability with our continuing desire to score as many SNFs as possible on this measure. For further details on SNF HAI measure testing for the SNF QRP, we refer readers to the SNF HAI Measure Technical Report available at *https://www.cms.gov/files/document/snf-hai-technical-report.pdf.*

For the Total Nurse Staffing measure, we are proposing that SNFs must have a minimum of 25 residents, on average, across all available quarters during the applicable 1-year performance period in order to be eligible to receive a score on the measure. We tested three potential case minimums for this measure: a 25-resident minimum, a minimum of one quarter of PBJ data, and a minimum of two quarters of PBJ data. Among all SNFs eligible for the SNF VBP Program, over 94 percent of SNFs satisfied the case minimum under all three alternatives tested. There were very minimal differences observed between the case minimums tested, and this finding held for most subgroups tested as well, including rural SNFs, large SNFs, and those SNFs serving the highest proportion of dually eligible beneficiaries. The only notable observed difference occurred within small SNFs, defined as those with fewer than 46 beds as a proxy for size. About 90 percent of small SNFs reported two quarters of PBJ data, and about 92 percent of small SNFs reported one quarter of PBJ data, but only about 63 percent of small SNFs satisfied the 25-resident minimum, indicating that even

after two quarters of successful PBJ reporting there was a substantial proportion of small SNFs (about 27 percent) reporting minimal numbers of residents, calling into question the utility of their limited staffing data. After considering these alternatives, we determined that the proposed 25-resident minimum best balances quality measure reliability with our desire to score as many SNFs as possible on this measure. We also note that the 25-resident minimum for this measure would align with the case minimums we are proposing for the other proposed measures.

Further, for the DTC PAC SNF measure, we are proposing that SNFs must have a minimum of 25 eligible stays during the applicable 2-year performance period in order to be eligible to receive a score on the measure. We believe this case minimum requirement for the DTC PAC SNF measure (*https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/Other-VBPs/SNFRM-Reliability-Testing-Memo.pdf*) is appropriate and consistent with the findings of measure testing analyses. Analyses conducted by CMS contractors found that a 25 eligible stay minimum produced good to excellent measure score reliability. In addition, analyses using 2015 through 2016 Medicare FFS claims data found that 94 percent of SNFs met the 25 eligible stay minimum during the 2-year performance period. We believe these testing results for the 25 eligible stay minimum support our objective, which is to establish case minimums that appropriately balance quality measure reliability with our continuing desire to score as many SNFs as possible on this measure. The complete measure testing results conducted by our contractors that we included as part of the documentation supporting our request for NQF to endorse the measure are available at *https://www.qualityforum.org/QPS/3481.*

We invite public comment on our proposal to adopt case minimums for the SNF HAI, Total Nurse Staffing, and DTC PAC SNF measures.

d. Proposed Measure Minimums for the FY 2026 and FY 2027 Program Years

We are proposing to adopt measure minimums for the FY 2026 and FY 2027 program years. Under these policies, only SNFs that have the minimum number of measures applicable to the program year would be eligible for inclusion in the Program for that program year.

In this proposed rule, we are proposing to adopt two new quality measures (SNF HAI and Total Nurse Staffing measures) beginning with the FY 2026 Program. If finalized, the SNF VBP Program would consist of three quality measures in FY 2026 (SNF Readmission Measure, SNF HAI, and Total Nurse Staffing measures). We are proposing that for FY 2026, SNFs must have the minimum number of cases for two of these three measures during the performance period to receive a performance score and value-based incentive payment. SNFs that do not meet these minimum requirements would be excluded from the FY 2026 program and would receive their full Federal per diem rate for that fiscal year. Under these proposed minimum requirements, we estimate that approximately 14 percent of SNFs would be excluded from the FY 2026 Program. Alternatively, if we required SNFs to have the minimum number of cases for all three measures during the performance period, approximately 21 percent of SNFs would be excluded from the FY 2026 Program. We also assessed the consistency of value-based incentive payment adjustment factors, or incentive payment multipliers (IPMs), between time periods as a proxy for performance score reliability under the different measure minimum options. The testing results indicated that the reliability of the SNF performance score would be relatively consistent across the different measure minimum requirements. Specifically, for the FY 2026 program year, we estimate that under the proposed minimum of two measures, 82 percent of SNFs receiving a net-negative IPM in the first testing period also received a net-negative IPM in the second testing period. Alternatively, under a minimum of three measures for the FY 2026 program year, we found that the consistency was 81 percent. Based on these testing results, we believe the proposed minimum of two out of three measures for FY 2026 best balances SNF performance score reliability with our desire to ensure that as many SNFs as possible can receive a performance score and value-based incentive payment.

We are also proposing to adopt an additional quality measure (DTC PAC SNF measure) beginning with the FY 2027 Program. If finalized, the SNF VBP Program would consist of four quality measures in FY 2027 (SNF Readmission Measure, SNF HAI, Total Nurse Staffing, and DTC PAC SNF measures). We are proposing that for FY 2027, SNFs must have the minimum number of cases for three of the four measures during a performance period to receive a performance score and value-based incentive payment. SNFs that do not meet these minimum requirements would be excluded from the FY 2027 program and would receive their full Federal per diem rate for that fiscal year. Under these proposed minimum requirements, we estimate that approximately 16 percent of SNFs would be excluded from the FY 2027 Program. Alternatively, if we required SNFs to have the minimum number of cases for all four measures, we estimate that approximately 24 percent of SNFs would be excluded from the FY 2027 Program. We also assessed the consistency of incentive payment multipliers (IPMs) between time periods as a proxy for performance score reliability under the different measure minimum options. The testing results indicated that the reliability of the SNF performance score for the FY 2027 program year would be relatively consistent across the different measure minimum requirements. That is, among the different measure minimums for the FY 2027 program year, a strong majority (between 85 and 87 percent) of the SNFs receiving a net-negative IPM for the first testing period also received a net-negative IPM for the second testing period. These findings indicate that increasing the measure minimum requirements does not meaningfully increase the consistency of the performance score. Based on these testing results, we believe the proposed minimum of three out of four measures for FY 2027 best balances SNF performance score reliability with our desire to ensure that as many SNFs as possible can receive a performance score and value-based incentive payment.

Under these proposals, we also estimate that 14 percent of SNFs would be excluded from the Program for the FY 2026 program year, but that the excluded SNFs would, as a whole, provide care to approximately 2 percent of the total number of eligible SNF stays. Similarly, for the FY 2027 Program, we estimate that 16 percent of SNFs would be excluded from the Program but that the excluded SNFs, as a whole, provide care to approximately 2 percent of the total number of eligible SNF stays.

We invite public comment on our proposed measure minimums for the FY 2026 and FY 2027 SNF VBP program years.

4. Proposed Update to the Scoring Policy for SNFs Without Sufficient Baseline Period Data Beginning With the FY 2026 Program Year

In the FY 2019 SNF PPS final rule (83 FR 39278), we finalized a policy to score SNFs based only on their achievement during the performance period for any program year for which they do not have sufficient baseline period data, which we defined as SNFs with fewer than 25 eligible stays during the baseline period for a fiscal year. We codified this policy at § 413.338(d)(1)(iv) of our regulations.

We continue to be concerned that measuring SNF performance on a given measure for which the SNF does not have sufficient baseline period data may result in unreliable improvement scores for that measure and, as a result, unreliable SNF performance scores. However, the current policy was designed for a SNF VBP Program with only one measure. As we continue to add measures to the Program, we aim to maintain the reliability of our SNF performance scoring. Therefore, we are proposing to update our policy beginning with the FY 2026 program year. Under the proposed update, we would not award improvement points to a SNF on a measure for a program year if the SNF has not met the case minimum for that measure during the baseline period that applies to the measure for the program year. That is, if a SNF does not meet a case minimum threshold for a given measure during the applicable baseline period, that SNF would only be eligible to be scored on achievement for that measure during the performance period for that measure for the applicable fiscal year.

For example, if a SNF has fewer than the minimum of 25 eligible stays during the applicable 1-year baseline period for the SNF HAI measure for FY 2026, that SNF would only be scored on achievement during the performance period for the SNF HAI measure for FY 2026, so long as that SNF meets the case minimum for that measure during the applicable performance period.

We are also proposing to codify this update in our regulation text at § 413.338(e)(1)(iv).

We invite public comment on this proposal to update the policy for scoring SNFs that do not have sufficient baseline period data.

5. Proposal To Remove the LVA Policy From the SNF VBP Program Beginning With the FY 2023 Program Year

In the FY 2019 SNF PPS final rule (83 FR 39278 through 39280), we finalized our LVA policy, which provides an adjustment to the Program's scoring methodology to ensure low-volume SNFs receive sufficiently reliable performance scores for the SNF readmission measure. In that final rule, we also codified the LVA policy in § 413.338(d)(3) of our regulations. As we discussed in the FY 2019 SNF PPS final rule, we found that the reliability of the SNFRM measure rates and resulting performance scores were adversely affected if SNFs had fewer than 25 eligible stays during the performance period for a program year (83 FR 39279). Therefore, we believed that assigning a performance score that would result in a value-based incentive payment amount that is equal to the adjusted Federal per diem rate that the SNF would have received in the absence of the Program, to any SNF with fewer than 25 eligible stays for the SNFRM during the performance period, was the most appropriate adjustment for ensuring reliable performance scores.

However, we no longer believe the LVA policy is necessary because we are now required under the statute to have case and measure minimum policies for the SNF VBP Program, and those policies will achieve the same payment objective as the LVA policy. Therefore, we are proposing to remove the LVA Policy from the SNF VBP Program's scoring methodology beginning with the FY 2023 program year. With the removal of the LVA policy, the total amount available for a fiscal year would no longer be increased as appropriate for each fiscal year to account for the assignment of a performance score to low-volume SNFs. We are proposing to update the Total amount available for a fiscal year to 60 percent of the total amount of the reduction to the adjusted SNF PPS payments for that fiscal year, as estimated by CMS, in our regulations at§ 413.338(c)(2)(i). We are proposing to update the LVA policy at § 413.338(d)(3) to reflect its removal from the program.

We invite public comment on our proposal to remove the LVA policy from the SNF VBP Program beginning with the FY 2023 program year.

6. Proposal To Update the SNF VBP Scoring Methodology Beginning in the FY 2026 Program Year

a. Background

In the FY 2017 SNF PPS final rule (81 FR 52000 through 52005), we adopted a scoring methodology for the SNF VBP Program where we score SNFs on their performance on the SNFRM, award between 0 and 100 points to each SNF (with up to 90 points available for improvement), and award each SNF a SNF performance score consisting of the higher of its scores for achievement and improvement. The SNF performance score is then translated into a value-based incentive payment multiplier that can be applied to each SNF's Medicare claims during the SNF VBP Program year using an exchange function. Additionally, in the FY 2018 SNF PPS final rule (82 FR 36615), we adopted a clarification of our rounding policy in SNF VBP scoring to award SNF performance scores that are rounded to the nearest ten-thousandth of a point, or with no more than five significant digits to the right of the decimal point. We have also codified numerous aspects of the SNF VBP Program's policies in our regulations at § 413.338, and our scoring policies appear in paragraph (d) of that section.

We refer readers to the FY 2017 rule cited above for a detailed discussion of the SNF VBP Program's scoring methodology, public comments on the proposed policies, and examples of our scoring calculations.

b. Proposed Measure-Level Scoring Update

We are proposing to update our achievement and improvement scoring methodology to allow a SNF to earn a maximum of 10 points on each measure for achievement, and a maximum of 9 points on each measure for improvement. For purposes of determining these points, we are proposing to define the benchmark as the mean of the top decile of SNF performance on the measure during the baseline period and the achievement threshold as the 25th percentile of national SNF performance on the measure during the baseline period.

We are proposing to award achievement points to SNFs based on their performance period measure rate for each measure according to the following:

- If a SNF's performance period measure rate is equal to or greater than the benchmark, the SNF would be awarded 10 points for achievement.
- If a SNF's performance period measure rate is less than the achievement threshold, the SNF would receive 0 points for achievement.
- If a SNF's performance period measure rate is equal to or greater than the achievement threshold, but less than the benchmark, we will award between 0 and 10 points according to the following formula:

$$Achievement\ Score = \left(\left[9 \times \left(\frac{Performance\ Period\ Rate - Achievement\ Threshold}{Benchmark - Achievement\ Threshold}\right)\right] + 0.5\right)$$

We are also proposing to award improvement points to SNFs based on their performance period measure rate according to the following:

- If a SNF's performance period measure rate is equal to or lower than its baseline period measure rate, the SNF would be awarded 0 points for improvement.
- If a SNF's performance period measure rate was equal to or higher than the benchmark, the SNF would be awarded 9 points for improvement.
- If a SNF's performance period measure rate was greater than its baseline period measure rate but less than the benchmark, we will award between 0 and 9 points according to the following formula:

$$Improvement\ Score = \left(\left[10 \times \left(\frac{Performance\ Period\ Rate - Baseline\ Period\ Rate}{Benchmark - Baseline\ Period\ Rate}\right)\right] - 0.5\right)$$

Under this proposal, we will score SNFs' performance on achievement and improvement for each measure and award them the higher of the two scores for each measure to be included in the SNF performance score, except in the instance that the SNF does not meet the case minimum threshold for the measure during the applicable baseline period, in which case we propose in section VII.E.4. that the SNF would only be scored on achievement. As discussed in the following subsection of this proposed rule, we will then sum each SNFs' measure points and normalize them to arrive at a SNF performance score that ranges between 0 and 100 points. We believe that this policy appropriately recognizes the best performers on each measure and reserves the maximum points for their performance levels while also recognizing that improvement over time is important and should also be rewarded.

We further propose that this change would apply beginning with the FY 2026 SNF VBP program year. Under this proposal, all measures in the expanded SNF VBP Program would be weighted equally, as we believe that an equal weighting approach is simple for participating SNFs to understand and assigns significant scoring weight (that is, 33.33 percentage points if a SNF has sufficient data on all three measures proposed for FY 2026) to each measure topic covered by the expanded SNF VBP Program. However, as we consider whether we should propose to adopt additional measures, we also intend to consider whether we should group the measures into domains and weight them, similar to what we do under the Hospital VBP Program scoring methodology.

We view this proposed change to measure-level scoring as a necessary update to the SNF VBP Program's scoring methodology to incorporate additional quality measures and to allow us to add more measures in the future. We are also proposing to codify these updates to our scoring methodology in our regulation text by revising the heading for paragraph (d) and adding paragraph (e)(1) at § 413.338.

We invite public comment on this proposal.

c. Proposed Normalization Policy

We continue to believe that awarding SNF performance scores out of a total of 100 points helps stakeholders more easily understand the performance evaluation that we provide through the SNF VBP Program. We therefore believe that continuing to award SNF performance scores out of 100 points would help stakeholders understand the revised scoring methodology and would allow the scoring methodology to accommodate additional measures in the future without more methodological changes.

Therefore, we considered how we could construct the SNF performance score such that the scores continue to range between 0 and 100 points. We considered our past experience in our VBP programs, specifically including our experience with the Hospital VBP Program, where we award between 0 and 10 points to participating providers for their performance on each measure, and to arrive at a Total Performance Score that ranges between 0 and 100 points regardless of the number of measures on which the hospital has sufficient data, we normalize hospitals' scores. We believe the Hospital VBP Program's success in comprehensible measure-level scoring provides a strong model for the expanded SNF VBP Program.

We are therefore proposing to adopt a ''normalization'' policy for SNF performance scores under the expanded SNF VBP Program, effective in the FY 2026 program year. Under this policy, we would calculate a raw point total for each SNF by adding up the SNF's score on each of the measures. For example, a SNF that met the case minimum to receive a score on three quality measures would receive a score between 0 to 30 points, while a SNF that met the case minimum to receive a score on two quality measures would receive a score between 0 to 20 points. We would then normalize the raw point totals by converting them to a 100-point scale, with the normalized values being awarded as the SNF performance score. For example, we would normalize a SNF's raw point total of 27 points out of 30 by converting that total to a 100-point scale, with the result that the SNF would receive a SNF performance score of 90.

In addition to allowing us to maintain a 100-point total performance score scale, this policy would enable us to adopt additional quality measures for the program without making further changes to the scoring methodology. If, for example, we proposed to adopt a total of seven quality measures in the future, the normalization policy would enable us to continue to award SNF performance scores on a 100-point scale, even though the maximum raw point total would be 70 points.

We view this proposed normalization policy as a useful update to the SNF VBP Program's scoring methodology to accommodate additional quality measures and to ensure that the public understands the SNF performance scores that we award. We are also proposing to codify these updates to our scoring methodology by adding paragraph (e)(2) to our regulation text at § 413.338.

We invite public comment on our proposal.

F. Proposal To Adopt a Validation Process for the SNF VBP Program Beginning With the FY 2023 Program Year

Section 1888(h)(12) of the Act (as added by Division CC, section 111(a)(4) of the Consolidated Appropriations Act, 2021 (Pub. L. 116–120)), requires the Secretary to apply a process to validate SNF VBP program measures and data, as appropriate. We are proposing to adopt a validation process for the Program beginning with the FY 2023 Program year.

For the SNFRM measure, we are proposing that the process we currently use to ensure the accuracy of the SNFRM satisfies this statutory requirement. Information reported through claims for the SNFRM measure are validated for accuracy by Medicare Administrative Contractors (MACs) to ensure accurate Medicare payments. MACs use software to determine whether billed services are medically necessary and should be covered by Medicare, review claims to identify any ambiguities or irregularities, and use a quality assurance process to help ensure quality and consistency in claim review and processing. They conduct prepayment and post-payment audits of Medicare claims, using both random selection and targeted reviews based on analyses of claims data. We are proposing to codify these proposals for the FY 2023 SNF VBP in our regulation text at § 413.338(j).

