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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Doc. No. AMS–SC–22–0004; SC22–915–1 FR]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Avocado Administrative Committee to increase the assessment rate established for the 2022–23 and subsequent fiscal years. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective September 26, 2022.

FOR FURTHER INFORMATION CONTACT: Delaney Fuhrmeister, Marketing Specialist, or Christian D. Nissen, Chief, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Delaney.Fuhrmeister@usda.gov* or *Christian.Nissen@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement No. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in south Florida. Part 915 (referred to as ''the Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Avocado Administrative Committee (Committee) locally administers the Order and is comprised of growers and handlers operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) 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.

This rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate will be applicable to all assessable Florida avocados for the 2022–23 fiscal year, and continue until amended, suspended, or terminated.

The Act provides that the administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the United States Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

This rule increases the assessment rate established for the 2022–23 and subsequent fiscal years from $0.45 to $0.50 per 55-pound container or equivalent of avocados.

The Order authorizes the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are familiar with the Committee's needs and with the costs for goods and services in their local area and are able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

For the 2021–22 and subsequent fiscal years, the Committee recommended, and AMS approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on January 12, 2022, and recommended 2022–23 expenditures of $268,484 and an assessment rate of $0.50 per 55-pound container or equivalent of avocados. In comparison, last year's budgeted expenditures were $348,484. The assessment rate of $0.50 is $0.05 higher than the rate currently in effect. The Committee discussed the need to increase the assessment rate based on the 2022–23 crop estimate of 500,000 55-pound containers, a decrease from 800,000 from the previous year. At the current assessment rate, assessment income would equal only $225,000, an

amount insufficient to cover the Committee's anticipated expenditures of $268,484. By increasing the assessment rate by $0.05, assessment income will be $250,000, which will reduce the amount of funds needed from the Committee's authorized reserve to cover the 2022–23 budgeted expenses. This amount, along with interest income, and funds from the reserve, should provide sufficient funds to meet 2022–23 anticipated expenses.

Major expenditures recommended by the Committee for the 2022–23 year include $116,164 for salaries, $53,350 for employee benefits, and $26,500 for office rent and supplies. Budgeted expenses for these items in 2021–22 were $116,164, $53,350, and $26,500 respectively.

The assessment rate recommended by the Committee was derived by reviewing anticipated expenses, expected shipments of Florida avocados, and the level of funds in reserve. Avocado shipments for the year are estimated at 500,000 55-pound containers, which should provide $250,000 in assessment income (500,000 containers × $0.50). Income derived from handler assessments at the increased rate, along with interest income, and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently about $230,000) are expected to be kept within the maximum permitted by the Order (approximately three fiscal years' expenses as authorized in § 915.42).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. Dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2022–23 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by AMS.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 315 growers of Florida avocados in the production area and 24 handlers subject to regulation under the Order. Small agricultural avocado growers are defined by the Small Business Administration (SBA) as those having annual receipts less than $3,000,000, and small agricultural service firms are defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201). The SBA threshold for growers changed in between the proposed and the final rule. Thus, AMS changed the RFA to reflect the new amount in this final rule. The change did not impact the number of growers considered to be small.

According to the National Agricultural Statistics Service, the average grower price paid for Florida avocados during the 2020–21 season was $21.97 per 55-pound container. Utilized production was equivalent to 624,364 55-pound containers for a total value of over $13,717,277 ($21.97 multiplied by 624,364 55-pound containers). Dividing the crop value by the estimated number of growers yields an estimated average receipt per grower of $43,547 ($13,717,277 divided by 315), so the majority of growers would have annual receipts of less than $3,000,000.

AMS Market News reported that April 2021 terminal market prices for green skinned avocados were about $83.60 per 55-pound container. Using this price and the total utilization, the total 2020–21 handler crop value is estimated at $52.2 million ($83.60 multiplied by 624,364 55-pound containers). Dividing this figure by the number of handlers yields an estimated average annual handler receipt of $2.18 million ($52.2 million divided by 24), which is below the SBA threshold for small agricultural service firms. Thus, the majority of Florida avocado growers and handlers may be classified as small entities.

This rule increases the assessment rate collected from handlers for the 2022–23 and subsequent fiscal years from $0.45 to $0.50 per 55-pound container or equivalent of avocados. The Committee recommended 2022–23 expenditures of $268,484 and an assessment rate of $0.50 per 55-pound container or equivalent of avocados. The assessment rate of $0.50 is $0.05 higher than the previous rate. The quantity of assessable avocados for the 2022–23 season is estimated at 500,000 55-pound containers. Thus, the $0.50 rate should provide $250,000 in assessment income. Income derived from handler assessments, along with interest income, and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

Major expenditures recommended by the Committee for the 2022–23 fiscal year include $116,164 for salaries, $53,350 for employee benefits, and $26,500 for office rent and supplies. Budgeted expenses for these items in 2021–22 were $116,164, $53,350, and $26,500, respectively.

The Committee recommended increasing the assessment based on the 2022–23 crop estimate of 500,000 55-pound containers, which is a decrease from the 800,000 55-pound containers estimated for the previous year. At the current assessment rate, assessment income would equal $225,000, an amount insufficient to cover the Committee's anticipated expenditures of $268,484. By increasing the assessment rate by $0.05, assessment income would be $250,000, which would reduce the amount of funds needed from the reserve. This amount, along with interest income, and funds from the reserve, should provide sufficient funds to meet 2022–23 anticipated expenses.

Prior to arriving at this budget and assessment rate, the Committee considered maintaining the current assessment rate of $0.45. The Committee ultimately determined that leaving the assessment rate unchanged would not generate sufficient revenue to meet the Committee's 2022–23 expenditures of $268,484. Therefore, the Committee rejected the idea of maintaining the current assessment rate.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the grower price for the 2022–23 fiscal year should be around $22.50 per 55-pound container or equivalent of avocados. The increased assessment rate of $0.50 per 55-pound container or equivalent of avocados represents 2.2 percent of the $22.50 estimated average grower price ($0.50 divided by $22.50 × 100).

This action increases the assessment obligation imposed on handlers. While assessments impose additional costs on handlers, the costs are minimal and uniform on all handlers, and some of the costs may be passed on to growers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee meetings are widely publicized throughout the Florida avocado industry and all interested persons are invited to attend meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the January 12, 2022, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0189 Fruit Crops. No changes in those requirements are necessary as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, AMS 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.

A proposed rule concerning this action was published in the **Federal Register** on April 22, 2022 (87 FR 24070). Copies of the proposed rule were also mailed or sent via email to all south Florida avocado handlers. The proposal was made available through the internet by USDA and *https://www.regulations.gov.* A 30-day comment period ending May 23, 2022, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 915 as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

■ 1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 915.235 is revised to read as follows:

§ 915.235 Assessment rate.

On and after April 1, 2022, an assessment rate of $0.50 per 55-pound container or equivalent is established for avocados grown in South Florida.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–18455 Filed 8–25–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2013–BT–TP–0050]

RIN 1904–AD88

Energy Conservation Program: Test Procedure for Ceiling Fans; Correction

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

ACTION: Final rule; correction.

SUMMARY: The U.S. Department of Energy (''DOE'') is correcting a final rule that appeared in the **Federal Register** on August 16, 2022. The document amended test procedures for ceiling fans. This document corrects an amendatory error in that final rule.

DATES: Effective September 15, 2022.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov*.

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2588. Email: *amelia.whiting@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

DOE published a final rule in the **Federal Register** on August 16, 2022, amending the test procedure for ceiling fans. 87 FR 50396. This correction addresses a numbering error in that final rule. The instruction amending 10 CFR 430.3(p) states that DOE is ''Adding note 1 to paragraph (p).'' However, in the amended regulatory text, the added note is written as ''Note 2 to paragraph (p).'' *Id.* at 50424. This document corrects the regulatory language to read ''Note 1 to paragraph (p).''

In final rule FR Doc. 2022–16951, published in the issue of Tuesday, August 16, 2022 (87 FR 50396), the following correction is made:

§ 430.3 [Corrected]

■ 1. On page 50424, in the first column, in § 430.3, ''Note 2 to paragraph (p)'' is corrected to read ''Note 1 to paragraph (p)''.

Signing Authority

This document of the Department of Energy was signed on August 19, 2022, by Dr. Geraldine Richmond, Undersecretary for Science and Innovation, 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 August 23, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–18433 Filed 8–25–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0602; Project Identifier MCAI–2020–01211–A; Amendment 39–22143; AD 2022–17–05]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2002–14–28, which applied to all de Havilland Inc. (type certificate currently held by Viking Air Limited) Model DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. AD 2002–14–28 established a life limit for the front fuselage struts and required repetitively replacing the front fuselage struts every 15 years or repetitively inspecting the struts for corrosion or fatigue damage and replacing when the damage exceeded a certain level. Since the FAA issued AD 2002–14–28, Transport Canada superseded its mandatory continuing airworthiness information (MCAI) to correct this unsafe condition on these products. This AD requires either doing recurring visual inspections, borescope inspections, and non-destructive inspections (NDIs) of the struts and airframe lugs with corrective action as necessary or replacing the struts every 15 years and doing recurring NDIs of the airframe lugs with corrective action as necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 30, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 30, 2022.

ADDRESSES: For service information identified in this final rule, contact Viking Air Limited Technical Support, 1959 de Havilland Way, Sidney, British Columbia, Canada, V8L 5V5; phone: (800) 663–8444; fax: (250) 656–0673; email: *technical.support@vikingair.com;* website: *www.vikingair.com/support/service-bulletins.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *www.regulations.gov* under Docket No. FAA–2022–0602.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov under* Docket No. FAA–2022–0602; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the MCAI, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aviation Safety Engineer, New York ACO Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7329; email: *aziz.ahmed@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2002–14–28, Amendment 39–12828 (67 FR 47684, July 22, 2002) (AD 2002–14–28). AD 2002–14–28 applied to all de Havilland Inc. (type certificate currently held by Viking Air Limited) Model DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. AD 2002–14–28 established a life limit for the front fuselage struts and required repetitively replacing the front fuselage struts every 15 years or repetitively inspecting the struts for corrosion or fatigue damage and replacing when the damage exceeded a certain level. The FAA issued AD 2002–14–28 to prevent structural failure of the front fuselage caused by corrosion or fatigue damage to the struts that develops over time, which could result in reduced or loss of airplane control.

The NPRM published in the **Federal Register** on June 7, 2022 (87 FR 34591). The NPRM was prompted by AD CF–2020–22, dated June 5, 2020 (referred to after this as ''the MCAI''), issued by Transport Canada, which is the aviation authority for Canada, which superseded its prior AD on this unsafe condition, AD CF–98–37R1, dated August 20, 1999. Transport Canada issued the MCAI to introduce a revised inspection schedule for the front fuselage struts from previously published schedules to alleviate the burden of mandatory replacement every 15 years or ultrasonic inspections every 5 years. The MCAI states:

Operators have reported incidents of corrosion of the DHC–2 front fuselage struts which are installed on each side of the flight compartment windshield. Deterioration of the airframe lugs to which the struts are attached has also been reported. The actions specified by this [Transport Canada] AD are intended to prevent structural failure of the front fuselage caused by damage to the fuselage struts and airframe lugs that develops over time, which could result in the loss of airframe structural integrity.

AD CF–98–37 issued 29 September 1998 mandated a 15-year life limit on the strut. It also prohibited installation of part numbers (P/Ns) C2FS209 and C2FS210.

Revision 1, CF–98–37R1, introduced repetitive inspection as an alternative to replacement of the strut. Detailed visual inspection was required to begin within 12 months from the effective date of the [Transport Canada] AD and be repeated every 12 months regardless of the age of the strut. Ultrasonic thickness measurements were required to begin within 24 months from the effective date of the [Transport Canada] AD and be repeated every 5 years regardless of the age of the strut.

After AD CF–98–37R1 was issued, it was determined that the repetitive inspections are not required to be started until the strut has accumulated 15 years since installation. As a result, Transport Canada (TC) approved several AMOCs [alternative methods of compliance] to authorize starting the inspections at that time.

Since the issuance of AD CF–98–37R1, TC has received several Service Difficulty Reports (SDRs) indicating that the corrective actions of that [Transport Canada] AD have not been effective at controlling damage of the fuselage struts to an acceptable level.

Viking Air Ltd. (Viking) has determined that a modified program of recurring visual inspection, borescope inspection and non-destructive inspection (NDI) of the struts and airframe lugs would be more effective than the existing inspection program. This program modifies affected parts by introducing a hole to permit a borescope inspection if that hole does not already exist in the parts.

To implement the modified inspection program, Viking has published Service Bulletin (SB) V2/0010 and Technical Bulletin (TB) V2/00002 that provide specific instructions for performing the modification, inspections and measurements required by this [Transport Canada] AD. The SB and TB also define the follow-on actions associated with those inspections and measurements.

Viking has also developed a version of the front fuselage strut with improved resistance to corrosion and with provisions for borescope inspection. The improved struts have been assigned P/Ns C2FS3281A–9 (left strut) and C2FS3282A–9 (right strut).

The corrective actions of this [Transport Canada] AD differ from those of AD CF–98–37R1 in the following ways:

- AD CF–98–37R1 included the details for all of the corrective actions, it did not require reference to other documents. For this [Transport Canada] AD, the details of the corrective actions are now specified in a SB and a TB.

- AD CF–98–37R1 required repetitive detailed visual inspection (DVI) of the airframe lugs. This [Transport Canada] AD requires repetitive DVI and NDI of the airframe lugs.
- AD CF–98–37R1 only permitted installation of P/Ns C2FS3281A and C2FS3282A. This [Transport Canada] AD permits installation of those parts, the superseding Viking P/Ns, parts installed by TC-issued or -accepted Supplemental Type Certificate (STC) or Part Manufacturing Approval (PMA) and Part Design Approval (PDA) parts that are approved for installation in DHC–2 as replacements for P/Ns C2FS3281A and C2FS3282A. Those are all approved parts.
- AD CF–98–37R1 did not specify to remove parts from the aeroplane to perform inspections. This [Transport Canada] AD requires repetitive removal of the struts from the aeroplane followed by a NDI of the airframe lugs. This requirement applies to DHC–2 where the struts are being replaced when they reach 15 years since installation. It also applies to DHC–2 where the struts are kept in service and inspected as required by the SB and TB.
- AD CF–98–37R1 required the visual inspection to start within 12 months from the [Transport Canada] AD effective date and the NDI to start within 24 months from the [Transport Canada] AD effective date. This [Transport Canada] AD requires the repetitive inspections to start no later than when the struts have accumulated 15 years since initial installation.
- AD CF–98–37R1 required repetitive ultrasonic thickness measurement for all parts. This [Transport Canada] AD only requires that measurement if corrosion is detected during an inspection.
- AD CF–98–37R1 required visual inspection of the exterior surfaces of the strut with the strut installed in the aeroplane. For struts that have accumulated more than 15 years since first installation, this [Transport Canada] AD continues to require visual inspection of the accessible exterior surfaces of the strut with the strut installed. This [Transport Canada] AD also includes repetitive requirements for:
  - Inspection of the fillet sealant;
  - Borescope inspection of the interior of the strut; and
  - Removal of the strut from the aeroplane followed by visual inspection of the entire strut and NDI of the strut end fittings.

All TC-issued or -accepted AMOCs with AD CF–98–37R1 are cancelled on the effective date of this [Transport Canada] AD. Parts in service must be replaced or modified, inspected and maintained in accordance with the requirements of this [Transport Canada] AD unless TC approves AMOCs with the requirements of this [Transport Canada] AD.

You may examine the MCAI in the AD docket at *www.regulations.gov* under Docket No. FAA–2022–0602.

In the NPRM, the FAA proposed to require either doing recurring visual inspections, borescope inspections, and NDIs of the struts and airframe lugs with corrective action as necessary or replacing the struts every 15 years and doing recurring NDIs of the airframe lugs with corrective action as necessary. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

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 referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Viking DHC–2 Beaver Technical Bulletin No. V2/00002, Revision 'A,' dated June 20, 2019. The service information specifies procedures for a detailed visual, borescope, and non-destructive testing (NDT) inspection of the front fuselage struts and airframe lugs.

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

Other Related Service Information

The FAA reviewed Viking DHC–2 Beaver Service Bulletin No. V2/0010, Revision 'NC,' dated April 3, 2020. The service information contains a detailed and revised schedule for a detailed visual inspection of the forward-lower and aft-upper strut attachment points on the fuselage (mating airframe lugs) every 12 months, borescope inspection of the strut interior surfaces every 5 years, NDT inspection of the fuselage strut fork ends and lugs every 15 years, replacement of each fuselage strut every 15 years, and replacement of the 5-year ultrasonic thickness measurement as an option to the 15-year life limit.

Costs of Compliance

The FAA estimates that this AD affects 143 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 airplane	Cost on U.S. operators
Visual, borescope, and NDT inspections of the front fuselage struts and airframe lugs.	80 work-hours × $85 per hour = $6,800 per inspection cycle.	Not applicable	$6,800 per inspection cycle.	$972,400 per inspection cycle.
Detailed visual inspection	4 work-hours × $85 per hour = $340 per inspection cycle.	Not applicable	$340 per inspection cycle.	$48,620 per inspection cycle.
Borescope and detailed visual inspection.	6 work-hours × $85 per hour = $510 per inspection cycle.	Not applicable	$510 per inspection cycle.	$72,930 per inspection cycle.
Replace left-hand fuselage strut	54 work-hours × $85 per hour = $4,590.	$2,331.40	$6,921.40	$989,760.20.
Replace right-hand fuselage strut	54 work-hours × $85 per hour = $4,590.	$2,331.40	$6,921.40	$989,760.20.

The extent of damage found during the required inspections could vary significantly from airplane to airplane. The FAA has no way of determining how much damage may be found on each airplane, the cost to repair damaged parts on each airplane, or the number of airplanes that may require repair.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2002–14–28, Amendment 39–12828 (67 FR 47684, July 22, 2002); and

■ b. Adding the following new airworthiness directive:

2022–17–05 Viking Air Limited (type certificate previously held by Bombardier Inc. and de Havilland Inc.): Amendment 39–22143; Docket No. FAA–2022–0602; Project Identifier MCAI–2020–01211–A.

(a) Effective Date

This airworthiness directive (AD) is effective September 30, 2022.

(b) Affected ADs

This AD replaces AD 2002–14–28, Amendment 39–12828 (67 FR 47684, July 22, 2002) (AD 2002–14–28).

(c) Applicability

This AD applies to Viking Air Limited (type certificate previously held by Bombardier Inc. and de Havilland Inc.) Model DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5300, Fuselage Structure (General).

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as the development of damage to the front fuselage struts and airframe lugs over time. The FAA is issuing this AD to address this condition. The unsafe condition, if not addressed, could result in failure of the front fuselage struts, which could lead to failure of the airframe and loss of airplane control.

(f) Definition of Serviceable Part

For purposes of this AD, a ''serviceable part'' is a front fuselage strut that has a part number (P/N) other than P/N C2FS209 and C2FS210 and meets the conditions in either paragraph (f)(1) or (2) of this AD:

(1) Has accumulated less than 15 years since first installation on an airplane; or

(2) Has accumulated 15 or more years since first installation on an airplane and has been inspected in accordance with the requirements of this AD.

(g) Compliance

Comply with the initial actions in paragraph (h) of this AD at the applicable compliance time in paragraph (g)(1), (2), or (3) of this AD, unless already done.

(1) For airplanes with a front fuselage strut that has been installed for less than 15 years as of the effective date of this AD: Before each front fuselage strut accumulates 15 years since first installation on an airplane.

(2) For airplanes with a front fuselage strut that has been installed for more than 15 years as of the effective date of this AD or with a front fuselage strut where the date of first installation on an airplane is unknown and the ultrasonic inspection required by paragraph (d)(2) of AD 2002–14–28 has not been done within the last 5 years: Before further flight.

(3) For airplanes with a front fuselage strut that has been installed for more than 15 years as of the effective date of this AD or with a front fuselage strut where the date of first installation on an airplane is unknown and the ultrasonic inspection required by paragraph (d)(2) of AD 2002–14–28 has been done within the last 5 years: Within 5 years from the date of the last ultrasonic inspection done in accordance with paragraph (d)(2) of AD 2002–14–28.

(h) Initial Actions

(1) Do the actions in paragraph (h)(1)(i) or (ii) of this AD:

(i) Remove the front fuselage struts from service and install and seal serviceable parts in accordance with steps w. and y. through ii. of Section II.B.1. or II.B.2., as applicable to your airplane, of Viking DHC–2 Beaver Technical Bulletin No. V2/00002, Revision A, dated June 20, 2019 (Viking TB V2/00002); or

(ii) Do visual and borescope inspections of the front fuselage struts and non-destructive testing (NDT) inspections of the fuselage strut fork ends for corrosion and cracks in accordance with steps m. through p. of Section II.B.1. or II.B.2., as applicable to your airplane, of Viking TB V2/00002, except you are not required to contact the manufacturer. Instead, do the actions in paragraph (h)(3) of this AD.

(2) Do visual and NDT inspections of the mating airframe lug surfaces and bolt holes for corrosion and cracks and replace if necessary in accordance with steps q., r., t., and u. of Section II.B.1. or II.B.2., as applicable to your airplane, of Viking TB V2/00002, except you are not required to contact the manufacturer.

(3) If, during any inspection required by paragraph (h)(1)(ii) of this AD, any crack or corrosion is found, before further flight, do one of the following:

(i) Remove the part from service and install and seal a serviceable part in accordance with steps w. and y. through ii. of Section II.B.1. or II.B.2., as applicable to your airplane, of Viking TB V2/00002; or

(ii) If the wall thickness of the part is 0.030 inch or more, repair in accordance with step s.(2) of Section II.B.1. or II.B.2., as applicable to your airplane, of Viking TB V2/00002; or

(iii) Repair using a method approved by the Manager, New York ACO Branch, FAA; Transport Canada; or Viking Air Limited's Transport Canada Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Repetitive Actions

(1) After completing the actions in paragraphs (h)(1)(ii) and (2) of this AD, unless already done, do the following:

(i) At intervals not to exceed 12 months, except when complying with paragraph (i)(1)(ii) or (2) of this AD, clean and visually inspect the front fuselage struts and airframe lugs for corrosion and cracking in accordance with steps n., p., and q. of Section II.B.1. or

II.B.2., as applicable to your airplane, of Viking TB V2/00002. If there is a crack or any corrosion, before further flight, comply with the actions in paragraph (h)(3)(i), (ii), or (iii) of this AD.

(ii) At intervals not to exceed 5 years, except when complying with paragraph (i)(2) of this AD, do visual and borescope inspections of the front fuselage struts and a visual inspection of the airframe lugs for corrosion and cracking in accordance with steps m. through q. and t. of Section II.B.1. or II.B.2., as applicable to your airplane, of Viking TB V2/00002, except you are not required to contact the manufacturer. If there is a crack or any corrosion, before further flight, comply with the actions in paragraph (h)(3)(i), (ii), or (iii) of this AD.

(2) At intervals not to exceed 15 years, repeat the actions required by paragraph (h) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD.

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

(k) Related Information

(1) For more information about this AD, contact Aziz Ahmed, Aviation Safety Engineer, New York ACO Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7329; email: *aziz.ahmed@faa.gov.*

(2) Refer to Transport Canada AD CF–2020–22, dated June 5, 2020, for more information. You may examine the Transport Canada AD in the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0602.

(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 the AD specifies otherwise.

(i) Viking DHC–2 Beaver Technical Bulletin No. V2/00002, Revision 'A,' dated June 20, 2019.

(ii) [Reserved]

(3) For Viking Air Ltd service information identified in this AD, contact Viking Air Limited Technical Support, 1959 de Havilland Way, Sidney, British Columbia, Canada, V8L 5V5; phone: (800) 663–8444; fax: (250) 656–0673; email: *technical.support@vikingair.com;* website: *www.vikingair.com/support/service-bulletins.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on August 4, 2022.

Christina Underwood,

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

[FR Doc. 2022–18383 Filed 8–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0715; Airspace Docket No. 22–ASW–13]

RIN 2120–AA66

Revocation of Class E Airspace; Coalgate, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the Class E airspace at Coalgate, OK. The FAA is taking this action due to the cancellation of the instrument procedures at the associated airport, and the airspace no longer being required.

DATES: Effective 0901 UTC, November 3, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes the Class E airspace extending upward from 700 feet above the surface at Mary Hurley Hospital Heliport, Coalgate, OK, due to the cancellation of the instrument procedures at this airport, and the airspace no longer being required.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 35469; June 10, 2022) for Docket No. FAA–2022–0715 to remove the Class E airspace at Coalgate, OK. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. Two comments were received supporting this action.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR 71 removes the Class E airspace extending upward from 700 feet above the surface at Mary Hurley Hospital Heliport, Coalgate, OK.

This action is the result of the instrument procedures at this airport

being cancelled, and the airspace no longer being required.

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Coalgate, OK [Remove]

Issued in Fort Worth, Texas, on August 22, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–18343 Filed 8–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0775; Airspace Docket No. 22–ASW–15]

RIN 2120–AA66

Amendment of Class E Airspace; Multiple Texas Towns

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Borger, TX; Pampa, TX; and Spearman, TX. These actions are due to airspace reviews conducted as part of the decommissioning of the Borger very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The names and geographic coordinates of some airports are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, November 3, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Hutchinson County Airport, Borger, TX; Perry Lefors Field, Pampa, TX; and Major Samuel B. Cornelius Field, Spearman, TX, to support instrument flight rule operations at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 36424; June 17, 2022) for Docket No. FAA–2022–0775 to amend the Class E airspace at Borger, TX; Pampa, TX; and Spearman, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR 71:

Amends the Class E airspace extending upward from 700 feet above the surface at Hutchinson County Airport, Borger, TX, by removing the Borger VORTAC and associated extensions from the airspace legal description; removes the city associated with the airport to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters; and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

Amends the Class E airspace extending upward from 700 feet above the surface to within a 6.7-mile (increased from a 6.4-mile) radius of the Perry Lefors Field, Pampa, TX; and removes the city associated with the airport to comply with changes to FAA Order JO 7400.2N;

And amends the Class E airspace extending upward from 700 feet above the surface at Major Samuel B. Cornelius Field, Spearman, TX, by updating the name (previously Spearman Municipal Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

These actions are due to airspace reviews conducted as part of the decommissioning of the Borger VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Borger, TX [Amended]

Hutchinson County Airport, TX
(Lat. 35°42′03″ N, long. 101°23′37″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Hutchinson County Airport.

* * * * *

ASW TX E5 Pampa, TX [Amended]

Perry Lefors Field, TX
(Lat. 35°36′47″ N, long. 100°59′47″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Perry Lefors Field.

* * * * *

ASW TX E5 Spearman, TX [Amended]

Major Samuel B. Cornelius Field, TX
(Lat. 36°13′16″ N, long. 101°11′40″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Major Samuel B. Cornelius Field.

Issued in Fort Worth, Texas, on August 22, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–18368 Filed 8–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0714; Airspace Docket No. 22–AGL–23]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Mansfield, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D and Class E airspace at Mansfield, OH. The FAA is taking this action due to a biennial airspace review. The geographic coordinates of the Mansfield VORTAC are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, November 3, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority

described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class D airspace, the Class E surface airspace, and the Class E airspace extending upward from 700 feet above the surface at Mansfield Lahm Municipal Airport, Mansfield, OH, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 35470; June 10, 2022) for Docket No. FAA–2022–0714 to amend the Class D and Class E airspace at Mansfield, OH. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in paragraphs 5000, 6002, and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR part 71:

Amends the Class D airspace at Mansfield Lahm Municipal Airport, Mansfield, OH, by removing the Mansfield VORTAC and associated extension from the airspace legal description as they are no longer needed; and replaces the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement'';

Amends the Class E surface airspace at Mansfield Lahm Municipal Airport by removing the Mansfield VORTAC and associated extension from the airspace legal description as they are no longer needed; and adds missing part-time language to the airspace legal description;

And amends the Class E airspace extending upward from 700 feet above the surface at Mansfield Lahm Municipal Airport by removing the extensions to the southeast, northwest, and southwest of the airport from the airspace legal description as they are no longer needed; amends the extension northeast of the airport to within 2 (decreased from 4) miles each side of the 047° bearing from the airport extending from the 6.9-mile radius of the airport to 8.9 (decreased from 11.2) miles northeast of the airport; amends the extension southeast of the VORTAC to within 9.9 miles northeast and 6.1 miles southwest (previously 4.4 miles each side) of the Mansfield VORTAC 133° (previously 130°) radial extending from the 6.9-mile radius of the airport to 19 (increased from 13.8) miles southeast of the VORTAC; amends the extension northwest of the VORTAC to within 9.9 miles southwest and 6.1 miles northeast (previously 6.1 miles each side) of the Mansfield VORTAC 310° (previously 307°) radial extending from the 6.9-mile radius of the airport to 10 (decreased from 13.3) miles northwest of the VORTAC; removes the cities associated with the airports in the airspace legal description to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters; and updates the geographic coordinates of the Mansfield VORTAC to coincide with the FAA's aeronautical database.

This action is due to a biennial airspace review.

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AGL OH D Mansfield, OH [Amended]

Mansfield Lahm Municipal Airport, OH
(Lat. 40°49′17″ N, long. 82°31′00″ W)

That airspace extending from the surface to and including 3,800 feet MSL within a 4.4-mile radius of the Mansfield Lahm Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AGL OH E2 Mansfield, OH [Amended]

Mansfield Lahm Regional Airport, OH
(Lat. 40°49′17″ N, long. 82°31′00″ W)

Within a 4.4-mile radius of Mansfield Lahm Regional Airport. This Class E airspace area is effective during the specific dates and

times established in advance by Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AGL OH E5 Mansfield, OH [Amended]

Mansfield Lahm Regional Airport, OH
(Lat. 40°49′17″ N, long. 82°31′00″ W)
Galion Municipal Airport, OH
(Lat. 40°45′12″ N, long. 82°43′26″ W)
Shelby Community Airport, OH
(Lat. 40°52′22″ N, long. 82°41′51″ W)
Willard Airport, OH
(Lat. 41°02′20″ N, long. 82°43′28″ W)
Mansfield VORTAC
(Lat. 40°52′07″ N, long. 82°35′27″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Mansfield Lahm Regional Airport; and within 2 miles each side of the 047° bearing from Mansfield Lahm Regional Airport extending from the 6.9-mile radius to 8.9 miles northeast of the airport; and within 9.9 miles northeast and 6.1 miles southwest of the Mansfield VORTAC 133° radial extending from the 6.9-mile radius of Mansfield Lahm Regional Airport to 19 miles southeast of the Mansfield VORTAC; and within 9.9 miles southwest and 6.1 miles northeast of the Mansfield VORTAC 310° radial extending from the 6.9-mile radius of Mansfield Lahm Regional Airport to 10 miles northwest of the Mansfield VORTAC; and within a 6.3-mile radius of Galion Municipal Airport, and within a 6.3-mile radius of Shelby Community Airport, and within a 6.3-mile radius of Willard Airport.

Issued in Fort Worth, Texas, on August 22, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–18341 Filed 8–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0788; Airspace Docket No. 22–ASO–14]

RIN 2120–AA66

Amendment of Class E Airspace; Erwin, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface at Harnett Regional Jetport, Erwin, NC, by updating the airport's name and geographic coordinates. This action also eliminates the Harnett non-directional beacon from the airspace description, as an airspace evaluation found it unnecessary. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, November 3, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 36423, June 17, 2022) for Docket No. FAA–2022–0788 to amend Class E airspace extending upward from 700 feet above the surface at Harnett Regional Jetport, Erwin, NC.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending 14 CFR part 71 by amending Class E airspace extending upward from 700 feet above the surface at Harnett Regional Jetport, Erwin, NC, by updating the airport's name (formerly Harnett County Airport), and removing the city name from the description header. This action also eliminates the Harnett NDB from the airspace description, as an airspace evaluation found it unnecessary. Also, this action widens the northeast extension and updates the airport's geographic coordinates to coincide with the FAA's database. In addition, this action removes reference of the Fayetteville, NC, class E airspace area from the description, as the airspace is shared.

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

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a.

This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant the preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO NC E5 Erwin, NC [Amended]

Harnett Regional Jetport, NC
(Lat. 35°22′49″ N, long. 78°43′56″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Harnett Regional Jetport, and within 2.6-miles each side of the 042° bearing of the airport, extending from the 6.3-mile radius to 8.6-miles northeast of the airport.

Issued in College Park, Georgia, on August 22, 2022.

Lisa Burrows,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2022–18366 Filed 8–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0758; Airspace Docket No. 22–AGL–24]

RIN 2120–AA66

Amendment of Class E Airspace; Coldwater and Sturgis, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Coldwater and Sturgis, MI. This action is due to an airspace review conducted as part of the decommissioning of the Litchfield very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The geographic coordinates of the airports are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, November 3, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Branch County Memorial Airport, Coldwater, MI, and Kirsch Municipal Airport, Sturgis, MI, to support instrument flight rule operations at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 35689; June 13, 2022) for Docket No. FAA–2022–0758 to amend the Class E airspace at Coldwater and Sturgis, MI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR part 71:

Amends the Class E airspace extending upward from 700 feet above the surface to within a 6.6-mile (decreased from an 8.1-mile) radius of Branch County Memorial Airport, Coldwater, MI; removes the city associated with the airport in the airspace legal description to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters; and updates the geographic

coordinates of the airport to coincide with the FAA's aeronautical database;

And amends the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile (decreased from a 7-mile) radius of Kirsch Municipal Airport, MI; adds an extension 2.5 miles each side of the 052° bearing from the Sturgis NDB extending from the 6.5-mile radius of the airport to 7 miles northeast of the NDB; adds an extension 2.5 miles each side of the 341° bearing from the Sturgis NDB extending from the 6.5-mile radius of the airport to 7 miles north of the NDB; removes the city associated with the airport in the airspace legal description to comply with changes to FAA Order JO 7400.2N; and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is due to an airspace review conducted as part of the decommissioning of the Litchfield VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL MI E5 Coldwater, MI [Amended]

Branch County Memorial Airport, MI
(Lat. 41°56′01″ N, long. 85°03′08″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Branch County Memorial Airport.

* * * * *

AGL MI E5 Sturgis, MI [Amended]

Kirsch Municipal Airport, MI
(Lat. 41°48′48″ N, long. 85°26′20″ W)
Sturgis NDB
(Lat. 41°48′47″ N, long. 85°26′02″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Kirsch Municipal Airport; and within 2.5 miles each side of the 052° bearing from the Sturgis NDB extending from the 6.5-mile radius of the airport to 7 miles northeast of the Sturgis NDB; and within 2.5 miles each side of the 341° bearing from the Sturgis NDB extending from the 6.5-mile radius of the airport to 7 miles north of the Sturgis NDB.

Issued in Fort Worth, Texas, on August 22, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–18342 Filed 8–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Parts 550 and 556

[Docket No. BOEM–2022–0022]

RIN 1010–AE16

Adjustment of Service Fees for Outer Continental Shelf Activities

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule adjusts for inflation of certain service fees accruing to the Bureau of Ocean Energy Management (BOEM) as provided for in BOEM regulations.

DATES: This rule is effective on November 1, 2022.

FOR FURTHER INFORMATION CONTACT: Peter Meffert, Office of Regulation, at (703) 787–1610 or by email at *peter.meffert@boem.gov*.

SUPPLEMENTARY INFORMATION: BOEM's regulations at 30 CFR 550.125 and 30 CFR 556.106 provide the authority for BOEM to periodically adjust a number of its service fees according to the Implicit Price Deflator for Gross Domestic Product by publication of a document in the **Federal Register**. BOEM derives its authority from the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701, as interpreted by Office of Management and Budget (OMB) Circular No. A–25 Revised (1993). That circular states: ''When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed (to recover the full cost to the Federal Government for providing the special benefit, or the market price).''

These service fees were last updated in a **Federal Register** notice in early 2013. 78 FR 5836, January 28, 2013. BOEM is now adjusting these service fees to reflect inflation since the last update.

This rule adjusts the service fees in accordance with BOEM's regulations at 30 CFR 550.125 and 30 CFR 556.106. The new 2022 fee amounts are based on an inflation rate of 18.36 percent as calculated by the Implicit Price Deflator for Gross Domestic Product between 2012 and 2021.