We are considering additional validation methods that may be appropriate to include in the future for the proposed SNF HAI, DTC PAC SNF, and Total Nurse Staffing measures, as well as for other new measures we may consider for the program, and for other SNF quality measures and assessment data. For more information, see section VII.I.c.3. of this proposed rule, Request for Comment on the SNF VBP Program Approach to Validation.

We invite public comment on our proposal to adopt a validation process for the SNF VBP Program beginning with the FY 2023 program year.

G. Proposed SNF Value-Based Incentive Payments for FY 2023

We refer readers to the FY 2018 SNF PPS final rule (82 FR 36616 through 36621) for discussion of the exchange function methodology that we have adopted for the Program, as well as the specific form of the exchange function (logistic, or S-shaped curve) that we finalized, and the payback percentage of 60 percent. We adopted these policies for FY 2019 and subsequent fiscal years.

We also discussed the process that we undertake for reducing SNFs' adjusted Federal per diem rates under the Medicare SNF PPS and awarding value-based incentive payments in the FY 2019 SNF PPS final rule (83 FR 39281 through 39282).

As discussed in section VII.B.1. of this proposed rule, we are proposing to suppress the SNFRM for the FY 2023 program year and assigning all SNFs a performance score of zero, which would result in all participating SNFs receiving an identical performance score, as well as an identical incentive payment multiplier. Under this proposal, we are proposing to not rank SNFs for FY 2023. We are also proposing to reduce each participating SNF's adjusted Federal per diem rate for FY 2023 by 2 percentage points and to award each participating SNF 60 percent of that 2 percent withhold, resulting in a 1.2 percent payback for the FY 2023 program year. We believe this continued application of the 2 percent withhold is spread evenly across all SNFs is the most equitable way to reduce the impact of the withhold considering our proposal to award a performance score of zero to all SNFs. We are also proposing that those SNFs that do not meet the proposed case minimum for the SNFRM for FY 2023 would be excluded from the Program for FY 2023. We are proposing to update § 413.338(i) to reflect that this special scoring and payment policy will apply for FY 2023 in addition to FY 2022. As noted in section VII.B.1. of this proposed rule, our goal is to resume use of the scoring methodology we finalized for the program prior to the PHE beginning with the FY 2024 program year.

We invite public comment on this proposed change to the SNF VBP payment policy for the FY 2023 program year.

H. Public Reporting on the Provider Data Catalog Website

1. Background

Section 1888(g)(6) of the Act requires the Secretary to establish procedures to make SNFs' performance information on SNF VBP Program measures available to the public on the Nursing Home Compare website or a successor website, and to provide SNFs an opportunity to review and submit corrections to that information prior to its publication. We began publishing SNFs' performance information on the SNFRM in accordance with this directive and the statutory deadline of October 1, 2017. In December 2020, we retired the Nursing Home Compare website and are now using the Provider Data Catalog website (*https://data.cms.gov/provider-data/*) to make quality data available to the public, including SNF VBP performance information.

Additionally, section 1888(h)(9)(A) of the Act requires the Secretary to make available to the public certain information on SNFs' performance under the SNF VBP Program, including SNF performance scores and their ranking. Section 1888(h)(9)(B) of the Act requires the Secretary to post aggregate information on the Program, including the range of SNF performance scores and the number of SNFs receiving value-based incentive payments, and the range and total amount of those payments.

In the FY 2017 SNF PPS final rule (81 FR 52009), we discussed the statutory requirements governing public reporting of SNFs' performance information under the SNF VBP Program. In the FY 2018 SNF PPS final rule (82 FR 36622 through 36623), we finalized our policy to publish SNF VBP Program performance information on the Nursing Home Compare or successor website after SNFs have had an opportunity to review and submit corrections to that information under the two-phase Review and Correction process that we adopted in the FY 2017 SNF PPS final rule (81 FR 52007 through 52009) and for which we adopted additional requirements in the FY 2018 SNF PPS final rule. In the FY 2018 SNF PPS final rule, we also adopted requirements to rank SNFs and adopted data elements that we will include in the ranking to provide consumers and stakeholders with the necessary information to evaluate SNF's performance under the Program (82 FR 36623).

As discussed in section VII.B.1. of this proposed rule, we are proposing to suppress the SNFRM for the FY 2023 program year due to the impacts of the PHE for COVID–19. If that proposal is finalized, for all SNFs participating in the FY 2023 SNF VBP Program, we would use the performance period (FY 2021, October 1, 2020 through September 30, 2021) we adopted in the FY 2021 SNF PPS final rule (85 FR 47624), as well as the previously finalized baseline period (FY 2019,

October 1, 2018 through September 30, 2019) to calculate each SNF's RSRR for the SNFRM. We are also proposing in section VII.E.2. of this proposed rule to assign all SNFs a performance score of zero. This will result in all participating SNFs receiving an identical performance score, as well as an identical incentive payment multiplier.

While we would publicly report the SNFRM rates for the FY 2023 program year, we would make clear in the public presentation of those data that we are suppressing the use of those data for purposes of scoring and payment adjustments in the FY 2023 SNF VBP Program given the significant changes in SNF patient case volume and facility-level case-mix described earlier.

2. Proposed Changes to the Data Suppression Policy for Low-Volume SNFs Beginning With the FY 2023 SNF VBP Program Year

In the FY 2020 SNF PPS final rule (84 FR 38823 through 38824), we adopted a data suppression policy for low-volume SNF performance information. Specifically, we finalized that we will suppress the SNF performance information available to display as follows: (1) If a SNF has fewer than 25 eligible stays during the baseline period for a program year, we will not display the baseline risk-standardized readmission rate (RSRR) or improvement score, although we will still display the performance period RSRR, achievement score, and total performance score if the SNF had sufficient data during the performance period; (2) if a SNF has fewer than 25 eligible stays during the performance period for a program year and receives an assigned SNF performance score as a result, we will report the assigned SNF performance score and we will not display the performance period RSRR, the achievement score, or improvement score; and (3) if a SNF has zero eligible cases during the performance period for a program year, we will not display any information for that SNF. We codified this policy in the FY 2021 SNF PPS final rule (85 FR 47626) at § 413.338(e)(3)(i) through (iii).

As discussed in section VII.B.1. of this proposed rule, we are proposing to suppress the SNFRM for the FY 2023 program year, and we are proposing special scoring and payment policies for FY 2023. In section VII.E.3.b of this proposed rule, we are proposing to adopt a new case minimum that would apply to the SNFRM beginning with FY 2023, new case minimums that would apply to the SNF HAI and Total Nurse Staffing measures and a measure minimum that would apply beginning with FY 2026, a new case minimum that would apply to the DTC PAC SNF measure and a new measure minimum that would apply beginning with FY 2027. As a result of these proposed policies, and in order to implement them for purposes of clarity and transparency in our public reporting, we propose revising the data suppression policy as follows:

(1) If a SNF does not have the minimum number of cases during the baseline period that applies to a measure for a program year, we would publicly report the SNF's measure rate and achievement score if the SNF had minimum number of cases for the measure during the performance period for the program year;

(2) If a SNF does not have the minimum number of cases during the performance period that applies to a measure for a program year, we would not publicly report any information on the SNF's performance on that measure for the program year;

(3) If a SNF does not have the minimum number of measures during the performance period for a program year, we would not publicly report any data for that SNF for the program year.

We are proposing to codify this policy at § 413.338(f)(4).

We invite public comment on these proposals.

I. Requests for Comment Related to Future SNF VBP Program Expansion Policies

1. Requests for Comment on Additional SNF VBP Program Measure Considerations for Future Years

(a) Request for Comment on Including a Staffing Turnover Measures in a Future SNF VBP Program Year

In the FY 2022 SNF PPS final rule (86 FR 42507 through 42511), we summarized stakeholder feedback on our request for comments related to potential future measures for the SNF VBP Program, including a specific request for comment on measures that focus on staffing turnover. Specifically, we noted that we have been developing measures of staff turnover with data that are required to be submitted under section 1128I(g)(4) of the Act, with the goal of making the information publicly available. We stated that, through our implementation of the PBJ staffing data collection program, we indicated that we will be reporting rates of employee turnover in the future (for more information on this program, see CMS memorandum QSO–18–17–NH).[248] We refer readers to the FY 2022 SNF PPS final rule for additional details on this request for public comments and a summary of the public comments we received (86 FR 42507 through 42511).

Nursing staff turnover has long been identified as a meaningful factor in nursing home quality of care.[249] Studies have shown a relationship between staff turnover and quality outcomes; for example, higher staff turnover is associated with an increased likelihood of receiving an infection control citation.[250] The collection of auditable payroll-based daily staffing data through the PBJ system has provided an opportunity to calculate, compare, and publicly report turnover rates; examine facility characteristics associated with higher or lower turnover rates; and further measure the relationship between turnover and quality outcomes. For example, a recent study using PBJ data found that nursing staff turnover is higher than previously understood, variable across facilities, and correlated with organizational characteristics such as for-profit status, chain ownership, and higher Medicaid census.[251] In addition, we have found that higher overall star ratings are associated with lower average staff turnover rates, suggesting that lower staff turnover rates are associated with higher overall nursing home quality.[252]

In January of 2022, we began publicly reporting a staffing turnover measure on the Compare tool currently hosted by HHS, available at *https://www.medicare.gov/care-compare,* and this information will be included in the Nursing Home Five Star Quality Rating System in July 2022. We refer readers to the Nursing Home Staff Turnover and Weekend Staffing Levels Memo for additional information related to this measure at *https://www.cms.gov/files/document/qso-22-08-nh.pdf.* We believe staffing turnover is an important indicator of quality of care provided in

[248] *https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO18-17-NH.pdf.*

[249] Centers for Medicare and Medicaid Services. 2001 Report to Congress: Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Phase II. Baltimore, MD: Centers for Medicare and Medicaid Services. *http://phinational.org/wp-content/uploads/legacy/clearinghouse/PhaseIIVolumeIofIII.pdf.*

[250] Lacey Loomer, David C. Grabowski, Ashvin Gandhi, Association between Nursing Home Staff Turnover and Infection Control Citations, SSRN Electronic Journal, 10.2139/ssrn.3766377, (2020). *https://onlinelibrary.wiley.com/doi/abs/10.1111/1475-6773.13877.*

[251] Gandhi, A., Yu, H., & Grabowski, D., ''High Nursing Staff Turnover in Nursing Homes Offers Important Quality Information'' (2021) Health Affairs, 40(3), 384–391. doi:10.1377/hlthaff.2020.00957. *https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00957.*

[252] *https://www.cms.gov/files/document/qso-22-08-nh.pdf.*

nursing homes and SNFs. Additionally, in response to our request for comment on a staffing turnover measure, stakeholders strongly recommended that we consider measures of staffing turnover to assess patterns and consistency in staffing levels. As a part of our goals to build a robust and comprehensive measure set for the SNF VBP Program and in alignment with stakeholder recommendations, we intend to propose to adopt a staffing turnover measure in the SNF VBP Program in the FY 2024 SNF PPS proposed rule. Specifically, the measure we intend to include in the SNF VBP program is the percent of total nurse staff that have left the facility over the last year. Total nurse staff include RNs, LPNs, and nurse aides. More information on this measure, can be found in the Five Star Rating Technical Users' Guide at *https://www.cms.gov/medicare/provider-enrollment-and-certification/certificationandcomplianc/downloads/usersguide.pdf.*

The Biden-Harris Administration is committed to improving the quality of care in nursing homes. As stated in a fact sheet entitled ''Protecting Seniors by Improving Safety and Quality of Care in the Nation's Nursing Homes,'' we are committed to strengthening the SNF VBP Program and have begun to measure and publish staff turnover and weekend staffing levels, metrics which closely align with the quality of care provided in a nursing home. We intend to propose new measures based on staffing adequacy, the resident experience, as well as how well facilities retain staff. Accordingly, we seek commenters' feedback on including the staff turnover measure that captures the percent of total nurse staff that have left the facility over the last year for the SNF VBP Program as currently specified or whether the measure should be revised before being proposed for inclusion in the SNF VBP program.

In addition, we are interested in whether we should explore the development of a composite measure that would capture multiple aspects of staffing, including both total nurse hours and the staff turnover measure rather than having separate but related measures related to nursing home staffing, such a measure could potentially replace the initial measure we intend to propose to include in SNF VBP for FY 2024. Preliminary analyses using the staff turnover data on the *Medicare.gov* Care Compare website have indicated that as the lower average staff turnover decreases, the overall star ratings for facilities increases, suggesting that lower turnover is associated with higher overall quality,[253] and research has indicated that staff turnover has been linked with increased infection control issues.[254] We believe it is important to capture and tie aspects of both staffing levels and staffing turnover to quality payment and welcome commenter's feedback for how to balance those goals under the SNF VBP program. We are also interested to hear about actions SNFs may take or have taken to reduce staff turnover in their facilities, and for SNFs that did reduce staff turnover, the reduction's observed impact on quality of care. In particular, we are interested in best practices for maintaining continuity of staffing among both nursing and nurse aide staff. Finally, we are interested in commenters feedback on any considerations we should take into account related to the impact that including a Nursing Home Staff Turnover measure may have on health equity. Before proposing to include this measure in the SNF VBP Program in the FY 2024 SNF PPS proposed rule, we would include the measure on a list of measures under consideration, as described in section 1890A of the Act.

(b) Request for Comment on Including the National Healthcare Safety Network (NHSN) COVID–19 Vaccination Coverage Among Healthcare Personnel Measure in a Future SNF VBP Program Year

In addition to the staffing turnover measure and the other potential future measures listed in the FY 2022 SNF PPS final rule, we are also considering the inclusion of the National Healthcare Safety Network (NHSN) COVID–19 Vaccination Coverage among Healthcare Personnel measure, which measures the percentage of healthcare personnel who receive a complete COVID–19 vaccination course. This measure data is collected by the CDC NHSN and the measure was finalized for use in the SNF QRP in the FY 2022 SNF PPS final rule (86 FR 42480 through 42489). We seek commenters' feedback on whether to propose to include this measure in a future SNF VBP program year. Before proposing to include any such measure, we would include the measure on a list of measures under consideration, as required by section 1890A of the Act.

[253] To Advance Information on Quality of Care, CMS Makes Nursing Home Staffing Data Available, available at: *https://www.cms.gov/newsroom/press-releases/advance-information-quality-care-cms-makes-nursing-home-staffing-data-available.*

[254] Lacey Loomer, David C. Grabowski, Ashvin Gandhi, Association between Nursing Home Staff Turnover and Infection Control Citations, SSRN Electronic Journal, 10.2139/ssrn.3766377, (2020). *https://onlinelibrary.wiley.com/doi/abs/10.1111/1475-6773.13877.*

(c) Request for Comment on Updating the SNF VBP Program Exchange Function

In the FY 2018 SNF PPS final rule (82 FR 36616 through 36619), we adopted an exchange function methodology for translating SNFs' performance scores into value-based incentive payments. We illustrated four possibilities for the functional forms that we considered—linear, cube, cube root, and logistic—and discussed how we assessed how each of the four possible exchange function forms would affect SNFs' incentive payments under the Program. We also discussed several important factors that we considered when adopting an exchange function, including the numbers of SNFs that receive more in value-based incentive payments in each scenario compared to the number of SNFs for which a reduction is applied to their Medicare payments, as well as the resulting incentives for SNFs to reduce hospital readmissions. We also evaluated the distributions of value-based incentive payment adjustments and the functions' results for compliance with the Program's statutory requirements. We found that the logistic function maximized the number of SNFs with positive payment adjustments among SNFs measured using the SNFRM. We also found that the logistic function best fulfilled the requirement that SNFs in the lowest 40 percent of the Program's ranking receive a lower payment rate than would otherwise apply, resulted in an appropriate distribution of value-based incentive payment percentages, and otherwise fulfilled the Program's requirements specified in statute.

Additionally, we published a technical paper describing the analyses of the SNF VBP Program exchange function forms and payback percentages that informed the policies that we adopted in the FY 2018 SNF PPS final rule. The paper is available on our website at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/Other-VBPs/SNF-VBP-exchange-function-analysis.pdf.*

As discussed earlier, we are proposing numerous policy changes to expand the SNF VBP Program's measure set based on authority provided by the Consolidated Appropriations Act, 2021, including additional quality measures and adjustments to the Program's scoring methodology to accommodate the presence of more than one quality measure. We are also considering whether we should propose a new form for the exchange function or modify the

logistic exchange function in future years.

When we adopted the logistic function for the SNF VBP Program, we focused on that function's ability, coupled with the 60 percent payback percentage, to provide net-positive value-based incentive payments to as many top-performing SNFs as possible. We believed that structuring the Program's incentive payments in this manner enabled us to reward the Program's top-performing participants and provide significant incentives for SNFs that were not performing as well to improve over time.

We continue to believe that these considerations are important and that net-positive incentive payments help drive quality improvement in the SNF VBP Program. However, in the context of a value-based purchasing program employing multiple measures, we are considering whether a new functional form or modifications to the existing logistic exchange function may provide the best incentives to SNFs to improve on the Program's measures.

If finalized, the additional measures that we are proposing for the SNF VBP Program would align the Program more closely with the Hospital VBP Program, on which some of SNF VBP's policies, like the exchange function methodology, are based. The Hospital VBP Program employs a linear exchange function to translate its Total Performance Scores into value-based incentive payment percentages that can be applied to hospitals' Medicare claims. A linear exchange function is somewhat simpler for stakeholders to understand but presents less of an opportunity to reward top performers than the logistic form that we currently employ in the SNF VBP Program at *https://data.cms.gov/provider-data/* or *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/SNF-VBP/SNF-VBP-Page.*

We request stakeholders' feedback on whether we should consider proposing either a new functional form or modified logistic exchange function for the SNF VBP Program. Specifically, we request comments on whether the proposed addition of new quality measures in the Program should weigh in favor of a new exchange function form, a modified logistic exchange function, or no change to the existing exchange function, whether stakeholders believe that the increased incentive payment percentages for top performers offered by the logistic function should outweigh the simplicity of the linear function, and whether we should further consider either the cube, cube root, or other functional forms.

3. Request for Comment on the Validation of SNF Measures and Assessment Data

We have proposed to adopt measures for the SNF VBP Program that are calculated using data from a variety of sources, including Medicare FFS claims, the minimum data set (MDS), and the PBJ system, and we are seeking feedback on the adoption of additional validation procedures. In addition, section 1888(h)(12) of the Act requires the Secretary to apply a process to validate SNF VBP program measures, quality measure data, and assessment data as appropriate. MDS information is transmitted electronically by nursing homes to the national MDS database at CMS. The data set was updated in 2010 from MDS 2.0 to MDS 3.0 to address concerns about the quality and validity of the MDS 2.0 data. Final testing of MDS 3.0 showed strong results, with the updated database outperforming MDS 2.0 in terms of accuracy, validity for cognitive and mood items, and clinical relevance.[255] Research has also shown that MDS 3.0 discharge data match Medicare enrollment and hospitalization claims data with a high degree of accuracy.[256]

Although The MDS data sets are assessed for accuracy, as described above, we are interested in ensuring the validity of the data reported by skilled nursing facilities because use of this data would have payment implications under the SNF VBP Program. Accordingly, we are requesting stakeholder feedback on the feasibility and need to select SNFs for validation via a chart review to determine the accuracy of elements entered into MDS 3.0 and PBJ. Additionally, we request feedback on data validation methods and procedures that could be utilized to ensure data element validity and accuracy.

We note that other programs, including the Hospital IQR (85 FR 58946) and Hospital OQR programs (76 FR 74485), have developed validation processes for chart-abstracted measures and electronic clinical quality measures (eCQMs), data sources not utilized for the SNF VBP Program. However, there are other elements of existing programs' validation procedures that may be considered for a future SNF VBP Program validation effort. For example, we request feedback on the volume of facilities to select for validation under the SNF VBP Program. We estimate that 3,300 hospitals report data under the Hospital OQR (86 FR 63961) and Hospital IQR (86 FR 45508) Programs. We estimate that over 15,000 SNFs are eligible for the SNF VBP Program. The Hospital OQR Program randomly selects the majority of hospitals (450 hospitals) for validation and additionally select a subset of targeted hospitals (50 hospitals) (86 FR 63872). Under the Hospital IQR Program, 400 hospitals are selected randomly and up to 200 hospitals are targeted for chart-abstracted data validation and up to 200 hospitals are randomly selected for eCQM data validation (86 FR 45424). We sample approximately 10 records from 300 randomly selected facilities under the ESRD QIP Program (82 FR 50766).

We also request stakeholder's feedback on the use of both random and targeted selection of facilities for validation. The Hospital OQR program identifies hospitals for targeted validation based on whether they have previously failed validation or have reported an outlier value deviating markedly from the measure values for other hospitals (more than 3 standard deviations of the mean) (76 FR 74485). Validation targeting criteria utilized by the Hospital IQR Program include factors such as: (1) Abnormal, conflicting or rapidly changing data patterns; (2) facilities which have joined the program within the previous 3 years, and which have not been previously validated or facilities which have not been randomly selected for validation in any of the previous 3 years; and (3) any hospital that passed validation in the previous year, but had a two-tailed confidence interval that included 75 percent (85 FR 58946).

Finally, we request stakeholder feedback on the implementation timeline for additional SNF VBP Program validation processes, as well as validation processes for other quality measures and assessment data. We believe it may be feasible to implement additional validation procedures beginning with data from the FY 2026 program year, at the earliest. Additionally, we may consider the adoption of a pilot of additional data validation processes; such an approach would be consistent with the implementation of the ESRD QIP data validation procedures, which began with a pilot in CY 2014 (82 FR 50766).

[255] RAND MDS 3.0 Final Study Report: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Downloads/MDS30FinalReport-Appendices.zip.*

[256] Rahman M, Tyler D, Acquah JK, Lima J, Mor V. Sensitivity and specificity of the Minimum Data Set 3.0 discharge data relative to Medicare claims. J Am Med Dir Assoc. 2014;15(11):819–824. doi:10.1016/j.jamda.2014.06.017: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4731611/.*

We request stakeholder's feedback on the data validation considerations for the SNF VBP Program discussed previously in this section.

4. Request for Comment on a SNF VBP Program Approach To Measuring and Improving Health Equity

Significant and persistent inequities in healthcare outcomes exist in the U.S. Belonging to a racial or ethnic minority group; living with a disability; being a member of the lesbian, gay, bisexual, transgender, and queer (LGBTQ+) community; living in a rural area; being a member of a religious minority; or being near or below the poverty level, is often associated with worse health outcomes.[257 258 259 260 261 262 263 264 265] In accordance with Executive Order 13985 of January 20, 2021 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, equity is defined as consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality (86 FR 7009). In February 2022, we further expanded on this definition by defining health equity as the attainment of the highest level of health for all people, where everyone has a fair and just opportunity to attain their optimal health regardless of race, ethnicity, disability, sexual orientation, gender identity, socioeconomic status, geography, preferred language, or other factors that affect access to care and health outcomes. We are working to advance health equity by designing, implementing, and operationalizing policies and programs that support health for all the people served by our programs, eliminating avoidable differences in health outcomes experienced by people who are disadvantaged or underserved, and providing the care and support that our enrollees need to thrive. Over the past decade we have enacted a suite of programs and policies aimed at reducing health care disparities including the CMS Mapping Medicare Disparities Tool,[266] the CMS Innovation Center's Accountable Health Communities Model,[267] the CMS Disparity Methods stratified reporting program,[268] and efforts to expand social risk factor data collection, such as the collection of Standardized Patient Assessment Data Elements in the post-acute care setting.[269]

As we continue to leverage our value-based purchasing programs to improve quality of care across settings, we are interested in exploring the role of health equity in creating better health outcomes for all populations in these programs. As the March 2020 ASPE Report to Congress on Social Risk Factors and Performance in Medicare's VBP Program notes, it is important to implement strategies that cut across all programs and health care settings to create aligned incentives that drive providers to improve health outcomes for all beneficiaries.[270] Therefore, in this proposed rule, we are requesting stakeholder feedback on guiding principles for a general framework that could be utilized across our quality programs to assess disparities in healthcare quality in a broader Request for Information (RFI) in section VI.E. of this proposed rule. We refer readers to this RFI titled, ''Overarching Principles for Measuring Healthcare Quality Disparities Across CMS Quality Programs—A Request for Information,'' which includes a complete discussion on the key considerations that we intend to take into account when determining how to address healthcare disparities and advance health equity across all of our quality programs. Additionally, we are interested in stakeholder feedback on specific actions the SNF VBP Program can take to align with other value-based purchasing and quality programs to address healthcare disparities and advance health equity.

As we continue assessing the SNF VBP Program's policies in light of its operation and its expansion as directed by the CAA, we request public comments on policy changes that we should consider on the topic of health equity. We specifically request comments on whether we should consider incorporating adjustments into the SNF VBP Program to reflect the varied patient populations that SNFs serve around the country and tie health equity outcomes to SNF payments under the Program. These adjustments could occur at the measure level in forms such as stratification (for example, based on dual status or other metrics) or including measures of social determinants of health (SDOH). These adjustments could also be incorporated at the scoring or incentive payment level in forms such as modified benchmarks, points adjustments, or modified incentive payment multipliers (for example, peer comparison groups based on whether the facility includes a high proportion of dual eligible beneficiaries or other metrics). We request commenters' views on which of these adjustments, if any, would be most effective for the SNF VBP Program at accounting for any health equity issues that we may observe in the SNF population.

VIII. Request for Information: Revising the Requirements for Long-Term Care (LTC) Facilities To Establish Mandatory Minimum Staffing Levels

The COVID–19 Public Health Emergency has highlighted and exacerbated long-standing concerns

[257] Joynt KE, Orav E, Jha AK. (2011). Thirty-day readmission rates for Medicare beneficiaries by race and site of care. JAMA, 305(7):675–681.

[258] Lindenauer PK, Lagu T, Rothberg MB, et al. (2013). Income inequality and 30 day outcomes after acute myocardial infarction, heart failure, and pneumonia: Retrospective cohort study. *British Medical Journal,* 346.

[259] Trivedi AN, Nsa W, Hausmann LRM, et al. (2014). Quality and equity of care in U.S. hospitals. *New England Journal of Medicine,* 371(24):2298–2308.

[260] Polyakova, M., et al. (2021). Racial disparities in excess all-cause mortality during the early COVID–19 pandemic varied substantially across states. *Health Affairs,* 40(2): 307–316.

[261] Rural Health Research Gateway. (2018). Rural communities: age, income, and health status. *Rural Health Research Recap. https://www.ruralhealthresearch.org/assets/2200-8536/rural-communities-age-incomehealth-status-recap.pdf.*

[262] *https://www.minorityhealth.hhs.gov/assets/PDF/Update_HHS_Disparities_Dept-FY2020.pdf.*

[263] *www.cdc.gov/mmwr/volumes/70/wr/mm7005a1.htm.*

[264] Milkie Vu et al. Predictors of Delayed Healthcare Seeking Among American Muslim Women, Journal of Women's Health 26(6) (2016) at 58; S.B. Nadimpalli, et al., The Association between Discrimination and the Health of Sikh Asian Indians Health Psychol. 2016 Apr; 35(4): 351–355.

[265] Poteat TC, Reisner SL, Miller M, Wirtz AL. (2020). COVID–19 vulnerability of transgender women with and without HIV infection in the Eastern and Southern U.S. preprint. *medRxiv.* 2020;2020.07.21. 20159327. doi:10.1101/2020.07.21.20159327.

[266] *https://www.cms.gov/About-CMS/Agency-Information/OMH/OMH-Mapping-Medicare-Disparities.*

[267] *https://innovation.cms.gov/innovation-models/ahcm.*

[268] *https://qualitynet.cms.gov/inpatient/measures/disparity-methods.*

[269] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/-IMPACT-Act-Standardized-Patient-Assessment-Data-Elements.*

[270] Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health & Human Services. Second Report to Congress on Social Risk Factors and Performance in Medicare's Value-Based Purchasing Program. 2020. *https://aspe.hhs.gov/social-risk-factors-and-medicares-value-basedpurchasing-programs.*

with inadequate staffing in long-term care (LTC) facilities. The Biden-Harris Administration is committed to improving the quality of U.S. nursing homes so that seniors and others living in nursing homes get the reliable, high-quality care they deserve.[271] As a result, we intend to propose minimum standards for staffing adequacy that nursing homes would be required to meet. We will conduct a new research study to help inform policy decisions related to determining the level and type of staffing needed to ensure safe and quality care and expect to issue proposed rules within 1 year. We are seeking opportunities to improve our health and safety standards to promote thoughtful, informed staffing plans and decisions within LTC facilities that aim to meet resident needs, including maintaining or improving resident function and quality of life. Such an approach is essential to effective person-centered care. Therefore, we are considering policy options for future rulemaking to establish specific minimum direct care staffing standards and are seeking stakeholder input to inform our policy decisions.

A. Background

The requirements for participation for LTC facilities are the baseline health and safety standards that Medicare-certified providers and suppliers must meet to receive Medicare and Medicaid payment. We have broad statutory authority to establish health and safety regulations for several types of health care providers and suppliers, which include Conditions of Participation (CoPs), Conditions for Coverage (CfCs), and Requirements for LTC facilities. Section 1102 of the Act grants the Secretary authority to make and publish such rules and regulations, not inconsistent with the Act, as may be necessary to the efficient administration of the functions with which the Secretary is charged under the Act. Section 1871 of the Act grants the Secretary authority to prescribe regulations as may be necessary to carry out the administration of the Medicare program. Finally, section 1819 of the Act establishes requirements specifically with respect to skilled nursing facilities (SNFs), including, among other requirements, section 1819(b)(1)(A) of the Act, which requires that a SNF must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident, section 1819(b)(4)(C)(i) of the Act, which requires that a SNF must provide 24-hour licensed nursing service sufficient to meet nursing needs of its residents, and must use the services of a registered professional nurse at least 8 consecutive hours a day. Section 1819(d)(4)(B) of the Act further states that a SNF must meet such other requirements relating to the health, safety, and well-being of residents or relating to the physical facilities thereof as the Secretary may find necessary. These provisions are largely paralleled in section 1919 of the Act for nursing facilities (NFs).

The regulatory requirements for SNFs and NFs, collectively referred to as LTC facilities and colloquially known as nursing homes, are codified at 42 CFR part 483. In this request for information, we are seeking public input on addressing direct care staffing requirements, especially those for registered nurses (RNs), licensed practical nurses (LPNs), or, in California and Texas, licensed vocational nurses (LVNs), and certified nursing assistants (CNAs), colloquially known as nurse aides, through the requirements for participation for LTC facilities. We also welcome input on which individuals should also be considered direct care staff, beyond nurses and CNAs.

Existing regulations at § 483.35 require that LTC facilities have sufficient nursing staff with the appropriate competencies and skill sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with a required facility assessment. Requirements at § 483.35(a) for sufficient staff mirror the statutory language at sections 1819(b)(4)(C)(i) and 1919(b)(4)(C)(i) of the Act, requiring (with certain exceptions) an RN to provide services in a facility 8 consecutive hours a day, 7 days a week as well as ''sufficient numbers'' of licensed nurses and other nursing personnel 24 hours a day to meet residents' needs. Certain nurse staffing requirements may be waived in accordance with the statute, under specific circumstances.

1. Prior Staffing Studies

As indicated later in this section, there is research that associates increased RN staffing with improved quality of care. We have conducted prior studies that have been noted as potential sources for helping us assess minimum staffing levels, including the STM (1995 to 1997) and STRIVE (2006 to 2007) studies,[272] which determined the amount of nursing (RN, LVN, and nurse aide) time dedicated to residents classified under each RUG group. Both these studies measured the direct care time that was actually provided by the facilities and not nurse staffing levels necessary to provide adequate quality of care. Other studies as discussed later in this section, focus on the number of hours of nursing care a resident must receive to achieve certain quality objectives. At least one study noted that the relationship is not necessarily linear; that is, it takes more labor resources to achieve a certain level of improvement, but beyond that improvement slows.[273] Our own 2001 study conducted by Abt Associates reported that facilities with staffing levels below 4.1 hours per resident day (HPRD) for long stay residents (that is, those residents in the facility at least 90 days) may provide care that results in harm and jeopardy to residents.[274] A 2004 study by Schnelle and colleagues found that the highest-staffed nursing homes reported significantly lower resident care loads on all staffing reports and provided better care than all other homes.[275] In a more recent study involving 13,500 nursing homes, Schnelle et al. used a mathematical model to determine the CNA staffing necessary to provide activities of daily living (ADL) care to residents in accordance with their needs as identified in Minimum Data Set (MDS) data.[276] Based on their model, CNA staffing required for ADL care that would result in a rate of care omissions below 10 percent ranged from 2.8 HPRD to 3.6 HPRD. However, the nursing homes participating in the study reported actual CNA staffing that ranged

[271] *https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/.*

[272] *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/TimeStudy.*

[273] Zhang, Unruh, Liu, and Wan, 2006. ''Minimum Nurse Staffing Ratios for Nursing Homes''.

[274] Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Phase II Final Report, 2001, Abt Associates. *https://theconsumervoice.org/uploads/files/issues/CMS-Staffing-Study-Phase-II.pdf.*

[275] Schnelle JF, Simmons SF, Harrington C, Cadogan M, Garcia E, M Bates-Jensen B. Relationship of nursing home staffing to quality of care. Health Serv Res. 2004 Apr;39(2):225–50. doi: 10.1111/j.1475–6773.2004.00225.x. PMID: 15032952; PMCID: PMC1361005.

[276] Schnelle, J.F., Schroyer, L.D., Saraf, A.A., Simmons, S.F. Determining nurse aide staffing requirements to provide care based on resident workload: A discrete event simulation model. JAMDA. 2016; 17:970–977. *https://www.jamda.com/article/S1525-8610(16)30358-9/fulltext.*

from 2.3 HPRD to 2.5 HPRD. The rate of care omissions reported by the authors was intended for illustrative purposes, not necessarily as a desirable or acceptable level of staffing.

Despite these requirements and general understanding of the impacts of staffing on resident health and safety, understaffing continues to be an area of concern. We are aware of ongoing quality concerns and the association of RN staffing with quality of care. A staffing level of 4.1 HPRD is currently the most common number put forward as a potential minimum standard to ensure the adequacy of nursing staff, largely attributed to the 2001 Abt Associates study. As noted below, the care needs of, and the type of care provided to, LTC facility residents have changed. Therefore we are now reevaluating the evidence and conducting a new study.