The inflation rate between any two years is calculated as the percentage difference between the measure of prices for a designated year (*e.g.,* 2021) and some previous year (*e.g.,* 2012). The prices include all new, domestically produced, final goods and services in

the economy for the designated year (*e.g.,* 2021). See the Department of Commerce's Bureau of Economic Analysis (BEA) ''Table 1.1.9, Implicit Price Deflators for Gross Domestic Product,'' available at *https://apps.bea.gov/iTable/index_nipa.cfm.*

The inflation rate was calculated by dividing the deflator from 2021 by the deflator from 2012, and then subtracting one. For example, using the data in the table below from BEA's table 1.1.9, with the base year set to 2012, the inflation multiplier was calculated as 118.36/100.00) − 1 = 18.36 percent.[1]

Calendar year	Current implicit price deflator for gross domestic product (base = 2012)	Latest BEA annual inflation rate (%)
2012	100.000	1.87
2013	101.751	1.75
2014	103.654	1.87
2015	104.691	1.00
2016	105.740	1.00
2017	107.747	1.90
2018	110.321	2.39
2019	112.294	1.79
2020	113.648	1.21
2021	118.370	4.15

The following table summarizes the change in cost recovery fees from 2012 to 2022 using the calculated inflation rate multiplier:[2]

Service—processing of the following:	2012 Fee amount	Multiplier	2022 Fee amount
Change in Designation of Operator	$175	1.1837	$207.
Right-of-Use and Easement for State lessee	$2,742	1.1837	$3,246.
Exploration Plan (EP)	$3,673 for each surface location; no fee for revisions.	1.1837	$4,348 for each surface location; no fee for revisions.
Development and Production Plan (DPP) or Development Operations Coordination Document (DOCD).	$4,238 for each well proposed; no fee for revisions.	1.1837	$5,017 for each well proposed; no fee for revisions.
Conservation Information Document	$27,348	1.1837	$32,372.
Assignment of record title interest in Federal oil and gas lease(s) for BOEM approval.	$198	1.1837	$234.
Sublease or Assignment of operating rights interest in Federal oil and gas lease(s) for BOEM approval.	$198	1.1837	$234.
Required document filing for record purpose, but not for BOEM approval.	$29	1.1837	$34.
Non-required document filing for record purposes	$29	1.1837	$34.

Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in OMB will review all significant rules. BOEM has determined that this rule is not significant because it does not meet any relevant financial threshold or raise any legal or policy issues.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The order 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. E.O. 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. BOEM has developed this rule in a manner consistent with these requirements to the extent permitted by statute.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). For the reasons discussed below, BOEM has determined that the Administrative Procedure Act does not require a proposed rule prior to this final rule. See 5 U.S.C. 553(b). Thus, the RFA does not apply to this rulemaking.

C. Congressional Review Act

This rule is not a major rule under the Congressional Review Act (5 U.S.C. 804) because it:

(a) Will 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; and

(c) Will 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.

[1] Table 1.1.9 as revised on July 28, 2022.

[2] The fee amount reflects an amount rounded to the nearest whole dollar.

D. 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. The 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 this act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O.D 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.

H. Consultation With Indian Tribes (E.O. 13175 and Department of the Interior Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with the Tribes and a recognition of their right to self-governance and Tribal sovereignty. BOEM evaluated this rule under the Department's consultation policy, under Departmental Manual part 512, chapters 4 and 5, and under the criteria in E.O. 13175. BOEM determined that this rule has no substantial direct effects on federally recognized Indian Tribes and that consultation under the Department's Tribal consultation policy is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. BOEM 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.

J. National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion (see 43 CFR 46.210(i)). This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of a financial nature. BOEM also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

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

This rule is not a significant energy action under the definition in E.O. 13211. A ''Statement of Energy Effects'' is not required.

L. Clarity of This Regulation

E.O. 12866 (section 1(b)(12)), E.O. 12988 (section 3(b)(1)(B)), E.O. 13563 (section 1(a)), and the Presidential memorandum of June 1, 1998, require that all rules will be written in plain language. This means that each rule must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that BOEM has not met these requirements, send your comments to Peter Meffert at *peter.meffert@boem.gov.* Your comments should be as specific as possible. For example, please indicate the sections or paragraphs that you find unclear or too long and the sections that you recommend lists or tables as useful aids, etc.

M. Administrative Procedure Act

The Administrative Procedure Act provides that, when an agency for good cause finds that ''notice and public procedure . . . are impracticable, unnecessary, or contrary to the public interest,'' the agency may issue a rule without providing notice and an opportunity for prior public comment. 5 U.S.C. 553(b). BOEM finds good cause to promulgate this rule without first providing an opportunity for public notice and comment because BOEM has specific authority under existing regulations to periodically adjust a number of its service fees according to the Implicit Price Deflator for Gross Domestic Product by publication of a document in the **Federal Register**. 30 CFR 550.125 and 30 CFR 556.106. Under the Independent Offices Appropriation Act and OMB Circular No. A–25 Revised, BOEM must adjust the fees to cover its costs. The amount of the fee increase is not subject to BOEM's discretion as it is based on the Implicit Price Deflator as determined by the U.S. Bureau of Economic Analysis. Thus, BOEM finds pre-promulgation notice and public comment to be unnecessary.

List of Subjects

30 CFR Part 550

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Federal lands, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Outer continental shelf, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Sulfur.

30 CFR Part 556

Administrative practice and procedure, Continental shelf, Environmental protection, Federal lands, Government contracts, Intergovernmental relations, Oil and gas exploration, Outer continental shelf, Mineral resources, Rights-of-way, Reporting and recordkeeping requirements.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Managements.

For the reasons stated in the preamble, BOEM hereby amends 30 CFR parts 550 and 556 as follows:

PART 550—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 550 continues to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334.

■ 2. Amend § 550.125 by revising paragraph (a) to read as follows:

§ 550.125 Service fees.

(a) The table in this paragraph (a) shows the fees that you must pay to BOEM for the services listed. The fees will be adjusted periodically according

to the Implicit Price Deflator for Gross Domestic Product by publication of a document in the **Federal Register**. If a significant adjustment is needed to arrive at the new actual cost for any reason other than inflation, then a proposed rule containing the new fees will be published in the **Federal Register** for comment.

Service—processing of the following:	Fee amount	30 CFR citation
(1) Change in Designation of Operator	$207	§ 550.143(d).
(2) Right-of-Use and Easement for State lessee	$3,246	§ 550.165.
(3) [Reserved].		
(4) Exploration Plan (EP)	$4,348 for each surface location; no fee for revisions.	§ 550.211(d).
(5) Development and Production Plan (DPP) or Development Operations Coordination Document (DOCD).	$5,017 for each well proposed; no fee for revisions.	§ 550.241(e).
(6) [Reserved].		
(7) Conservation Information Document	$32,372	§ 550.296(a).

* * * * *

PART 556—LEASING OF SULFUR OR OIL AND GAS AND BONDING REQUIREMENTS IN THE OUTER CONTINENTAL SHELF

■ 3. The authority citation for part 556 is revised to read as follows:

Authority: 30 U.S.C. 1701 note, 30 U.S.C. 1711, 31 U.S.C. 9701, 42 U.S.C. 6213, 43 U.S.C. 1331 note, 43 U.S.C. 1334, 43 U.S.C. 1801–1802.

■ 4. Amend § 556.106 by revising paragraph (a) to read as follows:

§ 556.106 Service fees.

(a) The table in this paragraph (a) shows the fees you must pay to BOEM for the services listed. BOEM will adjust the fees periodically according to the Implicit Price Deflator for Gross Domestic Product and publish a document showing the adjustment in the **Federal Register**. If a significant adjustment is needed to arrive at a new fee for any reason other than inflation, then a proposed rule containing the new fees will be published in the **Federal Register** for comment.

SERVICE FEE TABLE

Service—processing of the following:	Fee amount	30 CFR citation
(1) Assignment of record title interest in Federal oil and gas lease(s) for BOEM approval	$234	§ 556.701(a).
(2) Sublease or Assignment of operating rights interest in Federal oil and gas lease(s) for BOEM approval.	234	§ 556.801(a).
(3) Required document filing for record purpose, but not for BOEM approval	34	§ 556.715(a) § 556.808(a).
(4) Non-required document filing for record purposes	34	§ 556.715(b) § 556.808(b).

* * * * *

[FR Doc. 2022–18388 Filed 8–25–22; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 45

[Docket ID: DOD–2021–OS–0047]

RIN 0790–AL22

Medical Malpractice Claims by Members of the Uniformed Services

AGENCY: Department of Defense (DoD) Office of General Counsel, DoD.

ACTION: Final rule.

SUMMARY: DoD is publishing this rule to finalize the implementation of requirements of the National Defense Authorization Act (NDAA) for Fiscal Year 2020 permitting members of the uniformed services or their authorized representatives to file claims for personal injury or death caused by a Department of Defense health care provider in certain military medical treatment facilities. Because Federal courts do not have jurisdiction to consider these claims, DoD is issuing this rule to provide uniform standards and procedures for considering and processing these actions.

DATES: This final rule is in effect September 26, 2022.

FOR FURTHER INFORMATION CONTACT: Melissa D. Walters, (703) 681–6027, *melissa.d.walters.civ@mail.mil*.

SUPPLEMENTARY INFORMATION:

Background

Signed into law on December 20, 2019, section 731 of the 2020 NDAA allows members of the uniformed services or their authorized representatives to file claims for personal injury or death caused by a DoD health care provider in certain military medical treatment facilities.

Historically, members of the armed forces have been unable to bring suit against the government under the *Feres* doctrine, named for the plaintiff in *Feres* v. *United States,* 340 U.S. 135 (1950). Based on this 1950 Supreme Court decision, Active Duty military personnel may not sue the government for personal injuries suffered incident to service (generally, while on active duty). The 2020 NDAA allows Service members, with certain limitations, to bring administrative claims to seek compensation for personal injury or death resulting from medical malpractice that occurred in certain military medical treatment facilities, in addition to compensation already received under the comprehensive compensation system that currently exists for military members and their families.

A substantiated claim of up to $100,000 will be paid directly to the Service member or his/her estate by DoD. The Treasury Department will review and pay claims that the Secretary of Defense values at more than $100,000. Service members must present a claim that is received by DoD within two years after the claim accrues. However, the statute allowed Service

members to file claims in 2020 for injuries that occurred in 2017.

Legal Authority for This Rule

Based on section 731 of the NDAA, this rule finalizes in Title 32 of the Code of Federal Regulations a new part 45, Medical Malpractice Claims by Members of the Uniformed Services. Title 10 U.S.C. 2733a(f) sets forth the required contents of the rule. This rule describes the claims process, which includes: the claimant's submission of information to initiate a medical malpractice claim; the claimant's response to an adjudicator's request for new information required to substantiate the claim or to determine damages; an Initial Determination issued by DoD; the opportunity for a claimant to seek reconsideration of damage calculations in the case of clear error; and, in most cases, the opportunity for a claimant to file an administrative appeal.

Claims will be adjudicated based on uniform national standards consistent with generally accepted standards used in a majority of States in adjudicating claims under the Federal Tort Claims Act (FTCA), 28 U.S.C. 2671 *et seq.,* without regard to the place where the Service member received medical care.

Discussion of Comments and Changes

An interim final rule was published in the **Federal Register** (86 FR 32194–32215) on June 17, 2021. Comments were accepted for 60 days until August 16, 2021. A total of 93 comments were received. Summaries of the comments and the Department's responses are below. In the first section, we address general or overarching comments. In the sections that follow, we address comments related to specific portions of the regulation. The Department's responses are based not just upon the public comments but also upon the Department's experience with processing claims under the interim final rule. DoD will engage in an iterative regulatory process as it continues to receive and process medical malpractice claims. DoD will review this rule on a periodic three-year cycle in accordance with departmental retrospective review requirements.

General

The Department received a number of comments that were outside of the scope of the interim final rule.

Some comments included or consisted of personal narratives from Service members or their family members about specific medical care received from DoD. To the extent these individuals or their representatives believe that malpractice occurred, they may follow procedures in the final rule to submit a claim for adjudication.

A number of comments sought to have DoD establish an independent review or appellate process by what was described as a disinterested party or body or a third party, including review by a Federal court. One commenter recommended review through a body similar to the Independent Review Commission established by DoD to make recommendations for addressing sexual assault. Some commenters linked the lack of such a process with a lack of transparency. A law firm recommended review of DoD's final decision by a court, such as the U.S. Court of Appeals for Veterans Claims. Some commenters were concerned DoD would not follow its own procedures or the law in the absence of judicial review. Several commenters indicated that DoD would be able to make unconstitutional decisions in the absence of court review.

Title 10 U.S.C. 2733a does not include a provision for third-party or court review. Rather, the statute calls for the Secretary of Defense to allow, settle, and pay covered medical malpractice claims. The process established by the Department to implement Title 10 U.S.C. 2733a is intended to be non-adversarial. The Department has attempted to minimize claimant costs by not requiring expensive expert reports up front and affording claimants an opportunity to submit additional evidence prior to denial of a claim and, if deemed meritorious, in support of damages. The discussion below addresses adjustments made by the Department in the final rule in response to comments to increase the amount of information provided to claimants.

A few comments addressed DoD's Regulatory Analysis. One merely described the analysis as bold without more. Another generally described DoD's projections in unfavorable terms without making any recommendations. Other comments recommended that the Government Accountability Office investigate the number of deaths or disabilities incurred in non-combat healthcare settings since the United States Supreme Court decided *Feres* v. *United States* in 1950 in order to accurately project the number of malpractice claims per year. A law firm disputed DoD's estimate that seven claims a year would result in payments, but provided no rationale. The same law firm also stated that the estimated rates for attorneys and medical experts were ''grossly underestimated'' and did not appear to be consistent with those acknowledged in a majority of States, but again provided no information that would inform revised estimates. Based on the comments received, DoD is finalizing this section of the rule without changes.

A Member of Congress and some consumer advocacy groups requested that DoD pause adjudication of medical malpractice claims until the final rule has been issued. To have done so, however, would have been contrary to 10 U.S.C. 2733a(f)(3), which required DoD to prescribe an interim final rule.

Other comments outside the scope of the interim final rule were comments about the adequacy of medical coverage and disability benefits offered to the military through DoD and the Department of Veterans Affairs (VA); a comment about VA forms; a comment about the cost of life insurance; a comment about DoD's medical records system; a comment about separations through the Disability Evaluation System that the commenter believed were premature; a comment about the time taken by DoD to issue the interim final rule; issues with the medical quality assurance process and the Healthcare Resolutions Program; objections to certain medical procedures performed by DoD; comments by a Service members' organization regarding the development of the interim final rule; timeliness of responses to requests under the Freedom of Information Act; views about conditions contributing to malpractice claims and the adequacy of funding appropriated by Congress to pay claims; whether a rule about concurrent receipt of retirement and disability pay was fair; and the DoD bureaucracy in general.

Some comments were general and therefore non-actionable, such as one individual's general reference to bringing clarity to the interim final rule without any specifics being provided. Other comments referred generally to making changes to remove unspecified limits and restrictions, non-specific concerns about transparency, and statements that the interim final rule exceeded DoD's statutory authority without specifics.

One comment included questions for DoD about the source of funds used to pay claims and what statistics showed about the cost of malpractice claims. Providing answers to these questions is not within the scope of this regulatory process. We note that the sources of funding are established by statute. A substantiated claim of up to $100,000 will be paid directly to the claimant or the claimant's estate by DoD. The Treasury Department will review and

pay claims that the Secretary of Defense values at more than $100,000.

Section 45.2 Claims Payable and Not Payable in General

Comment: One individual generally expressed concerns regarding the inclusion of defenses available to the United States under the FTCA, 28 U.S.C. Chapter 171, in Section 45 .2. Several commenters suggested that DoD could deny a claim by classifying a health care provider's decision as ''discretionary.''

DoD Response: DoD made no changes. Certain exclusions from the FTCA are included in Section 45.2 because they apply to claims under this new authority as well. This includes the discretionary function exemption, which generally bars claims challenging a discretionary agency policy but would not bar claims under 10 U.S.C. 2733a involving health care providers' choices that breach their professional duty of care under Section 45.6. Section 45.2(f)(iii) lists examples of DoD policy decisions to which the discretionary function exception applies, including patient triage, disease prevention, and fitness for duty.

Comment: One individual sought a 50-year period in which to file claims instead of the current two-year period and other individuals sought to allow claims going back to 1950, the date of the U.S. Supreme Court decision in *Feres* v. *United States*. One commenter proposed allowing claims back to September 11, 2001.

DoD Response: Title 10 U.S.C. 2733a(b)(2) requires claims to be presented to the Department in writing within two years after the claim accrues. A claim accrues as of the latter of the date of the act or omission by a DoD health care provider that is the basis of the malpractice claim; or the date on which the claimant knew, or with the exercise of reasonable diligence should have known, of the injury and that malpractice was its possible cause.

Section 45.3 Authorized Claimants

Comment: A number of commenters sought to expand authorized claimants to include derivative claims by family members or other third parties, such as claims for loss of consortium. These comments generally indicated that excluding derivative claims was contrary to congressional intent. One individual expressed the view that the interim final rule discriminated against these potential claimants, thereby disincentivizing service in the Armed Forces. Consumer groups and a lawyers' association commented that wrongful death claims by family members are allowed in most, if not all, States. A lawyers' association commented that the FTCA and non-Service member claims under the Military Claims Act (MCA) allowed for derivative claims. A law firm commented that Section 45.3 appeared to preclude claims by deceased Service members as well as those Service members' families.

DoD Response: Title 10 U.S.C. 2733a(b)(1) only authorizes claims by members of the uniformed services, including claims by the representative of a deceased member of the uniformed services.

Members of the uniformed services and their representatives are subject to the requirements of Title 10 U.S.C. 2733a(b)(1). Thus, the final regulation does not permit derivative claims by family members or other claims from third parties alleging a separate injury such as loss of consortium as a result of harm to a member of the uniformed services. Family members of uniformed service members who believe they have been subjected to malpractice themselves may bring malpractice claims under different statutory provisions—either the FTCA or, if outside the United States, under the MCA.

Comment: Individuals, a law firm, and Service members' organizations indicated that trainees and participants in the Delayed Entry Program should be allowed to bring claims.

DoD Response: Title 10 U.S.C. 2733a(i)(3) requires the personal injury or death to have occurred in Federal status for the claim to be allowed under this provision. It does not include applicants or recruits who have not yet been accessed into active duty.

Section 45.4 Filing a Claim

Comment: Multiple commenters, including individuals, Service members' organizations, a law firm, a Veterans' organization, and Members of Congress commented that DoD should allow discovery to allow claimants to learn about their care and treatment. A Member of Congress requested that DoD authorize limited discovery, including the opportunity for claimants to interview or depose medical providers and sought explicit authorization in this section for claims adjudicators to conduct investigations in addition to accessing pertinent DoD records. This Member of Congress indicated alternatively that claimants be provided with the results of any interviews with health care providers conducted by DoD. Two Members of Congress indicated the rule should add a means by which claimants may submit questions they believe a claims examiner should ask a health care provider in the course of reviewing a claim and, to the extent possible, address those questions in the explanation that is provided back to the claimant. An individual made a comment to the effect that discovery promoted accountability.

Two commenters indicated that it was unfair that claimants' lawyers could not obtain access to all of DoD's records regarding claimants' medical treatment. A law firm commented that limiting claimants to their own medical records and records obtained via public records requests prevented claimants from discovering material evidence. An individual made a comment suggesting that DoD limited an individual's right to use counsel to obtain medical records and expressed concern about the time to obtain those records. Some commenters sought access to medical quality assurance records related to the healthcare provided to the claimant. One individual commented that the process lacked transparency because claimants would lack access to material that was protected by privilege, such as information protected by attorney-client privilege or medical quality assurance information.

DoD Response: Individuals, or their authorized representatives, already m/ay obtain copies of records in DoD's possession that are part of their personnel and medical records in accordance with the Privacy Act of 1974, 5 U.S.C. 552a; DoD's Privacy Act regulation at 32 CFR part 310; and DoD Manual 6025.18, ''Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule in DoD Health Care Programs.'' [1] Individuals may obtain copies of these records regardless of whether they file a claim. Once a claim is filed, the rule allows claimants to seek extensions of time for good cause shown if they are having difficulty obtaining medical records to submit in support of their claims. DoD modified the references in Section 45.4(e) to better assist individuals in understanding their rights of access to and amendment of their records.

The administrative adjudication of claims under this authority was intended to be non-adversarial. It is also consistent with the administrative adjudication of claims under the MCA, 10 U.S.C. 2733. Court-like discovery such as depositions and written interrogatories, and even ''discovery-like'' processes such as informal interviews, are contrary to that intent

[1] Available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/602518m.pdf?ver=2019-03-13-123513-717.*

and would cause the claims process to become adversarial and protracted. DoD does not provide claimants with copies of expert reports and interview summaries in MCA claims, but instead provides claimants with the basis for the denial of a claim.

DoD agrees that claimants should be informed of the basis for an offer of settlement or informed why their claim is denied. As discussed more fully under Section 45.12: Initial and Final Determinations, in response to comments about access to information, DoD has modified Sections 45.12 and 45.13. DoD has added language to Sections 45.12 and 45.13 to ensure that claimants are provided with a meaningful basis for an offer of settlement or are provided a meaningful explanation for the denial of a claim that includes the specific basis for the denial.

DoD added language to paragraph 45.4(d) to include additional actions that may be taken by DoD in connection with substantiating a claim, such as interviews of health care providers.

DoD made no changes in response to the comment seeking medical quality assurance information, as DoD may not lawfully disclose this information in this context under 10 U.S.C. 1102.

Comment: A Veterans' organization commented that the administrative process in the interim final rule may be difficult to navigate, with different requirements depending on the type of injury. The Veterans' organization suggested simplifying the process and suggested making claims forms available online and allowing electronic filing.

DoD Response: DoD did not make any changes in the rule in response to this comment, although DoD supports making the process as easy to navigate for Service members as possible and can make changes that would be helpful as DoD gains experience in processing claims.

Comment: A Veterans' organization indicated that the provision in Section 45.4(d) that may require claimants to submit an expert opinion in support of their claims placed an unnecessary and expensive burden on Service members. The organization commented that if DoD needed additional information, it should obtain an independent medical opinion.

DoD Response: No changes were made in response to this comment. Section 45.4(d) applies when DoD already believes it has all the information necessary (which may include an expert opinion obtained by DoD) and intends to deny the claim. This provision was intended to spare claimants the expense of providing an expert report up front. Instead, DoD will issue an Initial Determination explaining that DoD intends to deny the claim and providing the claimant with the opportunity to submit an expert report. DoD administratively removed language in Section 45.4 referring to the interim final rule.

Section 45.5 Elements of a Payable Claim: Facilities and Providers

Comment: Several commenters believed that care that was outside of a military medical treatment facility should be covered. Some indicated that the limitation to care provided in military medical treatment facilities overlooked care provided to Service members in other contexts and that all situations in which medical care was provided should be covered. A law firm indicated that malpractice claims should be afforded to Service members in DoD confinement facilities.

DoD Response: No changes were made in response to these comments. Title 10 U.S.C. 2733a(b)(3) requires the act or omission constituting malpractice to have occurred in a covered military medical treatment facility. Title 10 U.S.C. 2733a(i)(1) defines ''covered military medical treatment facility'' as a facility described in 10 U.S.C. 1073d. These facilities are medical centers, hospitals, and ambulatory care centers. DoD must limit claims to those covered under the statutory definition.

Section 45.6 Element of Payable Claim: Negligent or Wrongful Act or Omission

Comment: Individuals commented that DoD should have the burden of proof when determining malpractice claims. These individuals also commented that claims should be immediately paid in cases in which the injury was determined to be a sentinel event by a regulatory agency, the care was not administered according to evidence-based practice guidelines, and where health care providers were practicing outside the scope of the state in which they are licensed.

DoD Response: DoD made no changes in response to this comment. Placing the burden of proof with DoD would be inconsistent with the requirement in 10 U.S.C. 2733a(f)(2)(B) for DoD to adopt uniform standards consistent with generally accepted standards used in a majority of States. The rule generally addresses the standard of care and indicates claimants may present evidence in support of their belief that the standard of care was not met.

If DoD has already determined that the standard of care was not met in a particular circumstance before a claim is filed, DoD would be able to engage with the claimant to determine an appropriate amount to offer in settlement without requiring any additional information to substantiate the claim.

DoD would determine whether health care providers were acting in furtherance of their duties in the military medical treatment facility. Title 10 U.S.C. Section 1094(d) mandates that, notwithstanding any State law regarding the licensure of health care providers, designated licensed individual providers may practice their profession in any location in any jurisdiction of the United States, regardless of where the provider or patient is located, so long as the practice is within the scope of the provider's authorized federal duties. This includes telemedicine providers.

Comment: A Veterans' organization suggested clarifying the reference to the preponderance of the evidence standard to advise claimants that ''preponderance of the evidence'' requires providing only that something is more likely than not. The Veterans' organization cited several court cases with varying formulations of the law.

DoD Response: DoD did not make any changes in response to this comment. Although ''preponderance of the evidence'' is a commonly-used legal standard, as the comment itself illustrates, it is subject to various descriptions and DoD does not believe it advisable to include one particular formulation over another. After more experience in adjudicating claims under this final rule, if it appears that a definition is needed, DoD will revisit this.

Section 45.7 Element of Payable Claim: Proximate Cause

Comment: Individuals, Service members' organizations, a law firm, and unions commented that DoD did not specify how it will calculate damages based upon loss of chance or failure to diagnose claims and what steps it will take to review claims in this regard.

DoD Response: DoD did not make any changes based on this comment. The rule sets out general legal standards that must be applied in light of the specific facts of each individual claim. The rule states that the portion of harm attributable to the breach of duty will be the percentage of chance lost in proportion to the overall clinical outcome and that damages will be calculated based on this portion of harm. Including more detail would be neither feasible nor appropriate.

DoD administratively modified the first sentence of Section 45.7(d)(2) to

read that ''DoD may consider medical quality assurance records'' instead of ''will consider'' for consistency with the second sentence of Section 45.7(d)(2) which states that results of medical quality assurance records ''may'' be considered.

Section 45.8 Calculation of Damages: Disability Rating

Comment: Individuals, a Service members' organization, a law firm, and unions did not believe DoD should use disability ratings established through the DoD Disability Evaluation System or by the VA in calculating damages for medical malpractice claims on the grounds that these are different systems. The law firm indicated that DoD did not have authority to hold a claim in abeyance pending DoD or VA disability determinations. An individual was concerned that disability ratings may be inaccurate.

DoD Response: DoD did not make changes due to this comment. The purposes for which these disability ratings and compensation will be used is explained in the text of the rule. In short, disability ratings and compensation are useful for purposes of assessing the extent of the harm caused by the medical malpractice and in determining lost earning capacity. DoD will only use these ratings if they are useful and pertinent to the element of damages at issue. After more experience in adjudicating claims under this final rule, if it appears that disability ratings are not useful in assessing the extent of harm caused by the medical malpractice and in determining lost earning capacity, DoD will revisit this. DoD will review this rule on a periodic three-year cycle in accordance with departmental retrospective review. Congress gave DoD broad authority to issue regulations to implement the claims process and, if a disability rating and compensation are needed for purposes of assessing damages, holding the claim in abeyance ensures these damages are calculated accurately.

Section 45.10 Calculation of Damages: Non-Economic Damages

Comment: A number of comments, including comments from individuals, a law firm, unions, consumer groups, a Veterans' organization, and Members of Congress, sought elimination of the cap on non-economic damages. A number of individuals proposed an increase to $1,000,000 and one individual proposed an increase to $3,000,000.

Commenters, including some Members of Congress, consumer groups, and a lawyers' association commented that while a majority of States capped non-economic damages in medical malpractice cases, an average of the caps in these States did not account for the fact that other States did not cap non-economic damages. Two Members of Congress commented that some States had tiered or categorized caps that allowed higher caps in cases involving severe injury or death and that DoD should consider the higher limit in these systems. One Member of Congress estimated that this would result in a limit of at least $800,000. Members of Congress indicated the Department should factor in inflation and should retroactively reopen and adjust those claims settled before issuance of the final rule.

Several commenters interpreted the rule to mean that 26 states had non-economic damage caps of $500,000 and indicated this was incorrect based on their own research. One individual indicated the cap of $500,000 was too low based on a description of an incident caused by what the individual believes to have been medical malpractice. A law firm and a lawyers' association indicated that the FTCA had no limit on damages. The lawyers' association indicated that caps on non-economic damages placed Service members at a disadvantage compared to those whose damages were not capped under the FTCA or the MCA, are unfair to Service members living in States with no cap, and did not adequately compensate those with the most severe injuries. Consumer groups stated that only 23 States have laws expressly capping non-economic damages in medical malpractice cases and some States provide exceptions for serious injury or death.

Consumer groups commented that caps on non-economic damages have a disproportionate impact on women because of the types of injuries women are likely to experience such as sexual or reproductive harm or pregnancy loss.

DoD Response: After considering these comments, DoD increased the cap on non-economic damages to $600,000. Title 10 U.S.C. 2733a(f)(2)(B) requires the regulations prescribed by DoD to adjudicate claims based on uniform national standards consistent with generally accepted standards used in a majority of States in adjudicating claims under the FTCA, 28 U.S.C. 2671 *et seq.,* without regard to the place where the Service member received medical care. This is a different standard from the FTCA. Under the FTCA, 28 U.S.C. 2672 and 28 U.S.C. 1346(b)(1), the law applied is the law of the place where the medical care was provided. A majority of States, 29, have caps on non-economic damages applicable in medical malpractice claims. The median of these caps is approximately $500,000.

The cap of $600,000 represents DoD's best approximation of the current average of the caps on non-economic damages in medical malpractice cases in those States having caps and it is consistent with the median amount. States have varying formulas for determining caps on non-economic damages and the $600,000 cap takes into account current state law in this regard. Some States periodically increase their non-economic damage caps to account for inflation, and the final rule takes these increases into account and retains the requirement for periodic updates to the cap to account for inflationary increases.

Where a State had a higher cap for more serious injuries or death, DoD used that cap, in an effort for balance with those States that appeared to allow a higher, unspecified amount in cases involving more serious injuries or death. Three States appear to have caps on noneconomic damages that combine economic and non-economic damages together under one cap. For these States, DoD used one-half the total cap in the calculation of the average on the assumption that cases involving more serious injuries or death likely would have greater economic damages, eroding the amount available for non-economic damages. Commenters did not provide a basis for calculating the proposed $1,000,000 or $3,000,000 caps. DoD cannot arbitrarily adopt a proposed cap unsupported by an articulable legal basis for doing so and, in any event, must apply generally accepted standards used in a majority of States.

DoD did not modify the interim final rule to allow reopening and adjustment of claims settled before publication of the final rule to apply the higher damages cap. Congress required the interim final rule in 10 U.S.C. 2733a(f)(3) ''in order to implement expeditiously'' the provisions of that section and was aware claims might be settled before the final rule was issued. There is no basis for reopening settled claims under 10 U.S.C. 2733a, which does not permit DoD to pay claims unless the amount tendered is accepted by the claimant in full satisfaction.

Comment: Two Members of Congress and a Veterans' organization commented that the current elements of non-economic damages should be expanded beyond the listed elements to a wider range of non-economic categories recognized elsewhere in tort law, such as for emotional distress and loss of consortium. The Veterans' organization commented that it was unclear if ''physical disfigurement''

extends to all forms of physical impairment and recommended a catchall phrase to incorporate ''other non-financial losses'' it stated were recoverable in a majority of States.

DoD Response: DoD did not change the interim final rule as a result of these comments. The rule already defines ''past and future conscious pain and suffering'' broadly to include ''mental and emotional trauma or distress'' and ''loss of enjoyment of life.'' The definition of ''physical impairment'' likewise mirrors a definition used for MCA claims, set forth at 32 CFR 536.77. As derivative claims are not permitted under 10 U.S.C. 2733a(b)(1), damages for loss of consortium are inapplicable. DoD did not add a catchall phrase. A catchall phrase in this context could lead to confusion or improper awards of damages given the requirement in 10 U.S.C. 2733a for uniform standards consistent with generally accepted standards used in a majority of States.

Section 45.11 Calculation of Damages: Offsets for DoD and VA Compensation

Comment: A number of commenters, including individuals, law firms, a union, Service members' organizations, consumer groups, a lawyers' association, a Veterans' organization, and some of the Members of Congress who submitted comments sought to limit or eliminate offsets from potential malpractice damage awards for other compensation paid by the United States for the same harm. Some made comments to the effect that offsets for military benefits such as TRICARE and disability could leave Service members with little compensation for the injuries they have suffered and may discourage claims. Some commenters questioned DoD's authority to make offsets and noted that 10 U.S.C. 2733a does not explicitly reference offsets. A law firm indicated that the offsets removed incentives for improvement and accountability. Another law firm noted that the process under this rule was a non-adversarial administrative claim process involving DoD, and not a tort claim against the United States under the FTCA, so offsets should not be applied. Multiple commenters mentioned the collateral source rule in connection with offsets. A law firm commented that several of the offsets, such as Active Duty pay, housing allowance, and TRICARE, did not appear related to malpractice and including them was unfair. An individual made a similar comment.

Individuals, Service members' organizations, and unions, referencing the collateral source rule, indicated that DoD should award the cost of health care services provided or paid for by DoD or the VA as part of economic damages. The Service members' organization believed not doing so would discourage Service members from filing claims. A lawyers' association stated that courts had found the amounts of future medical payment. such as from TRICARE indeterminable. An individual and a lawyers' association indicated that individuals might not want to receive care from government health care providers for the injuries they sustained. One commenter was concerned about TRICARE's solvency and ability to cover a Service member's lifetime medical needs. Another commenter was concerned that Service members would have issues with obtaining needed care through TRICARE or the VA and that the VA might not approve needed benefits or might not approve benefits in a timely fashion. A commenter believed it would eliminate work for DoD if DoD eliminated offsets versus periodically conducting a review of offsets for purposes of making changes.

Several commenters erroneously questioned the inclusion of Servicemembers Group Life Insurance (SGLI) payments as an offset. Several commenters believed that offsets could limit a Service member from getting benefits to which that Service member was entitled and another believed that the compensation system would involve ''recouping'' benefits paid by the VA. A commenter incorrectly seemed to suggest that DoD would assume remarriage for purposes of determining offsets.

One commenter questioned whether the fact that the non-exhaustive listings of programs that did or did not offset potential malpractice damage awards would allow claimants to know what was included and thought this might be difficult to ascertain.

A lawyers' association commented that the government should bear the burden of proof with respect to offsets.

DoD Response: DoD did not make changes to this section, other than adding that the government is responsible for determining offsets, with claimants required to provide information not available to DoD but requested by DoD for this purpose. Both the interim and final rule provide for offsets from potential malpractice damage awards from compensation paid or expected to be paid by DoD or the VA for the same harm that was caused by the medical malpractice. These offsets are necessary so that the United States does not pay more than once for the same injury. Given that there is no third party involved in providing benefits other than the United States, the collateral source rule is not applicable.

Moreover, as explained in the preamble to the interim final rule, Federal law provides a comprehensive system of compensation for military members and their families in cases of death or disability incurred in military service. This system applies to all causes of death or disability incurred in service, whether due to combat injuries, training mishaps, motor vehicle accidents, naturally occurring illnesses, household events, or malpractice with limited exceptions (*e.g.,* when the member is absent without leave or the injury is due to the member's intentional misconduct or willful negligence). A medical malpractice claim under this part will have no effect on any other compensation the member or family is entitled to under this comprehensive compensation system. A chart in the Regulatory Analysis provides examples of benefits to which Service members are entitled under this system.

Nothing in the rule precludes Service members in any way from receiving benefits to which they are entitled. SGLI is listed specifically in Section 45.11(g) as a payment and benefit that is not an offset from economic and non-economic damages. It was not included as an offset because it is a benefit for which Service members have paid premiums. Nothing in the rule would permit ''recoupment'' of benefits already provided to Service members. The rule also states that DoD will not assume remarriage with respect to any lifetime payments or benefits that may terminate upon the remarriage of a surviving spouse.

Finally, but most importantly, DoD has a robust Clinical Quality Management Program which operates independently of medical malpractice claims by Service members or others (under DoD Instruction (DoDI) 6025.13 [2] and Defense Health Agency Procedural Manual 6025.13 [3]) to assess the quality of health care services, identify areas where improvements can be made, and ensure appropriate accountability.

[2] DoDI 6025.13, ''Medical Quality Assurance (MQA) and Clinical Quality Management in the Military Health System (MHS),'' February 17, 2011, Incorporating Change 2 on April 1, 2020, is available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/602513p.pdf?ver=2019-03-11-081734-313.*

[3] Defense Health Agency Procedural Manual, ''Clinical Quality Management in the Military Health System,'' June 27, 2022, is available at *https://health.mil/Reference-Center/Policies?query=6025.13&isDateRange=0&broadVector=000&newsVector=0000000&refVector=0000000001000000&refSrc=1.*

With regard to the comment that the listings of programs that did or did not offset potential malpractice damage awards was not all-inclusive, an illustrative list was included in the rule because benefit programs are numerous and are subject to frequent changes by law or regulation. The rule allows for a process. DoD contemplates a process for determining damages that involves exchanges of information to ensure accuracy, so claimants would be informed about those damages during that time or through Initial or Final Determinations.