2. Trends in Resident Composition and Care Needs in LTC Facilities

Based on existing data analyses from Centers for Disease Control and Prevention's National Center for Health Statistics Vital and Health Statistics, Series 3, Number 43 (February 2019), the average hours of nursing care per resident per day for LTC facilities is 3 hours and 48 minutes 0.54 RN hours (up 0.02 hours from 2013), 0.85 LPN or LVN hours (same as 2013), and 2.41 Aide hours (down 0.05 hours from 2013), plus an additional 0.08 hours of Social Worker time and 0.19 hours activities staff time. This does not include therapist time, although virtually all LTC facilities (99.5 percent) offer at least some therapeutic services as therapeutic services are critical to helping residents ''attain or maintain the highest practicable physical, mental, and psychosocial well-being'' in order for a facility to achieve its statutory mandate that a nursing facility provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident (see sections 1819(b)(2) and 1919(b)(2) of the Act). Very few LTC facilities (0.4 percent) were exclusive to dementia patients, who often require more care than the general LTC resident population; and only 14.9 percent offered a dedicated dementia care unit within the larger facility.[277]

A study of trends in LTC facilities from 1985 to 2015 revealed changes in resident composition and increased acuity and care needs.[278] The percentage of residents with dementia increased from 39 to 45 percent. Prevalence of psychiatric diagnoses among residents almost tripled from 11 to 31 percent. The number of residents admitted from the hospital increased from 67 percent in 2000 to 85 percent in 2015 reflecting an increased percentage of residents being admitted for post-acute care with higher levels of acuity and functional impairments. Physical abilities decreased among residents from 1995 to 2015 with increased assistance among residents needed for bathing (89 to 96 percent), dressing (74 to 92 percent), transferring (60 to 85 percent), toileting (49 to 88 percent), and eating (38 to 56 percent). The study also found an overall decrease in the number of facilities nationwide by over 3,000, declining occupancy rates which fell from 87 to 81 percent, and overall increased staffing levels. Although the study found that overall direct care HPRD increased from 3.39 to 3.79, a breakdown by job title or discipline revealed that the increase was largely attributed to CNAs. CNA HPRD increased from 2.26 to 2.42 hours while nursing hours remained relatively stable for LPN/LVN hours (0.87 to 0.88) and decreased for RN hours (0.66 to 0.58).

An Issue Brief published by the Office of the Assistant Secretary for Planning and Evaluation (ASPE) in October 2020 revealed similar findings.[279] From 2002 to 2015, the proportion of older adults residing in LTC facilities declined. The age-standardized prevalence of dementia among older adults in the United States (U.S.) increased; however, the largest increase occurred among LTC facility residents. Moreover, the proportion of LTC facility residents with limitations in three or more activities of daily living was significantly higher than older adults living in other settings (that is, private home, apartment, or assisted living facility). Both of these studies suggest an overall decrease in census of LTC facilities occurred simultaneously with an increase in resident acuity and care needs while direct care responsibilities shifted from nursing personnel to CNAs. We welcome comment on these trends and their implications for staffing level requirements.

3. Existing Data on Staffing in LTC Facilities

To ensure the availability of reliable and auditable data on LTC facility staffing, we developed a system to collect staffing information that is auditable back to payroll data, known as the Payroll Based Journal (PBJ). The Affordable Care Act (Pub. L. 111–148, March 23, 2010) added a new section 1128I to the Act to promote greater accountability for LTC facilities (defined under section 1128I(a) of the Act as SNFs). As added by the Affordable Care Act, section 1128I(g) of the Act pertains to the submission of staffing data by LTC facilities, and specifies that the Secretary, after consulting with State LTC ombudsman programs, consumer advocacy groups, provider stakeholder groups, employees and their representatives and other parties the Secretary deems appropriate, shall require a facility to electronically submit to the Secretary direct care staffing information, including information for agency and contract staff, based on payroll and other verifiable and auditable data in a uniform format according to specifications established by the Secretary in consultation with such programs, groups, and parties. Since July 2016, nursing homes have been submitting data electronically through the PBJ system as required under section 1128I(g) of the Act and § 483.70(q). The data submitted by facilities are the number of hours direct care staff are paid to work each day. All data submitted is auditable back to payroll and other verifiable sources.

In April 2018, we began using PBJ data to calculate staffing measures posted on Nursing Home Compare, and used in the Five Star Quality System. Staffing data is submitted quarterly and facilities are downgraded to a one-star staffing rating for a quarter if they meet either of the following criteria:

- Facilities fail to submit any staffing data for the reporting quarter.
- Facilities report four or more days in a quarter with zero registered nurse hours.[280]

Facilities that report staffing below established thresholds are downgraded. LTC facilities with significant inaccuracies between the hours reported and the hours verified, or facilities who failed to submit any data by the required deadline would be presumed to have low levels of staffing. This results in these facilities being downgraded to a one-star rating in the staffing domain, which drops their overall (composite) star rating by one-star for a quarter.

In April 2019, we established new thresholds for staffing ratings and

[277] *https://www.cdc.gov/nchs/data/series/sr_03/sr03_43-508.pdf.*

[278] *https://www.sciencedirect.com/science/article/pii/S1525861019305274?via%3Dihub.*

[279] *https://aspe.hhs.gov/reports/trends-use-residential-settings-among-older-adults-issue-brief-0.*

[280] *https://cmsintranet.share.cms.gov/ER/Pages/DetailOpportunities.aspx#; https://www.cms.gov/medicare/provider-enrollment-and-certification/certificationandcomplianc/downloads/usersguide.pdf.*

adjusted the staffing rating's grid to increase the weight RN staffing has on the staffing rating. We also reduced the number of days without an RN onsite that triggers an automatic downgrade to one-star from 7 days to 4 days.

In January 2022, we began posting on Care Compare the level of total nurse and RN staffing on weekends provided by each facility over a quarter and the percent of nursing staff and number of administrators that stopped working at the nursing home over a 12-month period. This data will be used in the Nursing Home Five Star Quality Rating System beginning in July 2022. We further anticipate using PBJ data to analyze the effects of LTC facility staffing on resident health and safety as we consider regulatory action. We are also considering a range of initiatives to further improve Care Compare.

4. Considerations and Approaches To Address Staffing Concerns

States have implemented a variety of methods to attempt to address concerns about adequate staffing and care in LTC facilities. Some States have implemented a CNA hour-per-resident day model, with some including part or all of the hours of licensed nurses into this calculation). For example, the District of Columbia requires a minimum daily average of 4.1 hours of direct nursing care per resident per day (with opportunity to adjust the requirements above or below this level, as determined by the Director of Department of Health), an RN on site 24 hours a day 7 days a week, plus additional nursing and medical staffing requirements.[281] Some States have implemented a ratio of numbers of full-time equivalent CNAs per resident. For example, Maine requires 3.58 HPRD with at least 0.508 of those hours provided by an RN.[282] Arkansas requires at least 3.36 average HPRD each month to include licensed nurses; nurse aides; medication assistants; physicians; physician assistants; licensed physical or occupational therapists or licensed therapy assistants; registered respiratory therapists; licensed speech-language pathologists; infection preventionists; and other healthcare professionals licensed or certified in the State, plus requirements for minimum numbers of licensed nurses per residents per shift.[283]

Research reporting on the outcomes of these State requirements is limited. A 2009 study that examined the impact of State staffing requirements in 16 States concluded that ''[m]andated staffing standards affect only low-staff facilities facing potential for penalties, and effects are small. Selected facility-level outcomes may show improvement at all facilities due to a general response to increased standards or to other quality initiatives implemented at the same time as staffing standards.[284] However, Florida reported improved resident care outcomes and decreased deficiencies after increasing its nurse staffing levels. Specifically, Florida found ''evidence that quality of care has substantially improved in Florida nursing homes since the introduction of increased nurse staffing levels and other quality standards since 2001. Average deficiencies per facility have decreased. Importantly, the citations for the more serious deficiencies have decreased dramatically and remain lower than the national average. Measures of resident care outcomes have improved in 2007 after the new staffing standards of 2.9 HPRD were instituted.'' [285]

An alternative or supplementary approach to mandating a specific number of direct care HPRD is to mandate the presence of an RN in a nursing home for more hours per day than is currently required, potentially 24 hours a day 7 days a week, subject to the statutory waiver. We note that a number of States already require this. Increased presence of RNs in nursing facilities would help address several issues. First, greater RN presence has been associated in research literature with higher quality of care and fewer deficiencies. Second, it has been reported in the literature that LPNs or LVNs may find themselves practicing outside of their scope of practice because, at least in part, there are not enough RNs providing direct patient care.[286] Increasing the number of hours per day that a LTC facility must have RNs in the nursing home would alleviate concerns about LPNs engaging in activities outside their scope of practice in the face of resident need during times when no RN is on site.

We recognize that RN presence alone would not address all these concerns. In addition to their clinical responsibilities, many RNs in LTC facilities appropriately carry out administrative duties as part or most of their routine work responsibilities. Further, that there are times of the day when nursing care demands may be less (such as during the night when most residents are sleeping); however, nursing care needs may occur at any time of the day and cannot be predicted or anticipated. Increases in resident acuity worsen this problem and safety should be maintained at all times.

With regard to whether there is an adequate supply of RNs, a December 2017 HRSA report on the future of the nursing workforce suggested that growth in RN supply would actually outpace demand in the period between 2012 and 2030.[287] The report noted that the national projections mask a distributional imbalance of RNs at the State level and that there is considerable variation in the geographic distribution of the growth in RN supply. Seven States were projected to have a shortage by 2030. Four States, California, Texas, New Jersey, and South Carolina, were projected to have the most significant deficiencies (>10,000 or more full-time employees), while South Dakota, Georgia, South Carolina, and Alaska were also projected to have shortages.[288]

In looking at the employment of RNs in LTC facilities, the BLS reported in its May 2020 Occupational Employment and Wage Statistics [289] that 143,250 RNs were employed in nursing care facilities (SNFs); down from 151,300 in the May 2019 Occupational Employment Statistics 148,970.[290] At the same time, the number of LTC facilities has decreased somewhat from 15,844 based on FY 2012 to 15,691 in 2015, based on CASPER data. For CNAs, BLS reported in its May 2020 Occupational Employment and Wage Statistics [291] that 527,480 CNAs were employed in SNFs, down from 566,240 in the May 2019 Occupational Employment and Wage Statistics.[292]

A 2022 analysis by Buerhaus et al. suggests that there is a tightening labor market for RNs, LPNs, and CNAs, marked by falling employment and rising wages through June 2021. Unemployment rates remained higher in

[281] *https://doh.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/Nursing_Facility_Regulations_Health_Care_Facilities_Improvement_2012.pdf.*

[282] *https://theconsumervoice.org/uploads/files/issues/CV_StaffingReport.pdf.*

[283] *https://theconsumervoice.org/uploads/files/issues/CV_StaffingReport.pdf.*

[284] *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2669632/pdf/hesr0044-0056.pdf.*

[285] Hyer, K. et al., (2009) University of South Florida, Analyses on Outcomes of Increased Nurse Staffing Policies in Florida Nursing Homes: Staffing Levels, Quality and Costs (2002–2007).

[286] *https://www.journalofnursingregulation.com/article/S2155-8256(15)30229-5/fulltext.*

[287] *https://bhw.hrsa.gov/sites/default/files/bureau-health-workforce/data-research/nchwa-hrsa-nursing-report.pdf.*

[288] *https://bhw.hrsa.gov/sites/default/files/bureau-health-workforce/data-research/nchwa-hrsa-nursing-report.pdf.*

[289] *https://www.bls.gov/oes/current/oes291141.htm.*

[290] *https://www.bls.gov/oes/2019/may/oes291141.htm.*

[291] *https://www.bls.gov/oes/current/oes311131.htm.*

[292] *https://www.bls.gov/oes/2019/may/oes311131.htm.*

nonhospital settings, including LTC facilities, and among RNs and CNAs who are members of racial and ethnic minority groups. The study notes that overall employment in LTC facilities has fallen more than in other nonhospital sectors.[293] In short, data indicate that there may be skilled direct care workers with experience in the LTC setting available.

There is concern that a facility can have sufficient numbers of staff, but if those staff do not have the skills and competencies to do the necessary work, quality will not improve. A 2011 review of the literature on nurse staffing and quality of care raises questions about the need to address issues beyond simply the numbers of nurses.[294] Specifically, the authors concluded that ''[a] focus on numbers of nurses fails to address the influence of other staffing factors (for example, turnover and agency staff use), training and experience of staff, and care organization and management.'' They note that the studies they reviewed presented 42 measures of quality and 52 ways of measuring staffing. They also note that it is ''difficult to offer conclusions and recommendations about nurse staffing based on the existing research evidence.'' An October 2011 research article by John R. Bowblis concluded that minimum direct care staffing requirements for LTC facilities ''change staffing levels and skill mix, improve certain aspects of quality, but can lead to use of care practices associated with lower quality.'' [295]

The American Nurses Association (ANA), in its 2020 Principles for Nurse Staffing, describe appropriate nurse staffing as ''a match of registered nurse expertise with the needs of the recipient of nursing care services in the context of the practice setting and situation.'' [296] The ANA further notes that ''staffing needs must be determined based on an analysis of healthcare consumer status (for example, degree of stability, intensity, and acuity), and the environment in which the care is provided. Other considerations to be included are: Professional characteristics, skill set, and mix of the staff and previous staffing patterns that have been shown to improve outcomes.'' The International Council of Nurses (ICN) included similar considerations in its 2018 statement of principles of safe staffing levels.[297] The ICN policy statement notes that ''Safe nurse staffing means that an appropriate number of nurses is available at all times across the continuum of care, with a suitable mix of education, skills and experience to ensure that patient care needs are met and that the working environment and conditions support staff to deliver quality care. This requires having an appropriate base staffing that includes a range of competencies which can be deployed to meet changing and fluctuating patient acuity in real time.'' Nurses are not the only skilled workers who provide regular direct care to LTC facility residents. By a wide margin, the numbers of LPNs, home and personal care aides, CNAs, and other support staff working in SNFs far exceeded the numbers of registered nurses over the 5-year period 2014 to 2018.[298]

5. The Impact of the COVID–19 Pandemic on Staffing in LTC Facilities

While the adequacy of LTC staffing has been a topic of national interest for many years, the COVID–19 pandemic and associated Public Health Emergency (PHE) have had unprecedented impacts on staff and residents of LTC facilities, with evolving effects on staffing. A 2019 study by Geng et al.[299] assessed LTC facility staffing prior to the spread of COVID–19 using various data available from us. The study found that staffing levels for LPNs, CNAs especially RNs were stable during weekdays but dropped on weekends. On average, weekend RN staffing in terms of time spent per resident was 17 minutes (42 percent) less than weekday staffing, LPN staffing 9 minutes (17 percent) less, and nurse aide staffing 12 minutes (9 percent) less. Larger facilities, on average, had a larger decrease in staffing time per resident during weekends. Decreases were smaller among facilities with higher five-star overall ratings and with lower shares of Medicaid residents (who are more likely to be long-term residents without skilled care needs, thereby impacting nurse staffing needs to a lesser degree).

A 2020 study by McGarry et al.[300] examined access to personal protective equipment (PPE), staffing, and facility characteristics associated with shortages of PPE and staffing from May through the end of July 2020. Findings included the following:

- One in five LTC facilities reported facing a severe shortage of PPE or staff shortage in early July 2020. Rates of both PPE shortages and staff did not meaningfully improve from May to July 2020.
- PPE shortages were magnified in LTC facilities with COVID–19 cases among staff or residents and those with low quality scores.
- Staff shortages were greater in LTC facilities with COVID–19 cases, particularly among those serving a high proportion of disadvantaged patients on Medicaid and those with lower quality scores, including pre-pandemic staffing score.
- Most prominent staff shortages were for nurses and nursing aides as opposed to other providers or staff.

More recent research, using PBJ data, shows that LTC facility staffing (nurse staff HPRD) remained steady or increased slightly during the COVID–19 pandemic when adjusted for declining resident census.[301] Slight increases in staffing were concentrated in counties with high COVID–19 prevalence, low Medicaid census, and not-for profit facilities. Furthermore, an analysis of the incidence of COVID–19 among facilities with different staffing ratings found that facilities with 1 to 3 stars for nurse staffing had 18 to 22 percent more weeks with high COVID–19 incidence than 5-star staffed nursing homes.[302]

The 2021 National Academy of Medicine Report, ''The Future of Nursing 2020 to 2030: Charting a Path to Achieve Health Equity'' specifically addressed nurse staffing in nursing homes since the onset of COVID–19.[303] As of 2020, there were 15,417 LTC facilities in the U.S.,[304] and in 2017, these facilities housed just over 1.3

[293] Nurse Employment During The First Fifteen Months Of The COVID–19 Pandemic, Peter I. Buerhaus, Douglas O. Staiger, David I. Auerbach, Max C. Yates, and Karen Donelan, Health Affairs 2022 41:1, 79–85.

[294] Spilsbury, Hewitt, Stirk and Bowman ''The relationship between nurse staffing and quality of care in nursing homes: A systematic review'' The International Journal of Nursing Studies 48(2011)732–750.

[295] *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3207189/.*

[296] *https://patientcarelink.org/wp-content/uploads/2021/02/2-ANA-Principles-for-Nurse-Staffing-3rd-Edition.pdf.*

[297] *https://www.icn.ch/sites/default/files/inline-files/PS_C_%20Evidence%20based%20safe%20nurse%20staffing_1.pdf.*

[298] *https://www.nmnec.org/wp-content/uploads/2021/05/Future-of-Nursing-2020-2030.pdf.*

[299] Geng F, Stevenson DG, Grabowski DC. Daily Nursing Home Staffing Levels Highly Variable, Often Below CMS Expectations. Health Aff (Millwood). 2019 Jul;38(7):1095–1100. doi: 10.1377/hlthaff.2018.05322. Erratum in: Health Aff (Millwood). 2019 Sep;38(9):1598. PMID: 31260368.

[300] *https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.01269.*

[301] *https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.02351.*

[302] *https://agsjournals.onlinelibrary.wiley.com/doi/epdf/10.1111/jgs.17309.*

[303] *https://nap.nationalacademies.org/catalog/25982/the-future-of-nursing-2020-2030-charting-a-path-to.*

[304] CMS (Centers for Medicare & Medicaid Services). 2020. Long term care facility reporting on COVID–19. *https://www.cms.gov/files/document/covid-nursing-home-reporting-numbers-5-31-20.pdf.*

million residents.[305] As of the end of May 2020, there had been 95,515 cumulative confirmed cases of COVID–19 among LTC facility residents in the U.S. and 30.2 deaths per 1,000 residents. At that time, almost one-third (31,782) of the 103,700 people who had died from COVID–19 in the U.S. through the end of May were residents of LTC facilities.[306] As of mid-February 2022, approximately 150,000 deaths have occurred among U.S. LTC facility residents, and close to 2,300 staff have died.[307]

A recent study of 4,254 LTC facilities across eight States found that those that were high-performing with respect to nurse staffing had fewer COVID–19 cases relative to their low-performing counterparts.[308] These findings suggest that poorly resourced LTC facilities with nurse staffing shortages may have been more susceptible to the spread of COVID–19. A 2020 study involving all 215 nursing homes in Connecticut revealed that a 20-minute increase in RN staffing HPRD was associated with 22 percent fewer confirmed cases of COVID–19 and 26 percent fewer COVID–19 deaths.[309]

Evidence suggests that in addition to staffing quantity and composition, consistent staffing is an important consideration. A 2021 study by McGarry et al. examined the relationship between the number of unique staff members entering a facility daily, including direct care staff and staff members not involved resident care, direct care staff-to-resident ratios and skills mix, and the number of COVID–19 cases and deaths in the facility.[310] The study concluded that ''[c]onventional staffing quality measures, including direct care staff-to-resident ratios and skills mix, were not significant predictors of COVID–19 cases or deaths.'' The authors suggest that, moving forward, policy makers should encourage policies that not only maintain sufficient direct caregivers to provide safe and effective care for residents, but also promote the use of full-time and more consistent staff.

In considering resident health and safety issues associated with facility staffing, we must consider different levels of risk and benefit. We have reviewed the recommendations of the Institute of Medicine (IOM) in its 2004 report ''Keeping Patients Safe: Transforming the Work Environment of Nurses.'' [311] That report reiterates prior recommendations for a mandatory RN presence in LTC facilities and mandatory minimum staffing requirements, although it does not recommend a specific ratio. The report states, in part, that ''[p]atient safety requires staff resources that are sufficient to prevent an inappropriately high rate of untoward events that could be avoided with adequate staffing levels. For such a standard to be reasonable, it must at least be based on the number of residents in the LTC facility and address NAs, who provide most of the care to LTC facility residents. Such minimum staffing standards are not a precise statement of how many staff are required to fully meet the needs of each specific group of residents on each unit, nor are they a quality improvement tool to optimize quality in each LTC facility. Rather, a minimum staffing level is one that avoids placing individual residents unnecessarily at risk because of insufficient numbers of staff to provide even the most basic care.'' The report discusses our 2001 Report to Congress ''Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes-Phase II Final Report'' [312] and states: ''With respect to the recommendation that DHHS specify staffing standards in regulations that would increase with the number of patients and be based on the findings and recommendations of the Phase II DHHS report to Congress on the appropriateness of minimum staffing ratios in nursing homes, the committee notes that the thresholds identified in that study above which no further benefit from staffing ratios could be identified are above the staffing levels of 75 to 90 percent of facilities, depending on the type of staff. However, a minimum standard set by DHHS need not approach the threshold level above which there is no further benefit. In fact, such a standard would go beyond the expectation for a minimum, which is intended to identify situations in which facilities unequivocally place residents at an unacceptable level of risk. The challenge is that there is no absolute minimum level of risk for untoward events that is considered acceptable.'' The IOM report further states: ''The study does not propose a specific minimum standard for RNs, licensed nurses, and NAs because agreement must first be reached about what is an unacceptable level of risk.''

A successor report [313] discussed that, ultimately, adequate staffing should involve direct care nurses in administrative decision making and consider both their levels of competence and unique organizational factors. The report asserts that nurse-staffing legislation is not a panacea for improving quality and safety.

Despite ongoing concern about LTC facility staffing, we have not yet directly addressed this issue in regulation. As discussed earlier in this section, while many studies indicate that consistent, adequate direct care facility staffing is vital to resident health and safety, we seek additional information to make fully informed policy proposals. We welcome your input on the topics addressed here, and others that you believe are relevant.

B. Request for Information

Given the ongoing concerns related to adequate staffing discussed prior, we are considering options for future rulemaking and are seeking stakeholder input. Specifically, we are interested in the issues provided later on in this section, but also welcome input on other aspects of staffing in LTC facilities that we should consider as we evaluate future policy options.

1. Is there evidence (other than the evidence reviewed in this RFI) that establishes appropriate minimum threshold staffing requirements for both nurses and other direct care workers? To what extent do older studies remain relevant? What are the benefits of adequate staffing in LTC facilities to residents and quality of care?

2. What resident and facility factors should be considered in establishing a minimum staffing requirement for LTC facilities? How should the facility assessment of resident needs and acuity impact the minimum staffing requirement?

3. Is there evidence of the actual cost of implementing recommended thresholds, that accounts for current staffing levels as well as projected savings from reduced hospitalizations and other adverse events?

4. Is there evidence that resources that could be spent on staffing are instead

[305] *https://www.kff.org/coronavirus-covid-19/issue-brief/data-note-how-might-coronavirus-affect-residents-in-nursing-facilities/.*

[306] *https://data.cms.gov/covid-19/covid-19-nursing-home-data.*

[307] *https://data.cms.gov/covid-19/covid-19-nursing-home-data.*

[308] Figueroa JF, Wadhera RK, Papanicolas I, et al. Association of Nursing Home Ratings on Health Inspections, Quality of Care, and Nurse Staffing With COVID–19 Cases. JAMA. 2020;324(11):1103–1105. doi:10.1001/jama.2020.14709.

[309] *https://agsjournals.onlinelibrary.wiley.com/doi/epdf/10.1111/jgs.16689.*

[310] Larger Nursing Home Staff Size Linked To Higher Number Of COVID–19 Cases In 2020 Brian E. McGarry, Ashvin D. Gandhi, David C. Grabowski, and Michael Lawrence Barnett Health Affairs 2021 40:8, 1261–1269.

[311] *https://www.ncbi.nlm.nih.gov/books/NBK216190/.*

[312] *https://www.justice.gov/sites/default/files/elderjustice/legacy/2015/07/12/Appropriateness_of_Minimum_Nurse_Staffing_Ratios_in_Nursing_Homes.pdf.*

[313] *https://www.rwjf.org/en/library/research/2014/03/cnf-ten-years-after-keeping-patients-safe.html.*

being used on expenses that are not necessary to quality patient care?

5. What factors impact a facility's capability to successfully recruit and retain nursing staff? What strategies could facilities employ to increase nurse staffing levels, including successful strategies for recruiting and retaining staff? What risks are associated with these strategies, and how could nursing homes mitigate these risks?

6. What should CMS do if there are facilities that are unable to obtain adequate staffing despite good faith efforts to recruit workers? How would CMS define and assess what constitutes a good faith effort to recruit workers? How would CMS account for job quality, pay and benefits, and labor protections in assessing whether recruitment efforts were adequate and in good faith?

7. How should nursing staff turnover be considered in establishing a staffing standard? How should CMS consider the use of short-term (that is, travelling or agency) nurses?

8. What fields and professions should be considered to count towards a minimum staffing requirement? Should RNs, LPNs/LVAs, and CNAs be grouped together under a single nursing care expectation? How or when should they be separated out? Should mental health workers be counted as direct care staff?

9. How should administrative nursing time be considered in establishing a staffing standard? Should a standard account for a minimum time for administrative nursing, in addition to direct care? If so, should it be separated out?

10. What should a minimum staffing requirement look like, that is, how should it be measured? Should there be some combination of options? For example, options could include establishing minimum nurse HPRD, establishing minimum nurse to resident ratios, requiring that an RN be present in every facility either 24 hours a day or 16 hours a day, and requiring that an RN be on-call whenever an RN was not present in the facility. Should it include any non-nursing requirements? Is there data that supports a specific option?

11. How should any new quantitative direct care staffing requirement interact with existing qualitative staffing requirements? We currently require that facilities have ''sufficient nursing staff'' based on a facility assessment and patient needs, including but not limited to the number of residents, resident acuity, range of diagnoses, and the content of care plans. We welcome comments on how facilities have implemented this qualitative requirement, including both successes and challenges and if or how this standard should work concurrently with a minimum staffing requirement. We would also welcome comments on how State laws limiting or otherwise restricting overtime for health care workers would interact with minimum staffing requirements.

12. Have minimum staffing requirements been effective at the State level? What were facilities' experiences transitioning to these requirements? We note that States have implemented a variety of these options, discussed in section VIII.A. of this proposed rule, and would welcome comment on experiences with State minimum staffing requirements.

13. Are any of the existing State approaches particularly successful? Should CMS consider adopting one of the existing successful State approaches or specific parts of successful State approaches? Are there other approaches to consider in determining adequate direct care staffing? We invite information regarding research on these approaches which indicate an association of a particular approach or approaches and the quality of care and/or quality of life outcomes experienced by resident, as well as any efficiencies that might be realized through such approaches.

14. The IOM has recommended in several reports that we require the presence of at least one RN within every facility at all times. Should CMS concurrently require the presence of an RN 24 hours a day 7 days a week? We also invite comment on the costs and benefits of a mandatory 24-hour RN presence, including savings from improved resident outcomes, as well as any unintended consequences of implementing this requirement.

15. Are there unintended consequences we should consider in implementing a minimum staffing ratio? How could these be mitigated? For example, how would a minimum staffing ratio impact and/or account for the development of innovative care options, particularly in smaller, more home-like settings, for a subset of residents who might benefit from and be appropriate for such a setting? Are there concerns about shifting non-nursing tasks to nursing staff in order to offset additions to nursing staff by reducing other categories of staff?

16. Does geographic disparity in workforce numbers make a minimum staffing requirement challenging in rural and underserved areas? If yes, how can that be mitigated?

17. What constitutes ''an unacceptable level of risk of harm?'' What outcomes and care processes should be considered in determining the level of staffing needed?

We welcome public input from a broad range of commenters including, but not limited to nursing home residents and caretakers, nursing staff, nurse aides, physicians, nursing home administrators, owners and operators, and researchers. We are particularly interested in data, evidence, and experience on the issues identified above and any others that are relevant to defining and ensuring adequate staffing in LTC facilities.

VIII. Collection of Information Requirements

As explained below, this proposed rule would not impose any new or revised ''collection of information'' requirements or burden. Consequently, this proposed rule is not subject to the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). For the purpose of this section, collection of information is defined under 5 CFR 1320.3(c) of the PRA's implementing regulations.

With regard to the SNF QRP, in section VI.C.1. of this proposed rule, we propose that SNFs submit data on the Influenza Vaccination Coverage among HCP measure beginning with the FY 2025 SNF QRP. We note that the CDC has a PRA waiver for the collection and reporting of vaccination data under section 321 of the National Childhood Vaccine Injury Act (NCVIA) (Pub. L. 99–660, enacted November 14, 1986).[314] Since the burden is waived from the requirements of the PRA, we have set out such burden under the economic analysis section (see section X.A.5.) of this proposed rule. While the waiver is specific to the PRA's requirements (''Chapter 35 of Title 44, United States Code''), our economic analysis requirements are not waived by any such statutes. We refer readers to section X.A.5. of this proposed rule, where we have provided an estimate of the burden to SNFs.

In section VI.C.2. of this proposed rule, we propose to revise the compliance date for certain SNF QRP reporting requirements including the Transfer of Health information measures and certain standardized patient assessment data elements (including race, ethnicity, preferred language, need for interpreter, health literacy, and social isolation). The proposed change in compliance date would have no

[314] Section 321 of the NCVIA provides the PRA waiver for activities that come under the NCVIA, including those in the NCVIA at section 2102 of the Public Health Service Act (42 U.S.C. 300aa–2). Section 321 is not codified in the U.S.C., but can be found in a note at 42 U.S.C. 300aa–1.

impact on any requirements or burden estimates; both proposals are active and accounted for under OMB control number 0938–1140 (CMS–10387). Consequently, we are not proposing any changes under that control number.

In section VI.C.3. of this proposed rule, we discuss our proposed revisions to the regulatory text. The proposed revisions have no collection of information implications.

With regard to the SNF VBP Program, in section VII.B.1.b. of this proposed rule, we propose to suppress the SNFRM for scoring and payment purposes for the FY 2023 SNF VBP program year. This measure is calculated using Medicare FFS claims data, and our proposal to suppress data on this measure for the FY 2023 program year would not create any new reporting burden for SNFs. We note that, if our proposals described in section VII.B.1.b. of this proposed rule are finalized, we would publicly report the SNFRM rates for the FY 2023 program year, and we would make clear in the public presentation of those data that we are suppressing the use of those data for purposes of scoring and payment adjustments in the FY 2023 SNF VBP Program given the significant changes in SNF patient case volume and facility-level case mix described in that section of this proposed rule. In addition, as we describe in sections VII.B.3.b. and VII.B.3.c. of this proposed rule, we are proposing to adopt two additional measures (the SNF Healthcare-Associated Infections (HAI) Requiring Hospitalization and the Total Nursing Hours per Resident Day/ Payroll-Based Journal (PBJ) measures) beginning with the FY 2026 Program. The SNF HAI measure would be calculated using Medicare FFS claims data, therefore, our proposal to add the measure to the SNF VBP measure set would not create any new reporting burden for SNFs. The PBJ measure would be calculated using data that SNFs currently report to CMS under the Nursing Home Five-Star Quality Rating System, and therefore, our proposal to add the measure to the SNF VBP measure set would not create new reporting burden for SNFs.

In section VII.B.3.d. of this proposed rule, we are proposing to adopt the DTC PAC Measure for SNFs beginning with the FY 2027 Program. The DTC PAC SNF measure would be calculated using Medicare FFS claims data; therefore, our proposal to add the measure to the SNF VBP measure set would not create a new reporting burden for SNFs.

The aforementioned FFS-related claims submission requirements and burden are active and approved by OMB under control number 0938–1140 (CMS–10387). This rule's proposed changes would have no impact on the requirements and burden that are currently approved under that control number.

IX. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

X. Economic Analyses

A. Regulatory Impact Analysis

1. Statement of Need

a. Statutory Provisions

This proposed rule updates the FY 2023 SNF prospective payment rates as required under section 1888(e)(4)(E) of the Act. It also responds to section 1888(e)(4)(H) of the Act, which requires the Secretary to provide for publication in the **Federal Register** before the August 1 that precedes the start of each FY, the unadjusted Federal per diem rates, the case-mix classification system, and the factors to be applied in making the area wage adjustment. These are statutory provisions that prescribe a detailed methodology for calculating and disseminating payment rates under the SNF PPS, and we do not have the discretion to adopt an alternative approach on these issues.

With respect to the SNF QRP, the proposed rule updates the FY 2025 SNF QRP requirements. Section 1888(e)(6) of the Act authorizes the SNF QRP and applies to freestanding SNFs, SNFs affiliated with acute care facilities, and all non-critical access hospital (CAH) swing-bed rural hospitals. We propose one new measure which we believe will encourage healthcare personnel to receive the influenza vaccine, resulting in fewer cases, less hospitalizations, and lower mortality associated with the virus. We propose to revise the compliance date for certain SNF QRP reporting requirements to improve data collection to allow for better measurement and reporting on equity across post-acute care programs and policies. For consistency in our regulations, we are also proposing conforming revisions to the Requirements under the SNF QRP at § 413.360.

With respect to the SNF VBP Program, the proposed rule updates SNF VBP Program requirements for FY 2023 and subsequent years. Section 1888(h)(3) of the Act requires the Secretary to establish and announce performance standards for SNF VBP Program measures no later than 60 days before the performance period, and this rule proposes numerical values of the performance standards for the all-cause, all-condition hospital readmission measure required by section 1888(g)(1) of the Act.

b. Discretionary Provisions

In addition, this proposed rule proposes the following discretionary provisions:

(1) Recalibrating the Patient Driven Payment Model (PDPM) Parity Adjustment

As a policy decision to ensure on-going budget neutral implementation of the new case mix system, the PDPM, we recommend proposing a recalibration of the PDPM parity adjustment. Since October 1, 2019, we have been monitoring the implementation of PDPM and our analysis of FY 2020 and FY 2021 data reveals that the PDPM implementation led to an increase in Medicare Part A SNF spending, even after accounting for the effects of the COVID–19 PHE. We believe that proposing recalibration and reducing SNF spending by 4.6 percent, or $1.7 billion, in FY 2023 with no delayed implementation or phase-in period would allow for the most rapid establishment of payments at the appropriate level. This would work to ensure that PDPM will be budget-neutral as intended and prevent continuing accumulation of excess SNF payments, which we cannot recoup.

(2) SNF Forecast Error Adjustment

Each year, we evaluate the market basket forecast error for the most recent year for which historical data is available. The forecast error is determined by comparing the projected market basket increase in a given year with the actual market basket increase in that year. In evaluating the data for FY 2021, we found that the forecast error for that year was 1.5 percentage point, exceeding the 0.5 percentage point threshold we established in regulation for proposing adjustments to correct for forecast error. Given that the forecast error exceeds the 0.5 percentage threshold, current regulations require that the SNF market basket for FY 2022 be increased by 1.5 percentage point.