Section 45.12 Initial and Final Determinations

Comment: In connection with a comment about discovery, a law firm commented that the government should be required to produce all evidence that it relied upon in making its decision, as well as any evidence that supports claimant's allegations of negligence. The law firm also commented that a ''meaningful explanation,'' supported by findings of fact and conclusions of law should be provided for any claim that is denied versus a ''brief explanation for the denial of the claim to the extent practicable.'' A Veterans' organization requested removing ''to the extent practicable'' and instead requiring a brief statement of the basis for any denial. Individuals commented that there was no mechanism to ascertain whether DoD reviewed the records it should have reviewed. A number of commenters sought more information in initial and final determinations and appeals for purposes of transparency.

DoD Response: DoD agrees that claimants should be informed of the basis for an offer of settlement or informed why their claim is denied. In response to comments about discovery and access to information generally, DoD has modified Sections 45.12 and 45.13. DoD modified Sections 45.12 and 45.13 to change ''brief'' to ''meaningful,'' so that a meaningful explanation of the basis for an Initial Determination denying a claim will be provided, including the specific basis for the denial. Although this was implied in the interim final rule, DoD also added language requiring that a meaningful basis for an offer of settlement be provided. Explanations will be subject to laws pertaining to disclosure of information, as discussed in the Supplementary Information related to Section 45.4.

Comment: A law firm recommended adjusting the amount of time to cure a deficiency following receipt of an initial determination to 90 days instead of 30 days. Similarly, the law firm recommended affording Service members 90 days instead of 60 days to request reconsideration and to appeal. The law firm further recommended a provision requiring DoD to confirm Service member receipt of Initial Determinations.

DoD Response: The final rule provides 90 days to cure a deficiency instead of 30 days and allows 90 days instead of 60 days to request reconsideration and to appeal. Extending the time to cure a deficiency is consistent with DoD's intent for a claimant-friendly process that provides ample opportunity for Service members or their representatives to provide information in support of their claims and reduces the need for DoD to process requests for extension.

DoD did not adopt a requirement for DoD to confirm receipt of Initial Determinations. The interim final rule adopted a presumption of receipt for the convenience of both the Service member and DoD and to provide flexibility with respect to delivery methods. The interim final rule adopted a lenient standard for overcoming the presumption: the date of receipt is presumed to be five calendar days after mailing or emailing unless there is evidence to the contrary.

Although DoD may elect to use a delivery method confirming receipt, email ''return receipts'' are not always reliable and certified mail may be inconvenient for Service members who are not at home when delivery is attempted. A presumption of receipt establishes a clear and fixed date for calculating time and reduces administrative burden. A presumption of receipt is consistent with practices in some other judicial and administrative bodies, such as the Federal courts [4] and the Merit Systems Protection Board.[5]

Even though DoD is not adopting a requirement to confirm receipt of delivery, in response to the comment, DoD revisited the length of time for presumption of delivery. The United States Postal Service is changing its target for first class mail delivery from 1–3 days to 1–5 days.[6] DoD accordingly increased the time for presumption of receipt from five to seven calendar days after an Initial Determination was mailed or emailed. DoD also clarified in Sections 45.12(c)(1) and 45.13(a) that the time period for action begins to run upon receipt by the claimant or the claimant's representative.

DoD administratively added language in Section 45.12(a)(1) to clarify that it is the DoD Component that issued the Initial Determination that acts on requests for extension of time relating to deficient filings. DoD also administratively added language to Section 45.12(d)(4) to clarify that the DoD Component that issued the Initial Determination will review alleged clear error in connection with requests for reconsideration. These changes make it clear that these processes are not conducted by the Appeals Board.

Comment: A law firm sought the opportunity for claimants to have a virtual hearing, noting that Boards for Correction of Military Records rarely afford a hearing and, in the law firm's view, lacked due process as a result. A Member of Congress also commented that claimants should be afforded a hearing, whether in person or virtual, to better capture the claimants' full experiences, particularly with respect to pain and suffering.

DoD Response: The claims process was intended to be easy to navigate and non-adversarial. A hearing would unduly increase manpower, cost, and administrative burdens on the Department and would cause undue disruption in the delivery of health care and medical readiness. It would also cause the proceedings to become adversarial in nature and increase the decision time and expense for both the Service member and the Department. Service members may submit any evidence in any form they wish and, particularly with respect to damages, back-and-forth engagement is contemplated to ensure the Department has full and accurate information from which to make a determination.

DoD administratively clarified in Section 45.12(c)(1) that it is the DoD Component which issued the Initial Determination that grants an extension of time for good cause.

45.13 Appeals

Comment: One individual commented that DoD should allow for an appellate process and another commented there was no right of appeal.

DoD Response: No changes were made as a result of this comment. The rule at Section 45.13 establishes an appeals process. To the extent these comments were seeking an appellate process outside of DoD, this is

[4] Rule 5(b) of the Federal Rules of Civil Procedure provides that service is complete upon mailing or by emailing (unless the email does not reach the person to be served). *https://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure.*

[5] Under 5 CFR 1201.22(b)(3), correspondence that is properly addressed and sent to the appellant's address via postal or commercial delivery is presumed to have been duly delivered to the addressee. The presumption may be overcome by the circumstances of a particular case.

[6] *https://crsreports.congress.gov/product/pdf/IN/IN11776.*

addressed in the section titled ''General,'' above.

Comment: Individuals, Service members' organizations, a Veterans' organization, and unions sought the opportunity to submit additional evidence in support of a claim on appeal. Some stated that the inability to submit additional evidence on appeal affected the opportunity for a fair assessment of the claim. The Veterans' organization indicated additional information might become available or that claimants' medical conditions may change, noting that the VA's and the Social Security Administration's administrative processes allow for new evidence on appeal. The Veterans' organization linked this comment to a lack of a discovery mechanism in the rule. A Member of Congress commented that claimants should be afforded a hearing on appeal to provide an actual opportunity to be heard if they are dissatisfied with the earlier disposition of their claims. Another Member of Congress indicated that a hearing on appeal imparted more information than could be captured in written statements and allowed traumatic experiences to be heard and acknowledged. A law firm stated that the opportunity for an oral presentation was used in what it characterized as almost every other non-adversarial claims process used by the Federal government.

DoD Response: DoD did not change the rule to permit additional evidence to be submitted on appeal. DoD modified Sections 45.12 and 45.13, adding language to ensure that claimants are provided with a meaningful basis for an offer of settlement or with a meaningful explanation for the denial of a claim that includes the specific basis for the denial. Claimants have ample opportunity to provide any information they wish at the Initial Determination stage. When a claimant initially does not submit an expert report in support of his or her claim and DoD intends to deny the claim, DoD will provide a meaningful explanation for the intent to deny the claim that includes the specific basis for the denial and provides the claimant with an opportunity to submit an expert report. Appellate review limited to the record below is consistent with procedures in many other appellate bodies, such as the Federal courts of appeal.

Comment: Some commenters stated that there was no transparency on who is going to sit on the Appeals Board, such as whether members are medical experts, legal experts, or Commanding Officers, and were concerned that Appeals Board members would not fully consider the record in an unbiased manner.

DoD Response: In response to the comments, DoD modified the rule to indicate that the Appeals Board is comprised of attorneys, in addition to the current language indicating that Appeals Board members are comprised of DoD officials who are ''experienced in medical malpractice claims adjudication'' and who ''have not had any previous role in the claims adjudication under appeal.'' In part in response to concerns about timeliness, and in part as an administrative matter, DoD adjusted the final rule to increase the number of Appeals Board members and allow for panels of members. This will permit more appeals to be considered simultaneously in light of the requirement that an Appeals Board member considering a claim not have had a previous role in adjudicating the claim.

DoD administratively clarified in Section 45.13(a) that it is the DoD Component which issued the Initial Determination that grants an extension of time for good cause and not the Appeals Board.

45.15 Other Claims Procedures and Administrative Matters

Comment: A law firm and two Members of Congress commented that the rule should include a timeline for DoD to process claims, in part so claimants would have some sense of how long they would need to wait and to give DoD a benchmark for progress.

DoD Response: This comment was not adopted. Unlike other statutes, 10 U.S.C. 2733a does not provide a right to go to court after a certain period of time. Similar to other adjudicative processes, too many variables preclude a reliable estimate. DoD has structured a process designed to allow claimants the time necessary to present information, including seeking extensions of time for good cause shown. DoD has expanded some time frames in the final rule in a manner favorable to claimants in response to comments. Exchanges of information, particularly with respect to damages, will take time in complex cases. DoD believes putting estimates in the final rule that turn out to be unrealistic for any number of reasons will only lead to claimant frustration. DoD is committed to adjudicating claims in a timely manner and will continue to endeavor to do so.

Comment: A Veterans' organization sought to include a requirement for DoD to respond to records requests within 45 days because claims must be presented within two years of accrual and because records may be needed to submit a viable claim.

DoD Response: This comment was not adopted. Responses to records requests are governed by processes outside of this rule. Moreover, DoD has established a process which requires very little information to be submitted at the time a claim is filed, with opportunities to submit additional evidence during the Initial Determination phase.

Comment: A Member of Congress requested that the rule be clarified to ensure that those issuing Initial Determinations and the attorneys advising them have expertise in medical malpractice and receive specialized training related to the military medical system.

DoD Response: DoD did not include language in the final rule on this topic, as these are matters internal to DoD and related to the regulation of the practice of law within DoD. Nonetheless, DoD shares the Member of Congress' interest in ensuring quality decisions are made by persons with appropriate training and expertise.

Comment: One commenter suggested that there be dedicated points of contact for Service members and their representatives to contact about their claims. DoD did not make changes to the rule based on this comment, as this can be addressed outside the rule, such as by including points of contact on communications about the claim.

DoD Response: DoD administratively modified Section 45.15(f) to state that the phrase ''DoD Components'' may include, but is not limited to, Military Departments.

Regulatory Analysis

The public comments received were not relevant to the RIA; therefore, DoD is finalizing the RIA with no further revisions.

a. Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 13563 and 12866 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; distribution of impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been determined to be a significant regulatory action, although

not economically significant. Accordingly, it has been reviewed by the Office of Management and Budget as required by these Executive Orders.

b. Summary

This interim final rule implements requirements of the NDAA for Fiscal Year 2020 permitting members of the uniformed services or their authorized representatives to file claims for personal injury or death caused by a DoD health care provider in certain military medical treatment facilities. Because Federal courts do not have jurisdiction to consider these claims, DoD is issuing this rule to provide uniform standards and procedures for considering and processing these actions administratively.

c. Affected Population

At the end of Fiscal Year 2019, there were approximately 1,400,000 Active Duty, 390,000 Reserve and National Guard, and 250,000 other uniformed Service members eligible for DoD healthcare benefits or around 19% of the total eligible beneficiary population. These uniformed Service members will be able to file claims with DoD alleging malpractice. There were approximately 8,140,000 other eligible beneficiaries to include retirees, retiree family members, and family members of Active Duty Service members. These other eligible beneficiaries currently may file claims with DoD alleging malpractice.

d. Costs

As a result of the rule, individuals who believe they were subjected to malpractice may consider filing a claim. In determining whether to file a claim, individuals may consult with medical professionals and attorneys and we assume that most claimants will have attorneys. We estimate that this will require 5 hours for individuals to locate an attorney, view and download pertinent medical records, and discuss the case with an attorney (or a medical professional for claimants without attorneys). At a mean hourly rate of $27.07 based on data from the Bureau of Labor Statistics (BLS), the cost of this activity is $135.

The cost for a consultation with a medical professional, whether directly by the claimant or through an attorney varies by the type of professional. Based upon information available from consultations and reports obtained in malpractice claims against the government and estimates of time spent by DoD in similar activity when handling those claims, we estimate a typical review of records would take about 3 to 5 hours (and include reviewing journals in support of the professional's opinion), with an additional 2 to 4 hours to write a report (if such a report is submitted with a claim, which is not required). The Department will assume for purposes of this analysis that the same type of professional would be consulted as the professional against whom the malpractice is alleged (*e.g.,* a doctor providing an opinion about the standard of care if a doctor is alleged to have committed malpractice). Most medical malpractice claims are brought on a contingent fee basis so there is no initial cost to the claimant. Based on similar claim analysis activity in handing malpractice claims, we estimate an attorney might spend 17–26 hours analyzing a claim before filing. We use BLS data to value time spent by these individuals, and we adjust mean wage rates upward by 100 percent to account for overhead and benefits. This implies hourly rates of $206.12 for physicians, $76.94 for nurses, $111.62 for physician assistants, and $143.18 for lawyers. As a result, the estimated cost for medical review would be approximately $231 to $1,855, and the estimated cost for attorney time would be approximately $2,434 to $3,723.

The cost to a Service member or an authorized representative for the filing itself will vary based on the amount of information the Service member includes with his or her filing. A basic letter stating the factual basis for the claim and including a demand for a specified dollar amount would cost the claimant postage ($0.55 per claim, or $27.50 for an estimated 50 claims) and possibly minimal photocopying. Claimants will likely choose to use certified mail, requiring additional postage of $3.35 per claim (or $167.50 for an estimated 50 claims per year). Two affidavits are likely required, one containing a statement from the claimant indicating he or she consulted with a health care professional and obtained an opinion from that health care professional that the medical standard of care was breached and one affirming that a representative is authorized to represent the claimant. Those entitled to legal assistance under 10 U.S.C. 1044 (such as Active Duty Service members, retired Service members, and survivors) would be able to obtain notarial services at no cost. Most likely, those filing claims would fall into one of these categories and so could obtain notarial services at no cost. However, this rule results in societal costs associated with these notarial services. We estimate that notarial services will require the equivalent of 20 minutes of paralegal time. Using BLS data, and adjusting upward by 100 percent to account for overhead and benefits to arrive at an hourly rate of $54.44 implies $18.14 in costs per claim. Finally, although not required, a claimant could submit any other information he or she chooses, which would result in a variable cost. DoD assumes that pertinent medical records outside its system would be fairly recent and could be accessed via web portals, resulting in a cost to the claimant of only the cost of printing and postage. If the claimant elects to submit receipts, the claimant would need to pay the cost of printing or photocopying, as well as postage.

In 2020, DoD received 149 malpractice claims filed by Active Duty beneficiaries under the process in this part and 173 malpractice claims filed by other beneficiaries under either the FTCA or MCA. Section 2733a(b)(4) requires claims to be presented to DoD within two years after the claim accrues, although section 731 of the Fiscal Year 2020 NDAA allowed claims accruing in 2017 to be filed in 2020. In future years, when three years' worth of claim filings are not compressed in the same year and the requirement for consultation with a health care professional in certain circumstances in advance of filing takes effect, DoD would anticipate around 50 claims per year. Based on information related to malpractice claims not filed after consideration, we estimate that 90% of the claims considered by individuals and their attorneys will not be filed. As a result, we estimate that 500 claims will be considered, and that 50 claims will be filed by Service members per year.

The categories of costs for considered claims are described above. In sum, we estimate costs of $2,822 to $5,735 per claim. This implies total costs of $1,401,102 to $2,857,602 each year for considered claims.

Next, we estimate costs associated with processing claims. Many steps in processing a claim will be the same for DoD whether or not the claim has merit. Based on activity in non-medical malpractice claims, we anticipate 3 hours of paralegal time for activities such as logging in claims, sending acknowledgment letters, mailing certified letters containing the outcome of a claim, drafting vouchers for payment, and filing/data entry. Assuming a GS–11 paralegal at the step 5 salary rate of $81,634 based on the 2020 Washington, DC, locality pay table (an hourly rate of $39.12) and the total value of labor including wages, benefits, and overhead being equal to 200 percent of the wage rate, the cost for this

paralegal activity per claim is $234.72. We estimate that the approximately same amount of time that a claimant's attorney would spend analyzing a claim (17–26 hours of attorney time) would be spent by DoD attorneys to analyze the claim, conduct legal research, consult with experts, and draft a determination. Assuming a GS 13/14 at an average GS 13/14 salary of $127,788 based on the 2020 Washington, DC, locality pay table (an hourly rate of $61.23) and the total value of labor including wages, benefits, and overhead being equal to 200 percent of the wage rate, this attorney activity would cost $2,081 to $3,184 per claim.

Of these 50 claims, for purposes of this analysis, based on historical malpractice claims data involving non-Service members, we assume 27% of claimants will have claims for which DoD determines malpractice occurred, or 14 claims. For these claims, based on time spent by DoD on the damages portion of current malpractice claims against the government, DoD estimates claimants' attorneys and DoD attorneys will spend 6–8 hours respectively on matters pertaining to damages. This results in a cost per claim of $859 to $1,145 for claimants' attorneys and $748 to $997 for DoD attorneys.

Of submitted claims, DoD estimates that claimants will appeal all claims that do not result in a payment of damages, resulting in 36 appeals annually. Note that this is described in more detail in the transfers section. We estimate it will take around the same amount of time spent on initial determination activities for appeal activities, or 17–26 hours per claim for both claimants' attorneys (at a cost of $2,434 to $3,723) and DoD attorneys (at a cost of $2,081 to $3,184) and 3 hours per claim by DoD paralegals (at a cost of $235). This implies total annual costs of $171,000 to $257,112 for appeals.

As a result, we estimate total annual processing costs for these 50 claims to be $309,284 to $458,036.

In summary, total estimated annual costs of this interim final rule are $1,710,386 to $3,315,638.

e. Transfers

Regardless of the number of claims in which malpractice occurred, the only claims in which damages will be awarded are those which exceed the offsets for any payment to be made. Subject to some exceptions such as insurance benefits for which Service members have paid premiums, benefits received through the DoD and VA comprehensive compensation system applicable to all injuries and deaths will be applied as an offset in calculating malpractice damages to prevent a double recovery. Because of these offsets, regardless of the number of claims filed, the only claims pertinent for purposes of payments made by the government are those that would exceed applicable offsets.

We estimate 7 claims per year will result in additional payments made to individuals, which is the number of claims anticipated to involve additional payments after offsets are applied. To help explain how we reached this estimate, we prepared the following tables as notional examples to illustrate what benefits are available under the existing comprehensive compensation system, both those that are offset and those that are not, and the value of these benefits in Fiscal Year 2020. In addition to the benefits in the above tables, disability retirees and survivors receive healthcare for life through TRICARE. In Fiscal Year 2020, based on information from the Office of the Assistant Secretary of Defense for Health Affairs, the average value of the TRICARE benefit for an under-65 retiree family of three was $14,600 per year. Benefits provided through the Social Security Administration, such as Social Security disability benefits and Social Security survivor benefits, are also in addition to the above tables. Calculations in the tables were provided by the Office of Military Compensation Policy, within the Office of the Under Secretary of Defense for Personnel and Readiness.

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Table 1: Notional Examples of Benefits Following a Service Member's Death on Active Duty – Fiscal Year 2021 Values

	Type of Payment	Description	(a) O-5[7] (16 Years of Service) (YOS) Married (age 38) with Two Children	(b) E-6 (10 YOS) Married (age 29) with Two Children	(c) E-4 (3 Years of Service) Married (age 22) with One Child
			Amount	Amount	Amount
ONE-TIME PAYMENTS	**Service Members Group Life Insurance (SGLI)**	Life insurance. All members are automatically covered unless declining coverage. Amount shown assumes member elected maximum coverage. Payment is tax-free.	$400,000	$400,000	$400,000
	Death Gratuity	Immediate tax-free payment to eligible survivors of members who die while on active duty or certain inactive duties. Amount does not vary.	$100,000	$100,000	$100,000
	Total Immediate Payments		**$500,000**	**$500,000**	**$500,000**

	Type of Payment	Description	(a) O-5[7] (16 Years of Service) (YOS) Married (age 38) with Two Children	(b) E-6 (10 YOS) Married (age 29) with Two Children	(c) E-4 (3 Years of Service) Married (age 22) with One Child
			Amount	Amount	Amount
RECURRING ANNUAL PAYMENTS	**Survivor Benefit Plan (SBP)**	Annuity paid to the surviving spouse for life, or until remarriage if surviving spouse remarries prior to age 57. This payment is offset by Dependency and Indemnity Compensation (DIC), if DIC is paid to the spouse.[8]	$41,304 ($25,013 after DIC offset)	$17,274 ($984 after DIC offset)	$10,679 (fully offset by DIC)
	Dependency and Indemnity Compensation (DIC)	Tax-free monetary benefit paid to eligible survivors of military members who died in the line of duty or eligible survivors of Veterans whose death resulted from a service-related injury or disease. Paid by Department of VA.[9]	$24,362.40	$24,362.40	$20,326.56
	Special Survivor Indemnity Allowance (SSIA)	Paid to the surviving spouse if the spouse is subject to an offset of SBP due to receipt of DIC.[10]	$3,924	$3,924	$3,924
	Total Annual Recurring Payment for First Year	SBP (decreased by the amount of DIC) + DIC + SSIA. Amount shown is in 2020 dollars.	$53,299	$29,270	$24,250

	Type of Payment	Description	(a) O-5[7] (16 Years of Service) (YOS) Married (age 38) with Two Children	(b) E-6 (10 YOS) Married (age 29) with Two Children	(c) E-4 (3 Years of Service) Married (age 22) with One Child
			Amount	Amount	Amount
	Estimated Lifetime Sum of Annual Payments	Assumptions: • Spouse lives to age 87, but does not remarry prior to age 57. • SBP (offset by DIC) is paid to the spouse for life rather than to the children. • DIC for child ends 10 years after the death of the member when children reach age 19 (note: for the E-4, it assumes 15 years after death of the member) and resumes when the spouse reaches age 65. • Average annual cost of living adjustment is 2.75%.	$4,842,372	$3,151,453	$3,749,434
	Total Estimated Government-Provided Direct Benefits (Immediate + Recurring Payments)		**$5,342,372**	**$3,651,453**	**$4,249,434[11]**

[7] In these tables, ''O–5'' refers to an officer grade; ''E–4'' to an enlisted grade.

[8] Amount shown is annual. The spouse SBP annuity is 55% of what retired pay would have been had the member retired with a full disability retirement on the date of his or her death. SBP is adjusted annually for cost-of-living. The amount reflected is for 2020 and assumes the spouse receives the full amount of SBP. SBP is subject to offset if the spouse also receives DIC (only for the portion of DIC payable to the spouse. If SBP is paid to the children instead of the spouse, there is no offset but the annuity ends when all children reach the age of majority).

[9] Basic Monthly Rate for 2020 is $1,340.14 plus $332.00 per child age 18 or younger. $16,081 is payable as DIC for the spouse which is offset against SBP.

[10] SSIA is only received if SBP is reduced by the amount of DIC. If children receive SBP in full while the spouse receives DIC, no SSIA is paid.

[11] The total payout for the spouse of the E–4 is higher than that for the E–6 because the spouse is 7 years younger, but both live until age 87.

Table 2: Notional Estimates of Monthly DoD and VA Disability Benefits for a Member Permanently Injured on Active Duty – Fiscal Year 2021 Values

Type of Payment	Description	(a) O-3 (Over 8 YOS) Age 30, Married Male with Two Children with 100% Disability	(b) E-6 (Over 8 YOS) Age 26, Married Female with Two Children with 100% Disability	(c) O-3 (Over 8 YOS), Age 30 Married Male with Two Children with 50% Disability	(d) E-6 (Over 8 YOS) Age 26, Married Female with Two Children with 50% Disability
		Monthly	*Monthly*	*Monthly*	*Monthly*
DoD Disability Retired Pay Calculated Based on Disability Percentage (Before VA Offset)	Disability retired pay under Chapter 61, Title 10, U.S.C., is determined by multiplying the disability percentage (maximum 75 percent) by the retired pay base, which is the average of the highest 36 months of pay that member received.[12]	$4,542	$2,519	$3,028	$1,679
Retired Pay Calculated Based on Years of Service	A disability retiree has the option of choosing to have retired pay calculated based on the disability percentage (A) or based on longevity of service (B). In most cases, the disability percentage results in a greater amount of retired pay.-Longevity retired pay is calculated by multiplying years of service by the average of the highest 36 months of pay by the applicable retirement program multiplier.[13]	$1,211	$671	$1,211	$671

Type of Payment	**Description**	**(a) O-3 (Over 8 YOS) Age 30, Married Male with Two Children with 100% Disability**	**(b) E-6 (Over 8 YOS) Age 26, Married Female with Two Children with 100% Disability**	**(c) O-3 (Over 8 YOS), Age 30 Married Male with Two Children with 50% Disability**	**(d) E-6 (Over 8 YOS) Age 26, Married Female with Two Children with 50% Disability**
VA Disability Compensation	A tax-free monetary benefit paid to veterans with disabilities that are the result of a disease or injury incurred or aggravated during active military service. The benefit amount is graduated according to the degree of the disability on a scale from 10 percent to 100 percent (in increments of 10 percent).[14]	$3,492	$3,492	$1,086	$1,086
DoD Disability Retired Pay (After VA Offset)	A retiree must waive a portion of his or her gross DoD retired pay, dollar for dollar, by the amount of his or her VA Disability Compensation pay.	$1,049	$0	$1,941	$592
Total Monthly DoD and VA Compensation	VA Disability Compensation + DoD Disability Retired Pay After VA Offset.	$4,541	$3,492	$3,027	$1,678
		Annual	*Annual*	*Annual*	*Annual*
Annual DoD and VA Compensation	Total Monthly DoD and VA Compensation x 12 months.	**$54,492**	**$41,904**	**$36,324**	**$20,136**
Lifetime DoD and VA Compensation After Disability Retirement	Annual total multiplied by the number of years of projected life. The life expectation for a male 30-year-old retired officer is 54.5 additional years. The life expectation for a female 26-year-old retired enlisted member is 56.5 additional years. Amounts shown are in 2020 dollars without	**$2,969,814**	**$2,367,576**	**$1,979,658**	**$1,137,684**

Type of Payment	Description	(a) O-3 (Over 8 YOS) Age 30, Married Male with Two Children with 100% Disability	(b) E-6 (Over 8 YOS) Age 26, Married Female with Two Children with 100% Disability	(c) O-3 (Over 8 YOS), Age 30 Married Male with Two Children with 50% Disability	(d) E-6 (Over 8 YOS) Age 26, Married Female with Two Children with 50% Disability
	taking into account annual cost-of-living adjustments (COLA) (i.e., the present value). The current COLA estimate used by the DoD Board of Actuaries for calculating future military retired pay is 2.75 percent per year.				

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We estimate that 7 claims per year would have damages that would exceed the offset amount of $1.1 million. We used the notional example in Table 2(d), the lowest of the estimates in the notional examples, as the basis for the $1.1 million offset. For the Table 2(b) example of the married enlisted member with two children in the grade of E–6 who is medically retired with a 50 percent disability rating, the current value of her lifetime compensation would be $1,142,430. In addition to the $1,142,430 paid, benefits include medical care for the retired Service member and her family. All these amounts would offset any damages award.

We then estimated the number of claims likely to exceed $1.1 million using claims data from non-Service member claims under the FTCA or MCA. In 2019 and 2020, the Military Departments had 14 claims from retirees or dependents under the FTCA or MCA with damages that exceeded $1.1 million, whether through settlement or an adverse court judgment. The average amount payable for these 14 claims over 2 years was approximately $2.7 million. In one year, therefore, we estimate that 7 claims by Service members would go forward that exceed the $1.1 million threshold for payable damages. Assuming 7 claims per year going forward exceeding $1.1 million, and average damages of $1.6 million (the difference between the average amount of $2.7 million paid per claim in the non-Active Duty claims and the estimated $1.1 million in offsets per Service member claim), the additional payments made by the U.S. Government because of section 731 are estimated to be $11.2 million per year. Of this, the first $100,000 for each claim would be paid by DoD and the remainder paid by the Treasury Department, for an estimated total of $0.7 million to be paid by DoD based on 7 claims and $1.05 million to be paid by the Treasury Department.

As the tables above illustrate, Government paid benefits would not be a factor, as this claims process would have no impact on what the benefits Service member is already receiving, has received, or is entitled to receive in the future based on his or her injuries.

Total transfers from the U.S. government to claimants are estimated to be $11.2 million per year.

f. Benefits

Absent the claims process established by section 731, Service members would not have the opportunity for potential monetary payments above the amounts they currently receive through current DoD and VA benefits. In addition to providing an additional potential compensation remedy, the claims process reinforces DoD Clinical Quality Management Program procedures for appropriate accountability of DoD health care providers. National Practitioner Data Bank (NPDB) reporting includes cases where DoD compensation is paid through the Disability Evaluation System or survivor benefits attributable to medical malpractice by a DoD health care provider and now, under this part, paid malpractice claims. Reports to the NPDB are accompanied by reports to State licensing boards and certifying agencies of the health care providers involved. The claims process further provides an opportunity for DoD to identify opportunities for improvement in the delivery of healthcare, potentially preventing harm to others based upon measures taken by DoD as a result of a claim even if the claim does not result in the payment of monetary damages. Finally, this process is only applicable in certain cases of medical malpractice.

[12] For simplicity of calculation, each member is assumed to have 12 months of service ''over 8 years'' and 24 months of service ''over 6 years'' in the same paygrade they currently hold, with a retirement date of December 31, 2019. Prior to retirement, each member was covered under the High-3 retirement program.

[13] For members who entered service prior to January 1, 2018, the applicable multiplier is 2.5 percent unless the member elected to opt into the Blended Retirement System or elected the Career Status Bonus and converted to the REDUX retirement program. For these examples, all members are assumed to have remained under the legacy ''High-3'' retirement program with a 2.5 percent multiplier.

[14] Rates for veteran + spouse + child + additional child at *https://www.benefits.va.gov/COMPENSATION/resources_comp01.asp#BM05.*

Congressional Review Act

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

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

This final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it is not a notice of proposed rulemaking under 5 U.S.C. 601(2).

Assistance for Small Entities

This final rule does not impose requirements on small entities.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require non-Federal spending in any one year of $100 million in 1995 dollars, updated annually for inflation. This final rule does not mandate any requirements for State, local, or tribal governments, nor affect private sector costs.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that this final rule does not impose new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates 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 final rule does not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 45

Medical, Malpractice, Claims, Uniformed Services.

Accordingly, the interim final rule adding 32 CFR part 45 which was published at 86 FR 32194–32215 on June 17, 2021 is adopted as a final rule with the following changes:

PART 45—MEDICAL MALPRACTICE CLAIMS BY MEMBERS OF THE UNIFORMED SERVICES [AMENDED]

■ 1. The Authority for part 45 continues to read as follows:

Authority: 10 U.S.C. 2733a.

■ 2. Amend § 45.4 by revising paragraphs (b)(5), (d), and (e) to read as follows:

§ 45.4 Filing a claim.

* * * * *

(b) * * *

(5) If the claimant is not represented by an attorney, unless the alleged medical malpractice is within the general knowledge and experience of ordinary laypersons, an affidavit from the claimant affirming that the claimant consulted with a health care professional who opined that a DoD health care provider breached the standard of care that caused the alleged harm. Alternatively, if the claimant is represented by an attorney, unless the alleged medical malpractice is within the general knowledge and experience of ordinary laypersons, the claim must include an affidavit from the attorney affirming that the attorney consulted with a health care professional who opined that a DoD health care provider breached the standard of care that caused the alleged harm.

* * * * *

(d) *Substantiating the claim.* Under section 2733a(b)(6), DoD is allowed to pay a claim only if it is substantiated. The claimant has the burden to substantiate the claim by a preponderance of the evidence. Upon receipt of a claim, DoD may require that the claimant provide additional information DoD believes is necessary for adjudication of the claim, including the submission of an expert opinion at the claimant's expense. DoD may determine an expert opinion is not necessary when negligence is within the general knowledge and experience of ordinary laypersons, such as when a foreign object is unintentionally left in the body or an operation occurred on the wrong body part. DoD may take other steps necessary to adjudicate the claim accurately, including conducting interviews of health care providers.

(e) *No discovery.* There is no discovery process for adjudication of claims under this part. However, claimants may obtain copies of records in DoD's possession that are part of their personnel and medical records in accordance with the Privacy Act of 1974, 5 U.S.C. 552a; DoD's Privacy Act regulation at 32 CFR part 310; and DoD Manual 6025.18, ''Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule in DoD Health Care Programs.'' Claimants are not entitled to attorney work product, attorney-client privileged communications, material that is part of a DoD Quality Assurance Program protected under 10 U.S.C. 1102, pre-decisional material, or other privileged information.

■ 3. Amend § 45.7 by revising paragraph (d)(2) to read as follows:

§ 45.7 Element of payable claim: proximate cause.

* * * * *

(d) * * *

(2) DoD may consider medical quality assurance records relevant to the health care provided to the patient. DoD's Clinical Quality Management Program features reviews of many circumstances of clinical care. Results of any such reviews of the care involved in the claim that occurred before or after the claim was filed may be considered by DoD in the adjudication of the claim. As required by 10 U.S.C. 1102, DoD medical quality assurance records are confidential. While such records may be used by DoD, any information contained in or derived from such records may not be disclosed to the claimant.

■ 4. Amend § 45.10 by revising paragraph (c) to read as follows:

§ 45.10 Calculation of damages: non-economic damages.

* * * * *

(c) *Cap on non-economic damages.* In any claim under this part, total non-economic damages may not exceed a cap amount. The current cap amount is $600,000. Updates to cap amounts in subsequent years will be published periodically, consistent with changes in prevailing amounts in the majority of the States with non-economic damages caps.

* * * * *

■ 4. Amend § 45.11 by revising paragraph (a) to read as follows:

§ 45.11 Calculation of damages: offsets for DoD and VA Government compensation.

(a) *In general.* Total potential damages calculated under this part, both economic and non-economic, are reduced by offsetting most of the compensation otherwise provided or expected to be provided by DoD or VA for the same harm that is the subject of the medical malpractice claim. The general rule is that prospective medical malpractice damage awards are offset by DoD or VA payments and benefits that are primarily funded by Government appropriations. However, there is no offset for U.S. Government payments and benefits that are substantially funded by the military member. DoD is responsible for determining offsets, but claimants must provide information not available to DoD, but requested by DoD for the purpose of determining offsets.

* * * * *

■ 5. Amend § 45.12 by revising paragraphs (a)(1), (c), (d)(2), and (d)(4) to read as follows:

§ 45.12 Initial and Final Determinations.

* * * * *

(a) * * *

(1) DoD will provide the claimant 90 calendar days following receipt of the Initial Determination to cure the deficiency, unless an extension of time is granted for good cause by the DoD Component which issued the Initial Determination. The date of receipt of the Initial Determination will be presumed to be seven calendar days after the date the Initial Determination was mailed or emailed, unless there is evidence to the contrary.

* * * * *

(c) *Denial of claim—absence of an expert report.* Where applicable, if the claimant initially does not submit an expert report in support of his or her claim and DoD intends to deny the claim, DoD will issue an Initial Determination stating that DoD will issue a Final Determination denying the claim in the absence of an expert report or manifest negligence. DoD will provide a meaningful explanation for the intent to deny the claim that includes the specific basis for the denial.

(1) DoD will provide the claimant 90 calendar days following receipt of the Initial Determination by the claimant or, if the claimant is represented, by the claimant's representative, to submit an expert report, unless an extension of time is granted for good cause. The date of receipt of the Initial Determination will be presumed to be seven calendar days after the date the Initial Determination was mailed or emailed, unless there is evidence to the contrary.

(2) If the claimant does not timely submit an expert report, DoD will issue a Final Determination denying the claim. A Final Determination issued under this paragraph (c) may not be appealed.

(d) * * *

(2) The Initial Determination may be in the form of a certified letter and/or an email. The Initial Determination may take the form of a grant of a claim and an offer of settlement or a denial of the claim. Subject to applicable confidentiality requirements, such as 10 U.S.C. 1102, privileged information, and paragraph (a) of this section, DoD will provide a meaningful basis for an offer of settlement or will provide a meaningful explanation for the denial of a claim that includes the specific basis for the denial.

* * * * *

(4) The claimant may request reconsideration of the damages calculation contained in an Initial Determination if, within the time otherwise allowed to file an administrative appeal, the claimant identifies an alleged clear error—a definite and firm conviction that a mistake has been committed—in the damages calculation. The DoD Component that issued the Initial Determination will review the alleged clear error and will issue an Initial Determination on Reconsideration either granting or denying reconsideration of the Initial Determination and adjusting the damages calculation, if appropriate. The Initial Determination on Reconsideration will include information on the claimant's right to appeal under the procedures in § 45.13.

■ 6. Amend § 45.13 by revising paragraphs (a), (b), and (d)(1) to read as follows:

§ 45.13 Appeals.