(3) Proposed Permanent Cap on Wage Index Decreases

The Secretary has broad authority to establish appropriate payment adjustments under the SNF PPS, including the wage index adjustment. As discussed earlier in this section, the SNF PPS regulations require us to use an appropriate wage index based on the best available data. For the reasons discussed earlier in this section, we believe that a 5-percent cap on wage index decreases would be appropriate for the SNF PPS. Therefore, for FY 2023 and subsequent years, we are proposing to apply a permanent 5-percent cap on any decrease to a provider's wage index from its wage index in the prior year, regardless of the circumstances causing the decline.

(4) Technical Updates to ICD–10 Mappings

Each year, the ICD–10 Coordination and Maintenance Committee, a Federal interdepartmental committee that is chaired by representatives from the National Center for Health Statistics (NCHS) and by representatives from CMS, meets biannually and publishes updates to the ICD–10 medical code data sets in June of each year. These changes become effective October 1 of the year in which these updates are issued by the committee. The ICD–10 Coordination and Maintenance Committee also has the ability to make changes to the ICD–10 medical code data sets effective on April 1 of each year. In this proposed rule, we are proposing several changes to the ICD–10 code mappings and lists.

2. Introduction

We have examined the impacts of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA, September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA, March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Based on our estimates, OMB's Office of Information and Regulatory Affairs has determined this rulemaking is ''economically significant'' as measured by the $100 million threshold. Accordingly, we have prepared a regulatory impact analysis (RIA) as further discussed below. Also, the rule has been reviewed by OMB.

3. Overall Impacts

This rule updates the SNF PPS rates contained in the SNF PPS final rule for FY 2022 (86 FR 42424). We estimate that the aggregate impact would be a decrease of approximately $320 million (0.9 percent) in Part A payments to SNFs in FY 2023. This reflects a $1.4 billion (3.9 percent) increase from the proposed update to the payment rates and a $1.7 billion (4.6 percent) decrease from the proposed reduction to the SNF payment rates to account for the recalibrated parity adjustment. We note that these impact numbers do not incorporate the SNF VBP Program reductions that we estimate would total $185.55 million in FY 2023. We would note that events may occur to limit the scope or accuracy of our impact analysis, as this analysis is future-oriented, and thus, very susceptible to forecasting errors due to events that may occur within the assessed impact time period.

In accordance with sections 1888(e)(4)(E) and (e)(5) of the Act and implementing regulations at § 413.337(d), we are proposing to update the FY 2022 payment rates by a factor equal to the market basket index percentage change increased by the forecast error adjustment and reduced by the productivity adjustment to determine the payment rates for FY 2023. The impact to Medicare is included in the total column of Table 19. When proposing the SNF PPS rates for FY 2023, we proposed a number of standard annual revisions and clarifications mentioned elsewhere in this proposed rule.

The annual update in this rule applies to SNF PPS payments in FY 2023. Accordingly, the analysis of the impact of the annual update that follows only describes the impact of this single year. Furthermore, in accordance with the requirements of the Act, we will publish a rule or notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

4. Detailed Economic Analysis

The FY 2023 SNF PPS payment impacts appear in Table 19. Using the most recently available data, in this case FY 2021 we apply the current FY 2022 CMIs, wage index and labor-related share value to the number of payment days to simulate FY 2022 payments. Then, using the same FY 2021 data, we apply the FY 2023 CMIs, wage index and labor-related share value to simulate FY 2023 payments. We would note that, given that this same data is being used for both parts of this calculation, as compared to other analyses discussed in this proposed rule which compare data from FY 2020 to data from other fiscal years, any issues discussed throughout this proposed rule with regard to data collected in FY 2020 will not cause any difference in this economic analysis. We tabulate the resulting payments according to the classifications in Table 19 (for example, facility type, geographic region, facility ownership), and compare the simulated FY 2022 payments to the simulated FY 2023 payments to determine the overall impact. The breakdown of the various categories of data in Table 19 is as follows:

- The first column shows the breakdown of all SNFs by urban or rural status, hospital-based or freestanding status, census region, and ownership.
- The first row of figures describes the estimated effects of the various proposed changes on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban, and rural categories. The next nineteen rows show the effects on facilities by urban versus rural status by census region. The last three rows show the effects on facilities by ownership (that is, government, profit, and non-profit status).
- The second column shows the number of facilities in the impact database.
- The third column shows the effect of the proposed parity adjustment recalibration discussed in section V.C. of this proposed rule.
- The fourth column shows the effect of the proposed annual update to the wage index. This represents the effect of using the most recent wage data available as well as accounts for the proposed 5 percent cap on wage index transitions, discussed in section V.A of this proposed rule. The total impact of this change is 0.0 percent; however, there are distributional effects of the proposed change.
- The fifth column shows the effect of all of the changes on the FY 2023 payments. The update of 3.9 percent is

constant for all providers and, though not shown individually, is included in the total column. It is projected that aggregate payments would increase by 3.9 percent, assuming facilities do not change their care delivery and billing practices in response. The figures in this column are calculated by multiplying the percentage change. For example, the Total Change figure for the Total Group Category is −0.9%, which is (1 − 4.6%) * (1 + 0.0%) * (1 + 3.9%).

As illustrated in Table 19, the combined effects of all of the changes vary by specific types of providers and by location. For example, due to changes in this proposed rule, rural providers would experience a 1.0 percent decrease in FY 2023 total payments.

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TABLE 19: Impact to the SNF PPS for FY 2023

Impact Categories	Number of Facilities	Parity Adjustment Recalibration	Update Wage Data	Total Change
Group				
Total	15,472	-4.6%	0.0%	-0.9%
Urban	11,140	-4.7%	0.1%	-0.9%
Rural	4,332	-4.5%	-0.3%	-1.0%
Hospital-based urban	374	-4.7%	0.2%	-0.8%
Freestanding urban	10,766	-4.7%	0.0%	-0.9%
Hospital-based rural	414	-4.5%	-0.4%	-1.2%
Freestanding rural	3,918	-4.5%	-0.3%	-1.0%
Urban by region				
New England	746	-4.7%	-0.7%	-1.7%
Middle Atlantic	1,485	-4.8%	0.1%	-1.0%
South Atlantic	1,938	-4.6%	-0.3%	-1.1%
East North Central	2,148	-4.6%	-0.1%	-1.0%
East South Central	546	-4.5%	-0.3%	-1.0%
West North Central	941	-4.6%	-0.6%	-1.4%
West South Central	1,401	-4.6%	0.3%	-0.6%
Mountain	540	-4.6%	-0.1%	-1.0%
Pacific	1,389	-4.8%	1.0%	-0.1%
Outlying	6	-4.0%	-1.4%	-1.7%
Rural by region				
New England	121	-4.6%	0.2%	-0.7%
Middle Atlantic	213	-4.5%	-0.4%	-1.2%
South Atlantic	499	-4.5%	0.0%	-0.7%
East North Central	927	-4.5%	-0.8%	-1.6%
East South Central	499	-4.4%	-0.5%	-1.2%
West North Central	1,042	-4.5%	0.0%	-0.8%
West South Central	721	-4.5%	0.5%	-0.2%
Mountain	217	-4.6%	-0.3%	-1.1%
Pacific	93	-4.7%	-1.3%	-2.3%
Ownership				
For profit	10,868	-4.6%	0.1%	-0.9%
Non-profit	3,613	-4.6%	-0.2%	-1.1%
Government	991	-4.6%	-0.1%	-1.0%

Note: The Total column includes the FY 2023 3.9 percent market basket update factor. Additionally, we found no SNFs in rural outlying areas.

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5. Impacts for the Skilled Nursing Facility Quality Reporting Program (SNF QRP) for FY 2023

Estimated impacts for the SNF QRP are based on analysis discussed in section IX.B. of this proposed rule.

In accordance with section 1888(e)(6)(A)(i) of the Act, the Secretary must reduce by 2 percentage points the annual payment update applicable to a SNF for a fiscal year if the SNF does not comply with the requirements of the SNF QRP for that fiscal year. In section VI.A. of this proposed rule, we discuss the method for applying the 2-percentage point reduction to SNFs that fail to meet the SNF QRP requirements.

As discussed in section VI.C.1. of this proposed rule, we are proposing the adoption of one new measure to the SNF QRP beginning with the FY 2025 SNF QRP, the Influenza Vaccination Coverage among HCP (NQF #0431) measure. We believe that the burden associated with the SNF QRP is the time and effort associated with complying with the non-claims-based measures requirements of the SNF QRP. Although the burden associated with the Influenza Vaccination Coverage among HCP (NQF #0431) measure is not accounted for under the Centers for Diseases Control and Prevention Paperwork Reduction Act (CDC PRA) package due to the NCVIA waiver discussed in section IX. of this proposed

rule, the cost and burden is discussed here.

Consistent with the CDC's experience of collecting data using the NHSN, we estimate that it would take each SNF an average of 15 minutes per month to collect data for the Influenza Vaccination Coverage among HCP (NQF #0431) measure and enter it into NHSN. We do not estimate that it will take SNFs additional time to input their data into NHSN, once they have logged onto the system for the purpose of submitting their monthly COVID–19 vaccine report. We believe it would take an administrative assistant 15 minutes to enter this data into NHSN. For the purposes of calculating the costs associated with the collection of information requirements, we obtained mean hourly wages from the U.S. Bureau of Labor Statistics' May 2020 National Occupational Employment and Wage Estimates.[315] To account for overhead and fringe benefits, we have doubled the hourly wage. These amounts are detailed in Table 20.

TABLE 20: U.S. Bureau of Labor and Statistics' May 2020 National Occupational Employment and Wage Estimates

Occupation title	Occupation code	Mean Hourly Wage ($/hr)	Overhead and Fringe Benefit ($/hr)	Adjusted Hourly Wage ($/hr)
Administrative Assistant	43-6013	$18.75	$18.75	$37.50

Based on this time range, it would cost each SNF an average cost of $9.38 each year. We believe the data submission for the Influenza Vaccination Coverage among HCP (NQF #0431) measure would cause SNFs to incur additional average burden of 15 minutes per year for each SNF and a total annual burden of 3,868 hours across all SNFs. The estimated annual cost across all 15,472 SNFs in the U.S. for the submission of the Influenza Vaccination Coverage among HCP (NQF #0431) measure would be an average of $145,127.36.

As discussed in section VII.C.2. of this proposed rule, we are proposing that SNFs would begin collecting data on two quality measures and certain standardized patient assessment data elements beginning with discharges on October 1, 2023. CMS estimated the impacts for collecting the new data elements in the FY 2020 SNF PPS final rule (84 FR 38829). When we delayed the compliance date for certain reporting requirements under the SNF QRP in the May 8th COVID–19 IFC, we did not remove the impacts for the new reporting requirements. However, we are providing updated impact information.

For these two quality measures, we are adding 4 data elements on discharge which would require an additional 1.2 minutes of nursing staff time per discharge. We estimate these data elements for these quality measures would be completed by registered nurses (25 percent of the time or 0.30 minutes) and by licensed practical and vocational nurses (75 percent of the time or 0.90 minutes). For the purposes of calculating the costs associated with the collection of information requirements, we obtained mean hourly wages from the U.S. Bureau of Labor Statistics' May 2020 National Occupational Employment and Wage Estimates.[316] To account for overhead and fringe benefits, we have doubled the hourly wage. These amounts are detailed in Table 21.

TABLE 21: U.S. Bureau of Labor and Statistics' May 2020 National Occupational Employment and Wage Estimates

Occupation title	Occupation code	Mean Hourly Wage ($/hr)	Overhead and Fringe Benefit ($/hr)	Adjusted Hourly Wage ($/hr)
Registered Nurse	29-1141	$38.47	$38.47	$76.94
Licensed Vocational Nurse (LVN)	29-2061	$24.08	$24.08	$48.16

With 2,406,401 discharges from 15,472 SNFs annually, we estimate an annual burden of 48,128 additional hours (2,406,401 discharges × 1.2 min/60) at a cost of $2,664,127 (2,406,401 × [(0.30/60 × $76.94/hr) + (0.90/60 × $48.16/hr)]). For each SNF we estimate an annual burden of 3.11 hours (48,128 hr/15,472 SNFs) at a cost of $172.19 ($2,664,127/15,472 SNFs).

We are also proposing SNFs would begin collecting data on certain standardized patient assessment data elements, beginning with admissions and discharges (except for the preferred language, need for interpreter services, hearing, vision, race, and ethnicity standardized patient assessment data elements, which would be collected at admission only) on October 1, 2023. If finalized as proposed, SNFs would use the MDS 3.0 V1.18.11 to submit SNF QRP data. We are finalizing requirements to collect 55.5 standardized patient assessment data elements consisting of 8 data elements on admission and 47.5 data elements on discharge beginning with the FY 2025 SNF QRP. We estimate that the data elements would take an additional 12.675 minutes of nursing staff time consisting of 1.725 minutes to report on each admission and 10.95 minutes to report on each discharge. We assume the added data elements would be performed by both registered nurses (25 percent of the time or 3.169 minutes) and licensed practical and vocational (75 percent of the time or 9.506

[315] *https://www.bls.gov/oes/current/oes_nat.htm.* Accessed February 1, 2022.

[316] *https://www.bls.gov/oes/current/oes_nat.htm.* Accessed February 1, 2022.

minutes). We estimate the reporting of these assessment items will impose an annual burden of 508,352 total hours (2,406,401 discharges × 12.675 min/60) at a cost of $28,139,825 ((508,352 hr × 0.25 × $76.94/hr) + (508,352 hr × 0.75 × $48.16/hr)). For each SNF the annual burden is 32.86 hours (508,352 hr/15,472 SNFs) at a cost of $1,818.76 ($28,139,825/15,472 SNFs). The overall annual cost of the finalized changes associated with the newly added 59.5 assessment items is estimated at $1,990.95 per SNF annually ($172.19 + $1,818.76), or $30,803,952 ($2,664,127 + $28,139,825) for all 15,472 SNFs annually.

We propose in section VI.C.3. of this proposed rule to make certain revisions in the regulation text itself at § 413.360 to include new paragraph (f) to reflect all the data completion thresholds required for SNFs to meet the compliance threshold for the annual payment update, as well as certain conforming revisions. As discussed in section IX. of this proposed rule, this proposal would not affect the information collection burden for the SNF QRP.

We welcome comments on the estimated time to collect influenza vaccination data and enter it into NHSN.

6. Impacts for the SNF VBP Program

The estimated impacts of the FY 2023 SNF VBP Program are based on historical data and appear in Table 22. We modeled SNF performance in the Program using SNFRM data from FY 2019 as the baseline period and FY 2021 as the performance period. Additionally, we modeled a logistic exchange function with a payback percentage of 60 percent, as we finalized in the FY 2018 SNF PPS final rule (82 FR 36619 through 36621).

However, in section VII.B.1 of this proposed rule, we are proposing to suppress the SNFRM for the FY 2023 program year. If finalized, we will award each participating SNF 60 percent of their 2 percent withhold. Additionally, we are proposing to apply a case minimum requirement for the SNFRM in section VII.E.3.b. of this proposed rule. In section VII.E.5. of this proposed rule, we are proposing to remove the Low-Volume Adjustment policy beginning with the FY 2023 Program year. As a result of these provisions, SNFs that do not meet the case minimum specified for the FY 2023 program year would be excluded from the program and would receive their full Federal per diem rate for that fiscal year. If finalized, this policy would maintain the overall payback percentage at 60 percent.

Based on the 60 percent payback percentage, we estimated that we will redistribute approximately $278.32 million (of the estimated $463.87 million in withheld funds) in value-based incentive payments to SNFs in FY 2023, which means that the SNF VBP Program is estimated to result in approximately $185.55 million in savings to the Medicare Program in FY 2023.

Our detailed analysis of the impacts of the FY 2023 SNF VBP Program is shown in Table 22.

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TABLE 22: Estimated SNF VBP Program Impacts for FY 2023

Characteristic	Number of facilities	Mean Risk-Standardized Readmission Rate (SNFRM) (%)	Mean performance score	Mean incentive multiplier	Percent of total payment
Group					
Total*	10,707	19.74	0.0000	0.99200	100.00
Urban	8,352	19.77	0.0000	0.99200	87.09
Rural	2,355	19.64	0.0000	0.99200	12.91
Hospital-based urban**	208	19.45	0.0000	0.99200	1.79
Freestanding urban**	8,132	19.78	0.0000	0.99200	85.28
Hospital-based rural**	88	19.19	0.0000	0.99200	0.35
Freestanding rural**	2,197	19.65	0.0000	0.99200	12.42
Urban by region					
New England	617	19.83	0.0000	0.99200	5.46
Middle Atlantic	1,246	19.56	0.0000	0.99200	17.97
South Atlantic	1,626	19.86	0.0000	0.99200	17.71
East North Central	1,486	19.95	0.0000	0.99200	12.62
East South Central	446	19.91	0.0000	0.99200	3.52
West North Central	544	19.79	0.0000	0.99200	3.74
West South Central	874	20.05	0.0000	0.99200	6.82
Mountain	379	19.30	0.0000	0.99200	3.84
Pacific	1,131	19.48	0.0000	0.99200	15.42
Outlying	3	21.41	0.0000	0.99200	0.00
Rural by region					
New England	81	18.99	0.0000	0.99200	0.58
Middle Atlantic	161	19.42	0.0000	0.99200	0.92
South Atlantic	342	19.81	0.0000	0.99200	2.09
East North Central	568	19.50	0.0000	0.99200	3.02
East South Central	388	19.86	0.0000	0.99200	2.19
West North Central	298	19.55	0.0000	0.99200	1.19
West South Central	350	20.14	0.0000	0.99200	1.76
Mountain	101	19.11	0.0000	0.99200	0.55
Pacific	66	18.54	0.0000	0.99200	0.63
Outlying	0	-	-	-	-
Ownership					
Government	453	19.50	0.0000	0.99200	2.89
Profit	7,738	19.79	0.0000	0.99200	75.02
Non-Profit	2,516	19.62	0.0000	0.99200	22.08

* The total group category excludes 4,213 SNFs who failed to meet the proposed measure minimum policy.
** The group category which includes hospital-based/freestanding by urban/rural excludes 82 swing bed SNFs which satisfied the proposed case minimum policy.

In section VII.B.2. of this proposed rule, we are also proposing to adopt two additional measures (the SNF HAI and Total Nurse Staffing measures) beginning with the FY 2026 program year. Additionally, we are proposing to apply a case minimum requirement for the SNF HAI and Total Nurse Staffing measures in section VII.E.3.c. of this proposed rule. In section VII.E.3.d. of this proposed rule, we are proposing to adopt a measure minimum policy for the FY 2026 program year. Therefore, we are providing estimated impacts of the FY 2026 SNF VBP Program, which are based on historical data and appear in Table 23. We modeled SNF performance in the Program using measure data from FY 2018 as the baseline period and FY 2019 as the performance period for the SNFRM, SNF HAI, and Total Nurse Staffing measures. Additionally, we modeled a logistic exchange function with a payback percentage of 60 percent, as we finalized in the FY 2018 SNF PPS final rule (82 FR 36619 through 36621), though we note that the logistic exchange function and payback percentage policies could be reconsidered in a future rulemaking. Based on the 60 percent payback percentage, we estimate that we will redistribute approximately $296.44 million (of the estimated $494.07 million in withheld funds) in value-based incentive payments to SNFs in FY 2026, which means that the SNF VBP Program is estimated to result in

approximately $197.63 million in savings to the Medicare Program in FY 2026.

Our detailed analysis of the impacts of the FY 2026 SNF VBP Program is shown in Table 23.

TABLE 23: Estimated SNF VBP Program Impacts for FY 2026

Characteristic	Number of facilities	Mean Risk-Standardized Rate of Hospital-Acquired Infections (SNF HAI) (%)	Mean Total Nursing Hours per Resident Day (Total Nurse Staffing)	Mean Risk-Standardized Readmission Rate (SNFRM) (%)	Mean performance score	Mean incentive payment multiplier	Percent of total payment
Group							
Total*	13,188	5.93	3.83	19.97	35.4559	0.99144	100.00
Urban	9,851	5.88	3.85	20.02	35.7219	0.99158	85.97
Rural	3,337	6.09	3.77	19.83	34.6706	0.99102	14.03
Hospital-based urban**	250	4.50	5.25	19.68	57.6328	1.00449	1.85
Freestanding urban**	9,582	5.92	3.81	20.03	35.1215	0.99122	84.09
Hospital-based rural**	126	4.94	4.88	19.30	53.2646	1.00219	0.41
Freestanding rural**	3,106	6.20	3.72	19.85	33.2724	0.99020	13.46
Urban by region							
New England	697	5.48	3.89	20.27	37.2305	0.99201	5.31
Middle Atlantic	1,385	5.77	3.63	19.76	35.5796	0.99174	17.26
South Atlantic	1,795	5.90	3.96	20.11	36.1595	0.99164	17.12
East North Central	1,803	5.85	3.64	20.19	32.7999	0.99002	12.64
East South Central	522	5.98	3.87	20.24	33.6477	0.99035	3.48
West North Central	740	5.79	4.18	20.01	39.3962	0.99374	3.94
West South Central	1,182	6.21	3.61	20.33	29.2867	0.98803	7.32
Mountain	460	5.32	4.00	19.43	44.0399	0.99642	3.85
Pacific	1,262	6.15	4.19	19.63	40.2634	0.99407	15.04
Outlying	5	4.84	4.83	21.00	44.0008	0.99456	0.00
Rural by region							
New England	106	5.30	4.13	19.02	48.9337	0.99981	0.61
Middle Atlantic	191	5.71	3.45	19.27	36.2703	0.99190	0.91
South Atlantic	425	6.06	3.61	19.97	31.9994	0.98959	2.11
East North Central	752	5.94	3.59	19.68	34.0636	0.99061	3.20
East South Central	455	6.34	3.84	20.20	34.1364	0.99085	2.18
West North Central	637	6.15	4.04	19.77	36.7251	0.99187	1.69
West South Central	546	6.57	3.68	20.35	28.4586	0.98762	2.09
Mountain	148	5.60	3.93	19.21	41.2598	0.99468	0.63
Pacific	77	5.50	4.22	18.71	49.2824	0.99987	0.62
Outlying	0	-	-	-	-	-	-
Ownership							
Government	617	5.75	4.07	19.79	40.2540	0.99434	3.05
Profit	9,507	6.13	3.66	20.04	31.9439	0.98935	74.88
Non-Profit	3,064	5.38	4.32	19.81	45.3868	0.99731	22.06

* The total group category excludes 2,144 SNFs who failed to meet the proposed measure minimum policy.

** The group category which includes hospital-based/freestanding by urban/rural excludes 124 swing bed SNFs which satisfied the proposed measure minimum policy.

In section VII.B.2. of this proposed rule, we are also proposing to adopt one additional measure (the DTC PAC SNF measure) beginning with the FY 2027 program year. Additionally, we are proposing to apply a case minimum requirement for the DTC PAC SNF measure in section VII.E.3.c. of this proposed rule. In section VII.E.3.d, of this proposed rule, we are proposing to adopt a measure minimum policy for the FY 2027 program year. Therefore, we are providing estimated impacts of the FY 2027 SNF VBP Program, which are based on historical data and appear

in Table 24. We modeled SNF performance in the Program using measure data from FY 2018 (the SNFRM, SNF HAI, and Total Nurse Staffing measures) and FY 2017–FY 2018 (the DTC PAC SNF measure) as the baseline period and FY 2019 (the SNFRM, SNF HAI, and Total Nurse Staffing measures) and FY 2019–FY 2020 (the DTC PAC SNF measure) as the performance period. Additionally, we modeled a logistic exchange function with a payback percentage of 60 percent, as we finalized in the FY 2018 SNF PPS final rule (82 FR 36619 through 36621), though we note that the logistic exchange function and payback percentage policies could be reconsidered in a future rule. Based on the 60 percent payback percentage, we estimate that we will redistribute approximately $294.67 million (of the estimated $491.12 million in withheld funds) in value-based incentive payments to SNFs in FY 2027, which means that the SNF VBP Program is estimated to result in approximately $196.45 million in savings to the Medicare Program in FY 2027.

Our detailed analysis of the impacts of the FY 2027 SNF VBP Program is shown in Table 24.

TABLE 24: Estimated SNF VBP Program Impacts for FY 2027

Characteristic	Number of facilities	Mean Risk-Standardized Rate of Hospital-Acquired Infections (SNF HAI) (%)	Mean Total Nursing Hours per Resident Day (Total Nurse Staffing)	Mean Risk-Standardized Discharge to Community Rate (DTC PAC) (%)	Mean Risk-Standardized Readmission Rate (SNFRM) (%)	Mean performance score	Mean incentive multiplier	Percent of total payment
Total*	12,929	5.94	3.82	53.39	19.97	36.3098	0.99067	100.00
Urban	9,675	5.89	3.84	54.02	20.02	37.0070	0.99107	86.03
Rural	3,254	6.10	3.76	51.54	19.83	34.2368	0.98950	13.97
Hospital-based urban**	222	4.54	5.13	64.29	19.69	61.4924	1.00497	1.74
Freestanding urban**	9,436	5.92	3.81	53.75	20.03	36.3859	0.99072	84.27
Hospital-based rural**	117	4.98	4.75	57.06	19.30	52.2485	0.99924	0.40
Freestanding rural**	3,035	6.20	3.72	50.71	19.84	32.5035	0.98851	13.41
Urban by region								
New England	690	5.47	3.89	57.59	20.27	40.3491	0.99250	5.34
Middle Atlantic	1,365	5.78	3.61	51.75	19.75	35.1747	0.99015	17.30
South Atlantic	1,781	5.90	3.94	54.31	20.11	37.5012	0.99120	17.19
East North Central	1,776	5.86	3.63	54.87	20.20	35.2015	0.99021	12.64
East South Central	516	5.99	3.86	52.97	20.24	34.6611	0.98973	3.49
West North Central	720	5.79	4.18	53.70	20.01	39.3350	0.99230	3.93
West South Central	1,125	6.23	3.60	51.21	20.35	30.1480	0.98761	7.22
Mountain	450	5.32	3.98	60.00	19.42	47.5690	0.99682	3.85
Pacific	1,247	6.16	4.18	53.90	19.64	40.9666	0.99318	15.07
Outlying	5	4.84	4.83	65.19	21.00	53.3254	1.00110	0.00
Rural by region								
New England	106	5.30	4.13	56.39	19.02	48.3424	0.99732	0.61
Middle Atlantic	188	5.72	3.45	49.69	19.26	34.0341	0.98928	0.91
South Atlantic	416	6.04	3.61	50.48	19.97	31.8067	0.98829	2.11
East North Central	740	5.94	3.59	53.62	19.68	34.9419	0.98974	3.20
East South Central	450	6.36	3.84	50.57	20.21	33.5263	0.98947	2.18
West North Central	615	6.17	4.05	50.05	19.77	34.4533	0.98918	1.67
West South Central	518	6.57	3.67	50.02	20.35	28.6480	0.98679	2.04
Mountain	144	5.62	3.83	54.57	19.21	40.8260	0.99289	0.63
Pacific	77	5.50	4.22	57.20	18.71	49.3633	0.99804	0.62
Outlying	0	-	-	-	-	-	-	-
Ownership								
Government	591	5.77	4.03	53.36	19.78	40.0316	0.99271	3.01
Profit	9,331	6.13	3.66	52.15	20.04	32.7939	0.98874	74.96
Non-Profit	3,007	5.39	4.30	57.25	19.81	46.4886	0.99629	22.03

* The total group category excludes 2,403 SNFs who failed to meet the proposed measure minimum policy.

** The group category which includes hospital-based/freestanding by urban/rural excludes 119 swing bed SNFs which satisfied the proposed measure minimum policy.

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7. Alternatives Considered

As described in this section, we estimate that the provisions in this proposed rule would result in an estimated net decrease in SNF payments of $320 million for FY 2023. This reflects a $1.4 billion increase from the proposed update to the payment rates of 3.9 percent and a $1.7 billion decrease from the proposed reduction to the SNF payment rates to account for the recalibrated parity adjustment.

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section of the statute prescribes a detailed formula for calculating base payment rates under the SNF PPS, and does not provide for the use of any alternative methodology. It specifies that the base year cost data

to be used for computing the SNF PPS payment rates must be from FY 1995 (October 1, 1994, through September 30, 1995). In accordance with the statute, we also incorporated a number of elements into the SNF PPS (for example, case-mix classification methodology, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the Federal rates). Further, section 1888(e)(4)(H) of the Act specifically requires us to disseminate the payment rates for each new FY through the **Federal Register**, and to do so before the August 1 that precedes the start of the new FY; accordingly, we are not pursuing alternatives for this process.

With regard to the alternatives considered related to the methodology for calculating the proposed parity adjustment to the rates, we considered numerous alternative approaches to the methodology, including alternative data sets, applying the parity adjustment to targeted components of the payment system, and delaying or phasing-in the parity adjustment. These alternatives are described in full detail in section V.C. of this proposed rule.

With regard to the proposal to add the HCP Influenza Vaccine measure to the SNF QRP Program, the COVID–19 pandemic has exposed the importance of implementing infection prevention strategies, including the promotion of HCP influenza vaccination. We believe this measure will encourage healthcare personnel to receive the influenza vaccine, resulting in fewer cases, less hospitalizations, and lower mortality associated with the virus, but were unable to identify any alternative methods for collecting the data. A compelling public need exists to target quality improvement among SNF providers and this proposed measure has the potential to generate actionable data on HCP vaccination rates.

With regard to the proposal to revise the compliance date for the MDS v1.18.11, section 1888(d)(6)(B)(i)(III) of the Act requires that, for fiscal years 2019 and each subsequent year, SNFs must report standardized patient assessment data required under section 1899B(b)(1) of the Act. Section 1899(a)(1)(C) of the Act requires, in part, the Secretary to modify the PAC assessment instruments in order for PAC providers, including SNFs, to submit standardized patient assessment data under the Medicare program. Further delay of collecting this data would delay compliance with the current regulations.

As discussed previously the burden for these proposals is minimal, and we believe the importance of the information necessitates these provisions.

With regard to the proposals for the SNF VBP Program, we discuss alternatives considered within those sections. In section VII.B.2. of this proposed rule, we considered 4 options to adjust for COVID–19 in a technical update to the SNFRM. None of the alternatives would change the analysis of the impacts of the FY 2023 SNF VBP Program described in section X.A.6. of this proposed rule. In section VII.C.2. of this proposed rule, we propose to revise the baseline period for the FY 2025 SNF VBP Program to FY 2019. We considered using alternative baseline periods, including FY 2020 and FY 2022, but these options are operationally infeasible. We will provide estimated impacts of the FY 2025 SNF VBP Program in future rulemaking. In section

In section VII.E.3.c. of this proposed rule, we are proposing that SNFs must have a minimum of 25 residents, on average, across all available quarters during the applicable 1-year performance period in order to be eligible to receive a score on the Total Nurse Staffing measure. We tested three alternative case minimums for this measure: A 25-resident minimum, a minimum of one quarter of PBJ data, and a minimum of two quarters of PBJ data. After considering these alternatives, we determined that the proposed 25-resident minimum best balances quality measure reliability with our desire to score as many SNFs as possible on this measure.

In section VII.E.3.d. of this proposed rule, we proposed measure minimums for the FY 2026 and FY 2027 SNF VBP programs. SNFs that do not meet these minimum requirements would be excluded from the program and would receive their full Federal per diem rate for that fiscal year. We also discussed alternatives, which are detailed below, that would result in more SNFs being excluded from the program.

We are proposing that for FY 2026, SNFs must have the minimum number of cases for two of these three measures during the performance period to receive a performance score and value-based incentive payment. Under these proposed minimum requirements for the FY 2026 program year, we estimate that approximately 14 percent of SNFs would be excluded from the FY 2026 Program. Specifically, if we required SNFs to have the minimum number of cases for all three measures during the performance period, approximately 21 percent of SNFs would be excluded from the FY 2026 Program. We also assessed the consistency of incentive payment multipliers (IPMs) between time periods as a proxy for performance score reliability under the different measure minimum options. The testing results indicated that the reliability of the SNF performance score would be relatively consistent across the different measure minimum requirements. Specifically, for the FY 2026 program year, we estimate that under the proposed minimum of two measures, 82 percent of SNFs receiving a net-negative IPM in the first testing period also received a net-negative IPM in the second testing period. Alternatively, under a minimum of three measures for the FY 2026 program year, we found that the consistency was 81 percent. Based on these testing results, we believe the proposed minimum of two out of three measures for FY 2026 best balances SNF performance score reliability with our desire to ensure that as many SNFs as possible can receive a performance score and value-based incentive payment.

We are proposing that for FY 2027, SNFs must have the minimum number of cases for three of the four measures during a performance period to receive a performance score and value-based incentive payment. Under these proposed minimum requirements, we estimate that approximately 16 percent of SNFs would be excluded from the FY 2027 Program. Alternatively, if we required SNFs to report the minimum number of cases for all four measures, we estimate that approximately 24 percent of SNFs would be excluded from the FY 2027 Program. We also assessed the consistency of incentive payment multipliers (IPMs) between time periods as a proxy for performance score reliability under the different measure minimum options. The testing results indicated that the reliability of the SNF performance score for the FY 2027 program year would be relatively consistent across the different measure minimum requirements. That is, among the different measure minimums for the FY 2027 program year, a strong majority (between 85 and 87 percent) of the SNFs receiving a net-negative IPM for the first testing period also received a net-negative IPM for the second testing period. These findings indicate that increasing the measure minimum requirements does not meaningfully increase the consistency of the performance score. Based on these testing results, we believe the propose minimum of three out of four measures for FY 2027 best balances SNF performance score reliability with our desire to ensure that as many SNFs as possible can receive a performance

score and value-based incentive payment.

8. Accounting Statement

As required by OMB Circular A–4 (available online at *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/*), in Tables 25 through 27, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule for FY 2023. Tables 19 and 25 provide our best estimate of the possible changes in Medicare payments under the SNF PPS as a result of the policies in this proposed rule, based on the data for 15,472 SNFs in our database. Table 26 provides our best estimate of the possible changes in Medicare payments under the SNF VBP as a result of the policies we have proposed for this program. Tables 20 and 27 provide our best estimate of the additional cost to SNFs to submit the data for the SNF QRP as a result of the policies in this proposed rule.

TABLE 25: Accounting Statement: Classification of Estimated Expenditures, from the 2022 SNF PPS Fiscal Year to the 2023 SNF PPS Fiscal Year

Category	Transfers
Annualized Monetized Transfers	-$320 million*
From Whom To Whom?	Federal Government to SNF Medicare Providers

* The net decrease of $320 million in transfer payments is a result of the $1.4 billion increase from the proposed update to the payment rates of 3.9 percent, reduced by $1.7 billion due to the proposed parity adjustment.