(a) *In general.* This section describes the appeals process applicable to Initial Determinations under this part, which include Initial Determinations on Reconsideration. With the exception of Initial Determinations issued under § 45.12(a), in any case in which the claimant disagrees with an Initial Determination, the claimant has a right to file an administrative appeal. The claimant should explain why he or she disagrees with the Initial Determination, but may not submit additional information in support of the claim unless requested to do so by DoD. An appeal must be received within 90 calendar days of the date of receipt of the Initial Determination by the claimant or, if the claimant is represented, the claimant's representative, unless an extension of time is granted for good cause by the DoD Component that issued the Initial Determination. The date of receipt of the Initial Determination will be presumed to be seven calendar days after the date the Initial Determination was mailed or emailed, unless there is evidence to the contrary. If no timely appeal is received, DoD will issue a Final Determination.

(b) *Appeals Board.* Appeals will be decided by an Appeals Board administratively supported by the Office of the General Counsel, Defense Health Agency. Although there may be, in DoD's discretion, multiple offices that initially adjudicate claims under this part (such as offices in the Military Departments), there is a single DoD Appeals Board. The Appeals Board will consist of DoD attorneys designated by the Defense Health Agency from that agency and/or the Military Departments who are experienced in medical malpractice claims adjudication. Appeals Board members must not have had any previous role in the claims adjudication under appeal. The Appeals Board will consider cases in panels designated by the General Counsel of the Defense Health Agency of not fewer than three and no more than five Appeals Board members. Appeals are decided on a written record and decisions will be approved by a majority of the members. There is no adversarial proceeding and no hearing. There is no opposing party. The Appeals Board may obtain information or assessments from appropriate sources, including from the claimant, to assist in deciding the appeal. The Appeals Board is bound by the provisions of this part and will not consider challenges to them.

* * * * *

(d) * * * (1) Every claimant will be provided a written Final Determination on the claimant's appeal. The Final Determination may adopt by reference the Initial Determination or revise the Initial Determination, as appropriate. If the Final Determination revises the Initial Determination, DoD will provide a meaningful explanation of the basis for the revisions.

* * * * *

■ 7. Amend § 45.15 by revising paragraph (f) to read as follows:

§ 45.15 Other claims procedures and administrative matters.

* * * * *

(f) *Authority for actions under this part.* To ensure consistency and compliance with statutory requirements, supplementation of the procedures in this part is not permitted without approval in writing by the General Counsel of the Department of Defense. The General Counsel of the Department of Defense, under DoD Directive 5145.01, ''General Counsel of the Department of Defense,'' may delegate in writing authority for making Initial and Final Determinations, and other actions by DoD officials under this part. As used in this part, and at DoD's discretion, ''DoD'' or ''DoD Components'' may include, but is not limited to, Military Departments.

Dated: August 22, 2022.

Patricia L. Toppings

OSD Federal Register Liaison, Department of Defense.

[FR Doc. 2022–18314 Filed 8–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0721]

RIN 1625–AA00

Safety Zone; Ohio River, Miles 90.3 to 91.8 Wheeling, WV

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Ohio River from Mile 90.3 to Mile 91.8 from 6 p.m. to 8 p.m. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a floating lantern tribute. Entry of vessels or persons into this zone is prohibited unless specifically authorized by Captain of the Port Marine Safety Unit Pittsburgh.

DATES: This rule is effective on August 31, 2022, from 6 p.m. through 8 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0721 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST2 David Deaton, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone 412–221–0807, email *David.M.Deaton@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This safety zone must be established by August 31, 2022, and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule. The NPRM process would delay the establishment of the safety zone until after the date of the raw water intake construction and compromise public safety.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because action is needed on August 31, 2022, to ensure the safety of the participants in the floating lantern tribute.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Pittsburgh (COTP) has determined that potential hazards associated with the lanterns on August 31, 2022, will be a safety concern for anyone within a Mile Markers 90.3 to 91.8. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from 6 through 8 p.m. on August 31, 2022. The safety zone would cover all navigable waters on the Ohio River from Mile 90.3 to Mile 91.8. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment from potential hazards created by a floating lantern tribute.

No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text appears at the end of this document.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, location, and duration of the temporary safety zone. This safety zone impacts only a one-and-a-half-mile stretch of the Ohio River for a short amount of time of two hours on one evening. Vessel traffic will be informed about the safety zone through local notices to mariners. Moreover, the Coast Guard will issue Local Notice to Mariners and Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission from the COTP to transit the zone.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The

Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting two hours that will prohibit entry on the Ohio River from mile 90.3 to mile 91.8, during the floating lantern tribute. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0721 to read as follows:

§ 165.T08–0721 Safety Zone; Ohio River, Miles 90.3–91.8, Wheeling, WV.

(a) *Location.* The following area is a temporary safety zone: all navigable waters of the Ohio River from Mile 90.3 to Mile 91.8.

(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 Pittsburgh (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry of persons and vessels into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the COTP or a designated representative. The COTP's representative may be contacted at 412–670–4288.

(d) *Enforcement period.* This section is effective from 6 p.m. through 8 p.m. on August 31, 2022.

Dated: August 22, 2022.

Eric J. Velez,

Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2022–18361 Filed 8–25–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0733]

RIN 1625–AA00

Safety Zone; Potomac River, National Harbor, MD

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Potomac River. This action is necessary to provide for the safety of life on these navigable waters of the Potomac River at National Harbor, MD, on September 3, 2022 (with alternate date of September 4, 2022), from potential hazards during a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from 8:30 p.m. on September 3, 2022, through 11 p.m. on September 4, 2022. This rule will be enforced from 8:30 p.m. until 11 p.m. on September 3, 2022, or in the event of inclement weather on September 3, 2022, those same hours on September 4, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0733 in the search box and click ''Search.'' Next, in the Document Type

column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST2 Courtney Perry, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410–576–2596, email *Courtney.E.Perry@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because we must take immediate action to establish this safety zone by September 3, 2022, to respond to potential safety hazards associated with the fireworks display. Potential safety hazards include the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The determination that a safety zone was necessary was not made until August 19, 2022.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port, Maryland-National Capital Region (COTP) has determined that potential hazards associated with the fireworks to be used in this September 3, 2022, display will be a safety concern for anyone near these fireworks discharge sites. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from 8:30 p.m. until 11 p.m. on September 3, 2022. The zone will be enforced from 8:30 p.m. to 11 p.m. on September 3, 2022 or, if necessary due to inclement weather, from 8:30 p.m. to 11 p.m. on September 4, 2022. The safety zone will cover all navigable waters within 500 feet of a barge in the Potomac River located in approximate position latitude 38°47′01.60″ N, longitude 077°01′17.66″ W, at National Harbor, MD. The duration of the zone is intended to ensure safety of vessels and these navigable waters before, during, and after the scheduled 9:30 p.m. to 11 p.m. fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, duration, and time-of-day of the safety zone, which will impact a small designated area of the Potomac River for a total of no more than 2.5 hours of total enforcement-hours during the evening when vessel traffic is normally low. Moreover, the Coast Guard will issue Local Notice to Mariners and a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the safety zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 26.5 hours that will prohibit entry within 500 feet of a barge within a portion of the Potomac River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0733 to read as follows:

§ 165.T05–0733 Safety Zone; Potomac River, National Harbor, MD.

(a) *Location.* The following area is a safety zone: All waters of the Potomac River, within 500 feet of a fireworks barge in approximate position latitude 38°47′01.60″ N, longitude 077°01′17.66″ W, at National Harbor, MD. These coordinates are based on datum North American Datum (NAD) 1983.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

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 Maryland-National Capital Region (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

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

(e) *Enforcement period.* This safety zone will be enforced from 8:30 p.m. to 11 p.m. on September 3, 2022. If necessary due to inclement weather on September 3, 2022, it will be enforced from 8:30 p.m. to 11 p.m. on September 4, 2022.

Dated: August 22, 2022.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2022–18400 Filed 8–25–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0915]

RIN 1625–AA00

Safety Zones for Parallel Thimble Shoal Tunnel Project on the Chesapeake Bay Bridge Tunnel; Chesapeake Bay, VA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones for certain waters of the Chesapeake Bay. This action is necessary to provide for the safety of life on these navigable waters near the Chesapeake Bay Bridge Tunnel (CBBT), linking Southeastern Virginia to the Eastern Shore, during an already ongoing construction project on the CBBT. This regulation prohibits persons and vessels from operating within 500 feet of the construction area unless authorized by the Captain of the Port (COTP) Sector Virginia or a designated representative.

DATES: This rule is effective from September 26, 2022, through January 31, 2027.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0915 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Ashley Holm, Sector Virginia, Waterways Management Division, U.S. Coast Guard, Telephone: (757) 668–5581; Email: *virginiawaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CBBT Cheasapeake Bay Bridge Tunnel

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

II. Background Information and Regulatory History

In December, 2021, the COTP was notified by project management for the Parallel Thimble Shoals Tunnel Project that construction work in vicinity of the CBBT's southern two islands, South Thimble Island and North Thimble Island, creates hazards to the maritime public and recommended the establishment of safety zones. Hazards include the operation of heavy machinery and loads suspended by cranes over the waters surrounding the islands and attached structures. Specifically, safety concerns were raised that involved kayakers and vessels fishing in the vicinity of the construction site despite posted signs indicating not to approach the site within 500 feet. The COTP has determined that potential hazards associated with the construction equipment used in this project creates a safety concern for those transiting within 500 feet of the project site. This construction project has been ongoing for 4 years, workers are present at all hours and the work is projected to continue for the next 5 years. In response, on April 8, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zones for Parallel Thimble Shoal Tunnel Project on the Chesapeake Bay Bridge Tunnel; Chesapeake Bay, VA'' (87 FR 20796). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to the bridge construction. During the comment period that ended May 23, 2022, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Virginia (COTP) has determined that potential hazards associated with the bridge tunnel construction project will be a safety concern for anyone within a 500-feet in all direction from the edge of both South Thimble Island and North Thimble Island. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone at all times while construction equipment is present.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published April 8, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes two temporary safety zones extending 500 feet in all directions from the edge of both South Thimble Island and North Thimble Island. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on its minimal impact to the local economy, as any fishery needing to use these waters can be accommodated by the two other man-made islands approximately 5 miles to the north and the attached 15 miles of bridge trestle which are not covered with construction equipment, and therefore will not be covered by these safety zones.

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 received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of safety zones to protect the public from hazards created by ongoing construction work. It is categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0915 to read as follows:

§ 165.T05–0915 Safety Zones; Chesapeake Bay Bridge Tunnel, Chesapeake Bay Entrance, VA.

(a) *Location.* The following areas are safety zones:

(1) Any waters located within 500 feet in all directions from the edge of South Thimble Island. South Thimble Island is located approximately 3.3 miles north of the shores of Virginia Beach on Highway 13, also known as the Chesapeake Bay Bridge Tunnel (CBBT).

(2) Any waters located within 500 feet in all directions from the edge of North Thimble Island. North Thimble Island is located approximately 4.5 miles north of Virginia Beach on Highway 13.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Virginia (COTP) in the enforcement of the safety zones. The term also includes an employee or contractor of Chesapeake Tunnel Joint Venture (CTJV) for the sole purpose of designating and establishing safe transit corridors, to permit passage into or through the safety zones listed in paragraph (a) of this section, or to notify vessels and individuals that they have entered a safety zone and are required to depart immediately.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, no vessel or person may enter or remain in any safety zone described in paragraph (a) of this section unless authorized by the COTP, or designated representative. If a vessel or person is notified by the COTP, or designated representative, that they have entered one of these safety zones without permission, they are required to immediately depart in a safe manner following the directions given.

(2) Mariners requesting to transit any of these safety zones must first contact the CTJV designated representatives, CTJV Marine General Superintendant by phone at 361–244–8852, CTJV Safety Director at 702–415–8600, or CTJV Construction Manager at 757–782–7741. CTJV will be monitoring VHF–FM channels 13 and 16 while work is ongoing. If permission is granted, mariners must proceed at their own risk and strictly observe any and all instructions provided by the COTP, or designated representative, to the mariner regarding the conditions of entry to and exit from any location within the fixed safety zones.

(d) *Enforcement.* The Sector Virginia COTP may enforce the regulations in this section and may be assisted by any Federal, state, county, or municipal law enforcement agency.

(e) *Enforcement period.* This section will be enforced until January 31, 2027, unless cancelled sooner by the COTP.

Dated: August 19, 2022.

Jennifer A. Stockwell,

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

[FR Doc. 2022–18360 Filed 8–25–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0692]

RIN 1625–AA00

Safety Zone; Maumee River, Toledo, OH

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters directly surrounding the northern half of the I–75 Bridge over the Maumee River. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by demolition of the bridge. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Detroit.

DATES: This rule is effective from 9:30 p.m. on August 27, 2022, through 11:30 p.m. on August 28, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0692 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or

email MST1 Karl Dirksmeyer, Waterways Management, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418–6044, email *Karl.E.Dirksmeyer@USCG.MIL.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the party conducting the work notified the Coast Guard with insufficient time to accommodate the comment period. It is impracticable to publish an NPRM because we must establish this safety zone by August 27, 2022.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed in order to keep the I–75 demolition project on schedule, and to keep the public safe during this demolition phase.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Detroit (COTP) has determined that potential hazards associated with the bridge demolition occurring between August 27, 2022–August 28, 2022, will be a safety concern for anyone transiting near the I–75 bridge on the Maumee River. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being demolished.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:30 p.m. through 11:30 p.m. on August 27, 2022. In the case of inclement weather on August 27, 2022, this safety zone will be enforced from 9:30 p.m. through 11:30 p.m. on August 28, 2022. The safety zone will cover all navigable waters 500 feet up and down river from surface to bottom, below the old Michael V. DiSalle Memorial (I–75) Bridge located at 41°37′31.2″ N 83°32′31.1″ W. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the bridge is being demolished. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, location, duration, and time-of-day of the safety zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry into the waters 500 feet up and down river of the Michael V. DiSalle Memorial (I–75) Bridge while it is demolished. It is categorically excluded from further review under paragraph L[60(a)] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0692 to read as follows:

§ 165.T09–0692 Safety Zone; Maumee River, Toledo, OH.

(a) *Location.* The following area is a safety zone: The safety zone will cover all navigable waters 500 feet up and down river from surface to bottom, underneath the old Michael V. DiSalle Memorial (I–75) Bridge located at 41°37′31.2″ N 83°32′31.1″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his or her designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated representative.

(3) The ''designated representative'' of the Captain of the Port Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Detroit to act on his behalf. The designated representative of the Captain of the Port Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port Detroit or his designated representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his designated representative to obtain permission to do so at least 30 minutes prior to transit. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit or his designated representative.

(c) *Enforcement periods.* This section will be enforced from August 27, 2022–August 28, 2022, from 2130–2330.

Dated: August 22, 2022.

Brad W. Kelly,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2022–18395 Filed 8–25–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0719]

RIN 1625–AA00

Safety Zone; Tennessee River, Decatur County, AL

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Tennessee River extending from mile marker 169—172. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the salvage operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley.

DATES: This rule is effective from 8 a.m. on August 29, 2022, through 4 p.m. on August 31, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0719 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Joshua Rehl, MSD Nashville, U.S. Coast Guard; telephone 615–736–5421, email *Joshua.M.Rehl@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary

to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to respond and repair to the potential safety hazards associated with the sunken vessel. It is impracticable to publish an NPRM because we must establish this safely zone by August 29, 2022. A sunken vessel between mile markers 169—172 is causing a hazard to navigation on the Tennessee River. The safety zone must be established to protect people and vessels associated with and resulting from the sunken vessel and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. This safety zone may include closures and/or navigation restrictions and requirements that are vital to maintain safe navigation on the Tennessee River during salve operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the salvage operations of the sunken vessel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the salvage operations from August 29 through August 31, 2022, will be a safety concern for anyone within mile marker 169–172. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the salvage operations are taking place.

IV. Discussion of the Rule

This rule establishes a safety zone from 8 a.m. until 4 p.m. on August 29 through August 31, 2022. The safety zone will cover all navigable waters within mile markers 169–172. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the salvage operations are being conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the location of the event on the Tennessee River lasting only 8 hours each day.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, this rule will only last 8 hours, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42

U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 8 hours that will prohibit entry within mile marker 169—172 of the Tennessee River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0719 to read as follows:

§ 165.T08–0719 Safety Zone; Tennessee River, Decatur County, AL.

(a) *Location.* The following area is a safety zone: All navigable waters of the Tennessee River from Mile Marker 169 through 172, extending the entire width of the river.

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by 502–779–5422 or on VHR–FM channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period(s).* This section will be enforced August 29 through August 31, 2022, from 8 a.m. through 4 p.m. each day.

Dated: August 22, 2022.

H.R. Mattern,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2022–18466 Filed 8–25–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–HQ–OAR–2021–0668; FRL–8670.1–01–OAR]

Deadlines for Submission and Recordation of Allowance Allocations Under the Cross-State Air Pollution Rule (CSAPR) Trading Programs and the Texas SO_2 Trading Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is revising certain administrative deadlines under seven allowance trading programs for emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X).

DATES: This final rule is effective on August 26, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2021–0668. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information 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 hardcopy form. Publicly available docket materials are available electronically through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: David Lifland, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation, U.S. Environmental Protection Agency, Mail Code 6204M, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone: (202) 343–9151; email: *lifland.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

Executive Summary: The Environmental Protection Agency (EPA) is revising certain administrative deadlines under seven allowance trading programs for emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X). First, under the Cross-State Air Pollution Rule (CSAPR) NO_X Ozone Season Group 3 Trading Program, the deadline for the EPA to record advance allocations of allowances for the 2023 and 2024 control periods is being revised to September 1, 2023. Second, under all six CSAPR trading programs as well as the Texas SO_2 Trading Program, the deadlines for the EPA to record advance allocations of allowances for control periods in 2025 and later years are being revised to July 1 of the year immediately before the year of each such control period. Finally, the latest approvable deadlines for states to submit the amounts of state-determined advance allocations of allowances used in the CSAPR trading programs to the EPA under state implementation plan (SIP) revisions are being revised to June 1 of the year immediately before the year of each such control period. The revisions being finalized in this rule do not alter the recipients or amounts of any allowance allocations under any trading program and do not affect the recordation schedules for any allowances that are reserved for allocation after the end of the control period for which the allowances are being issued. On April 26, 2022, the EPA proposed to revise these administrative deadlines as part of a larger proposal (published at 87 FR 20036) that addresses multiple states' obligations to mitigate interstate air pollution with respect to the 2015 ozone national ambient air quality standards (NAAQS). The Agency is not taking final action with respect to the remainder of the April 2022 proposed rule at this time.

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I. General

A. Potentially Affected Entities

Some of the regulatory revisions finalized in this rule affect the EPA by extending the deadlines for the Agency to perform certain allowance recordation activities under the CSAPR trading programs and the Texas SO_2 Trading Program. The remaining regulatory revisions potentially affect states whose sources participate in one or more CSAPR trading programs, if the states have chosen or choose in the future to allocate allowances among their sources pursuant to SIP revisions, by extending the latest approvable deadlines for the states to submit the amounts of the state-determined allocations to the EPA. The following states are potentially affected by the latter revisions: Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

The sources participating in the trading programs in each covered state are generally fossil fuel-fired boilers and combustion turbines that at any time on or after January 1, 2005, serve electricity generators larger than 25 megawatts producing electricity for sale.[1] However, as discussed in Section IV of this rule, the regulatory revisions finalized in this rule will have no substantive impact on participating sources because the revisions do not alter which sources are required to participate in any of the trading programs, the regulatory requirements applicable to the participating sources, or the amounts of allowances allocated to any source for use in any control period.

B. Statutory Authority

Statutory authority to issue the regulatory revisions finalized in this rule is provided by the same Clean Air Act (CAA) provisions that provided authority to issue the regulations being amended: CAA section 110(a) and (c), 42 U.S.C. 7410(a) and (c) (SIP and federal implementation plan (FIP) requirements, including requirements for mitigation of interstate air pollution); CAA section 169A, 42 U.S.C. 7491 (visibility protection); and CAA section 301, 42 U.S.C. 7601 (general rulemaking authority). Because the revisions amend FIP provisions issued under CAA section 110(c), the rulemaking procedural requirements at CAA section 307(d), 42 U.S.C. 7607(d), apply to this action.

II. Discussion of Revisions

A. Background

The EPA currently administers seven similarly structured allowance trading programs for electricity generating units under regulations set forth at 40 CFR part 97, subparts AAAAA through GGGGG.[2] Six of the programs were created as mechanisms to address obligations of the covered states—that is, the states where the participating sources are located—under CAA section 110(a)(2)(D)(i)(I), 42 U.S.C. 7410(a)(2)(D)(i)(I), known as the good neighbor provision, with respect to the 1997 and 2006 fine particulate matter NAAQS and the 1997 and 2008 ozone NAAQS. These six programs, collectively referred to in this rule as the CSAPR trading programs, are the CSAPR NO_X Annual Trading Program, the CSAPR NO_X Ozone Season Group 1 Trading Program, the CSAPR SO_2 Group 1 Trading Program, and the CSAPR SO_2 Group 2 Trading Program, all established in the original CSAPR;[3] the CSAPR NO_X Ozone Season Group 2 Trading Program, established in the CSAPR Update;[4] and the CSAPR NO_X Ozone Season Group 3 Trading Program, established in the Revised CSAPR Update.[5] The seventh program is the Texas SO_2 Trading Program, which was created to address certain visibility protection requirements under CAA section 169A but shares many structural elements and is administered in parallel with the CSAPR trading programs.[6] All seven trading programs were promulgated as FIP provisions under CAA section 110(c).

The functions that the EPA performs to administer the seven trading programs include allocation and recordation of allowances. Allocation is the process of determining the shares of the overall quantities of allowances issued for a given control period to be initially credited to various recipients.[7] The amounts of most allowance allocations are determined before (or sometimes during) the control period in question. These allocations are referred to in this rule as advance allocations to distinguish them from other allowance allocations whose amounts are determined after the end of each control period.[8] Under all seven trading programs, the EPA determines the default amounts of the advance allocations of allowances to the sources in each covered state from the respective state's emissions budget for each control period. However, for most control periods under the CSAPR trading programs, the Agency also allows covered states to replace the default EPA-determined advance allocations with state-determined advance allocations pursuant to approved SIP revisions.[9]

Recordation is the process of moving allowances into, out of, or between

[1] *See, e.g.,* 40 CFR 97.1004. The sources participating in the Texas SO_2 Trading Program are identified by a list in the regulations rather than by applicability criteria, *see* 40 CFR 97.904 and 97.911(a)(1), but all of these sources also participate in one of the CSAPR trading programs.

[2] This final rule does not amend any provision of the additional SO_2 allowance trading program that the EPA administers under the Acid Rain Program regulations at 40 CFR parts 72–78.

[3] 76 FR 48208 (August 8, 2011).

[4] 81 FR 74504 (October 26, 2016).

[5] 86 FR 23054 (April 30, 2021).

[6] 82 FR 48234 (October 17, 2017); affirmed with amendments, 85 FR 49170 (August 12, 2020). The EPA has convened a proceeding to reconsider the amended rule. *See* EPA Motion to Govern, *National Parks Conservation Assn.* v. *EPA,* No. 20–1408 (D.C. Cir. filed June 28, 2021). This final rule has no bearing on the reconsideration proceeding.

[7] *See, e.g.,* 40 CFR 97.1002 (definition of allocation).

[8] Under the CSAPR trading programs, some allowances issued for each control period are reserved in set-asides for allocation after the end of the control period. Allowances reserved in the Texas SO_2 Trading Program's supplemental allowance pool are allocated on a parallel schedule. This final rule does not amend any provisions relating to these reserved allowances.

[9] *See, e.g.,* 40 CFR 52.38(b)(11)–(12) (2021). A state may also choose to distribute allowances through an auction process instead of through a no-cost allocation process. *Id.* For simplicity, in this rule the EPA uses the term ''state-determined allocations'' to include the results of any state auction process because the same deadlines apply regardless of the state's choice of process.

accounts in the EPA's Allowance Management System for purposes of allocation, auction, transfer, or deduction.[10] Recordation is performed exclusively by the EPA.[11] The regulations for each trading program include deadlines for the Agency to record the amounts of advance allocations of allowances issued for each control period in sources' compliance accounts. To promote regulatory clarity and minimize compliance and administrative burdens for sources and the EPA, the recordation deadlines are generally parallel across the seven trading programs. In addition, for states that choose to provide state-determined allowance allocations pursuant to SIP revisions, the regulations governing the approvability of the SIP revisions require the states' rules to include deadlines for submitting the amounts of the advance allocations to the EPA that are coordinated with the Agency's deadlines for recording the allowances in sources' compliance accounts. When the proposal underlying this final rule was issued, the next deadline for the EPA to record the amounts of advance allocations of allowances that had not already been recorded was July 1, 2022, under all seven trading programs, and the associated latest approvable deadline for states to submit the amounts of any state-determined advance allocations to the EPA was June 1, 2022.

In April 2022, the EPA published a proposal to address multiple states' obligations under the good neighbor provision with respect to the 2015 ozone NAAQS.[12] Under the proposal, the CSAPR NO_X Ozone Season Group 3 Trading Program would be revised in a number of ways. Among other things, the program would be expanded to apply to sources in additional states, the existing state emissions budgets and default unit-level allowance allocations for the 2023 and 2024 control periods would be updated, and starting with the 2025 control period the state emissions budgets and default unit-level allowance allocations would be dynamically determined in the year immediately before the year of each control period according to procedures to be set forth in the final revised regulations.[13] In conjunction with these proposed revisions, the EPA proposed to revise that trading program's administrative deadlines for the Agency to record advance allocations of allowances and the latest approvable deadlines for states to submit the amounts of any state-determined advance allocations to the EPA pursuant to SIP revisions.[14] The proposal also includes parallel proposed revisions to the recordation and latest approvable submission deadlines for the other five CSAPR trading programs and the Texas SO_2 Trading Program.[15] Under the proposed revised schedules, there would be no July 1, 2022, deadline to record advance allocations of allowances for use in any of the seven trading programs.

Following an extension, the public comment period on the April 2022 proposal closed on June 21, 2022.[16] No comments were received addressing the proposed revisions to the recordation deadlines and latest approvable submission deadlines,[17] and the EPA is taking this action to expeditiously resolve the differences between the deadlines as previously in effect and the proposed revised deadlines included in the proposal. The Agency is not responding to comments or taking action on any other aspects of the April 2022 proposal at this time.

B. Deadlines for Recordation of Allowance Allocations

The regulations for each of the seven trading programs addressed in this rule include schedules for the EPA to record advance allocations of allowances issued for each control period. Under the regulations for the CSAPR NO_X Ozone Season Group 3 Trading Program in effect at the time of the April 2022 proposal, advance allocations of allowances issued for control periods through 2022 had already been recorded; the recordation deadline for advance allocations for the 2023 and 2024 control periods was July 1, 2022; the recordation deadline for advance allocations for the 2025 and 2026 control periods was July 1, 2023; and the recordation deadlines for advance allocations for control periods in 2027 and later years were July 1 of the third year before the year of each such control period.[18] In the April 2022 proposal, the EPA proposed to revise the recordation deadline for advance allocations for the 2023 and 2024 control periods to the date 30 days after the effective date of a final rule and to revise the recordation deadlines for advance allocations for control periods in 2025 and later years to July 1 of the year immediately before the year of each such control period.[19]

Under the regulations for the other five CSAPR trading programs and the Texas SO_2 Trading Program in effect at the time of the April 2022 proposal, advance allocations of allowances issued for control periods through 2024 had already been recorded and the recordation deadlines for advance allocations for control periods in 2025 and later years were July 1 of the third year before the year of each such control period (*e.g.,* the deadline for recording 2025 advance allocations was July 1, 2022).[20] In the April 2022 proposal, the EPA proposed to revise the recordation deadlines for advance allocations for control periods in 2025 and later years to match the recordation deadlines established in a final rule for the CSAPR NO_X Ozone Season Group 3 Trading Program for the same control periods, such that if the remainder of the proposal was finalized generally as proposed, the recordation deadlines for advance allocations for control periods in 2025 and later years under all seven trading programs would be July 1 of the year immediately before the year of each such control period.[21]

The April 2022 proposal discussed several reasons supporting the proposed revisions to recordation deadlines. First, with respect to the CSAPR NO_X Ozone Season Group 3 Trading Program, the deadline revisions would be necessary to accommodate proposed updates to the amounts of the advance allocations of allowances to be recorded for the 2023 and 2024 control periods and proposed changes to the schedule for determining the amounts of the advance allocations for later control periods.[22] Second, with respect to the other six trading programs, maintaining consistency in recordation deadlines

[10] *See, e.g.,* 40 CFR 97.1002 (definition of recordation).

[11] In some cases, the EPA records allowance transactions automatically in response to electronically submitted instructions from representatives for the accounts where the allowances are held.

[12] 87 FR 20036 (April 6, 2022).

[13] 87 FR 20115–19 (state emissions budgets) and 20128–30 (unit-level allocations).

[14] 87 FR 20129–30.

[15] 87 FR 20140.

[16] 87 FR 29108 (May 12, 2022).

[17] One comment includes a description of the proposed recordation deadline revisions under the CSAPR NO_X Ozone Season Group 3 Trading Program, but the comment concerns the timing of information on the amounts of state emissions budgets and unit-level allocations under that trading program, not the timing of recordation of allowances in sources' compliance accounts. *See* Comments of Basin Electric Power Cooperative, EPA–HQ–OAR–2021–0668–0547, at 60.

[18] *See* 40 CFR 97.1021(a)–(f) (2021).

[19] 87 FR 20129–30. The EPA notes that under the proposal, the recordation deadline for the 2024 advance allocations would be extended for several months if a state provides a timely letter of intent to submit state-determined allocations for that control period. *See* 87 FR at 20150.

[20] *See, e.g.,* 40 CFR 97.821(a)–(f) (2021).

[21] 87 FR 20140.

[22] 87 FR 20130.

across the various trading programs to the extent possible is expected to minimize the time and cost expended by sources to understand and comply with multiple trading programs and would support greater administrative efficiency by the EPA.[23] Third, lowering the number of future control periods for which allowances are recorded in advance will reduce the likelihood that the Agency might need to recall already-recorded allowances as part of a transition to new regulatory requirements in a future rulemaking.[24] The EPA also observed that lowering the number of future control periods for which allowances are recorded in advance is not expected to adversely impact allowance market liquidity, because the historical data on transfers of recorded allowances between accounts in the EPA's Allowance Management System show few arms-length transfers of allowances issued for control periods more than one control period in the future.[25]

Although the April 2022 proposal's rationale for the proposed recordation deadline revisions was provided in the context of a larger set of proposed trading program revisions, the same rationale supports finalizing the recordation deadline revisions on a stand-alone basis while the Agency continues to work toward a final rule addressing the remainder of the proposal in light of the comments received. With respect to the proposed revision to the deadline for recording the 2023 and 2024 advance allocations of allowances used in the CSAPR NO_X Ozone Season Group 3 Trading Program, finalizing a revised recordation deadline at this time, before issuance of a final rule addressing the remainder of the proposal, would accommodate updates to the allocation amounts if such updates are in fact finalized and would thereby facilitate an orderly implementation process for such a final rule. Conversely, if the Agency did not finalize a recordation deadline revision at this time and instead were to record advance allocations of allowances for the 2023 and 2024 control periods before completing consideration of the remainder of the proposal, the recorded amounts could become incorrect upon issuance of a more comprehensive final rule. Correcting the incorrect amounts would then require an allowance recall, which would reduce regulatory clarity and create an additional compliance requirement for sources and administrative burden for the EPA.

It is not possible in this stand-alone rule to finalize the specific revised recordation deadline that was included in the April 2022 proposal for the 2023 and 2024 advance allocations—that is, 30 days after the effective date of a final rule addressing the full proposal. However, the EPA believes that finalizing a recordation deadline of September 1, 2023 in this rule for the 2023 and 2024 advance allocations serves the same dual purpose of, first, allowing sufficient time for a final rule addressing the remainder of the proposal to take effect and, second, recording the allowances far enough in advance of the compliance deadlines for the respective control periods to allow ample time for sources to engage in any desired allowance trading activity. Allowances allocated for the 2023 control period will be recorded in sources' compliance accounts before the end of the 2023 control period and eight months before the June 1, 2024, date for demonstrating compliance for the 2023 control period. Further, if a rule addressing the remainder of the proposal is finalized on a schedule that makes it possible for the allowances to be recorded earlier than September 1, 2023, the EPA could accelerate recordation accordingly.[26]

The April 2022 proposal's rationale also supports finalizing the remaining proposed revisions to recordation deadlines under all seven trading programs on a stand-alone basis. Under these proposed revisions, advance allocations of allowances for control periods in 2025 and later years under all seven trading programs would be recorded by July 1 of the year before the year of each such control period. For the CSAPR NO_X Ozone Season Group 3 Trading Program, as stated in the proposal, finalizing the revisions would accommodate the proposed revisions to the schedule for determining allowance allocations for control periods in 2025 and later years, and for the allowances issued for the 2025 and 2026 control periods in particular, extending the recordation deadline would also avert the possible need for an allowance recall that otherwise could arise if advance allocations for these control periods were recorded before the effective date of a final rule addressing the remainder of the April 2022 proposal. For the remaining trading programs, as stated in the proposal, finalizing the recordation deadline revisions on a stand-alone basis will minimize compliance burdens and support administrative efficiency by maintaining consistency across the trading programs and will reduce the likelihood that future allowance recalls would be needed in conjunction with possible future rulemakings. Under all seven trading programs, allowances allocated for control periods in 2025 and later years will be recorded in sources' compliance accounts in the year before the start dates and almost 2 years before the compliance determination dates of the respective control periods.

The EPA notes that finalization of the proposed revisions to recordation deadlines is separable from the other elements of the April 2022 proposal and does not require finalization of the proposal's other elements or otherwise represent a prejudgment of the Agency concerning the content of a potential future rule. If for some reason the EPA does not finalize, or is delayed in finalizing, the proposal's other elements, finalizing the revisions to the recordation deadlines would still provide the benefits described earlier concerning reduction of the likelihood of future allowance recalls and maintenance of consistency across the trading programs and would have no adverse impact on any source. In this circumstance, the amounts of sources' allocations to be recorded for all control periods under all seven trading programs would remain unchanged from the amounts already determined and announced pursuant to previous rulemakings unless and until a subsequent rule altering the allocation amounts is finalized.

C. Deadlines for Submission of State-Determined Allowance Allocations

For all the CSAPR trading programs, covered states have options to replace the default EPA-determined allowance allocations with state-determined allowance allocations pursuant to approved SIP revisions. Among other things, the regulations governing the EPA's approval of such SIP revisions require the states' rules to include deadlines for submitting the amounts of the allocations to the EPA that are coordinated with the Agency's deadlines for recording the allowances in sources' compliance accounts. Under the regulations in effect at the time of the April 2022 proposal, the latest approvable deadline for submission of state-determined advance allocations for each control period was June 1 immediately before the EPA's

[23] 87 FR 20140.

[24] *Id.*

[25] *Id.*

[26] A final rule addressing the remainder of the April 2022 proposal could also finalize the proposed provision extending the recordation deadline for 2024 advance allocations if a state provides a timely letter of intent to submit state-determined allocations for that control period.

corresponding July 1 recordation deadline for the control period.[27] For control periods in 2025 and later years, these submission deadlines therefore were generally in the third year before the year of each such control period.[28]

In the April 2022 proposal, the EPA proposed to revise the latest approvable deadlines for submission of state-determined advance allocations for the control periods in 2025 and later years under all the CSAPR trading programs to June 1 of the year immediately before the year of each such control period (*i.e.,* one month before the EPA's proposed deadlines to record advance allocations of allowances for the same control periods). In the case of the CSAPR NO_X Ozone Season Group 3 Trading Program, the reason provided for the proposed revision was to coordinate with the proposed revised schedule for determining state emissions budgets for the control periods in 2025 and later years, under which the state emissions budgets would be finalized by May 1 of the year immediately before the year of each control period. Revision of the submission deadline for state-determined allocations under this trading program would be necessary because a state would be unable to determine the amounts of unit-level allocations for a given control period without first knowing the amount of the state emissions budget for the control period.[29] In the case of the other trading programs, the reason provided for the proposed revision to the latest approvable submission deadlines was to maintain consistent deadlines across the various trading programs to the extent possible so as to facilitate greater administrative efficiency by states that choose to provide state-determined allowance allocations.[30] For all the trading programs, an additional reason supporting the revisions to the latest allowable submission deadlines is to maintain the existing relationship to the EPA's corresponding recordation deadlines. That relationship is intended to maximize states' flexibility by allowing the states to submit state-determined allocations to the EPA as late as one month before the EPA's deadlines for recording the allowances in sources' compliance accounts.

The EPA considers it appropriate to revise the latest approvable deadlines for states to submit state-determined advance allocations to the Agency in the same stand-alone action as the corresponding recordation deadlines so as to maintain the existing relationship between the two sets of deadlines. The EPA does not need to receive the amounts of any state-determined allocations more than one month before the Agency's corresponding recordation deadlines, and revising the recordation deadlines makes it possible for the EPA to offer states the flexibility to adopt later submission deadlines. The EPA notes that revising the latest approvable submission deadlines in this rule will not obligate any state that already has an approved SIP revision authorizing the state to determine allocations of allowances for some of the CSAPR trading programs to adopt a revised submission deadline.

III. Final Action

The EPA is taking final action to revise the regulations for the CSAPR trading programs and the Texas SO_2 Trading Program as follows. Under the CSAPR NO_X Ozone Season Group 3 Trading Program, the deadline at 40 CFR 97.1021 for the EPA to record advance allocations of allowances for the control periods in 2023 and 2024 is being revised to September 1, 2023. Under all the CSAPR trading programs and the Texas SO_2 Trading Program, the deadlines at 40 CFR 97.421, 97.521, 97.621, 97.721, 97.821, 97.921, and 97.1021 for the EPA to record advance allocations of allowances for the control periods in 2025 and later years are being revised to July 1 of the year immediately before the year of each such control period. Under the regulations at 40 CFR 52.38 and 52.39 governing approvability of SIP revisions that authorize states to determine the allocations of allowances used in the CSAPR trading programs, the latest approvable deadlines for submission to The EPA of the amounts of state-determined advance allocations for the control periods in 2025 and later years are being revised to June 1 of the year immediately before the year of each such control period.

The EPA is making the regulatory revisions finalized in this rule effective immediately upon publication in the **Federal Register**. As noted in Section I.B of this rule, the revisions are being issued under CAA section 307(d), which does not include provisions governing the effective date of a rule issued under its procedures. While Congressional Review Act (CRA) section 801(a)(3), 5 U.S.C. 801(a)(3), and Administrative Procedure Act (APA) section 553(d), 5 U.S.C. 553(d), require specified minimum periods between the dates of publication and effectiveness for certain rules (with various exceptions), this action is not subject to such requirements under either statute.[31] [32] Accordingly, the EPA has discretion in establishing the effective date for the revisions finalized in this action. Resolving the differences between the previously effective deadlines and the deadlines in the April 2022 proposal at this time will provide clarity for stakeholders and facilitate an orderly process for implementing any additional regulatory revisions that may be promulgated after consideration of comments on the remainder of the April 2022 proposal. Further, as discussed in Section IV of this rule, the deadline revisions finalized in this action will not have any adverse impacts on any state or source. For these reasons, the Agency finds it is appropriate to make the deadline revisions effective immediately upon publication.

Although APA section 553(d) does not apply to this action, in making the regulatory revisions finalized in this action effective immediately upon publication, the EPA has nevertheless considered this section's underlying purposes. The primary purpose of the section's general requirement for a minimum period between a covered rule's dates of publication and effectiveness is ''to give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *FCC,* 78 F.3d 620, 630 (D.C. Cir. 1996). The revisions finalized in this action do not impose any new regulatory requirements on either covered states or participating sources and therefore do not necessitate time for the states or sources to adjust their behavior or otherwise prepare for implementation.

[27] *See, e.g.,* 40 CFR 52.38(b)(11)(iii)(B) (2021).

[28] The latest approvable deadlines for submission of state-determined allocations of allowances used in the CSAPR NO_X Ozone Season Group 3 Trading Program for the control periods in 2023, 2024, and 2025 would have been in the first or second year before the year of the control period. However, at this time no covered state has sought approval for a SIP revision authorizing state-determined allocations of the allowances used in this trading program.

[29] 87 FR 20130.

[30] 87 FR 20140.

[31] CRA section 801(a)(3) generally provides that a ''major rule'' may not take effect less than 60 days after the rule is published in the **Federal Register**. Under CRA section 804(2), 5 U.S.C. 804(2), a major rule generally is a rule that the Office of Management and Budget finds has resulted in or is likely to result in (i) an annual effect on the economy of $100 million or more, (ii) major cost or price increases, or (iii) other significant adverse economic effects. This action is not a major rule for CRA purposes.

[32] APA section 553(d) generally provides that a covered rule may not take effect less than 30 days after the rule is published in the **Federal Register**. However, CAA section 307(d)(1) states that ''[t]he provisions of [APA] section 553 . . . shall not, except as expressly provided in [CAA section 307(d)], apply to actions to which [CAA section 307(d)] applies.'' This action is subject to CAA section 307(d), which does not contain any provision making the action subject to APA section 553(d).

Further, APA section 553(d)(1) expressly allows an effective date earlier than 30 days after publication for a rule that ''grants or recognizes an exemption or relieves a restriction.'' This action relieves an existing restriction on covered states by extending the latest approvable deadlines for the states to submit any optional state-determined allowance allocations to the EPA. Consequently, making the deadline revisions effective immediately upon publication of the final action is consistent with the purposes of APA section 553(d).

IV. Expected Impacts

The regulatory revisions to the CSAPR trading programs and the Texas SO_2 Trading Program finalized in this rule extend the deadlines by which the EPA will record advance allocations of allowances in sources' compliance accounts as well as, for the CSAPR trading programs, the latest approvable deadlines by which covered states must submit any state-determined advance allocations to the EPA for subsequent recordation. The EPA expects the principal impacts of the revisions to be more orderly implementation of any final rule addressing the remainder of the April 2022 proposal and reduction of the likelihood of future allowance recalls in possible future rulemakings. For covered states, the revisions to the latest approvable submission deadlines will also generally increase flexibility regarding the timing of the states' optional activities to determine the amounts of allowance allocations under the CSAPR trading programs.

The EPA expects the sources participating in the trading programs to benefit from improved regulatory clarity and potentially also from avoidance of the need to expend time and resources to comply with additional allowance recalls. Further, the EPA expects no adverse impact on any source. The revisions do not alter which sources are required to participate in any of the trading programs, the regulatory requirements applicable to the participating sources, or the amounts of emissions allowances allocated to any source for use in any control period. Advance allocations of allowances issued for the 2023 control period under the CSAPR NO_X Ozone Season Group 3 Trading Program will be recorded before the end of that control period, which is the point in time at which trading of allowances for a given control period typically becomes most active, and well before June 1, 2024, which is the date when sources must hold allowances to demonstrate compliance for that control period. In all other cases, advance allocations of allowances for each control period will be recorded in sources' compliance accounts in the year before the start date and almost 2 years before the compliance determination date of the control period for which the allowances are being issued. Moreover, as observed in the proposal and referenced in Section II.B of this rule, lowering the number of future control periods for which allowances are recorded in advance is not expected to adversely impact allowance market liquidity, because the historical data on transfers of recorded allowances between accounts in the EPA's Allowance Management System show few arms-length transfers of allowances issued for control periods more than one control period in the future.

V. Statutory and Executive Order Reviews

Additional information about these statutes and executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0667. This action makes no changes to either the information collected or the number of respondents.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5. U.S.C. 601–602. This action will not impose any requirements on small entities. This action simply extends certain administrative deadlines that apply to the EPA or covered states under existing regulations.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. 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. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 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. This action simply extends certain administrative deadlines that apply to the EPA or covered states under existing regulations.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 because it does not establish an

environmental health or safety standard. This action simply extends certain administrative deadlines that apply to the EPA or covered states under existing regulations.

K. Congressional Review Act

This action is subject to the Congressional Review Act, 5 U.S.C. 801–808, 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).

L. Determination Under CAA Section 307(b)

CAA section 307(b)(1), 42 U.S.C. 7607(b)(1), indicates which United States Courts of Appeals have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) if (i) the Agency action consists of ''nationally applicable regulations promulgated, or final action taken, by the Administrator,'' or (ii) the action is locally or regionally applicable, but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' This action amends existing regulations that apply to 27 states and to sources in those states. For this reason, this final action is nationally applicable. In the alternative, the Administrator hereby finds that this final action is based on a determination of nationwide scope and effect for purposes of CAA section 307(b)(1). Thus, pursuant to CAA section 307(b), any petitions for review of this final action must be filed in the D.C. Circuit within 60 days from the date this final action is published in the **Federal Register**.

List of Subjects

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Sulfur dioxide.

40 CFR Part 97

Environmental protection, Administrative practice and procedure, Air pollution control, Electric power plants, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Michael S. Regan,
Administrator.

For the reasons stated in the preamble, parts 52 and 97 of title 40 of the Code of Federal Regulations are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart A—General Provisions

■ 2. Amend § 52.38 by:
■ a. In Table 1 to paragraph (a)(4)(i)(B), Table 2 to paragraph (a)(5)(i)(B), Table 3 to paragraph (b)(4)(ii)(B), Table 4 to paragraph (b)(5)(ii)(B), Table 5 to paragraph (b)(8)(iii)(B), and Table 6 to paragraph (b)(9)(iii)(B), revising the entries for ''2025 and any year thereafter'';
■ b. In paragraph (b)(11)(iii) introductory text, removing ''2023'' and adding in its place ''2025'';
■ c. In paragraph (b)(11)(iii)(B), removing ''no later than the dates in Table 7 to this paragraph;'' and adding in its place ''by June 1 of the year before the year of such control period;'', and removing Table 7 to paragraph (b)(11)(iii)(B);
■ d. In paragraph (b)(12)(iii) introductory text, removing ''2023'' and adding in its place ''2025'';
■ e. In paragraph (b)(12)(iii)(B), removing ''no later than the dates in Table 8 to this paragraph;'' and adding in its place ''by June 1 of the year before the year of such control period;'', and removing Table 8 to paragraph (b)(12)(iii)(B); and
■ f. In paragraph (b)(17)(ii), removing ''2023'' and adding in its place ''2025''.

The revisions read as follows:

§ 52.38 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of nitrogen oxides?

(a) * * *
(4) * * *
(i) * * *
(B) * * *

TABLE 1 TO PARAGRAPH (a)(4)(i)(B)

Year of the control period for which CSAPR NO_X Annual allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2025 and any year thereafter	June 1 of the year before the year of the control period.

* * * * *
(5) * * *
(i) * * *
(B) * * *

TABLE 2 TO PARAGRAPH (a)(5)(i)(B)

Year of the control period for which CSAPR NO_X Annual allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2025 and any year thereafter	June 1 of the year before the year of the control period.

* * * * *
(b) * * *
(4) * * *
(ii) * * *
(B) * * *

TABLE 3 TO PARAGRAPH (b)(4)(ii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2025 and any year thereafter	June 1 of the year before the year of the control period.

* * * * * (B) * * *

(5) * * *

(ii) * * *

TABLE 4 TO PARAGRAPH (b)(5)(ii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2025 and any year thereafter	June 1 of the year before the year of the control period.

* * * * * (B) * * *

(8) * * *

(iii) * * *

TABLE 5 TO PARAGRAPH (b)(8)(iii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2025 and any year thereafter	June 1 of the year before the year of the control period.

* * * * * (B) * * *

(9) * * *

(iii) * * *

TABLE 6 TO PARAGRAPH (b)(9)(iii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2025 and any year thereafter	June 1 of the year before the year of the control period.

* * * * *

■ 3. Amend § 52.39 in Table 1 to paragraph (e)(1)(ii), Table 2 to paragraph (f)(1)(ii), Table 3 to paragraph (h)(1)(ii), and Table 4 to paragraph (i)(1)(ii) by revising the entries for ''2025 and any year thereafter''.

The revisions read as follows:

§ 52.39 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of sulfur dioxide?

* * * * *

(e) * * *

(1) * * *

(ii) * * *

TABLE 1 TO PARAGRAPH (e)(1)(ii)

Year of the control period for which CSAPR SO_2 Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2025 and any year thereafter	June 1 of the year before the year of the control period.

* * * * * (f) * * * (i) * * *

(ii) * * *

TABLE 2 TO PARAGRAPH (f)(1)(ii)

Year of the control period for which CSAPR SO_2 Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2025 and any year thereafter	June 1 of the year before the year of the control period.

* * * * *

(ii) * * *

(h) * * *

(1) * * *

TABLE 3 TO PARAGRAPH (h)(1)(ii)

Year of the control period for which CSAPR SO_2 Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2025 and any year thereafter	June 1 of the year before the year of the control period.

* * * * *

(ii) * * *

(i) * * *

(1) * * *

TABLE 4 TO PARAGRAPH (i)(1)(ii)

Year of the control period for which CSAPR SO_2 Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2025 and any year thereafter	June 1 of the year before the year of the control period.

* * * * *

PART 97—FEDERAL NO_X BUDGET TRADING PROGRAM, CAIR NO_X AND SO_2 TRADING PROGRAMS, CSAPR NO_X AND SO_2 TRADING PROGRAMS, AND TEXAS SO_2 TRADING PROGRAM

■ 4. The authority citation for part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7491, 7601, and 7651, *et seq.*

Subpart AAAAA—CSAPR NO_X Annual Trading Program

§ 97.421 [Amended]

■ 5. In § 97.421, amend paragraph (f)(2) by removing ''2022'' and adding in its place ''2024'', and removing the word ''third'' before ''year after the year''.

Subpart BBBBB—CSAPR NO_X Ozone Season Group 1 Trading Program

§ 97.521 [Amended]

■ 6. In § 97.521, amend paragraph (f)(2) by removing ''2022'' and adding in its place ''2024'', and removing the word ''third'' before ''year after the year''.

Subpart CCCCC—CSAPR SO_2 Group 1 Trading Program

§ 97.621 [Amended]

■ 7. In § 97.621, amend paragraph (f)(2) by removing ''2022'' and adding in its place ''2024'', and removing the word ''third'' before ''year after the year''.

Subpart DDDDD—CSAPR SO_2 Group 2 Trading Program

§ 97.721 [Amended]

■ 8. In § 97.721, amend paragraph (f)(2) by removing ''2022'' and adding in its place ''2024'', and removing the word ''third'' before ''year after the year''.

Subpart EEEEE—CSAPR NO_X Ozone Season Group 2 Trading Program

§ 97.821 [Amended]

■ 9. In § 97.821, amend paragraph (f) by removing ''2022'' and adding in its place ''2024'', and removing the word ''third'' before ''year after the year''.

Subpart FFFFF—Texas SO_2 Trading Program

§ 97.921 [Amended]

■ 10. In § 97.921, amend paragraph (b)(2) by removing ''2022'' and adding in its place ''2024'', and removing the word ''third'' before ''year after the year''.

Subpart GGGGG—CSAPR NO_X Ozone Season Group 3 Trading Program

§ 97.1021 [Amended]

■ 11. Amend § 97.1021 by:

■ a. In paragraph (c), removing ''July 1, 2022, the'' and adding in its place ''September 1, 2023, the'';

■ b. Removing and reserving paragraph (d); and

■ c. In paragraph (f), removing the word ''third'' before ''year after the year''.

[FR Doc. 2022–18318 Filed 8–25–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1090

[EPA–HQ–OAR–2022–0398; FRL 9847–01–OAR]

RIN 2060–AV75

Removal of the Reformulated Gasoline Program From the Southern Maine Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final action, the Environmental Protection Agency (EPA) is amending its reformulated gasoline (RFG) regulations to reflect that York, Cumberland, Androscoggin, Sagadahoc, Kennebec, Knox and Lincoln counties in Maine (the Southern Maine Area) are no longer Federal RFG covered areas as of September 30, 2021. EPA previously approved a petition from Maine to opt out of the Federal RFG program and removed the requirement to sell Federal RFG in the Southern Maine Area as of September 30, 2021. This effective date applied to retailers, wholesale purchaser-consumers, refiners, importers, and distributors. This rule merely updates the list of RFG-covered areas in the Federal regulations to reflect the effective date of the opt-out for the Southern Maine Area.

DATES: This final rule is effective August 26, 2022.

FOR FURTHER INFORMATION CONTACT: Mark Coryell, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105; email address: *coryell.mark@epa.gov* or Rudy Kapichak, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105; email address: *kapichak.rudolph@epa.gov.*

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. General Information
II. Action
III. Background
IV. Public Participation
V. Statutory and Executive Order Reviews
VI. Legal Authority and Statutory Provisions

I. General Information

A. Does this action apply to me?

Entities potentially affected by this final action are fuel producers and distributors who do business in the Southern Maine Area.

Examples of potentially regulated entities	NAICS [1] codes
Petroleum refineries	324110 424710
Gasoline Marketers and Distributors	424720
Gasoline Retail Stations	447110
Gasoline Transporters	484220 484230

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. The table lists the types of entities of which EPA is aware that potentially could be affected by this final action. Other types of entities not listed on the table could also be affected. To determine whether your organization could be affected by this final action, you should carefully examine the regulations in 40 CFR part 1090. If you have questions regarding the applicability of this action to a particular entity, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2022–0398. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *www.regulations.gov.*

II. Action

In this rule, EPA is amending 40 CFR 1090.285(d) to reflect that the Southern Maine Area (York, Cumberland, Androscoggin, Sagadahoc, Kennebec, Knox and Lincoln counties) [2] is no longer a Federal RFG covered area. This final rule merely conforms the applicable regulations with EPA's prior approval of the Maine petition.

III. Background

On July 23, 2013, the Governor of Maine requested that EPA approve a request to voluntarily opt York, Cumberland, Androscoggin, Sagadahoc, Kennebec, Knox and Lincoln counties (the Southern Maine Area) into the Federal RFG program with an effective date of May 1, 2014. EPA approved that request on February 6, 2015 (80 FR 6658) with a commencement date for the RFG program of May 1, 2015.

On August 20, 2020, Maine submitted a petition to the EPA Administrator requesting to opt-out from the Federal RFG program for the Southern Maine Area.[3] In order to fulfill the requirements of the RFG opt-out regulations [4] and to support its initial request, on August 20, 2020, Maine submitted revisions to its maintenance plans for the Portland and Midcoast ozone maintenance areas for the 1997 ozone national ambient air quality standard (NAAQS). The revisions to the maintenance plans removed the emissions reductions associated with the use of RFG in these areas and demonstrated that the RFG opt-out would not interfere with the areas' ability to attain or maintain the 1997, 2008 and 2015 ozone NAAQS and any other NAAQS as required by CAA section 110(l). (*See* 40 CFR 1090.290(d)(1).) EPA published a proposed approval of the SIP revision on March 25, 2021 (86 FR 15844) and a final approval of the SIP revision on June 2, 2021 (86 FR 29520), with an effective date of July 2, 2021.

By letter dated July 12, 2021, EPA informed Maine of the grant of its petition as required by the RFG opt-out regulations. (*See* 40 CFR 1090.290(d)(2)(ii).) EPA also indicated that the effective date of the RFG opt-out for the Southern Maine Area would be September 30, 2021, which is 90 days after the effective date of EPA's approval of the maintenance plan revision and CAA section 110(l) analysis, as required by 40 CFR 1090(d)(2)(ii). The September 30, 2021, opt-out effective date is the date for the removal of the prohibition on the sale of conventional gasoline in the Southern Maine Area and applied to retailers, wholesale purchasers-

[1] North American Industry Classification System.

[2] The Southern Maine Area is part of the Portland and Midcoast ozone maintenance areas for the 1997 ozone national ambient air quality standard (NAAQS).

[3] The Commissioner of Maine's Department of Environmental Protection submitted the opt-out petition on behalf of the State of Maine. A copy of the petition is included in the docket.

[4] The RFG opt-out regulations (40 CFR 1090.290(b) and (d)—*Opting out of RFG* and *Procedure for opting out of RFG,* respectively) provide the process and criteria for a reasonable transition out of the Federal RFG program if a state decides to opt-out. Pursuant to CAA sections 211(c) and (k) and 301(a), EPA promulgated regulations at 40 CFR 80.72 to provide criteria and general procedures for states to opt-out of the RFG program where the state had previously voluntarily opted into the program. The regulations were initially adopted on July 8, 1996 (61 FR 35673) (the RFG ''Opt-out Rule''); and were revised on October 20, 1997 (62 FR 54552). On December 4, 2020, these regulations were redrafted into 40 CFR 1090.290 as a part of EPA's Fuels Streamlining Rule (85 FR 78412).

consumers, refiners, importers, and distributors of gasoline.

On July 16, 2021, EPA published the **Federal Register** document required by 40 CFR 1090.290(d)(4) that informed the public of the September 30, 2021, effective date and indicated that EPA would publish a final rule later to remove the Southern Maine Area from the list of RFG covered areas in 40 CFR 1090.285 after the effective date of the opt-out.

IV. Public Participation

EPA is issuing this final action without prior notice and comment. The rulemaking procedures provided in CAA section 307(d) do not apply when the Agency for good cause finds that notice-and-comment procedures are impracticable, unnecessary, or contrary to the public interest pursuant to section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B). This is a ministerial action that amends 40 CFR 1090.285(d) to reflect the prior EPA approval of Maine's opt-out petition, which was based on criteria in EPA regulations for opting out of the Federal RFG program. EPA's RFG opt-out regulations provide a petition process that addresses, on a case-by-case basis, future individual state requests to opt out of the RFG program. (*See* 40 CFR 1090.290(d)(1).). The regulations established clear and objective criteria for EPA to apply that include criteria for when a state's petition is complete and the appropriate transition time for opt-out of the RFG program. Further, at the time of promulgation of those regulations, EPA explained that the application of these regulatory criteria on a case-by-case basis to individual opt-out requests would not require notice-and-comment rulemaking, either under CAA section 307(d) or the Administrative Procedure Act. (*See* 61 FR 35673, July 8, 1996; and 62 FR 54552, October 20, 1997.)

Here, EPA is simply revising the list of RFG covered areas in 40 CFR 1090.285(d) to conform with EPA's prior approval of Maine's request, which was effective on September 30, 2021. That approval was a separate action, which was based on criteria in EPA's regulations for opting out of the Federal RFG program and is not the subject of this rule. For these reasons, EPA finds that notice-and-comment procedures under CAA section 307(d)(1) are unnecessary.

This final rule is effective immediately upon publication. Section 553(d)(1) of the Administrative Procedure Act, 5 U.S.C. 553(d)(1), provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency finalizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the affect is not adverse. EPA has determined that the finalized rule does not change any regulatory obligations and merely revises the list of covered areas in 40 CFR 1090.285(d) to reflect EPA's prior action on July 16, 2021, which relieved a restriction (the requirement of the Federal RFG program) in the Southern Maine Area. For these reasons, this rule will be effective immediately upon publication.

V. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any information collection burden under the PRA, because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the Agency has invoked the APA ''good cause'' exemption under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act (UMRA)

This final rule does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action and the earlier approval of Maine's request to opt the seven counties in the Southern Maine Area out of the Federal RFG program removed a requirement for the sale of Federal RFG in the area as provided for in CAA section 211(k) and EPA's regulations at 40 CFR 1090.290(b) and (d).

E. Executive Order 13132: Federalism

This action does not have federalism implications. 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. This final rule and earlier approval of Maine's request to opt the seven counties in the Southern Maine Area out of the Federal RFG program affect only those refiners, importers or blenders of gasoline that chose to produce or import gasoline that met Federal RFG program requirements for sale in the Southern Maine Area and gasoline distributers and retail stations in the Area. 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 as applying only to those regulatory actions that concern environmental health or safety risks that 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. EPA has no reason to believe that this action will disproportionately affect children since Maine has provided evidence that opt-out from the Federal RFG gasoline program will not interfere with its attainment of the ozone NAAQS, or any other applicable CAA requirement.

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

This action is not subject to Executive Order 13211 because it is not a

significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rule does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action does not have potential disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994), because it does not affect the applicable ozone NAAQS which establish the level of protection provided to human health or the environment. This rule and the earlier approval of Maine's request to opt the seven counties in the Southern Maine Area out of the Federal RFG program removes the Federal RFG gasoline program requirements for the Southern Maine Area. EPA has concluded that the Federal RFG opt-out will not cause a measurable increase in ozone concentrations that would result in a violation of any ozone NAAQS including the 1997, 2008 ozone NAAQS and the more stringent 2015 ozone NAAQS. Therefore, disproportionately high and adverse human health or environmental effects on minority or low-income populations are not an anticipated result. The results of this evaluation are contained in EPA's proposed and final rules for Maine's non-interference demonstration. A copy of EPA's approval on July 2, 2021, of Maine's SIP revision has been placed in the public docket for this action.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in section IV, including the basis for that finding.

VI. Legal Authority and Statutory Provisions

The statutory authority for this action is granted to EPA by sections 211(k) and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7545(h) and 7601(a).

List of Subjects in 40 CFR Part 1090

Environmental protection, Administrative practice and procedures, Air pollution control, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 1090 as follows:

PART 1090—REGULATION OF FUELS, FUEL ADDITIVES, AND REGULATED BLENDSTOCKS

■ 1. The authority citation for part 1090 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7522–7525, 7541, 7542, 7543, 7545, 7547, 7550, and 7601.

Subpart C—Gasoline Standards

■ 2. Section 1090.285 is amended by revising paragraph (d) to read as follows:

§ 1090.285 RFG covered areas.

* * * * *

(d) RFG covered areas located in the ozone transport region established by 42 U.S.C. 7511c(a) that a state has requested to opt into RFG under 42 U.S.C. 7545(k)(6)(B)(i)(I).

[FR Doc. 2022–18320 Filed 8–25–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 215

[Docket DARS–2022–0001]

Defense Federal Acquisition Regulation Supplement; Technical Amendment

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule; technical amendment.

SUMMARY: DoD is making a needed technical amendment to update the Defense Federal Acquisition Regulation Supplement (DFARS).

DATES: Effective August 26, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, Defense Acquisition Regulations System, telephone 703–717–8226.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS 215.300 to provide an updated notice to contracting officers to see DFARS Procedures, Guidance, and Information (PGI) for additional guidance when conducting negotiated, competitive acquisition utilizing Federal Acquisition Regulation part 15 procedures.

List of Subjects in 48 CFR Part 215

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR part 215 is amended as follows:

PART 215—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 215 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Revise section 215.300 to read as follows:

215.300 Scope of subpart.

When conducting negotiated, competitive acquisitions utilizing FAR part 15 procedures, contracting officers shall follow the principles and procedures in the Director, Defense Pricing and Contracting memorandum provided at PGI 215.300.

[FR Doc. 2022–18410 Filed 8–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF JUSTICE

48 CFR Chapter 28

[Docket No. JMD 155]

RIN 1105–AB54

Streamlining DOJ Acquisition Regulations (JAR); Corrections

AGENCY: Justice Management Division, Department of Justice.

ACTION: Final rule; corrections.

SUMMARY: The Department of Justice (''Department'' or ''DOJ'') is correcting a final rule that was published in the **Federal Register** on August 2, 2022, with an effective date of September 2, 2022. The final rule revised the Justice Acquisition Regulations (''JAR'') in its entirety in order to update and streamline agency procurement actions consistent with the Federal Acquisition Reform Act and the Federal Acquisition Streamlining Act. The text of the final

rule contained minor administrative errors. This document corrects the indicated portions of the final rule published on August 2, 2022, which otherwise remains the same as previously published.

DATES: Effective September 2, 2022.

FOR FURTHER INFORMATION CONTACT: Tara M. Jamison, Director, Office of Acquisition Management, Justice Management Division, 145 N Street NE, Room 8W.210, Washington, DC 20530, (202) 616–3754 (not a toll-free call).

SUPPLEMENTARY INFORMATION: On August 2, 2022, the Department issued a final rule titled, ''Streamlining DOJ Acquisition Regulations (JAR),'' revising the existing JAR to update and streamline agency procurement actions (87 FR 47116), with an effective date of September 2, 2022. The text of the final rule contained minor administrative errors. This document corrects those administrative errors.

Corrections

In FR Doc. 2022–15746, published at 87 FR 47116 in the issue of Tuesday, August 2, 2022, the following corrections are made:

PART 2804 [Corrected]

■ 1. On page 47121, in the third column, under the table of contents for part 2804, the entries for ''Subpart 2804.13—Personal Identity Verification'' and ''2804.1301 Policy.'' are removed.

PART 2805 [Corrected]

■ 2. On page 47122, in the second column, under the table of contents for part 2805, under Subpart 2805.5—Paid Advertisements, the entry ''2805.500 Scope of subpart.'' is added. 2805.500 [Corrected]

■ 3. On page 47122, in the third column, following the heading ''Subpart 2805.5—Paid Advertisements'', the heading ''2805.500 Scope of subpart.'' is added before the text ''This subpart provides policies and procedures for the procurement of paid advertising as covered by 44 U.S.C. 3702 and 3703 and 5 U.S.C. 302(b).''

PART 2822 [Corrected]

■ 4. On page 47127, in the second column, under the table of contents for part 2822, under Subpart 2822.1—Basic Labor Policies, the entry ''2822.101–3 Reporting labor disputes.'' is removed.

2852.222–70 [Corrected]

■ 5. On page 47138, in the first column, in the introductory text of 2852.222–70, remove ''JAR 2822.101–1–70'' and add in its place ''JAR 2822.101–70''.

Dated: August 22, 2022.

Jolene Ann Lauria,

Acting Assistant Attorney General for Administration.

[FR Doc. 2022–18448 Filed 8–25–22; 8:45 am]

BILLING CODE 4410–AR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220223–0054; RTID 0648–XC266]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure; request for comments.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2022 total allowable catch of Pacific cod allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), September 1, 2022, through 2400 hours, A.l.t., December 31, 2022. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 12, 2022.

ADDRESSES: You may submit comments on this document, identified by docket number NOAA–NMFS–2022–0076, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0076 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Josh Keaton, Acting Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

NMFS closed directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI under § 679.20(d)(1)(iii) on January 26, 2022 (87 FR 4818, January 31, 2022).

NMFS has determined that as of August 22, 2022, approximately 1,500 metric tons of Pacific cod remain in the 2022 Pacific cod apportionment for catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2022 total allowable catch (TAC) of Pacific cod in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. The Administrator, Alaska Region, NMFS, (Regional Administrator) considered the following factors in reaching this decision: (1) the current catch of Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

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 opening of directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 22, 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.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 12, 2022.

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

Dated: August 23, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–18457 Filed 8–25–22; 8:45 am]

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Proposed Rules

Federal Register
Vol. 87, No. 165
Friday, August 26, 2022

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

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2022–0290; FRL–10107–01–R4]

Air Plan Approval and Air Quality Designation; GA; Redesignation of the Atlanta, Georgia 2015 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the Georgia State Implementation Plan (SIP) submitted on behalf of the State of Georgia, through the Georgia Environmental Protection Division (GA EPD) of the Department of Natural Resources, on February 28, 2022, through a letter dated February 25, 2022. The submission includes a request for the EPA to redesignate the Atlanta, Georgia 2015 8-hour ozone nonattainment area (hereinafter referred to as the ''Atlanta Area'' or ''Area'') to attainment for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards) and to approve a SIP revision containing a maintenance plan for the Area. EPA is proposing to approve the State's plan for maintaining attainment of the 2015 8-hour ozone standard in the Area, including the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) for the years 2018 and 2033 for the Area, and to incorporate the maintenance plan into the SIP, and to redesignate the Area to attainment for the 2015 8-hour ozone NAAQS. EPA is also notifying the public of the status of EPA's adequacy determination for the MVEBs for the Area.

DATES: Comments must be received on or before September 26, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2022–0290 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jane Spann, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9029. Ms. Jane Spann can also be reached via electronic mail at *spann.jane@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Summary of EPA's Proposed Actions

EPA is proposing to take the following separate but related actions addressing the February 25, 2022 submittal: [1] (1) to approve Georgia's plan for maintaining the 2015 ozone NAAQS (maintenance plan), including the associated MVEBs for the Atlanta Area, and incorporate the plan into the SIP, and (2) to redesignate the Atlanta Area to attainment for the 2015 8-hour ozone NAAQS. EPA is also notifying the public of the status of EPA's adequacy determination for the MVEBs for the Atlanta Area. The Atlanta Area consists of Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett, and Henry Counties in Georgia. These proposed actions are summarized below and described in greater detail throughout this notice of proposed rulemaking.

EPA is proposing to approve Georgia's maintenance plan for the Atlanta Area as meeting the requirements of section 175A (such approval being one of the Clean Air Act (CAA or Act) criteria for redesignation to attainment status) and incorporate it into the SIP. The maintenance plan is designed to keep the Atlanta Area in attainment of the 2015 8-hour ozone NAAQS through 2033. The maintenance plan includes 2018 and 2033 MVEBs for NO_X and VOC for the Atlanta Area for transportation conformity purposes. EPA is proposing to approve these MVEBs and incorporate them into the SIP.

EPA also proposes to determine that the Atlanta Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. Accordingly, EPA is proposing to approve a request to change the legal designation of Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett, and Henry Counties in Georgia, as found at 40 CFR part 81, from nonattainment to attainment for the 2015 8-hour ozone NAAQS.

EPA is also notifying the public of the status of EPA's adequacy process for the MVEBs for the Atlanta Area. The adequacy comment period began on February 11, 2022, with EPA's posting of the availability of Georgia's submission on EPA's adequacy website (*https://www.epa.gov/state-and-local-transportation/state-implementation-plans-sip-submissions-currently-under-epa*). The adequacy comment period for these MVEBs closed on March 15, 2022. No comments, adverse or otherwise, were received during the adequacy

[1] EPA notes that the February 28, 2022, submission was received under a cover letter dated February 25, 2022. For clarity, throughout this notice EPA will refer to the February 28, 2022, submission by its cover letter date of February 25, 2022.

comment period. Please see Section VII of this notice of proposed rulemaking for further explanation of this process and for more details on the MVEBs.

In summary, this notice of proposed rulemaking is in response to Georgia's February 25, 2022, redesignation request and associated SIP submission that addresses the specific issues summarized above and the necessary elements described in section 107(d)(3)(E) of the CAA for redesignation of the Atlanta Area to attainment for the 2015 8-hour ozone NAAQS.

II. Background

On October 1, 2015, EPA revised both the primary and secondary NAAQS for ozone to a level of 0.070 parts per million (ppm) to provide increased protection of public health and the environment. *See* 80 FR 65292 (October 26, 2015). The 2015 ozone NAAQS retains the same general form and averaging time as the 0.075 ppm NAAQS set in 2008 but is set at a more protective level. Under EPA's regulations at 40 CFR part 50, the 2015 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.070 ppm. *See* Appendix U of 40 CFR part 50. This 3-year average is referred to as the design value.

Upon promulgation of a new or revised ozone NAAQS, section 107(d) of the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS (or that contributes to ambient air quality in a nearby area that is violating the NAAQS). As part of the designations process for the 2015 8-hour ozone NAAQS, the Atlanta Area was designated as a ''Marginal'' ozone nonattainment area, effective August 3, 2018. *See* 83 FR 25776 (June 4, 2018) *and* 40 CFR 81.311. Areas that were designated as Marginal ozone nonattainment areas were required to attain the 2015 8-hour ozone NAAQS no later than August 3, 2021, based on 2018, 2019, and 2020 monitoring data. *See* 40 CFR 51.1303.[2] The Atlanta Area has an attaining design value calculated using 2018, 2019 and 2020 ozone ambient monitoring data. The Atlanta Area design value continues to meet the 2015 8-hour ozone standard with a design value calculated using 2019, 2020, and 2021 ozone ambient monitoring data. Based on complete, quality-assured, and certified ozone monitoring data from monitoring stations in the Atlanta Area, EPA is proposing to determine that the Atlanta Area attained the 2015 8-hour ozone NAAQS to meet the CAA 107(d)(3)(E)(i) requirement that the area attains the NAAQS for redesignation purposes.

[2] Determination that the Atlanta Area attained by the required August 3, 2021, attainment date is being addressed in a separate rulemaking. *See* 87 FR 21842 (April 13, 2022).

III. Criteria for Redesignation

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

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

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;

2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereinafter referred to as the ''Calcagni Memorandum'');

5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

6. ''Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993 (hereinafter referred to as the ''Shapiro Memorandum'');

8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;

9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994 (hereinafter referred to as the ''Nichols Memorandum''); and

10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Georgia's SIP Submittal

On February 25, 2022, Georgia requested that EPA redesignate the Atlanta Area to attainment for the 2015 8-hour ozone NAAQS and approve the associated SIP revision submitted on the same date containing a maintenance plan for the Area. EPA's evaluation indicates that the Atlanta Area meets the requirements for redesignation as set forth in CAA section 107(d)(3)(E), including the maintenance plan requirements under CAA section 175A and associated MVEBs. As a result of these proposed findings, EPA is proposing to take the actions summarized in Section I of this notice.