TABLE 26: Accounting Statement: Classification of Estimated Expenditures for the FY 2023 SNF VBP Program

Category	Transfers
Annualized Monetized Transfers	$278.32 million*
From Whom To Whom?	Federal Government to SNF Medicare Providers

*This estimate does not include the 2 percent reduction to SNFs' Medicare payments (estimated to be $463.87 million) required by statute.

TABLE 27: Accounting Statement: Classification of Estimated Expenditures for the FY 2025 SNF QRP Program

Category	Transfers/Costs
Costs for SNFs to Submit Data for QRP	$30,949,079.36

*Costs associated with the submission of data for the Influenza Vaccination among HCP (NQF #0431) and the collection of the Transfer of Health Information measures and certain standardized patient assessment data elements will occur in FY 2023 and is likely to continue in future years.

9. Conclusion

This rule updates the SNF PPS rates contained in the SNF PPS final rule for FY 2022 (86 FR 42424). Based on the above, we estimate that the overall payments for SNFs under the SNF PPS in FY 2023 are projected to decrease by approximately $320 million, or 0.9 percent, compared with those in FY 2022. We estimate that in FY 2023, SNFs in urban and rural areas would experience, on average, a 0.9 percent decrease and 1.0 percent decrease, respectively, in estimated payments compared with FY 2022. Providers in the rural Pacific region would experience the largest estimated decrease in payments of approximately 2.3 percent. Providers in the urban Pacific region would experience the smallest estimated decrease in payments of 0.1 percent.

B. Regulatory Flexibility Act Analysis

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, non-profit organizations, and small governmental jurisdictions. Most SNFs and most other providers and suppliers are small entities, either by reason of their non-profit status or by having revenues of $30 million or less in any 1 year. We utilized the revenues of individual SNF providers (from recent Medicare Cost Reports) to classify a small business, and not the revenue of a larger firm with which they may be affiliated. As a result, for the purposes of the RFA, we estimate that almost all SNFs are small entities as that term is used in the RFA, according to the Small Business Administration's latest size standards (NAICS 623110), with total revenues of $30 million or less in any 1 year. (For details, see the Small Business Administration's website at *https://www.sba.gov/category/navigation-structure/contracting/contracting-officials/eligibility-size-standards*) In addition, approximately 20 percent of SNFs classified as small entities are non-profit organizations. Finally, individuals and states are not

included in the definition of a small entity.

This rule would update the SNF PPS rates contained in the SNF PPS final rule for FY 2022 (86 FR 42424). Based on the above, we estimate that the aggregate impact for FY 2023 would be a decrease of $320 million in payments to SNFs, resulting from the SNF market basket update to the payment rates, reduced by the proposed parity adjustment discussed in section IV.D. While it is projected in Table 19 that all providers would experience a net decrease in payments, we note that some individual providers within the same region or group may experience different impacts on payments than others due to the distributional impact of the FY 2023 wage indexes and the degree of Medicare utilization.

Guidance issued by the Department of Health and Human Services on the proper assessment of the impact on small entities in rulemakings, utilizes a cost or revenue impact of 3 to 5 percent as a significance threshold under the RFA. In their March 2022 Report to Congress (available at *https://www.medpac.gov/wp-content/uploads/2022/03/Mar22_MedPAC_ReportToCongress_Ch7_SEC.pdf*), MedPAC states that Medicare covers approximately 10 percent of total patient days in freestanding facilities and 17 percent of facility revenue (March 2022 MedPAC Report to Congress, 238). As indicated in Table 19, the effect on facilities is projected to be an aggregate negative impact of 0.9 percent for FY 2023. As the overall impact on the industry as a whole, and thus on small entities specifically, is less than the 3 to 5 percent threshold discussed previously, the Secretary has determined that this proposed rule will not have a significant impact on a substantial number of small entities for FY 2023.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of an MSA and has fewer than 100 beds. This proposed rule will affect small rural hospitals that: (1) Furnish SNF services under a swing-bed agreement or (2) have a hospital-based SNF. We anticipate that the impact on small rural hospitals would be similar to the impact on SNF providers overall. Moreover, as noted in previous SNF PPS final rules (most recently, the one for FY 2022 (86 FR 42424)), the category of small rural hospitals is included within the analysis of the impact of this proposed rule on small entities in general. As indicated in Table 19, the effect on facilities for FY 2023 is projected to be an aggregate negative impact of 0.9 percent. As the overall impact on the industry as a whole is less than the 3 to 5 percent threshold discussed above, the Secretary has determined that this proposed rule will not have a significant impact on a substantial number of small rural hospitals for FY 2023.

C. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2022, that threshold is approximately $165 million. This proposed rule will impose no mandates on State, local, or tribal governments or on the private sector.

D. Federalism Analysis

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This proposed rule will have no substantial direct effect on State and local governments, preempt State law, or otherwise have federalism implications.

E. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on last year's proposed rule will be the number of reviewers of this year's proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all commenters reviewed this year's proposed rule in detail, and it is also possible that some reviewers chose not to comment on that proposed rule. For these reasons, we believe that the number of commenters on last year's proposed rule is a fair estimate of the number of reviewers of this year's proposed rule.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule, and therefore, for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule.

Using the national mean hourly wage data from the May 2020 BLS Occupational Employment Statistics (OES) for medical and health service managers (SOC 11–9111), we estimate that the cost of reviewing this rule is $114.24 per hour, including overhead and fringe benefits *https://www.bls.gov/oes/current/oes_nat.htm.* Assuming an average reading speed, we estimate that it would take approximately 4 hours for the staff to review half of the proposed rule. For each SNF that reviews the rule, the estimated cost is $456.96 (4 hours × $114.24). Therefore, we estimate that the total cost of reviewing this regulation is $156,280.32 ($442.96 × 342 reviewers).

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on March 22, 2022.

List of Subjects in 42 CFR Part 413

Diseases, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES; PAYMENT FOR ACUTE KIDNEY INJURY DIALYSIS

■ 1. The authority citation for part 413 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww.

■ 2. Amend § 413.337 by revising paragraph (b)(4) to read as follows:

§ 413.337 Methodology for calculating the prospective payment rates.

* * * * *

(b) * * *

(4) *Standardization of data for variation in area wage levels and case-*

mix. The cost data described in paragraph (b)(2) of this section are standardized to remove the effects of geographic variation in wage levels and facility variation in case-mix.

(i) The cost data are standardized for geographic variation in wage levels using the wage index. The application of the wage index is made on the basis of the location of the facility in an urban or rural area as defined in § 413.333.

(ii) Starting on October 1, 2022, CMS applies a cap on decreases to the wage index such that the wage index applied to a SNF is not less than 95 percent of the wage index applied to that SNF in the prior FY.

(iii) The cost data are standardized for facility variation in case-mix using the case-mix indices and other data that indicate facility case-mix.

* * * * *

■ 3. Amend § 413.338 by—

■ a. Revising paragraphs (a)(1) and (4) through (17);

■ b. Revising paragraphs (b) and (c)(2)(i), the paragraph (d) heading, and paragraph (d)(3);

■ c. Adding paragraphs (d)(5) and (6);

■ d. Redesignating paragraphs (e) through (g) as paragraphs (f) through (h);

■ e. Adding a new paragraph (e);

■ f. Revising newly redesignated paragraph (f)(1) and paragraph (f)(3) introductory text; and

■ g. Adding paragraphs (f)(4), (i), and (j).

The revisions and additions read as follows:

§ 413.338 Skilled nursing facility value-based purchasing program.

(a) * * *

(1) *Achievement threshold (or achievement performance standard)* means the 25th percentile of SNF performance on a measure during the baseline period for a fiscal year.

* * * * *

(4) *Baseline period* means the time period used to calculate the achievement threshold, benchmark, and improvement threshold that apply to a measure for a fiscal year.

(5) *Benchmark* means, for a fiscal year, the arithmetic mean of the top decile of SNF performance on a measure during the baseline period for that fiscal year.

(6) *Eligible stay* means, for purposes of the SNF readmission measure, an index SNF admission that would be included in the denominator of that measure.

(7) *Improvement threshold (or improvement performance standard)* means an individual SNF's performance on a measure during the applicable baseline period for that fiscal year.

(8) *Logistic exchange function* means the function used to translate a SNF's performance score into a value-based incentive payment percentage.

(9) *Low-volume SNF* means a SNF with fewer than 25 eligible stays included in the SNF readmission measure denominator during the performance period for each of fiscal years 2019 through 2022.

(10) *Performance period* means the time period during which SNF performance on a measure is calculated for a fiscal year.

(11) *Performance score* means the numeric score ranging from 0 to 100 awarded to each SNF based on its performance under the SNF VBP Program for a fiscal year.

(12) *Performance standards* are the levels of performance that SNFs must meet or exceed to earn points on a measure under the SNF VBP Program for a fiscal year.

(13) *Ranking* means the ordering of SNFs based on each SNF's *Performance score* under the SNF VBP Program for a fiscal year.

(14) *SNF readmission measure* means, prior to October 1, 2019, the all-cause all-condition hospital readmission measure (SNFRM) or the all-condition risk-adjusted potentially preventable hospital readmission rate (SNFPPR) specified by CMS for application in the SNF Value-Based Purchasing Program. Beginning October 1, 2019, the term *SNF readmission measure* means the all-cause all-condition hospital readmission measure (SNFRM) or the all-condition risk-adjusted potentially preventable hospital readmission rate (Skilled Nursing Facility Potentially Preventable Readmissions after Hospital Discharge measure) specified by CMS for application in the SNF VBP Program.

(15) *SNF Value-Based Purchasing (VBP) Program* means the program required under section 1888(h) of the Social Security Act.

(16) *Value-based incentive payment adjustment factor* is the number that will be multiplied by the adjusted Federal per diem rate for services furnished by a SNF during a fiscal year, based on its performance score for that fiscal year, and after such rate is reduced by the applicable percent.

(17) *Value-based incentive payment amount* is the portion of a SNF's adjusted Federal per diem rate that is attributable to the SNF VBP Program.

(b) *Applicability of the SNF VBP Program.* The SNF VBP Program applies to SNFs, including facilities described in section 1888(e)(7)(B) of the Act. Beginning with fiscal year 2023, the SNF VBP Program does not include a SNF, with respect to a fiscal year, if:

(1) The SNF does not have the minimum number of cases that applies to each measure for the fiscal year, as specified by CMS; or

(2) The SNF does not have the minimum number of measures for the fiscal year, as specified by CMS.

(c) * * *

(2) * * *

(i) *Total amount available for a fiscal year.* The total amount available for value-based incentive payments for a fiscal year is at least 60 percent of the total amount of the reduction to the adjusted SNF PPS payments for that fiscal year, as estimated by CMS, and will be increased as appropriate for each fiscal year to account for the assignment of a performance score to low-volume SNFs under paragraph (d)(3) of this section. Beginning with the FY 2023 SNF VBP, the total amount for value-based incentive payments for a fiscal year is 60 percent of the total amount of the reduction to the adjusted SNF PPS payments for that fiscal year, as estimated by CMS.

* * * * *

(d) *Performance scoring under the SNF VBP Program (applicable, as described in this paragraph, to fiscal year 2019 through and including fiscal year 2025).* * * *

(3) If, with respect to a fiscal year beginning with fiscal year 2019 through and including fiscal year 2022, CMS determines that a SNF is a low-volume SNF, CMS will assign a performance score to the SNF for the fiscal year that, when used to calculate the value-based incentive payment amount (as defined in paragraph (a)(17) of this section), results in a value-based incentive payment amount that is equal to the adjusted Federal per diem rate (as defined in paragraph (a)(2) of this section) that would apply to the SNF for the fiscal year without application of § 413.337(f).

* * * * *

(5) CMS will specify the measures for application in the SNF VBP Program for a given fiscal year.

(6)(i) Performance standards are announced no later than 60 days prior to the start of the performance period that applies to that measure for that fiscal year.

(ii) Beginning with the performance standards that apply to FY 2021, if CMS discovers an error in the performance standard calculations subsequent to publishing their numerical values for a fiscal year, CMS will update the numerical values to correct the error. If CMS subsequently discovers one or more other errors with respect to the same fiscal year, CMS will not further update the numerical values for that fiscal year.

(e) *Performance scoring under the SNF VBP Program beginning with fiscal year 2026*—(1) *Points awarded based on SNF performance.* CMS will award points to SNFs based on their performance on each measure for which the SNF reports the applicable minimum number of cases during the performance period applicable to that fiscal year as follows:

(i) CMS will award from 1 to 9 points for achievement to each SNF whose performance on a measure during the applicable performance period meets or exceeds the achievement threshold for that measure but is less than the benchmark for that measure.

(ii) CMS will award 10 points for achievement to a SNF whose performance on a measure during the applicable performance period meets or exceeds the benchmark for that measure.

(iii) CMS will award from 0 to 9 points for improvement to each SNF whose performance on a measure during the applicable performance period exceeds the improvement threshold but is less than the benchmark for that measure.

(iv) CMS will not award points for improvement to a SNF that does not meet the case minimum for a measure for the applicable baseline period.

(v) The highest of the SNF's achievement and improvement score for a given measure will be the SNF's score on that measure for the applicable fiscal year.

(2) *Calculation of the SNF performance score.* The SNF performance score for a fiscal year is calculated as follows:

(i) CMS will sum all points awarded to a SNF as described in paragraph (e) of this section for each measure applicable to a fiscal year to calculate the SNF's point total.

(ii) CMS will normalize the point total such that the resulting SNF performance score is expressed as a number of points earned out of a total of 100.

(f) * * *

(1) CMS will provide quarterly confidential feedback reports to SNFs on their performance on each measure specified for the fiscal year. Beginning with the baseline period and performance period quality measure quarterly reports issued on or after October 1, 2021, which contain the baseline period and performance period measure rates, respectively, SNFs will have 30 days following the date CMS provides each of these reports to review and submit corrections to the measure rates contained in that report. The administrative claims data used to calculate measure rates are not subject to review and correction under paragraph (e)(1) of this section. All correction requests must be accompanied by appropriate evidence showing the basis for the correction to each of the applicable measure rates.

* * * * *

(3) CMS will publicly report the information described in paragraphs (f)(1) and (2) of this section on the Nursing Home Compare website or a successor website. Beginning with information publicly reported on or after October 1, 2019, and ending with information publicly reported on September 30, 2022 the following exceptions apply:

* * * * *

(4) Beginning with the information publicly reported on or after October 1, 2022, the following exceptions apply:

(i) If a SNF does not have the minimum number of cases during the baseline period that applies to a measure for a fiscal year, CMS will not publicly report the SNF's baseline period measure rate for that particular measure, although CMS will publicly report the SNF's performance period measure rate and achievement score if the SNF had the minimum number of cases for the measure during the performance period of the same program year;

(ii) If a SNF does not have the minimum number of cases during the performance period that applies to a measure for a fiscal year, CMS will not publicly report any information with respect to the SNF's performance on that measure for the fiscal year;

(iii) If a SNF does not have the minimum number of measures during the performance period for a fiscal year, CMS will not publicly report any data for that SNF for the fiscal year.

* * * * *

(i) *Special rules for the FY 2023 SNF VBP Program.* (1) CMS will calculate a SNF readmission measure rate for each SNF based on its performance on the SNF readmission measure during the performance period specified by CMS for fiscal year 2023, but CMS will not calculate a performance score for any SNF using the methodology described in paragraphs (d)(1) and (2) of this section. CMS will instead assign a performance score of zero to each SNF.

(2) CMS will calculate the value-based incentive payment adjustment factor for each SNF using a performance score of zero and will then calculate the value-based incentive payment amount for each SNF using the methodology described in paragraph (c)(2)(ii) of this section.

(3) CMS will provide confidential feedback reports to SNFs on their performance on the SNF readmission measure in accordance with paragraphs (e)(1) and (2) of this section.

(4) CMS will publicly report SNF performance on the SNF readmission measure in accordance with paragraph (f)(3) of this section.

(j) *Validation.* (1) Beginning with the FY 2023 Program year, for the SNFRM measure, information reported through claims for the SNFRM measure are validated for accuracy by Medicare Administrative Contractors (MACs) to ensure accurate Medicare payments.

(2) [Reserved]

■ 4. Amend § 413.360 by—

■ a. Removing paragraph (b)(2) and redesignating paragraph (b)(3) as paragraph (b)(2); and

■ b. Adding paragraph (f).

The addition reads as follows:

§ 413.360 Requirements under the Skilled Nursing Facility (SNF) Quality Reporting Program (QRP).

* * * * *

(f) *Data completion threshold.* (1) SNFs must meet or exceed two separate data completeness thresholds: One threshold set at 80 percent for completion of required quality measures data and standardized patient assessment data collected using the MDS submitted through the CMS designated data submission system; beginning with FY 2018 and for all subsequent payment updates; and a second threshold set at 100 percent for measures data collected and submitted using the CDC NHSN, beginning with FY 2023 and for all subsequent payment updates.

(2) These thresholds (80 percent for completion of required quality measures data and standardized patient assessment data on the MDS; 100 percent for CDC NHSN data) will apply to all measures and standardized patient assessment data requirements adopted into the SNF QRP.

(3) A SNF must meet or exceed both thresholds to avoid receiving a 2-percentage point reduction to their annual payment update for a given fiscal year.

Dated: April 8, 2022.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2022–07906 Filed 4–11–22; 4:15 pm]

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S. 3294/P.L. 117–111
To obtain and direct the placement in the Capitol or on the Capitol Grounds of a statue to honor Associate Justice of the Supreme Court of the United States Sandra Day O'Connor and a statue to honor Associate Justice of the Supreme Court of the United States Ruth Bader Ginsburg. (Apr. 13, 2022; 136 Stat. 1166)

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