V. EPA's Analysis of Georgia's SIP Submittal

As stated above, in accordance with the CAA, EPA proposes to approve the 2015 8-hour ozone NAAQS maintenance plan, including the associated MVEBs, and incorporate it into the Georgia SIP; and redesignate the Atlanta Area to attainment for the 2015 8-hour ozone NAAQS. The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Area in the following paragraphs of this section.

Criterion (1)—The Atlanta Area Has Attained the 2015 8-Hour Ozone NAAQS

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS. *See* CAA section 107(d)(3)(E)(i). For ozone, an area may be considered to be attaining the 2015 8-hour ozone NAAQS if it meets the 2015 8-hour ozone NAAQS, as determined in accordance with 40 CFR 50.19 and Appendix U of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain the 2015 8-hour ozone NAAQS, the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area must not exceed 0.070 ppm. Based on the data handling and reporting convention described in 40 CFR part 50, Appendix U, the 2015 8-hour ozone NAAQS are attained if the design value is 0.070 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

EPA reviewed complete, quality-assured, and certified ozone monitoring data from monitoring stations in the Atlanta Area for the 2015 8-hour ozone NAAQS for 2018 through 2021 and has determined that the design values for each monitor in the Area are equal to or less than the standard of 0.070 ppm for that time period. Based on this air quality monitoring data, EPA is proposing to determine that the Atlanta Area attained the 2015 8-hour ozone NAAQS. The fourth-highest 8-hour ozone values at each monitor for 2018 through 2021 and the 3-year averages of these values (*i.e.,* design values), are summarized in Table 1, below.

TABLE 1—2018–2021 OZONE CONCENTRATIONS FOR THE ATLANTA AREA

[ppm]

Air Quality System (AQS) site code	Site name	Annual 4th-highest daily maximum 8-hr ozone concentration				Design values	
		2018	2019	2020	2021	2018–2020	2019–2021
13–067–0003	Kennesaw	0.065	0.067	0.056	0.062	0.062	0.061
13–085–0001	Dawsonville	0.065	0.062	0.057	0.061	0.061	0.060
13–089–0002	South DeKalb	0.067	0.073	0.061	0.067	0.067	0.067
13–097–0004	Douglasville	0.064	0.072	0.056	0.07	0.064	0.066
13–121–0055	United Avenue	0.072	0.075	0.063	0.066	0.070	0.068
13–135–0002	Gwinnett	0.065	0.068	0.066	0.065	0.066	0.066
13–151–0002	McDonough	0.069	0.075	0.058	0.066	0.067	0.066
13–247–0001	Conyers	0.069	0.072	0.060	0.063	0.067	0.065
13–231–9991	Georgia Station (Pike County) CASTNET.	0.065	0.068	0.054	0.061	0.062	0.061

The highest 3-year design value for 2018–2020 for the Atlanta Area is 0.070 ppm at the United Ave site (AQS ID: 13–121–0055),[3] which meets the NAAQS. The highest 3-year design value for 2019–2021 for the Atlanta Area is 0.068 ppm at the United Ave site, which is below the NAAQS.

EPA will not take final action to approve the redesignation of the Atlanta Area if the 3-year design value exceeds the NAAQS prior to EPA finalizing the redesignation. Preliminary 2022 ozone monitoring data currently indicates an attaining 2020, 2021 and 2022 design value for the Atlanta Area. As discussed in more detail below, Georgia has committed to continue monitoring in this Area in accordance with 40 CFR part 58.

[3] The design value for an area is the highest 3-year average of the annual fourth-highest daily maximum 8-hour concentration recorded at any monitor in the area.

Criterion (2)—Georgia Has a Fully Approved SIP Under Section 110(k) for the Atlanta Area; and Criterion (5)—Georgia Has Met All Applicable Requirements Under Section 110 and Part D of Title I of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA, *see* CAA section 107(d)(3)(E)(v), and that the state has a fully approved SIP under section 110(k) for the area, *see* CAA section 107(d)(3)(E)(ii). EPA proposes to find that Georgia has met all applicable SIP requirements for the Atlanta Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that Georgia has met all applicable SIP requirements for purposes of redesignation under part D of title I of the CAA in accordance with section 107(d)(3)(E)(v) and proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were due prior to submittal of the complete redesignation request.

a. The Atlanta Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

General SIP requirements. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures

needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (NSR permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D)(i)(I), referred to as the ''good neighbor provision'' or the ''interstate transport provision'' of the Act, requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D)(i)(I) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable for purposes of redesignation.

In addition, EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are not applicable requirements for purpose of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* 61 FR 53174 (October 10, 1996) and 62 FR 24826 (May 7, 1997) (Reading, Pennsylvania, proposed and final rulemakings); 61 FR 20458 (May 7, 1996) (Cleveland-Akron-Loraine, Ohio, final rulemaking); and 60 FR 62748, (December 7, 1995) (Tampa, Florida, final rulemaking)). *See also* 65 FR 37890 (June 19, 2000) (discussion on this issue in Cincinnati, Ohio, redesignation) and 66 FR 50399 (October 19, 2001) (Pittsburgh, Pennsylvania, redesignation).

Title I, part D, applicable SIP requirements. Section 172(c) of the CAA sets forth the basic requirements of attainment plans for nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the area's nonattainment classification. As provided in subpart 2, a Marginal ozone nonattainment area must submit an emissions inventory that complies with section 172(c)(3), but the specific requirements of section 182(a) apply in lieu of the demonstration of attainment (and contingency measures) required by section 172(c). *See* 42 U.S.C. 7511a(a). A thorough discussion of the requirements contained in sections 172(c) and 182 can be found in the General Preamble for Implementation of Title I. *See* 57 FR 13498 (April 16, 1992).

Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are ''applicable'' and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. *See* Calcagni Memorandum. *See also* Shapiro Memorandum; 60 FR 12549, 12465–66 (March 7, 1995) (Final Redesignation of Detroit-Ann Arbor,); 68 FR 25418, 25424–27 (May 12, 2003) (Final Redesignation of St. Louis, Missouri); and *Sierra Club* v. *EPA,* 375 F. 3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of ''applicable'' under the statue is ''whatever should have been in the plan at the time of attainment'' rather than ''whatever actually was in the plan and already implemented or due at the time of attainment'').[4] In addition, as discussed below, several of the part D requirements under 182(a) are otherwise not applicable for the purposes of redesignation and several of the requirements have already been satisfied by the State.

Section 182(a) Requirements. Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NO_X emitted within the boundaries of the ozone nonattainment area. This required submission was due by August 3, 2020, for the Atlanta Area. *See* 40 CFR 51.1315(a). Georgia provided an emissions inventory for the Area to EPA in a July 2, 2020, SIP submission, and EPA approved the emissions inventory in an action published on March 9, 2022. *See* 87 FR 13179.

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC reasonably available control technology (RACT) rules that were required under section 172(b)(3) of the CAA (and related guidance) prior to the 1990 CAA amendments. The Area is not subject to the section 182(a)(2) RACT ''fix up'' requirement for the 2015 ozone NAAQS because it was designated as nonattainment for this standard after the enactment of the 1990 CAA amendments. Furthermore, the State complied with this requirement under the 1-hour ozone NAAQS. *See* 57 FR 46780 (October 13, 1992).

Section 182(a)(2)(B) requires each state with a Marginal or higher ozone nonattainment area classification that implemented, or was required to implement, a vehicle inspection and maintenance (I/M) program prior to the 1990 CAA amendments to submit a SIP revision providing for an I/M program no less stringent than that required prior to the 1990 amendments or already in the SIP at the time of the amendments, whichever is more stringent. The Atlanta Area is not subject to the section 182(a)(2)(B) requirement because the Area was designated as nonattainment for the 2015 8-hour ozone standard after the enactment of the 1990 CAA amendments.

Regarding the permitting and offset requirements of section 182(a)(2)(C) and section 182(a)(4), Georgia currently has a fully approved part D NSR program in place. However, EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR, because PSD requirements will apply after redesignation. A more detailed rationale for this view is described in the Nichols Memorandum. Georgia's PSD program will become applicable in the Atlanta Area upon its redesignation to attainment. Nonetheless, Georgia has an

[4] Applicable requirements of the CAA that become due after the area's submittal of a complete redesignation request remain applicable until a redesignation is approved but are not required as a prerequisite to redesignation. *See* Calcagni Memorandum; CAA section 175A(c).

approved part D NSR SIP for the Atlanta Area. *See* 87 FR 3677 (January 25, 2022).

Section 182(a)(3) requires states to submit periodic inventories and emissions statements. Section 182(a)(3)(A) requires states to submit a periodic inventory every three years. As discussed below in the *Verification of Continued Attainment* section of this notice, the State will continue to update its emissions inventory at least once every three years. Under section 182(a)(3)(B), each state with an ozone nonattainment area must submit a SIP revision requiring emissions statements to be submitted to the state by certain sources within that nonattainment area. Georgia provided a SIP revision to EPA on July 2, 2020, with a supplement to that submittal on November 4, 2021, addressing the section 182(a)(3)(B) emissions statements requirements. EPA approved Georgia's July 2, 2020, and November 4, 2021, SIP revision in an action published on March 9, 2022. *See* 87 FR 13179.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements [5] as not applying for the purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Nonetheless, Georgia has an approved conformity SIP for the Atlanta Area. *See* 77 FR 35866 (June 15, 2012).

Thus, for the reasons discussed above, EPA proposes to find that the Atlanta Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

b. The Atlanta Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Georgia SIP for the Atlanta Area under section 110(k) of the CAA for all requirements applicable for purpose of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request, *see* Calcagni Memorandum at 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); and *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action, *see* 68 FR 25426 (May 12, 2003) and citations therein. Georgia has adopted and submitted, and EPA has fully approved at various times, provisions addressing various SIP elements applicable for the ozone NAAQS. *See* 86 FR 68413 (December 12, 2021), 85 FR 14147 (March 11, 2020), and 85 FR 20836 (April 15, 2020). As discussed above, EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area's nonattainment status are not applicable requirements for purposes of redesignation, and it believes that Georgia has met all part D requirements applicable for purpose of this redesignation.

Criterion (3)—The Air Quality Improvement in the Atlanta Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal air pollution control regulations, and other permanent and enforceable reductions. *See* CAA section 107(d)(3)(E)(iii). EPA has preliminarily determined that Georgia has demonstrated that the observed air quality improvement in the Atlanta Area is due to permanent and enforceable reductions in emissions resulting from Federal measures and from state measures adopted into the SIP and is not the result of unusually favorable weather conditions or the COVID–19 pandemic.[6]

State measures adopted into the SIP and Federal measures enacted in recent years have resulted in permanent emission reductions. The SIP-approved state measures, some of which implement Federal requirements, that have been implemented to date and identified by Georgia include: Georgia Rule 391–3–1–.02(2)(yy)—Emissions of Nitrogen Oxides; Georgia Rule 391–3–1–.02(2)(jjj)—NO_X from Electric Generating Units (EGUs); Georgia Rule 391–3–1–.02(2)(lll)—NO_X from Fuel Burning Equipment; Georgia Rule 391–3–1–.02(2)(nnn)—NO_X from Stationary Gas Turbines; Georgia Rule 391–3–1–.02(2)(rrr)—NO_X from Small Fuel Burning Equipment; and Georgia Rule Chapter 391–3–20—Enhanced Inspection and Maintenance.

[5] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the MVEBs that are established in control strategy SIPs and maintenance plans.

[6] Georgia provided average temperature and precipitation data for May through September in Atlanta, Georgia, from 1930 through 2020. Based on this information, the average temperature and precipitation fluctuates around the average meteorological conditions, with 2018, 2019, and 2020 being hotter than the 1930–2020 average temperature and 2018 and 2020 wetter than the 1930–2020 average precipitation. Georgia concluded that the 2018–2020 period for the Atlanta Area was not unusually cool or wet and that meteorology is not responsible for the decreasing ozone trends. *See* Section 2.3 of the State's redesignation request and proposed SIP revision for further information. EPA analyzed 2021 meteorology data related to the Atlanta Area which shows that the May through September 2021 temperatures were essentially the same as the 30-year 1981–2020 normals and that 2021 precipitation was near the 75th percentile of the 30-year average and not significantly higher than in 2017 and 2018. The 2021 data does not indicate unusually favorable weather conditions for lower ozone concentrations and is consistent with Georgia's conclusions that the air quality improvement in the area is due to permanent and enforceable emissions reductions.

Georgia also provided data related to the COVID–19 pandemic's impact on mobile emissions. Georgia recognized that following the beginning of the pandemic, 2020 vehicle counts and vehicle miles traveled (VMT) were lower than 2018 and 2019, but Georgia points out that studies indicate that people plan to work from home more in the future than they did before the pandemic, therefore VMT are not expected to return to pre-pandemic levels. *See* Georgia Commute Options, *COVID–19 Commute Impact Report* (Dec. 2021), *available at https://gacommuteoptions.com/home/return-to-office/covid-19-commute-impact-report/.* Georgia also points out that, despite preliminary traffic and congestion data from the Georgia Department of Transportation, TomTom International BV (TomTom) and the Federal Highway Administration indicating increased VMT from 2020 to 2021, ozone design values are still decreasing. *See* Atlanta Regional Commission, *How Traffic Patterns in ATL Have Changed During Pandemic, https://atlantaregional.org/whats-next-atl/articles/how-traffic-patterns-in-atl-have-changed-during-pandemic/;* TomTom, Atlanta Traffic, *https://www.tomtom.com/en_gb/traffic-index/atlanta-traffic/.*

Rule 391–3–1–.02(2)(yy) requires a case-by-case RACT determination for sources of NO_X emissions with the potential to emit more than 25 tons of NO_X per year in Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale Counties and for sources that have the potential to emit more than 100 tons of NO_X per year in Barrow, Bartow, Carrol, Hall, Newton, Spalding, and Walton Counties.

Rule 391–3–1–.02(2)(jjj) regulates NO_X emissions from coal-fired external combustion devices that generate steam for electricity generation. This rule established a NO_X emission standard of 0.13 pound per million British thermal unit (lb/MMBtu) from May 1 through September 30 (starting in 2003) averaged across affected sources in Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Floyd, Forsyth, Fulton, Gwinnett, Heard, Henry, Paulding, and Rockdale Counties.[7]

Rule 391–3–1–.02(2)(lll) applies to fuel-burning equipment with maximum design head input capacities greater than or equal to 10 million British thermal units per hour (MMBtu/hr) and less than or equal to 250 MMBtu/hr in 45 counties, including all the counties in the Atlanta Area and counties in the surrounding area. It established a compliance date for the ozone standard beginning on May 1, 2000, and it affects all fuel burning equipment installed from that date forward. This rule also affects future possible emissions for new or modified sources by requiring the operation of equipment during the control season to meet emission limits based on the use of natural gas.

Rule 391–3–1–.02(2)(nnn) establishes ozone season NO_X emissions limits for stationary gas turbines greater than 25 megawatts (MW) in 45 counties, including the counties in the Atlanta Area and counties in the surrounding area. This rule requires combustion turbines permitted on or after April 1, 2000, to emit no more than 6 ppm NO_X at 15 percent oxygen during the period of May 1 through September 30 of each year. This period falls within the broader ozone season.

Rule 391–3–1–.02(2)(rrr) is a RACT rule for small fuel-burning equipment. It requires that in order to reduce NO_X emissions, an annual tune-up and the burning of natural gas, liquefied petroleum gas, or propane be conducted on individual fuel burning equipment in the Atlanta Area during ozone season for units not subject to Rule 391–3–1–.02(2)(jjj) or 391–3–1–.02(2)(lll). This includes individual fuel-burning equipment located at facilities in Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, or Rockdale County with NO_X emissions exceeding 25 tons per year (tpy) and at facilities in Barrow, Bartow, Carroll, Hall, Newton, Spalding or Walton County with NO_X emissions exceeding 100 tpy; the individual fuel-burning equipment has potential emissions of NO_X equal to or exceeding 1 tpy; and the individual fuel-burning equipment either has a maximum design head input capacity of less than 100 MMBtu/hr or less than 10 MMBtu/hr, depending on when it was installed.

Rule Chapter 391–3–20 is the Enhanced Inspection and Maintenance (Vehicle Emissions I/M Program). EPA fully approved the State's enhanced I/M program and adopted it into the SIP in January 2000 and updated it in April 2009.[8] *See* 65 FR 4133 (January 26, 2000) and 74 FR 17783 (April 17, 2009), respectively. The program applies to Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale Counties.

Federal measures enacted in recent years have also resulted in permanent emission reductions in the Atlanta Area. The Federal measures that have been implemented include the following:

Clean Air Interstate Rule (CAIR)/ Cross-State Air Pollution Rule (CSAPR). CAIR created regional cap-and-trade programs to reduce sulfur dioxide (SO_2) and NO_X emissions in 28 eastern states, including Georgia, that contributed to downwind nonattainment and maintenance of the 1997 8-hour ozone NAAQS and the 1997 Fine Particulate Matter ($PM_{2.5}$) NAAQS. *See* 70 FR 25162 (May 12, 2005). In 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur in *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008) to preserve the environmental benefits provided by CAIR.

On August 8, 2011, *see* 76 FR 48208, acting on the D.C. Circuit's remand, EPA promulgated CSAPR to address the issues raised by the remand of CAIR. CSAPR addressed the two NAAQS at issue in CAIR and additionally addressed the good neighbor provision for the 2006 $PM_{2.5}$ NAAQS.[9] CSAPR required 28 states to reduce SO_2 emissions, annual NO_X emissions, or ozone season NO_X emissions that significantly contribute to other states' nonattainment or interfere with other states' abilities to maintain the 1997 $PM_{2.5}$ and ozone standards and the 2006 $PM_{2.5}$ standard.[10] The FIPs required EGUs in the covered states, including Georgia, to participate in regional trading programs to achieve the necessary emissions reductions. CSAPR was the subject of an adverse decision by the D.C. Circuit in August 2012.[11] However, this decision was reversed in April 2014 by the Supreme Court, which largely upheld the rule, including EPA's approach to addressing interstate transport in CSAPR. *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489 (2014) (*EME Homer City I*). The rule was remanded to the D.C. Circuit to consider claims not addressed by the Supreme Court. *Id.* In July 2015, the D.C. Circuit generally affirmed EPA's interpretation of various statutory provisions and EPA's technical decisions, *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (2015) (*EME Homer City II*), but the court remanded the rule without vacatur for reconsideration of EPA's emissions budgets for certain states, which the court found may have over-controlled those states' emissions with respect to the downwind air quality problems to which the states were linked. *Id.* at 129–30, 138. For more information on the legal issues associated with CSAPR and the Supreme Court and D.C. Circuit's decisions in the EME Homer City litigation, refer to the preamble of the CSAPR Update.[12] On October 13, 2017, EPA approved into the Georgia SIP, the Group 1 NO_X ozone season trading program budgets and implementing

[7] Plant Bowen operates the only remaining coal-fired EGU in the Atlanta Area. In order to comply with Rule 391–3–1–.02(2)(jjj) Plant Bowen incorporated a 0.07 lb/MMBtu permit limit from May 1—September 30 into its Title V permit and has been operating at or below this limit each year from May 1—September 30 since 2003.

[8] EPA has recently proposed to approve a revision to the Georgia I/M program. *See* 87 FR 41080 (July 11, 2022).

[9] *See* 76 FR 48208.

[10] CSAPR was revised by several rulemakings after its initial promulgation in order to revise certain states' budgets and to promulgate FIPs for five additional states addressing the good neighbor obligation for the 1997 ozone NAAQS. *See, e.g.,* 76 FR 80760 (December 27, 2011); 77 FR 10324 (February 21, 2012); 77 FR 34830 (June 12, 2012). Additional revisions to CSAPR are discussed in the following paragraph.

[11] On August 21, 2012, the D.C. Circuit issued a decision in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), vacating CSAPR. The EPA sought review with the D.C. Circuit en banc and the D.C. Circuit declined to consider EPA's appeal en banc. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. January 24, 2013), ECF No. 1417012 (denying EPA's motion for rehearing en banc).

[12] Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504, 74511 (October 26, 2016).

regulations to address interstate transport for the 1997 8-hour ozone standard and removed from Georgia's SIP those state trading program rules adopted to comply with CAIR. *See* 82 FR 47930.

From 2016 to 2021, EPA established multiple rules to address interstate transport of ozone pollution respecting the 2008 8-hour ozone NAAQS including the CSAPR Update in 2016, *see* 81 FR 74504, the Close Out rule in 2018, *see* 83 FR 65878, and the Revised CSAPR Update in 2021, *see* 86 FR 23054. For additional policy and legal details including litigation regarding the 2008 8-hour ozone interstate transport considerations, please refer to the preamble of the final Revised CSAPR Update. *See* 86 FR 23054. EGUs in Georgia were not found to significantly contribute to nonattainment or interfere with maintenance in downwind states for the 2008 8-hour standard.

On April 6, 2022, EPA published in the **Federal Register** a notice of proposed rulemaking titled the ''Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard,'' which if finalized, would fully resolve the covered states' CAA interstate transport obligations for the 2015 Ozone NAAQS.[13] The proposed rule addresses 26 states' obligations to eliminate significant contribution to nonattainment, or interference with maintenance, for the 2015 standard in other states. Georgia is not within the scope of that proposed rule because EPA found that emissions from sources in Georgia will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in another state and approved Georgia's 2015 ozone transport SIP. *See* 86 FR 68413 (December 2, 2021).

Tier 2 vehicle and fuel standards. Implementation began in 2004 and as newer, cleaner cars enter the national fleet, these standards continue to significantly reduce NO_X emissions.

These standards require all passenger vehicles in any manufacturer's fleet to meet an average standard of 0.07 grams of NO_X per mile. Additionally, in January 2006, the sulfur content of gasoline was required to be on average 30 ppm which assists in lowering the NO_X emissions. EPA expects that these standards will reduce NO_X emissions from vehicles by approximately 74 percent by 2030, translating to nearly 3 million tons annually by 2030.[14]

Tier 3 vehicle and fuel standards. Implementation began in 2017 and will continue to phase in through 2025. These standards set new vehicle emissions standards and lower the allowed sulfur content of gasoline in order to reduce air pollution from passenger cars and trucks. Tailpipe and evaporative emissions will be reduced for passenger cars, light-duty trucks, medium-duty passenger vehicles, and some heavy-duty vehicles. The Tier 3 vehicle standards for light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles will be a fleet average standard of 0.03 gram of non-methane organic gases (NMOG) + NO_X per mile as measured on the Federal Test Procedure (FTP), and a fleet average standard 0.05 gram of NMOG + NO_X per mile as measured on the Supplemental Federal Test Procedure (SFTP). The Tier 3 vehicle standards for heavy-duty pick-ups and vans will be 0.178 gram per mile of non-methane organic gases (NMOG) + NO_X for Class 2b vehicles and 0.247 gram per mile of NMOG + NO_X for Class 3 vehicles, as measured on the FTP. This standard required Federal gasoline to meet an annual average standard of 10 ppm of sulfur by January 1, 2017. The Tier 3 tailpipe standards for light-duty vehicles will reduce the fleet average standards for the sum of NMOG and NO_X, NMOG + NO_X by approximately 80 percent from the current fleet average standards, and will reduce the per-vehicle particulate matter (PM) standards by 70 percent. The Tier 3 program for heavy-duty vehicles will reduce the fleet average standards for NMOG + NO_X and PM by approximately 60 percent from the current fleet average standards. The Tier 3 program is also reducing the evaporative VOCs by approximately 50 percent from the current standards, and these standards apply to all light-duty and on-road gasoline-powered heavy-duty vehicles.

Large non-road diesel engines rule & ultra low-sulfur diesel rule. This rule was promulgated in 2004 and was phased in from 2008 to 2014. This rule reduces the sulfur content in the nonroad diesel fuel and reduces NO_X, VOC, PM, and CO emissions. This rule applies to diesel engines and fuel used in industries such as construction, agriculture, and mining. It is estimated that compliance with this rule will cut NO_X emissions from non-road diesel engines by up to 90 percent nationwide.

Medium and heavy-duty vehicle fuel consumption and GHG standards. These standards have reduced and will continue to reduce greenhouse gas emissions and increase fuel efficiency for model year 2014 through 2018 combination tractors (semi-trucks), heavy-duty pickup trucks and vans, and vocational vehicles. These standards required on-road vehicles to achieve reductions in CO emissions and fuel consumption by 2018. The decrease in fuel consumption may result in NO_X emission reductions.

Heavy-duty gasoline and diesel highway vehicle standards & ultra low-sulfur diesel rule. EPA issued this rule in 2001. *See* 66 FR 5002. This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007; it further reduces the highway diesel fuel sulfur content to 15 ppm, leading to additional reductions in combustion NO_X and VOC emissions. EPA expects that this rule will achieve a 95 percent reduction in NO_X emissions from diesel trucks and buses and will reduce NO_X emissions by 2.6 million tons by 2030 when the heavy-duty vehicle fleet is completely replaced with newer heavy-duty vehicles that comply with these emission standards.[15]

Nonroad spark-ignition engines and recreational engines standards. The nonroad spark-ignition and recreational engine standards, effective in July 2003, regulate NO_X, hydrocarbons, and CO from groups of previously unregulated nonroad engines. These engine standards apply to large spark-ignition engines (*e.g.,* forklifts and airport ground service equipment), recreational vehicles (*e.g.,* off-highway motorcycles and all-terrain-vehicles), and recreational marine diesel engines sold in the United States and imported after the effective date of these standards. Now that all of the nonroad spark-ignition and recreational engine standards are fully implemented, there has been an overall 72 percent reduction in hydrocarbons, 80 percent reduction in NO_X, and 56 percent reduction in CO emissions. *See* 73 FR 59034 (October 8, 2008). The controls resulting from these standards reduce ambient concentrations of ozone, CO, and $PM_{2.5}$.

National program for greenhouse gas (GHG) emissions and fuel economy standards. The Federal GHG and fuel economy standards apply to light-duty cars and trucks in model years 2012–2016 (phase 1) and 2017–2025 (phase 2). The final standards are projected to result in an average industry fleet-wide level of 163 grams/mile in carbon dioxide (CO_2) which is equivalent to 54.5 miles per gallon if achieved exclusively through fuel economy improvements. The fuel economy standards result in less fuel being

[13] *See* 87 FR 20036.

[14] EPA, Regulatory Announcement, EPA420–F–99–051 (December 1999), *available at http://www.epa.gov/tier2/documents/f99051.pdf.*

[15] *See* 66 FR 5002, 5012 (January 18, 2001).

consumed, and therefore, slightly less VOC emissions released. EPA issued the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule on April 30, 2020, as an update to Phase 2. *See* 84 FR 24174 (April 30, 2020). This new standard sets fuel economy and CO_2 standards that increase 1.5 percent in stringency each year from model years 2021 through 2026 and applies to passenger cars and light trucks. On February 8, 2021, the D.C. Circuit issued an order granting the Federal Government's motion to stay litigation over the SAFE Vehicles Rule. *See* Order, *Union of Concerned Scientists* v. *NHTSA,* No. 19–1230 (D.C. Cir. Feb. 8. 2021)).

Boiler and Reciprocating Internal Combustion Engine (RICE) National Emissions Standards for Hazardous Air Pollutants (NESHAP). The NESHAP for industrial, commercial, and institutional boilers (40 CFR part 63, subpart DDDDD) and the NESHAP for RICE (40 CFR part 63, subpart ZZZZ) are projected to reduce VOC emissions. The former applies to boiler and process heaters located at major sources of hazardous air pollutants (HAPs) that burn natural gas, fuel oil, coal, biomass, refinery gas, or other gas and had a compliance deadline of January 31, 2016. The latter applies to existing, new, or reconstructed stationary RICE located at major or area sources of HAPs, excluding stationary RICE being tested at a stationary RICE test cell, and has various compliance dates from August 16, 2004, to October 19, 2013, depending on the type of source and date of construction or reconstruction.

Utility Mercury Air Toxics Standards (MATS) and New Source Performance Standards (NSPS). The MATS for coal- and oil-fired electric generation units (EGU) and the NSPS for fossil-fuel-fired electric utility steam generating units were published on February 16, 2012. *See* 77 FR 9304. The purpose of this rule is to reduce mercury and other toxic air pollutant emissions from coal- and oil-fired EGUs, 25 MW or more, that generate electricity for sale and distribution through the national electric grid to the public. The NSPS has revised emission standards for NO_X, SO_2, and PM that apply to new coal- and oil-fired power plants. The MATS compliance date for existing sources was April 16, 2015. However, all coal-fired EGUs in Georgia received a one-year compliance extension. The MATS rule has resulted in further reductions of both NO_X and SO_2 emissions as well as emissions of mercury and other air toxics.

EPA proposes to find that the improvements in air quality in the Atlanta Area are due to real, permanent and enforceable reductions in NO_X and VOC emissions resulting from the Federal and SIP-approved state measures discussed above.

Criterion (4)—The Atlanta Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. *See* CAA section 107(d)(3)(E)(iv). In conjunction with its request to redesignate the Atlanta Area to attainment for the 2015 8-hour ozone NAAQS, Georgia submitted a SIP revision to provide for the maintenance of the 2015 8-hour ozone NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA has made the preliminary determination that this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Pursuant to section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the remainder of the 20-year period following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future 2015 8-hour ozone violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring plan, verification of continued attainment, and a contingency plan. As discussed more fully below, EPA has preliminarily determined that Georgia's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Georgia SIP.

b. Attainment Emissions Inventory

As discussed above, the Atlanta Area has an attaining design value for the 2015 8-hour ozone NAAQS based on quality-assured monitoring data for the 3-year period from 2018–2020.[16] The Atlanta Area design value continues to meet the 2015 8-hour ozone NAAQS based on quality-assured monitoring data for the 3-year period from 2019–2021. Georgia selected 2018 as the base year (*i.e.,* attainment emissions inventory year) for developing a comprehensive emissions inventory for NO_X and VOC, for which projected emissions could be developed for 2021, 2024, 2027, and 2030. The attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 2015 8-hour ozone NAAQS. Georgia began development of the attainment inventory by first generating a baseline emissions inventory for the Area. The 2018 base year emissions were projected to 2033 for EGU point sources, non-EGU point sources, area sources, fires (both agricultural burning and land clearing, and wildfire and prescribed burning), non-road mobile sources, and on-road mobile sources. The State projected summer day emission inventories using projected rates of growth in population, traffic, economic activity, and other parameters. In addition to comparing the final year of the plan (2033) to the base year (2018), Georgia compared interim years to the baseline to demonstrate that these years are also expected to show continued maintenance of the 2015 8-hour ozone standard.

The emissions inventory is composed of four major types of sources: Point, non-point, on-road, and non-road mobile. Complete descriptions of how the State developed these inventories are located in Appendix A–3 through Appendix A–10 of the February 25, 2022, SIP submittal.

Point Sources

Georgia provided point source emissions for EGU and non-EGU stationary sources with emissions equal to or exceeding 250 tpy of VOC or 2,500 tpy of NO_X in Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett, and Henry Counties. The 2017 emissions inventory (most recent triannual National Emissions Inventory (NEI) year) includes all stationary sources whose actual emissions equal or exceed 100 tpy of VOC or 100 tpy of NO_X. Therefore, 2017 point source emissions for the smaller point sources that were not included in the 2018 inventory were added by Georgia to provide a

[16] Final air quality design values for all criteria pollutants, including ozone, are available at *https://www.epa.gov/air-trends/air-quality-design-values.* These design values are calculated in accordance with 40 CFR part 50.

comprehensive 2018 point source emissions inventory.

EGU point source emissions for the two power plants in the Area (Plant Bowen, Plant McDonough/Atkinson) are tabulated from data collected from Georgia Power during the 2018 emission data collection process.[17] Georgia projected 2033 NO_X and VOC emissions for Plant Bowen and Plan McDonough/Atkinson from the 2018 emissions using growth factors based on fuel consumption.

For non-EGU emissions, Georgia calculated 2018 and 2033 NO_X and VOC summer day emissions using 2018 data submitted by facilities during the 2018 GA EPD emission data collection process. The basis for Georgia's no-growth assumption for non-EGU point source emissions from 2018–2033 is discussed in the SIP submittal.

Non-Point Sources

Since 2018 is not an NEI year, GA EPD estimates 2018 area source emissions as an interpolation between 2016 and 2023 emissions from EPA's 2016 emissions modeling platform v1.[18] GA EPD multiplied the 2018 area source emissions with growth factors to estimate 2033 area source emissions. These growth factors were calculated using 2016, 2023, and 2028 emissions in EPA's 2016 modeling platform v1.

GA EPD developed 2018 agricultural burning and land clearing emissions using 2018 burning records from the Georgia Forestry Commission (GFC) and EPA agricultural burning emission factors provided during the development of 2011 agricultural burning emissions for the 2011 NEI. The emissions for land clearing were estimated using the same method used in SEMAP 2007 [19] and the 2011 NEI fire inventory. Emissions in future year 2033 are projected to be the same as base year 2018. Summer day emissions from agricultural burning and land clearing were calculated using emissions during the month of July, and Georgia used the same formula it used to calculate summer day emissions for non-EGU sources.

GA EPD used 2018 burning records from the GFC, the United States Forest Service, the United States Fish & Wildlife Service, and military bases to determine 2018 wildfire and prescribed burning emissions, again using the same method used in SEMAP 2007 [20] and the 2011 NEI fire inventory. Summer day emissions from wildfires and prescribed burning were calculated using daily emissions from fires that occurred during the 20 weekdays in July and then dividing the total emissions during July weekdays by 20 days. GA EPD assumed that emissions from agricultural burning, land clearing, wildfires, and prescribed burning remained constant from 2018–2033.

On-Road Sources

The Atlanta Regional Commission developed 2018 and 2033 on-road mobile source emissions using EPA's MOVES3 mobile source emissions model. GA EPD used best available local data for model inputs such as population, VMT, road type distribution, average speed distribution, starts, ramp fractions, age distributions, I/M inputs, and fuel properties. The model was run separately for two different groups of nonattainment counties in the Atlanta Area: one six-county group consisting of Clayton, Cobb, Dekalb, Fulton, Gwinnett, and Henry; and Bartow County alone. The Area was broken into two groups because of differences in I/M control programs and summer fuel blends (volatility levels). Running the model separately addresses the impacts from different inputs by county and is consistent with modeling for future transportation conformity demonstrations.[21] The six-county group has an I/M program and a summer fuel blend with Reid Vapor Pressure (RVP, a measure of volatility) limit of 8.8 psi for 2018. Bartow County does not have an I/M program and has a summer fuel blend with a RVP limit of 10.0 psi. All seven counties in the Atlanta Area will have the same fuel blend by 2033.

Non-Road Sources

Some non-road mobile emissions in the U.S. are from the non-road equipment segment (*i.e.,* agricultural equipment, construction equipment, lawn and garden equipment, and recreational vehicles, such as boats and jet-skis). Georgia calculated 2018 and 2033 emissions from non-road sources other than marine, aircraft, and locomotives, using the NONROAD portion of EPA's MOVES3 model.[22] MOVES3 defaults were used with 2018 meteorological data based on Atlanta Hartsfield Jackson International Airport meteorological data. Fuel properties reflected the current Georgia gasoline formulation.[23]

For 2018 locomotive emissions, Georgia used the 2017 NEI [24] because locomotive fuel consumption changed little from 2017 to 2018. Georgia projected 2033 locomotive emissions from 2018 emissions using growth and annual factors. Summer day and annual emissions for 2018 and 2033 from aircraft at Atlanta Hartsfield Jackson International Airport were provided by KB Environmental Sciences on behalf of the City of Atlanta Department of Aviation and are included in Appendix A–10 of the SIP submittal. Other aircraft emissions were projected from the 2017 NEI version 2 for 2018 and were projected for 2033 using growth factors. The growth factors were based on landing and take-off operation projections available from the Federal Aviation Administration's Terminal Area Forecasts. Growth rates for military aircraft stayed at 2017 levels. Georgia did not include marine emissions in the inventory because no commercial marine vessels operate in the Atlanta Area.

The 2018 base year inventory for the Area, as well as the projected inventories for other years, were developed consistent with EPA guidance and are summarized in Tables 2 through 4 of the following subsection discussing the maintenance demonstration.

c. Maintenance Demonstration

The maintenance plan associated with the redesignation request includes a maintenance plan that does all of the following:

(i) Shows compliance with and maintenance of the 2015 8-hour ozone NAAQS by providing information to support the demonstration that current and future emissions of NO_X and VOC remain at or below 2018 emissions levels.

(ii) Uses 2018 as the attainment year and includes future emissions inventory projections for 2021, 2024, 2027, and 2030. The 2027 emissions were calculated by linear interpolation

[17] Georgia's emission data collection process is discussed at *https://epd.georgia.gov/forms-permits/air-protection-branch-forms-permits/air-emissions/submit-emissions-inventory.*

[18] Information regarding the 2016 emissions modeling platform v6.1 is located at *https://www.epa.gov/air-emissions-modeling/2016v1-platform.*

[19] *See* AMEC, Development of the 2007 Base Year and Typical Year Fire Emission Inventory for the Southeastern States Air Resource Managers, Inc. (Final Report) (2012).

[20] *Id.*

[21] See ''Ozone 2015 Maintenance Plan Modeling Assumptions'' in Appendix A–11 of Georgia's submittal for more details.

[22] Georgia used MOVES3. More information on the MOVES3 model is available at *https://www.epa.gov/moves/latest-version-motor-vehicle-emission-simulator-moves.*

[23] Many of the counties in the Atlanta Area must use gasoline with a reduced Reid Vapor Pressure (RVP) of 7.8 pounds per square inch during some of the summer months. This reduced RVP reduces VOC emissions. For further information on RVP, see *http://www.epa.gov/gasoline-standards/gasoline-reid-vapor-pressure.*

[24] See Appendix A–9 of the February 25, 2022 SIP submittal.

between 2018 and 2033; 2024 emissions were calculated by linear interpolation between 2018 and 2027; and 2021 emissions were calculated by linear interpolation between 2018 and 2024; and 2030 emissions were calculated by linear interpolation between 2027 and 2033.

(iii) Identifies an ''out year'' at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, NO_X and VOC MVEBs were established for the last year (2033) of the maintenance plan as well as for an interim year of 2018 (see Section VI, below).

(iv) Provides actual 2018 and projected emissions inventories, in tons per summer day (tpsd), for the Atlanta Area, as shown in Tables 2 through 4, below.

TABLE 2—ACTUAL AND PROJECTED AVERAGE SUMMER DAY NO_X EMISSIONS FOR THE ATLANTA AREA

[tpsd] *

Source	2018	2021	2024	2027	2030	2033
Point	28.02	27.82	27.62	27.42	27.22	27.02
Non-point	2.70	2.70	2.70	2.70	2.70	2.70
On-road	99.99	87.27	74.56	61.85	49.14	36.43
Non-road	49.22	48.70	48.18	47.67	47.15	46.63
Total	179.92	166.49	153.06	139.63	126.20	112.77

* The emissions represented in the table may be slightly different than the inventories in the submittal based on rounding convention.

TABLE 3—ACTUAL AND PROJECTED AVERAGE SUMMER DAY VOC EMISSIONS FOR THE ATLANTA AREA

[tpsd] *

Source	2018	2021	2024	2027	2030	2033
Point	8.07	8.07	8.07	8.06	8.06	8.06
Non-point	23.36	23.88	24.40	24.91	25.43	25.95
On-road	54.00	47.55	41.09	34.64	28.18	21.73
Non-road	37.89	38.53	39.17	39.80	40.44	41.08
Total	123.32	118.03	112.73	107.41	102.11	96.82

* The emissions represented in the table may be slightly different than the inventories in the submittal based on rounding convention.

TABLE 4—EMISSION ESTIMATES FOR THE ATLANTA AREA

[tpsd] *

Pollutant	2018	2021	2024	2027	2030	2033	Safety margins
NO_X	179.92	166.49	153.06	139.63	126.20	112.77	67.16
VOC	123.32	118.03	112.73	107.41	102.11	96.82	26.50

* The emissions represented in the table may be slightly different than the inventories in the submittal based on rounding convention.

Tables 2 through 4 summarize the 2018 and future projected emissions of NO_X and VOC in the Atlanta Area. In situations where local emissions were the primary contributor to nonattainment, such as the Atlanta Area, if the future projected emissions in the nonattainment area remain at or below the baseline emissions in the nonattainment area, then the related ambient air quality standard should not be exceeded in the future. Georgia has projected emissions as described previously and determined that emissions in the Atlanta Area will remain below those in the attainment year inventory for the duration of the maintenance plan.

As discussed in Section VI, below, a safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. Georgia selected 2018 as the attainment emissions inventory year for the Atlanta Area and calculated safety margins for 2033. Because the initial MVEB year of 2018 is also the base year for the maintenance plan inventory, there is no safety margin for 2018, therefore, no adjustments were made to the MVEB for 2018. The State has allocated a portion of the safety margin to the 2033 MVEB for the Atlanta Area.

TABLE 5—SAFETY MARGINS FOR THE ATLANTA AREA

Year	NO_x (tpsd)	VOC (tpsd)
2033	67.16	26.50

The State has decided to allocate a portion of the available safety margin to the 2033 MVEBs to allow for, among other things, unanticipated growth in VMT and changes and uncertainty in vehicle mix assumptions that will influence the emission estimations. Georgia has allocated 17.57 tpd of the available NO_X safety margin to the 2033 NO_X MVEB and 13.27 tpd of the available VOC safety margin to the 2033 VOC MVEB. After allocation of the available safety margin, the remaining safety margin is 49.59 tpd for NO_X and 13.23 tpd for VOC. This allocation and the resulting available safety margin for the Atlanta Area are discussed further in Section VI along with the MVEBs to be used for transportation conformity purposes.

d. Monitoring Network

There currently are nine AQS monitors measuring ozone in the

Atlanta Area. Georgia will continue to operate the monitors in the Atlanta Area in compliance with 40 CFR part 58 and has thus addressed the requirement for the monitoring. EPA approved Georgia's 2021 ambient air monitoring network plan on October 19, 2021.

e. Verification of Continued Attainment

Georgia, through GA EPD, has the legal authority to enforce and implement the maintenance plan for the Area. This includes the authority to adopt, implement, and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Additionally, under the Air Emissions Reporting Requirements (AERR) (40 CFR part 51, subpart A), every three years GA EPD is required to develop a comprehensive, annual, statewide emissions inventory that is due twelve to eighteen months after the completion of the inventory year. EPD will update the AERR inventory every three years and will use the updated emissions inventory to track the progress of maintenance of the NAAQS.

f. Contingency Measures in the Maintenance Plan

Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and a procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the February 25, 2022, submittal, Georgia states that the minimum requirement for contingency provisions is the implementation of all measures that were contained in the SIP for the Area before the redesignation and that all such measures are in effect for the Area. Georgia also commits to use emission inventory and air quality monitoring data as indicators to determine whether contingency measures will be implemented. The contingency measures in the maintenance plan include a two-tiered triggering mechanism to determine when a contingency measure is needed and a process of developing and implementing appropriate control measures.

A Tier 1 trigger will apply where a violation of the 2015 8-hour ozone standard has not occurred, but where the State finds monitored ozone concentrations indicating that a violation may be imminent. The Tier 1 trigger date will be 60 days after the State observes a 4th highest value of 0.071 ppm or greater at a single monitor for which the previous ozone season had a 4th highest value of 0.071 ppm or greater. If Tier 1 is triggered, Georgia will develop a plan identifying additional voluntary measures to be implemented to remedy the situation that may include the following measures to be implemented to remedy the situation. The plan may include the following measures or any other measure deemed appropriate and effective at the time the selection is made: additional Clean Air Force Campaign strategies; additional Georgia Department of Transportation marketing campaigns; implementation of diesel retrofit programs, including incentives for performing retrofits for fleet vehicle operations; alternative fuel programs for fleet vehicle operations; gas can and lawnmower replacement programs; or voluntary engine idling reduction programs.[25] If the 4th highest exceedance occurs early in the ozone season, GA EPD will work with entities identified in the plan to determine if measures can be implemented during the current season; otherwise, GA EPD will implement the plan for the following ozone seasons. No later than May 1 of the year following the trigger, GA EPD will complete analyses to begin adoption of necessary rules for ensuring attainment and maintenance of the 2015 8-hour ozone NAAQS.

A Tier II trigger will apply when any quality assured ozone design value is equal to or greater than 0.071 ppm at a monitor in the Atlanta Area which would be a violation of the 2015 ozone NAAQS. The Tier II trigger date will be 60 days after the State observes a 4th highest value that, when averaged with the two previous ozone seasons' fourth highest values, would result in a three-year average equal to or greater than 0.071 ppm. Alternatively, a Tier II trigger is activated if the periodic emission inventory updates reveal excessive or unanticipated growth greater than 10 percent in NO_X or VOC emissions over the attainment or intermediate emissions inventories for the Atlanta Area. Once a Tier II trigger is activated, GA EPD will conduct an analysis based on quality-assured ambient data and, within 24 months of the trigger, will implement at least one contingency measure. In order for more time to be allowed, Georgia must submit to EPA a demonstration that more time is needed, and EPA must approve such demonstration.

If the comprehensive analysis determines that emissions from the Area are contributing to the trigger condition, GA EPD will evaluate those measures as specified in CAA section 172 for control options as well as other available measures. If a new measure or control is already promulgated and scheduled to be implemented at the Federal or state level, and that measure or control is determined to be adequate, the State may conclude that additional local controls may be unnecessary. At a minimum, section 175A contingency plans must include a requirement that the state will implement all measures that were contained in the SIP before the redesignation. Currently, all such measures are in effect for the Atlanta Area; however, at the time of a Tier II trigger, an evaluation of those measures such as RACT, can be performed to determine if those measures are adequate or up-to-date. In addition to these measures, contingency measures will be selected from the following types of measures or from any other measures deemed appropriate and effective at the time that the selection is made:

- Reasonably Available Control Measures (RACM) for sources of VOC and NO_X;
- RACT for point sources of VOC and NO_X, specifically the adoption of new and revised RACT rules based on Groups II, III, and IV control technique guidelines;
- Expansion of RACM/RACT to area(s) of transport within the State;
- Other measures deemed appropriate at the time as a result of advances in control technologies; and
- Additional NO_X reduction measures yet to be identified.

EPA preliminarily finds that the maintenance plan adequately provides the five basic required components of a maintenance plan: the attainment

[25] If the State adopts a voluntary emission reduction measure as a contingency measure necessary to attain or maintain the NAAQS, EPA will evaluate approvability in accordance with relevant Agency guidance regarding the incorporation of voluntary measures into SIPs. *See, e.g.,* Memorandum from Richard D. Wilson, Acting Administrator for Air and Radiation, to EPA Regional Administrators re: Guidance on Incorporating Voluntary Mobile Source Emission Reduction programs in State Implementation Plans (SIPs) (October 24, 1997); and EPA's policy document, ''Incorporating Emerging and Voluntary Measures in a State Implementation Plan (SIP)'' (September 2004).

emissions inventory, maintenance demonstration, monitoring plan, verification of continued attainment, and a contingency plan. Therefore, EPA proposes to find that the maintenance plan SIP revision submitted by Georgia for the Atlanta Area meets the requirements of section 175A of the CAA and is approvable.

VI. EPA's Analysis of Georgia's Proposed NO_X and VOC MVEBs

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously designated as nonattainment for a particular NAAQS but have since been redesignated to attainment with an approved maintenance plan for that NAAQS.

Under the CAA, states are required to submit at various times control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including reasonable further progress and attainment demonstration requirements) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB must be established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule. *See* 58 FR 62188. The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

After interagency consultation with the transportation partners for the Atlanta Area, Georgia has developed MVEBs for NO_X and VOC for the Area. Georgia developed these MVEBs for the last year of the maintenance plan (2033) and for the interim year of 2018. Because the interim MVEB year of 2018 is also the base year for the maintenance plan inventory, there is no safety margin; therefore, no adjustments were made to the MVEBs for 2018. Under 40 CFR 93.101, the term ''safety margin'' is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. The NO_X and VOC MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model vehicle miles traveled, and new emission factor models. The NO_X and VOC MVEBs for the Area are identified in Table 5, below.

TABLE 6—ATLANTA AREA NO_X AND VOC MVEBS

[tpsd]

	2018	2033
NO_X On-Road Emissions	99.99	37.57
NO_X Safety Margin Allocated to MVEB	.....	17.57
NO_X MVEB	99.99	54
VOC On-Road Emissions	54.00	21.73
VOC Safety Margin Allocated to MVEB	.....	13.27
VOC MVEB	54.00	35

*The emissions represented in the table may be slightly different than the inventories in the submittal based on rounding convention.

Georgia has chosen to allocate a portion of the available safety margin to the 2033 NO_X and VOC MVEBs for the Area based on the worse-case 2033 daily motor vehicle emissions projection. The worst-case projection for NO_X is 48 percent (17.57 tpd) above the projected 2033 NO_X on-road emissions, and the worst-case projection for VOC is 61 percent (13.27 tpd) above the 2033 VOC on-road emissions. Georgia therefore allocated 17.57 tpd of the NO_X safety margin to the 2033 NO_X MVEB and 13.27 tpd of the VOC safety margin to the 2033 MVEB. The remaining safety margins for 2033 are 49.59 tpd and 13.23 tpd for NO_X and VOC, respectively.

Through this proposed rulemaking, EPA is proposing to approve the MVEBs for NO_X and VOC for years 2018 and 2033 for the Area because EPA has determined that the Area maintains the 2015 8-hour ozone NAAQS with the emissions at the levels of the budgets. If the MVEBs for the Area are approved or found adequate (whichever comes first), they must be used for future conformity determinations.

VII. EPA's Adequacy Determination for the Proposed NO_X and VOC MVEBs

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA may affirmatively find the MVEB contained therein adequate for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initiated outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments in an action titled ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Stanards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004. *See* 69 FR 40004. Additional information on the adequacy process for transportation conformity purpose is available in the June 30, 2003, proposed rule titled ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes.'' *See* 68 FR 38974, 38984.

As discussed earlier, Georgia's maintenance plan includes NO_X and VOC MVEBs for the Atlanta Area for interim year 2018 and 2033, the last year of the maintenance plan. EPA reviewed the NO_X and VOC MVEBs through the adequacy process as described in Section I.

EPA intends to make its determination on the adequacy of the

2018 and 2033 MVEBs for the Area for transportation conformity purposes in the near future by completing the adequacy process that was started on February 11, 2022. If EPA finds the 2018 and 2033 MVEBs adequate or approves them, the new MVEBs for NO_X and VOC must be used for future transportation conformity determinations. For required regional emissions analysis years that involve 2018 through 2032, the new 2018 MVEBs will be used, and for years 2033 and beyond, the applicable budgets will be the new 2033 MVEBs established in the maintenance plan.

VIII. Effect of EPA's Proposed Actions

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval. Approval of Georgia's redesignation request would change the legal designation of Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett, and Henry Counties, in the Atlanta Area, found at 40 CFR part 81, from nonattainment to attainment for the 2015 8-hour ozone NAAQS. Approval of Georgia's associated SIP revision would also incorporate a plan for maintaining the 2015 8-hour ozone NAAQS in the Area through 2033 into the Georgia SIP. The maintenance plan establishes NO_X and VOC MVEBs for the 2018 and 2033 for the Area and includes contingency measures to remedy any future violations of the 2015 8-hour ozone NAAQS and procedures for evaluating potential violations.

IX. Proposed Actions

EPA is proposing to: (1) approve the maintenance plan for the Atlanta Area, including the NO_X and VOC MVEBs for 2018 and 2033, and incorporate it into the Georgia SIP, and (2) approve Georgia's redesignation request for the 2015 8-hour ozone NAAQS for the Area. Further, as part of this proposed action, EPA is also describing the status of its adequacy determination for the NO_X and VOC MVEBs for the 2018 and 2033 in accordance with 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy determination for the MVEBs or the effective date for the final rule for this action, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NO_X and VOC MVEBs pursuant to 40 CFR 93.104(e)(3).

If finalized, approval of the redesignation request would change the official designation of Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett, and Henry Counties, in Georgia for the 2015 8-hour ozone NAAQS from nonattainment to attainment, as found at 40 CFR part 81.

X. Statutory and Executive Order and Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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. These actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: August 12, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–17846 Filed 8–25–22; 8:45 am]

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Notices

Federal Register
Vol. 87, No. 165
Friday, August 26, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; 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 September 26, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: National Management Information System (Wildlife Service).

OMB Control Number: 0579–0335.

Summary of Collection: The Secretary of Agriculture is authorized under 7 U.S.C. 8351–8353 to conduct a program of wildlife services with respect to injurious animal species and to enter into agreements with states, local jurisdictions, individuals, and public and private organizations and institutions for the control of nuisance mammals and birds and those mammal and bird species that are reservoirs of zoonotic diseases. These populations, if left unmanaged, can pose a risk to human health and safety and may cause tremendous economic damage to crops, livestock herds, and private property within the United States. The Wildlife Services (WS) program of the United States Department of Agriculture Animal and Plant Health Inspection Service is responsible for assisting the public with managing wildlife damage conflicts. WS provides advice or enters into agreements for its services. Through its technical assistance approach, WS offers advice through telephone or onsite consultations, training sessions, demonstration projects, and other means. Mitigation activities are then performed by the requester. Through its direct control approach, goods, services, and expertise are provided with appropriated and cooperative funds.

Need and Use of the Information: WS collects only information needed to determine appropriate courses of action for providing effective wildlife damage management services. Information is used by the agency to identify and differentiate between cooperators (*i.e.,* property owners, land managers, or resource owners) who request assistance, and to identify land areas on which management activities would be conducted. Information is also collected to identify the relationship between resources or property, WS' protection of such resources or property, the damage caused by wildlife, and the management methods or activities required to mitigate the damage. Records are maintained of permissions to access cooperator property, wildlife damage occurrences on cooperator property and allowable methods to address wildlife damage, and occurrences which may have affected non-target species or humans during, or related to, WS project actions. Finally, information is used to help WS evaluate, modify, and improve its programs.

If left unmanaged, some wildlife species can pose a risk to human health and safety and may cause tremendous amounts of damage to crops, livestock herds, and private property within the United States. Without mitigation, the damage could result in severe physical and economic losses for States, tribes, businesses, organizations, and private property owners.

Description of Respondents: State and local jurisdictions, Tribes, public and private agencies, organizations, institutions, and individuals.

Number of Respondents: 77,712.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,608.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–18469 Filed 8–25–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0019]

Notice of Availability of Bovine Tuberculosis Status Evaluation of Eight Mexican Regions and Intent To Classify Those Regions for Bovine Tuberculosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that we are proposing to classify eight Mexican regions for bovine tuberculosis as follows: The State of Sonora as Level II; the Yucatán Peninsula region (States of Yucatán and Quintana Roo, and part of the State of Campeche), the Huasteca region (parts of the States of Puebla, Veracruz, and Hidalgo), part of the State of Chihuahua, and part of the State of Durango as Level III; and part of the State of Coahuila, part of the State of Nuevo León, and the State of Tamaulipas as Level IV. These proposed recognitions are based on an evaluation

we have prepared in connection with this action, which we are making available for review and comment.

DATES: We will consider all comments that we receive on or before October 25, 2022.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2021–0019 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2021–0019, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Kari Coulson, Import Risk Analyst, Regionalization Evaluation Services, Strategy and Policy, VS, APHIS, USDA, 920 Main Campus Drive, Venture II, 3rd floor, Raleigh, NC 27606; *AskRegionalization@usda.gov;* (919) 480–9876.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 93, subpart D (§§ 93.400 through 93.442, referred to below as part 93 or the subpart), contain requirements for the importation of ruminants into the United States to address the risk of introducing or disseminating diseases of livestock within the United States. Part 93 currently contains provisions that address the risk that imported bovines (cattle or bison) may introduce or disseminate bovine tuberculosis within the United States. Within part 93, § 93.437 contains the requirements for classification of foreign regions for bovine tuberculosis and § 93.438 contains the process for requesting regional classification for bovine tuberculosis.

In accordance with § 93.437(f), the Animal and Plant Health Inspection Service (APHIS) maintains lists of all Level I, Level II, Level III, Level IV, and Level V regions for bovine tuberculosis and adds foreign regions classified in accordance with § 93.438 to these lists. In accordance with § 93.437(e), regions that do not have a program that meets APHIS requirements for bovine tuberculosis classification, have a prevalence of bovine tuberculosis in their domestic bovine herds equal to or greater than 0.5 percent, or are unassessed by APHIS with regard to bovine tuberculosis are considered to be Level V.

Paragraph (a) of § 93.438 provides that a representative of a national government with authority to make such a request may request that APHIS classify a region for bovine tuberculosis. Within that same section, paragraph (b) provides that if, after reviewing and evaluating the request for bovine tuberculosis classification, APHIS believes the region can be accurately classified, APHIS will publish a notice in the **Federal Register** with the proposed classification and make its evaluation available for public comment. Following the close of the comment period, APHIS will review all comments received and will make a final determination regarding the request that will be detailed in another document published in the **Federal Register**.

The Government of Mexico has requested that APHIS evaluate and classify several Mexican regions for bovine tuberculosis. APHIS has evaluated eight of the proposed Mexican regions to date in response to this request: The State of Sonora; the Yucatán Peninsula region (States of Yucatán and Quintana Roo, and part of the State of Campeche); the Huasteca region (parts of the States of Puebla, Veracruz, San Luis Potosí, and Hidalgo); part of the State of Chihuahua, part of the State of Durango; part of the State of Coahuila; part of the State of Nuevo León; and the State of Tamaulipas. We have detailed the findings and conclusions in a document titled ''APHIS Evaluation of Eight Mexican Regions for Bovine Tuberculosis (*M. bovis*) Classification'' (March 2022). The evaluation concludes that the Sonora region meets the conditions to be classified as Level II for bovine tuberculosis, which supports adding the Sonora region to the web-based list of Level II regions for bovine tuberculosis. The evaluation also concludes that the Yucatán Peninsula (States of Yucatán and Quintana Roo, and part of the State of Campeche), Huasteca (including parts of the States of Puebla, Veracruz, and Hidalgo, but excluding San Luis Potosí), Chihuahua, and Durango regions meet the conditions to be classified as Level III for bovine tuberculosis, which supports adding the Yucatán Peninsula, Huasteca (parts of the States of Puebla, Veracruz, and Hidalgo), Chihuahua, and Durango regions to the web-based list of Level III regions for bovine tuberculosis. The evaluation further concludes that the Coahuila, Nuevo León, and Tamaulipas regions meet the conditions to be classified as Level IV for bovine tuberculosis, which supports adding the Coahuila, Nuevo León, and Tamaulipas regions to the web-based list of Level IV regions for bovine tuberculosis.

Additionally, although the Government of Mexico requested inclusion of part of the State of San Luis Potosí (Zone A1) in the Huasteca region, the APHIS evaluation concluded that Zone A1 does not meet the conditions to be classified as Level III at this time. San Luis Potosí (Zone A1) is eligible to export bovine animals to the United States under a previous agreement. Pursuant to a final rule published in the **Federal Register** on September 17, 2020 (85 FR 57944–57956, Docket No. APHIS–2011–0044),[1] San Luis Potosí (Zone A1) will continue to be able to trade with the United States under the terms of the status it currently holds until we reevaluate the zone and act to classify the zone in accordance with § 93.437.

Regions of Mexico not listed above do not currently hold bovine tuberculosis status and are not eligible to export bovine animals to the United States except to direct slaughter. These regions either do not have a program that meets APHIS requirements for bovine tuberculosis classification or are unassessed by APHIS with regard to bovine tuberculosis and would be considered Level V for bovine tuberculosis.

Therefore, in accordance with § 93.438(b), we are announcing the availability of our evaluation of these eight Mexican regions for bovine tuberculosis for public review and comment.

Information submitted in support of Mexico's request is available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

After reviewing any comments we receive, we will announce our final determination regarding classification of these eight Mexican regions with respect to bovine tuberculosis in a subsequent notice.

National Environmental Policy Act

On December 27, 2021, we published in the **Federal Register** a notice (86 FR 73238–73239, Docket No. APHIS–2020–0071) announcing that we were classifying Canada as Level I for

[1] To view the final rule, go to *www.regulations.gov* and enter APHIS–2011–0044 in the Search field.

brucellosis and bovine tuberculosis. That final notice was accompanied by a final environmental assessment and finding of no significant impact (FONSI). The final environmental assessment and FONSI also evaluated the possible environmental impacts associated with classifying the State of Sonora as Level II; the Yucatán Peninsula region (States of Yucatán and Quintana Roo, and part of the State of Campeche), the Huasteca region (parts of the States of Puebla, Veracruz, and Hidalgo), part of the State of Chihuahua, and part of the State of Durango as Level III; and part of the State of Coahuila, part of the State of Nuevo León, and the State of Tamaulipas as Level IV for bovine tuberculosis. Accordingly, we direct the public to go to *www.regulations.gov* and enter APHIS–2020–0071 in the Search field to view those documents, and are not republishing them for this action.

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 22nd day of August 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–18409 Filed 8–25–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket #: RUS–22–ELECTRIC–0049]

Badger State Solar, LLC: Notice of Availability of a Final Environmental Impact Statement

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of a Final Environmental Impact Statement.

SUMMARY: The Rural Utilities Service (RUS), an agency within the United States Department of Agriculture (USDA), has prepared a Final Environmental Impact Statement (FEIS) to meet its responsibilities under the National Environmental Policy Act of 1969 (NEPA) as amended, RUS's implementing regulations, and other applicable environmental requirements related to providing financial assistance for Badger State Solar, LLC's proposed Alternating Current solar project (Project) in Wisconsin. RUS has included documentation in the FEIS demonstrating RUS has completed its responsibilities under Section 106 of the National Historic Preservation Act and its implementing regulations, ''Protection of Historic Properties.'' The FEIS addresses the construction, operation, and maintenance of a 149 megawatt (MW) photovoltaic (PV) alternating current solar energy generating facility on a site in in Jefferson County, Wisconsin described previously in the Draft Environmental Impact Statement (DEIS). It also addresses comments received during the comment period for the DEIS.

DATES: Written comments on the FEIS will be accepted for 30 days following the publication of the Environmental Protection Agency's environmental impact statement receipt notice in the **Federal Register**. Comments must be received by October 3, 2022. Notices of Availability of the FEIS will be published in local newspapers. After a 30-day comment period on the FEIS, RUS will prepare a Record of Decision for its respective action. The environmental review process is expected to conclude in Fall 2022.

ADDRESSES: The Final EIS and other Project-related information is available at RUS's and Badger State Solar's websites located at: *https://www.rd.usda.gov/resources/environmental-studies/impact-statements, https://badgerstatesolar.consultation.ai,* and *https://www.badgerstatesolar.com.*

All comments submitted during the comment period will become part of the public record. Before including your address, telephone 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. All comments will be reviewed and in the Record of Decision. For consideration, comments must be received by October 3, 2022.

Comments may be submitted at *BadgerStateSolarEIS@usda.gov* during the comment period. Comments submitted after the comment period may not be considered by the agency.

FOR FURTHER INFORMATION CONTACT: To receive copies of the FEIS or request information on the proposed Project, the FEIS process, and RUS financing, contact Peter Steinour at *BadgerStateSolarEIS@usda.gov* or 202–692–5346.

Copies of the FEIS will be available for review at the Jefferson Public Library in Jefferson, WI, the Cambridge Community Library in Cambridge, WI and the Lake Mills Library in Lake Mills, WI. Library locations will be published in the local papers.

SUPPLEMENTARY INFORMATION: Badger State Solar is a project of the solar development company, Ranger Power. Many of Wisconsin's fossil-fueled power plants are scheduled to cease power generation over the next several years. Six of the 12 coal-fired power plants in Wisconsin have been retired or are scheduled to go offline. The Applicant's purpose and need for the proposed Project is to develop a utility-scale solar facility in Jefferson County, Wisconsin, to replace load demand on local utilities, including Dairyland Power, resulting from coal-fired power plant closures or scheduled decommissioning.

Badger State Solar has indicated the intention to request Federal financing from USDA RUS for development of the Project. While RUS is authorized under the Rural Electrification Act of 1936 (REA) to finance electric generation infrastructure in rural areas, it is the Midcontinent Independent System Operator, Inc. (MISO), not RUS, who is responsible for electric grid planning. Supporting renewable energy projects meets both RUS's goal to support infrastructure development in rural communities and USDA's support of the President's Climate Action Plan, issued in June 2013, which encourages voluntary actions to increase energy independence.

Badger State Solar proposes to construct, install, operate, and maintain a 149 MW PV alternating current solar energy generating facility on a site in the Townships of Jefferson and Oakland, in Jefferson County, Wisconsin. The proposed Project involves approximately 1,200 acres located on the north and south sides of U.S. Highway 18, approximately 2-miles west of the City of Jefferson and west of State Highway 89. Site land cover is predominantly agricultural crops and pasture, with some forest and wetland. Bader State Solar estimates the total project cost will be approximately $225,000,000. Project construction would begin in October 2022. Construction would be complete, and the project would be expected to come online by Fall 2023.

Construction involves the installation on leased lands of 487,848 single-axis tracking PV panels. The PV panels would be mounted on a steel racking frame. Supporting facilities include an electrical substation. The lease agreement allows for an operating period of 40 years. A power purchase agreement (PPA) has been executed with Dairyland Power Cooperative for the entire output of the Project. The proposed site is near the point of interconnection to the grid at the American Transmission Company Jefferson substation near the

intersection of State Trunk Highway 89 and U.S. Highway 18.

Construction equipment would include graders, bulldozers, excavators, forklifts, trailers, plows, trenchers, pile drivers, and directional boring rigs. Vehicles for transporting construction materials and components primarily would be legal load over-the road flatbed and box trucks. Transport would use existing regional roads, bridges, and intersections. Laydown areas would be established within the Project site. Internal site access roads would be required. The solar facility would be interconnected to the transmission grid through the existing ATC substation located to the northeast of the proposed substation and would require a short 138 kilovolt (kV) overhead line between the two stations. Laydown areas and a Laydown Yard would be established within the Project site. Fencing would be placed around contiguous blocks of solar arrays.

Potential locations for development of the solar facility in Wisconsin were evaluated in an initial preliminary site review to identify locations where electric transmission infrastructure would be sufficient to connect a solar project to the power grid. The Site Selection Study consisted of three phases of evaluation which began with 18 potential sites and ended with the identification of the 1,200 acre proposed site in Jefferson County as the most feasible alternative for detailed evaluation in the EIS because it best meets the purpose and need and minimizes or mitigates potential impacts.

RUS is authorized to make loans and loan guarantees that finance the construction of the Badger State Solar Alternating Current Project. RUS is responsible for completing the environmental review process in processing Badger State Solar's application. RUS is serving as the lead Federal agency, as defined at 40 CFR1501.5, for preparation of the FEIS.

The proposed Project is subject to the jurisdiction of Public Service Commission of Wisconsin (PSCW), Wisconsin Department of Natural Resources (WDNR), Wisconsin State Historical Society of Historic Preservation Office (SHPO), Wisconsin Department of Transportation (WisDOT), and State of Wisconsin Division of Safety and Buildings. PSCW and WDNR are responsible for coordination of environmental reviews for compliance with the Wisconsin Environmental Policy Act (WEPA). PSCW and WDNR must comply with WEPA when reviewing proposed energy construction projects, including electric generating and transmission projects seeking PSCW statutory approval. WEPA applies only to actions of state agencies. However, the environmental impact of the proposed Project was reviewed by PSCW, in coordination with WDNR, as part of the application for a Certificate of Public Convenience and Necessity (CPCN). PSCW issued an Order approving the CPCN application subject conditions issued in the Final Decision on February 26, 2020 (Docket 9800–CE–100)

RUS has prepared the FEIS to analyze the impacts of its respective Federal actions and the proposed Project in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 United States Code [U.S.C.] 4321 *et seq.*), Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 Code of Federal Regulations [CFR] part 1500 *et seq.*), and Rural Utilities Service (RUS), Environmental Policies and Procedures (7 CFR part 1970 *et seq.*). RUS has prepared and published a DEIS which can be found on the RUS and Badger State Solar websites (*https://www.rd.usda.gov/resources/environmental-studies/impact-statements, https://badgerstatesolar.consultation.ai,* and *https://www.badgerstatesolar.com*).

RUS evaluated the potential impacts of the proposed Project on environmental resources. The analysis determined that there would be no impact or minor adverse impacts on soils and geology, air quality, acoustic environment (noise), water resources (including groundwater and surface water), biological resources (including vegetation, wetlands, riparian areas, floodplains, wildlife, fisheries and aquatic resources, and threatened and endangered species), land resources (including prime farmlands), visual resources, transportation, cultural resources and historic properties, public health and safety, and socioeconomics and environmental justice associated with the proposed Project. Badger State Solar would implement mitigation measures as necessary and appropriate to minimize adverse impacts. There would be potential beneficial effects on soils, water resources, air quality, and socioeconomics. Unavoidable adverse effects related to proposed Project operations would last only as long as the useful life of the solar facility (an expected 40 years). Implementation of the proposed Project would not result in significant unavoidable adverse impacts, irreversible or irretrievable commitment of resources, or in permanent losses to maintenance or enhancement of long-term productivity of the environment. When the incremental effects from the proposed Project are considered together with other past, present, and reasonably foreseeable future actions, there would be no cumulative adverse impact.

This Notice of Availability also serves as a notice of proposed wetland and floodplain actions. It is anticipated that there will be no permanent wetland impacts and no significant direct or indirect impacts to floodplains. The proposed Project was planned to avoid and minimize impacts to wetlands and waterways to the extent practicable during the site selection and design phase of the Project. Throughout the Project, best management practices (BMPs) (*e.g.,* silt fences, hand-clearing of vegetation where necessary, etc.) will be implemented to minimize soil disturbance in or near wetlands and jurisdictional streams, and BMPs in accordance with requirements of the Project's Sediment and Erosion Control Plan and stormwater pollution prevention plan would be followed. Temporary impacts to wetlands would be permitted in accordance with United States Army Corps of Engineers and state requirements. The proposed Project also has been designed to avoid impacts to sensitive floodplains; there are no floodplains present within the Project boundary.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service, U.S. Department of Agriculture.

[FR Doc. 2022–18381 Filed 8–25–22; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the California Advisory Committee

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 California Advisory Committee (Committee) will hold a meeting via a Webex platform on Wednesday, September 28, 2022, from 2:00 p.m. to 4:30 p.m., for the purpose of hearing testimony regarding the civil rights impacts of AB5.

DATES: The meeting will take place on:

- *Panel 5:* Wednesday, September 28, 2022, from 2:00 p.m.–4:30 p.m. Pacific Time

Public Webex Registration Link: https://tinyurl.com/yas3dvun.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or by phone at (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public WebEx registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at *bpeery@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701–1376.

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 at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkUAAQ*.

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email address.

Agenda

I. Welcome & Opening
II. Panelist Statements
III. Committee Q&A
IV. Public Comment
V. Adjournment

Dated: August 22, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–18365 Filed 8–25–22; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nevada Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of Virtual Business 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 Nevada Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Webex at 3:00 p.m. PT on Thursday, September 22, 2022. The purpose of the meeting is to discuss proposed topics of study.

DATES: The meeting will take place on Thursday, September 22, 2022, from 3:00 p.m.–4:30 p.m. PT.

LINK TO JOIN (Audio/Visual): https://tinyurl.com/ymruddra.

TELEPHONE (Audio Only): Dial (800) 360–9505 USA Toll Free; Access Code: 2762 063 9838.

FOR FURTHER INFORMATION CONTACT: Ana Fortes, Designated Federal Officer, at *afortes@usccr.gov* or (202) 519–2938.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, 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. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *afortes@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to Angelica Trevino at *atrevino@usccr.gov*. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination 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, Nevada 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 Coordination Unit at the above phone number.

Agenda

I. Welcome
II. Review and Discuss Proposed Topics
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: August 22, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–18364 Filed 8–25–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Connecticut Advisory Committee

AGENCY: 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 (FACA), that the Connecticut Advisory Committee to the U.S. Commission on Civil Rights will hold a briefing on algorithms and civil rights in Connecticut on Thursday, September 8, 2022, from 9:30 a.m. to approximately 2:00 p.m. The briefing's location is the Legislative Office Building, Room 1E, 300 Capitol Avenue, Hartford, CT 06106. The purpose of the briefing is to hear from experts on the topic of algorithms and civil rights in Connecticut.

Date and Time: Thursday, September 8, 2022; 9:30 a.m. to approximately 2:00 p.m. ET.

Location: Legislative Office Building, Room 1E, 300 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez at *ero@usccr.gov* or by phone at 202–539–8246.

SUPPLEMENTARY INFORMATION: If other persons who plan to attend the meeting require other accommodations, please contact Evelyn Bohor at *ebohor@usccr.gov* at the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Time will be set aside at the end of the meeting so that members of the public may address the Committee after the briefing during the open comment session. This meeting is available to the public by attendance in person.

Members of the public are entitled to make comments during the open period

at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Barbara de La Viez at *ero@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 539–8246. Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov*. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Thursday, September 8, 2022; 9:30 a.m. (ET)

I. Welcome and Roll Call
II. Briefing on Algorithms in Connecticut
III. Question and Answer Between Panelists and Committee Members
IV. Public Comment
V. Adjournment

Dated: August 22, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–18362 Filed 8–25–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Petition by a Firm for Certification of Eligibility To Apply for Trade Adjustment Assistance, and Adjustment Proposals

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 June 24, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Economic Development Administration (EDA), U.S. Department of Commerce.

Title: Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance, and Adjustment Proposals.

OMB Control Number: 0610–0091.

Form Number(s): ED–840P.

Type of Request: Extension without change of a currently approved information collection.

Number of Respondents: 300 (150 petitions for certification and 150 adjustment proposals).

Average Hours per Response: 53 hours for petitions for certification and 120 hours for adjustment proposals.

Burden Hours: 25,950 (7,950 hours for petitions for certification and 18,000 for adjustment proposals).

Needs and Uses: The information collected on Form ED–840P, Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance, and relevant supporting documentation is used to determine whether a firm satisfies the eligibility and programmatic requirements contained in chapters 3 and 5 of title II of the Trade Act of 1974, as amended (19 U.S.C. 2341). If certified as eligible for Trade Adjustment Assistance following submission of Form ED–840P, firms must create an EDA-approved Adjustment Proposal in order to receive Trade Adjustment Assistance.

The statutory authorization for the TAAF program sunset in two stages. First, on July 1, 2021, the TAAF program reverted to more limited eligibility criteria. Second, as of June 30, 2022, assistance could not be provided to new firms. After that date, assistance could only be provided to firms that had previously submitted a petition under the TAAF program. EDA wishes to extend the current information collection for the TAAF program so that EDA may continue to review and approve adjustment proposals from certified firms, and in case the TAAF program is re-authorized by Congress.

Affected Public: Businesses or other for-profit organizations.

Frequency: During application for Trade Adjustment Assistance.

Respondent's Obligation: Mandatory.

Legal Authority: Chapters 3 and 5 of title II of the Trade Act of 1974, as amended (19 U.S.C. 2341).

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 0610–0091.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–18468 Filed 8–25–22; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–37–2022]

Foreign-Trade Zone (FTZ) 35—Philadelphia, Pennsylvania, Notification of Proposed Production Activity, Piramal Pharma Solutions (Pharmaceutical Products), Sellersville, Pennsylvania

Piramal Pharma Solutions submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Sellersville, Pennsylvania under FTZ 35. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on August 19, 2022.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished products are bempedoic acid and ezetimibe tablets (180/10 milligrams) (duty-free).

The proposed foreign-status materials are bempedoic acid and ezetimibe (duty rate ranges from 4% to 6.5%). The request indicates that the materials are subject to duties under Section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive

Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is October 5, 2022.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov.*

Dated: August 23, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–18470 Filed 8–25–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee will meet September 13, 2022, at 10:00 a.m., Eastern Daylight Time, via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman
2. Opening remarks by the Bureau of Industry and Security
3. Presentation of papers or comments by the Public
4. Regulations Update
5. Working Group Reports
6. Automated Export System Update

Closed Session

7. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. App. §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than September 6, 2022.

To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on August 19, 2022, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App. § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. App. §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Yvette Springer via email.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2022–18445 Filed 8–25–22; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–826]

Monosodium Glutamate From the Republic of Indonesia: Final Results of Changed Circumstances Review

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

SUMMARY: On July 6, 2022, the U.S. Department of Commerce (Commerce) published its notice of initiation and preliminary results of a changed circumstances review (CCR) of the antidumping duty (AD) order on monosodium glutamate (MSG) from the Republic of Indonesia (Indonesia). For these final results, Commerce finds that PT. Daesang Ingredients Indonesia (PT. Daesang) is the successor-in-interest to PT. Miwon Indonesia (PT. Miwon) and should be assigned the same AD cash deposit rate for purposes of determining AD liability.

DATES: Applicable August 26, 2022.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4261.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 2022, PT. Daesang requested that Commerce conduct an expedited CCR to find that PT. Daesang is the successor-in-interest to PT. Miwon.[1] On July 6, 2022, Commerce initiated a CCR and preliminarily determined that PT. Daesang is the successor-in-interest to PT. Miwon.[2] In the *Initiation and Preliminary Results,* we provided all interested parties with an opportunity to comment.[3] We received no comments from any interested party.

Scope of the Order [4]

The merchandise covered by the *Order* is MSG, whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in the *Order* when the resulting mix contains 15 percent or more of MSG by dry weight. Products with which MSG may be blended include, but are not limited to, salts, sugars, starches, maltodextrins, and various seasonings. Further, MSG is included in the *Order* regardless of physical form (including, but not limited to, in monohydrate or anhydrous form, or as substrates, solutions, dry powders of any particle size, or unfinished forms such as MSG slurry), end-use application, or packaging.

MSG in monohydrate form has a molecular formula of C5H8NO4Na-H2O, a Chemical Abstract Service (CAS) registry number of 6106–04–3, and a Unique Ingredient Identifier (UNII) number of W81N5U6R6U. MSG in anhydrous form has a molecular formula of C5H8NO4 Na, a CAS registry number of l42–47–2, and a UNII number of C3C196L9FG.

Merchandise covered by the *Order* is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2922.42.10.00. Merchandise covered by the *Order* may also enter under HTSUS subheadings 2922.42.50.00, 2103.90.72.00, 2103.90.74.00, 2103.90.78.00, 2103.90.80.00, and 2103.90.90.91. These tariff classifications, CAS registry numbers, and UNII numbers are

[1] *See* PT. Daesang's Letter, ''Monosodium Glutamate (MSG) from Indonesia: Request to Initiate a Successor-in-Interest Changed Circumstances Review for PT. Daesang Ingredients Indonesia,'' dated March 10, 2022.

[2] *See Monosodium Glutamate from the Republic of Indonesia: Notice of Initiation and Preliminary Results of Changed Circumstances Review,* 87 FR 40182 (July 6, 2022) (*Initiation and Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[3] *Id.,* 87 FR at 40183.

[4] *See Monosodium Glutamate from the People's Republic of China, and the Republic of Indonesia: Antidumping Duty Orders; and Monosodium Glutamate from the Republic of China: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 70505 (November 26, 2014) (*Order*).

provided for convenience and customs purposes; however, the written description of the scope is dispositive.

Final Results of Changed Circumstances Review

Because the record contains no information or evidence that calls into question the *Initiation and Preliminary Results,* and because we received no comments from interested parties to the contrary, for the reasons stated in the *Initiation and Preliminary Results,*[5] Commerce finds that PT. Daesang is the successor-in-interest to PT. Miwon.

Instructions to U.S. Customs and Border Protection

As a result of these final results and consistent with established practice, we find that, as the successor-in-interest to PT. Miwon, entries of MSG from Indonesia produced and/or exported by PT. Daesang should be subject to the cash deposit rate previously assigned to PT. Miwon. Commerce will instruct U.S. Customs and Border Protection to suspend liquidation of all shipments of subject merchandise produced and/or exported by PT. Daesang and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at 1.60 percent, which is the current AD cash deposit rate in effect for subject merchandise produced and/or exported by PT. Miwon.[6] This cash deposit rate shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(b)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.216(e), 19 CFR 351.221(b), and 19 CFR 351.221(c)(3).

Dated: August 22, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–18473 Filed 8–25–22; 8:45 am]

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[5] For a complete discussion of the information that PT. Daesang provided, including business proprietary information, and Commerce's complete successor-in-interest analysis, *see* the *Initiation and Preliminary Results* Preliminary Decision Memorandum.

[6] *See Monosodium Glutamate from the Republic of Indonesia: Final Results of Antidumping Duty Administrative Review; 2019–2020,* 87 FR 18767 (March 31, 2022).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Certain Welded Carbon Steel Standard Pipes and Tubes From India: Preliminary Negative Determinations of Circumvention of the Antidumping Order

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that imports of certain welded carbon steel standard pipes and tubes (pipe and tube), completed in Oman and the United Arab Emirates (UAE) from hot-rolled steel (HRS) produced in India, are not circumventing the antidumping duty (AD) order on pipe and tube from India.

DATES: Applicable August 26, 2022.

FOR FURTHER INFORMATION CONTACT: Jacob Keller or Dusten Hom, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4849 or (202) 482–5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 1986, Commerce published the order on imports of pipe and tube from India.[1] On February 22, 2022, Commerce initiated a country-wide circumvention inquiry to determine whether certain imports of pipe of tube completed in Oman and the UAE using HRS produced in India are circumventing the *Order.*[2] On March 24, 2022, Commerce selected from Oman, Al Jazeera Tube Mill Company SAOG (Al Jazeera), and, from the UAE, in alphabetical order, Ajmal Steel Tubes and Pipes Ind., LLC (Ajmal Steel), Conares Metal Supply Limited (Conares), and Universal Tube and Plastic Industries, Ltd. (Jebel Ali Branch) (UTP); KHK Scaffolding and Formwork LLC (KHK); and THL Pipe and Tube Industries LLC (THL) (collectively, Universal) as the mandatory respondents in these circumvention inquiries.[3] Between March and July 2022, Commerce issued questionnaires to the four respondents and received timely responses.[4] From April through July 2022, Commerce received comments from the company respondents and Bull Moose Tube Company, Nucor Tubular Products Inc., Wheatland Tube Company, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (collectively, the domestic interested parties).[5] On July 20, 2022, Commerce

[1] *See Antidumping Duty Order; Certain Welded Carbon Steel Standard Pipes and Tubes from India,* 51 FR 17384 (May 12, 1986) (*Order*).

[2] *See Certain Welded Carbon Steel Standard Pipes and Tubes from India: Initiation of Circumvention Inquiry on the Antidumping Duty Order,* 87 FR 9571 (February 22, 2022).

[3] *See* Memorandum, ''Circumvention Inquiries on Certain Welded Carbon Steel Standard Pipes and Tubes from India: Respondent Selection,'' dated March 24, 2022.

[4] *See* Commerce's Letters, ''Certain Welded Carbon Steel Standard Pipes and Tubes from India: Circumvention Inquiry Initial Questionnaire,'' dated March 25, 2022; *see also* Al Jazeera's Letter, ''Circular Welded Carbon-Quality Steel Pipe from India—Anti-circumvention Inquiry; Al Jazeera Questionnaire Response,'' dated May 6, 2022; Conares' Letter, ''Welded Carbon Steel Pipe & Tube: Circumvention Inquiry Initial Questionnaire Response,'' dated May 16, 2022; Universal's Letter, ''Certain Welded Carbon Steel Standard Pipes and Tubes from India—Anti-Circumvention Inquiry Initial Questionnaire Response,'' dated May 16, 2022; Ajmal's Letter, ''Ajmal Steel's Initial Questionnaire Response, Certain Welded Carbon Steel Standard Pipes and Tubes from India: Circumvention Inquiry,'' dated May 20, 2022; Commerce's Letters, ''Circumvention Inquiries on the Antidumping Duty Order on Certain Welded Carbon Steel Standard Pipes and Tubes from India: Supplemental Questionnaire,'' dated June 15, 2022; Commerce's Letters, ''Circumvention Inquiries on the Antidumping Duty Order on Certain Welded Carbon Steel Standard Pipes and Tubes from India: Supplemental Questionnaire,'' June 22, 2022; Al Jazeera's Letter, ''Circular Welded Carbon-Quality Steel Pipe from India—Anti-circumvention Inquiry; Al Jazeera SQR,'' dated June 24, 2022; Ajmal's Letter, ''Ajmal Steel's Supplemental Questionnaire Response, Certain Welded Carbon Steel Standard Pipes and Tubes from India: Circumvention Inquiry,'' dated June 30, 2022; Universal's Letter, ''Certain Welded Carbon Steel Standard Pipes and Tubes from India—Anti-Circumvention Inquiry Supplemental Questionnaire Response,'' dated June 30, 2022; Conares' Letter, ''Welded Carbon Steel Pipe & Tube: Circumvention Inquiry Supplemental Questionnaire Response,'' dated July 1, 2022.

[5] *See* Al Jazeera's Letter, ''Circular Welded Carbon-Quality Steel Pipe from India; Al Jazeera comments and NFI re: DIPs' request for inquiry,'' dated April 7, 2022; *see also* Conares' Letter, ''Welded Carbon Steel Standard Pipe from India: Comments on Anti Circumvention Inquiry Request,'' dated April 7, 2022; and Universal's Letter, ''Certain Welded Carbon Steel Standard Pipes and Tubes from India—Response to Domestic Interested Parties' Factual Information Submitted in Support of Their Request for Commerce to Conduct an Anti-Circumvention Inquiry,'' dated April 7,

Continued

extended the time limit for issuing the preliminary determination of this circumvention inquiry until August 22, 2022.[6]

Scope of the Order [7]

The products covered by the *Order* include certain welded carbon steel standard pipes and tubes with an outside diameter of 0.375 inch or more but not over 16 inches. For a full description of the scope of the *Order, see* the Preliminary Decision Memorandum.[8]

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers pipe and tube completed in Oman and the UAE using India-origin HRS and subsequently exported from Oman and the UAE to the United States.

Methodology

Commerce is conducting this circumvention inquiry in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226. For a complete description of the events that followed the initiation of these circumvention inquiries, *see* the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included as an Appendix 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 *https://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.*

Preliminary Determinations

As detailed in the Preliminary Decision Memorandum, Commerce preliminarily determines that pipe and tube completed in Oman and the UAE using India-origin HRS and subsequently exported from Oman or the UAE to the United States are not circumventing the *Order* on a country-wide basis. Accordingly, Commerce is making a negative preliminary finding of circumvention of the *Order.*

Verification

As provided in 19 CFR 351.307, Commerce intends to verify information relied upon in making its final determination.

Public Comment

Because Commerce intends to conduct verification, interested parties will be provided an opportunity to submit written comments (case briefs) at a date to be determined by Commerce and rebuttal comments (rebuttal briefs) within seven days after the time limit for filing case briefs.[9] Parties who submit case briefs or rebuttal briefs in this proceeding 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.[10] Case and rebuttal briefs should be filed electronically via ACCESS.[11] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[12]

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.

Notification to Interested Parties

This determination is issued and published in accordance with section 781(b) of the Act and 19 CFR 351.226(g)(1).

Dated: August 22, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Merchandise Subject to the Circumvention Inquiry
V. Period of Circumvention Inquiry
VI. Affiliation and Collapsing
VII. Statutory and Regulatory Framework for Circumvention Inquiries
VIII. Statutory Analysis for the Circumvention Inquiry
IX. Summary of Statutory Analysis
X. Verification
XI. Country-Wide Negative Determination of Circumvention
XII. Recommendation

[FR Doc. 2022–18399 Filed 8–25–22; 8:45 am]

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2022; Domestic Interested Parties' Letter, ''Certain Welded Carbon Steel Standard Pipes and Tubes from India: Comments and Factual Information in Response to Submissions of Al Jazeera, Universal, and Conares,'' dated April 28, 2022; Domestic Interested Parties' Letters, ''Certain Welded Carbon Steel Standard Pipes and Tubes from India: Comments on Ajmal's Initial Questionnaire Responses,'' dated July 6, 2022; and ''Certain Welded Carbon Steel Standard Pipes and Tubes from India: Comments on Universal's Questionnaire Responses and Submission of Information to Rebut, Clarify, or Correct,'' dated July 7, 2022; Domestic Interested Parties Letter, ''Certain Welded Carbon Steel Standard Pipes and Tubes from India: Comments Regarding Preliminary Circumvention Determination,'' dated July 15, 2022; Universal's Letter, ''Certain Welded Carbon Steel Standard Pipes and Tubes from India—Comments Regarding Preliminary Circumvention Determination,'' dated July 19, 2022; Al Jazeera's Letter, ''Circular Welded Carbon-Quality Steel Pipe from India—Anti-circumvention Inquiry; Al Jazeera Response to DIPs' Pre-Preliminary Comments,'' dated July 19, 2022; Ajmal's Letter, ''Ajmal's Pre-Prelim Comments, Certain Welded Carbon Steel Standard Pipes and Tubes from India: Circumvention Inquiry,'' dated August 5, 2022; Universal's Letter, ''Certain Welded Carbon Steel Standard Pipes and Tubes from India—Comments Regarding Preliminary Circumvention Determination,'' dated August 8, 2022; Conares' Letter, ''Welded Carbon Steel Standard Pipe from India: Anti-Circumvention Pre-Preliminary Comments,'' dated August 8, 2022; Domestic Interested Parties Letter, ''Certain Welded Carbon Steel Standard Pipes and Tubes from India: Additional Comments Regarding Preliminary Circumvention Determination,'' dated August 12, 2022; and Al Jazeera's Letter, ''Circular Welded Carbon-Quality Steel Pipe from India—Anti-circumvention Inquiry; Al Jazeera response to DIPs' pre-preliminary comments,'' dated August 15, 2022.

[6] *See* Memorandum. ''Certain Welded Carbon Steel Standard Pipes and Tubes from India: Extension of Anti-Circumvention Preliminary Determination,'' dated July 20, 2022.

[7] *See Order.*

[8] *See* Memorandum, ''Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Decision Memorandum for the Circumvention Inquiries on the Antidumping Duty Order,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum), at 2.

[9] *See* 19 CFR 351.309(c)(l)(ii) and 351.309(d)(l). Interested parties will be notified through ACCESS regarding the deadline for submitting case briefs; see also 19 CFR 351.303 (for general filing requirements).

[10] *See* 19 CFR 351.309(c)(2)(d)(2).

[11] *See* 19 CFR 351.303.

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

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–073, C–570–074]

Common Alloy Aluminum Sheet From the People's Republic of China: Initiation of Circumvention Inquiry of the Antidumping and Countervailing Duty Orders—4017 Aluminum Sheet

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

SUMMARY: In response to a circumvention inquiry request from the Aluminum Association Common Alloy Aluminum Sheet Working Group and its individual members, the U.S. Department of Commerce (Commerce) is initiating a country-wide circumvention inquiry to determine whether imports of aluminum sheet produced from aluminum alloy 4017 are circumventing the antidumping (AD) and countervailing duty (CVD) orders on common alloy aluminum sheet (CAAS) from the People's Republic of China (China).

DATES: Applicable August 26, 2022.

FOR FURTHER INFORMATION CONTACT: Frank Schmitt, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4880.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2022, the Aluminum Association Common Alloy Aluminum Sheet Working Group and its individual members (collectively, the domestic industry),[1] requested that Commerce initiate a circumvention inquiry with regard to aluminum sheet produced from aluminum alloy 4017 (4017 aluminum sheet) in, and exported from, China.[2] The domestic industry alleges that 4017 aluminum sheet constitutes merchandise altered in form or appearance in minor respects, and therefore should be included within the scope of the *Orders*[3] pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act).[4]

On August 4, 2022, we extended the deadline to issue a decision regarding whether to initiate this circumvention inquiry by 15 days, in accordance with the 19 CFR 351.226(d)(1), to August 22, 2022.[5]

Scope of the Orders

The merchandise covered by the *Orders* is aluminum common alloy sheet (common alloy sheet), which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. For a complete description of the scope of the *Orders, see* the appendix to this notice.

Merchandise Subject to the Circumvention Inquiry

The merchandise subject to the circumvention inquiry is 4017 aluminum sheet, having a thickness of 6.3 mm or less, but greater that 0.2 mm, in coils or cut-to-length, regardless of width. According to the Domestic Industry, such 4017 aluminum sheet is a not clad aluminum sheet product whose chemical content has been modified from in-scope CAAS. All 4017 aluminum sheet that meets the scope description with respect to physical characteristics (other than principle alloying element) is subject to this inquiry. The subject 4017 aluminum sheet is currently classifiable under Harmonized Tariff Schedule of the United States subheading 7607.12.3096.

Statutory and Regulatory Framework

Section 351.226(d)(1)(ii) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce ''will accept the request and initiate a circumvention inquiry.'' Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each request for a circumvention inquiry allege ''that the elements necessary for a circumvention determination under section 781 of the Act exist'' and be ''accompanied by information reasonably available to the interested party supporting these allegations.'' The domestic industry alleged circumvention pursuant to section 781(c) of the Act (merchandise altered in form or appearance in minor respects).

In accordance with 19 CFR 351.226(m)(2), for companion antidumping and countervailing duty proceedings, ''the Secretary will initiate and conduct a single inquiry with respect to the product at issue for both orders only on the record of the antidumping proceeding.'' Further, once ''the Secretary issues a final circumvention determination on the record of the antidumping duty proceeding, the Secretary will include a copy of that determination on the record of the countervailing duty proceeding.'' Accordingly, once Commerce concludes this circumvention inquiry, Commerce intends to place its final circumvention determination on the record of the companion CVD proceeding.

Section 781(c)(1) of the Act provides that the class or kind of merchandise subject to an AD or CVD order shall include articles that have been ''altered in form or appearance in minor respects . . . whether or not included in the same tariff classification.'' Section 781(c)(2) of the Act provides an exception that section 781(c)(1) of the Act ''shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {order}.'' Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.226(j), Commerce may consider criteria including, but not limited to: (1) overall physical characteristics of the merchandise; (2) expectations of ultimate users; (3) use of the merchandise; (4) channels of marketing; and (5) cost of any modification relative to the value of the imported products.

Analysis

After analyzing the record evidence and the domestic industry's allegation, we determine that the circumvention request satisfies the requirements of 19 CFR 351.226(c) and that there is sufficient information to warrant initiation of a circumvention inquiry based on minor alterations, pursuant to section 781(c) of the Act and 19 CFR 351.226(j). For a full discussion of the basis for our decision to initiate a circumvention inquiry, *see* the Initiation Decision Memorandum.[6]

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[1] The individual members of the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group are Arconic Corporation; Commonwealth Rolled Products, Inc.; Constellium Rolled Products Ravenswood, LLC; Jupiter Aluminum Corporation; JW Aluminum Company; and Novelis Corporation.

[2] *See* Domestic Industry's Letter, ''Common Alloy Aluminum Sheet from China—Domestic Industry request for Circumvention Ruling Pursuant to Section 781(c) of the tariff Act of 1930, as Amended,'' dated July 7, 2022 (Circumvention Allegation).

[3] *See Common Alloy Aluminum Sheet from the People's Republic of China: Antidumping Duty Order,* 84 FR 2813 (February 8, 2019); and *Common Alloy Aluminum Sheet from the People's Republic of China: Countervailing Duty Order,* 84 FR 2157 (February 6, 2019) (collectively, *Orders*).

[4] *See* 19 CFR 351.226(j).

[5] *See* Memorandum, ''Common Alloy Aluminum Sheet from the People's Republic of China (A–570–073, C–570–074): Extension of Time to Determine Whether to Initiate Circumvention Inquiry,'' dated August 4, 2022.

[6] *See* Memorandum, ''Common Alloy Aluminum Sheet from the People's Republic of China: Decision Memorandum for Initiation of Circumvention Inquiry on the Antidumping and Countervailing Duty Orders,'' dated concurrently with and hereby adopted by this notice (Initiation Decision

Continued

As explained in the Initiation Decision Memorandum, the information provided by the domestic industry also warrants initiating this circumvention inquiry on a country-wide basis.[7] Commerce has taken this approach in prior circumvention inquiries, when the facts warranted initiation on a country-wide basis.[8]

Commerce intends to establish a schedule for questionnaires and comments on the issues related to this inquiry. A company's failure to respond completely to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce intends to notify U.S. Customs and Border Protection (CBP) of this initiation and direct CBP to continue the suspension of liquidation of entries of products subject to this circumvention inquiry that were already subject to the suspension of liquidation under the *Orders* and to apply the cash deposit requirement at the rates that would be applicable if the products were determined to be covered by the scope of the *Orders.* Should Commerce issue preliminary or final circumvention determinations, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)-(4).

Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and sections 781(c) and (d) of the Act, Commerce determines that the domestic industry's request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of this circumvention inquiry to determine whether 4017 aluminum alloy produced in, and exported from, China is circumventing the *Orders.* In addition, we have included a description of the products that are the subject to this inquiry and an explanation of Commerce's decision to initiate this inquiry as provided in the accompanying Initiation Decision Memorandum.[9] In accordance with 19 CFR 351.226(e)(1), Commerce intends to issue its preliminary circumvention determination no later than 150 days from the date of publication of the notice of initiation of this circumvention inquiry in the **Federal Register**.

This notice is published in accordance with section 781(c) of the Act and 19 CFR 351.226(d)(1)(ii).

Dated: August 22, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The merchandise covered by the *Orders* is aluminum common alloy sheet (common alloy sheet), which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of the *Orders* includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core.

Common alloy sheet may be made to ASTM specification B209–14, but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the *Orders* if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of the *Orders* is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080. Further, merchandise that falls within the scope of the *Orders* may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3030, 7606.91.3060, 7606.91.6040, 7606.92.3060, 7606.92.6040, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

[FR Doc. 2022–18472 Filed 8–25–22; 8:45 am]

BILLING CODE 3510–DS–P

Memorandum). This memorandum is a public document and is available electronically online via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

[7] *See* Initiation Decision Memorandum at 8.

[8] *See, e.g., Aluminum Extrusions from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders and Rescission of Minor Alterations Anti-Circumvention Inquiry,* 82 FR 4630 (July 26, 2017), and accompanying Issues And Decision Memorandum, at Comment 4.

[9] *See* Initiation Decision Memorandum.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC300]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public joint meeting of its Habitat 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 meeting will be held on Monday, September 12, 2022, at 1 p.m. Webinar registration URL information *https://attendee.gotowebinar.com/register/5884834047079761679.*

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 provide feedback on the following items discussed during an August 18, 2022 meeting of the Habitat Committee: (1) utility of a research project conducted in the Great South Channel Habitat Management Area for management

(Exempted Fishing Permit 19066), (2) the scope of an Atlantic salmon aquaculture framework that the Council may initiate in September, (3) offshore wind development issues, including strategies for providing effective comments, (4) an ongoing NOAA Fisheries review of two Dedicated Habitat Research Areas designated via Omnibus Habitat Amendment 2, and (5) potential habitat-related work priorities for 2023. Other business may be discussed as necessary.

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 these meetings. 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.

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 date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: August 23, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–18449 Filed 8–25–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance for NOAA Citizen Science and Crowdsourcing Projects (New)

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before October 25, 2022.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Dr. Joe Terry, Office of Science and Technology, 1315 East West Hwy., Building SSMC3, Silver Spring, MD 20910–3282, (858) 454–2547, *joe.terry@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA is requesting approval for a new generic clearance for its citizen science and crowdsourcing projects and approval for those citizen science and crowdsourcing existing collections in use without an OMB control number. The generic clearance would allow NOAA to do the following: (1) be more responsive to the Citizen Science and Crowdsourcing Act (15 U.S.C. 3724), as well as the other laws and Executive Orders (E.O.) listed under Legal Authority in Section III, (2) more rapidly and efficiently come into compliance with the PRA and, therefore, (3) obtain additional scientific information that supports its mission to understand and predict changes in climate, weather, ocean, and coasts, to share that knowledge and information with others, and to conserve and manage coastal and marine ecosystems and resources.

NOAA relies on scientific information. Citizen science and crowdsourcing techniques will allow NOAA to collect qualitative and quantitative data that might help inform scientific research and monitoring, validate models or tools, support STEM learning, and enhance the quantity and quality of data collected to support NOAA's mission. Information gathered under this generic clearance will be used by NOAA to support the activities listed above and might provide unprecedented avenues for conducting breakthrough research. Collections under this generic clearance will be from participants who actively seek to participate on their own initiative through an open and transparent process (NOAA does select participants or require participation); collections will be low-cost for both the participants and the Federal Government; and the data will be available to support the scientific research (including assessments, tools, models, etc.) of NOAA and its partners. Its partners include states, tribal or local entities, business or other for-profit organizations, and not-for-profit institutions or organizations. NOAA may, by virtue of collaborating with other federal agencies and/or non-federal entities, sponsor the collection of this type of information in connection with citizen science or crowdsourcing projects. All collections must comply with NOAA policies and the scope of this generic clearance, which includes, but is not limited to, the natural, applied, social, and cultural sciences as they apply to crowdsourcing and citizen science activities. Finally, personally identifiable information (PII) will only be collected when necessary and in accordance with applicable federal procedures and policies. If a new collection is not within the parameters of this generic clearance, NOAA will submit a separate information collection request to OMB for approval of that new collection.

III. Data

OMB Control Number: 0648–XXXX.

Form Number(s): None.

Type of Review: Regular submission (new generic clearance for its citizen science and crowdsourcing projects and approval for those citizen science and crowdsourcing existing collections in use without an OMB control number).

Affected Public: Individuals or households; Business or other for-profit organizations; Not-for-profit institutions or organization; State, Local, or Tribal government; and Federal government; Farms.

Estimated Number of Respondents: 1,372,414.

Estimated Time per Response: 9.0 minutes average with a range from 1 minutes to 8 hours, depending on the project.

Estimated Total Burden Hours: 3,116,328.

Estimated Total Annual Cost to Public: $97,932.

Respondent's Obligation: Voluntary.

Legal Authority: Crowdsourcing and Citizen Science Act; Magnuson-Stevens Fishery Conservation and Management Act (MSA); Marine Mammal Protection Act (MMPA); National Marine Sanctuaries Act (NMSA); Harmful Algal Bloom and Hypoxia Research and Control Act (HABHRCA); Coastal Zone Management Act (CZMA); Coral Reef Conservation Program (CRCP); Digital Coast Act (DAC); Ocean and Coastal Mapping Integration Act (OCMIA); Weather Research and Forecasting Innovation Act (WRFIA); Endangered Species Act (ESA); National Environmental Policy Act (NEPA); The National Environmental Education Act, E.O. 12866 (Regulatory Planning and Review); E.O. 12898 (Environmental Justice); E.O. 13985 (Advancing Racial Equity and Support for Underserved Communities); and E.O. 14008 (Climate Crisis).

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. 2022–18461 Filed 8–25–22; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC274]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Texas Sea Grant. If granted, the EFP would authorize the testing of new bycatch reduction device (BRD) designs in the commercial shrimp fishery in Federal waters of the Gulf of Mexico (Gulf). The Better BRDs for the Gulf Shrimp Fleet Project is a collaborative effort amongst Louisiana Sea Grant, Texas Sea Grant, NOAA Restoration Center, and NMFS to restore finfish populations impacted by the Deepwater Horizon oil spill (MC252) through the development and certification of new BRDs for the commercial shrimp industry throughout the Gulf.

DATES: Written comments must be received on or before September 12, 2022.

ADDRESSES: You may submit comments on the application, identified by ''NOAA–NMFS–2022–0089'' by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to Go to *https://www.regulations.gov* and enter ''NOAA–NMFS–2022–0089'' in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Frank Helies, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the application and may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/southeast/commercial-fishing/better-bycatch-reduction-device-gulf-shrimp-fleet-project/.*

FOR FURTHER INFORMATION CONTACT: Frank Helies, 727–824–5305; email: *frank.helies@noaa.gov.*

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

The EFP application submitted to NMFS involves the use of experimental fishing gear (BRDs) in Federal waters. Federal regulations require shrimp vessels to use NMFS approved BRDs while trawling for Gulf shrimp in Federal waters in the Gulf (50 CFR 622.53(a)). The EFP would exempt these research activities from the regulations requiring the use of BRDs in Federal waters of the Gulf at 50 CFR 622.53(a), and would allow the applicant to replace an existing approved BRD with one of six experimental BRDs determined by the applicant. The specific EFP request is further described and summarized below.

The Better BRDs for the Gulf Shrimp Fleet Project is a collaborative effort amongst Louisiana Sea Grant, Texas Sea Grant, NOAA Restoration Center, and NMFS to restore finfish populations injured by the Deepwater Horizon oil spill (MC252) through development and certification of new BRDs for the commercial shrimp industry throughout the Gulf. The project involves the testing of new BRD designs in the commercial shrimp fishery in Federal waters of the Gulf. The new BRD designs could demonstrate a greater reduction in bycatch over the federally certified Fisheye BRD, which may also lead to an overall increase in shrimp catch.

This project would identify and develop new bycatch-reducing technology to minimize commercial shrimp trawl finfish discard mortality. Additionally, the project seeks to advance cost-effective solutions for the Gulf shrimp fleet that would maximize the adoption of improved BRDs.

The project is separated into several phases. The first phase was conducted over the past year and included proof-of-concept testing of new BRD designs

by NMFS Gear Research Branch partners. This proof-of-concept testing included both dive and vessel testing aboard the research vessel Caretta. The dive testing was conducted off Panama City, Florida, and the vessel testing was conducted off Pascagoula, Mississippi. New BRD designs that showed the potential to be effective during proof-of-concept testing will be accepted for further evaluation during the project's next phase.

The next phase, covered by this EFP, would further evaluate the vetted BRDs through cost-effective solutions as part of commercial stakeholder testing. The final phase would be pre-certification and certification testing of the selected BRDs, consistent with the requirements in 50 CFR 622.53(a)(2) and the Bycatch Reduction Device Testing Manual (*https://www.fisheries.noaa.gov/resource/document/bycatch-reduction-device-testing-manual-2016/*).

The purpose of the commercial stakeholder testing that would be authorized under this EFP is to allow for stakeholder input on the strengths and weaknesses of new BRD designs across a variety of species and environmental conditions within the Gulf. This testing would also aid in the acceptance of new BRDs by the commercial shrimping industry when the most promising designs are later submitted for NMFS certification.

Up to 30 federally-permitted commercial Gulf shrimp vessels would be selected by the applicant to test gear that passed the proof-of-concept testing. The location of proof-of-concept testing trial vessels would be distributed across the Federal Gulf shrimp fishery and fishing grounds throughout the Gulf in water depths of 10–50 fathoms (18–91 m). During testing, vessels included in the EFP would be surveyed for qualitative information about the new BRDs, and any other use recommendations that are needed. Additional BRD information including time and difficulty to install, longevity, ease of use (*e.g.,* tangling during deployment/retrieval and shark damage), bycatch and shrimp retention characteristics, and overall cost would be collected by the applicant to assist with promotion of new BRD designs for industry wide usage.

Vessels in the project would be using experimental BRD designs on trips of up to 30 days at sea. Trip duration and the total number of tows with experimental BRD gear may vary based on underway conditions and vessel business factors at the discretion of the vessel operator. During a 30-day trip, approximately 90 tows with BRD-equipped shrimp trawls are expected to occur. Tow times would be variable but would be consistent during each trip. Typical tow time average 3 hours but may vary from 1 to 5 hours. If all 30 vessels participate, and complete each test tow, there is the potential for a maximum of 1,800 tows for this phase of the project.

The EFP would be valid through December 31, 2024, commencing on the date the EFP is issued. All BRD testing on federally permitted shrimp vessels would occur during the course of normal Gulf shrimp fishing operations and all of these operations would comply with all other current Federal shrimp regulations such as closed areas and size limits.

Experimental BRD Configurations

Under the EFP, six initial experimental BRD configurations could be tested by the applicant and project vessels. Each type of experimental BRD to be tested during the EFP is listed and summarized below.

Toms Fisheye

The Toms Fisheye BRD is a metal fisheye design with solid sides for buoyancy that produces an escape area in the net to allow fish to swim out. The device is installed further forward (approximately 11 ft (3 m)) than the standard Fisheye BRD and builds on an established design created in Australia.

Large Mesh Sections

In the Large Mesh Sections BRD, areas of the otter trawl net that are composed of 2 inch (5.1 cm) or larger mesh that is well above minimum cod end dimensions and installed anywhere from 4 to 8 ft (1.2 to 2.4 m) from the trawl tie off rings. The large mesh provides openings that make it easier for fish to escape the trawl net.

Nested Cylinder

The Nested Cylinder BRD includes an extended funnel with radial openings and metal collar supporting radial mesh. This type of BRD is installed directly behind the turtle excluder device (TED) on the shrimp trawl. The funnel retains shrimp while allowing fish the opportunity to swim back to the openings and escape.

Virgil Potter

The Virgil Potter BRD is also known as the ''Radial Escape Panel''. It consists of a soft funnel design installed directly behind the TED and shrimp are retained by the funnel while allowing fish the opportunity to swim back to the openings and escape.

Flapless TED

The project would test two different flapless TED designs known as the Chauvin TED and the Drury TED. These are both top-shooting TEDs with PVC pieces placed ahead of TED extension at the leading edge of the escape opening cut. These TEDs are designed to work as both a TED and a BRD. However, neither TED configuration has been tested as a BRD.

The Chauvin TED is a top shooting TED that contains a ''Chauvin shrimp deflector'', which is an allowable TED modification (50 CFR part 223.207(d)(8)). The Drury modification is not an allowable TED modification. Therefore, if the Drury TED modification is tested under this EFP, the applicant would need to obtain an additional TED testing permit from NMFS prior to commencement of testing.

Composite Panel Variations

The Composite Panel BRD is a NMFS-certified design that includes two soft panels with two sets of windows that allow fish to escape the net in addition a secondary component of either a spooker cone or a large mesh section installed further down the net. There is a potential for differences in BRD characteristics when used with a top versus bottom shooting TED. There is also potential for differences when installed with the escape openings in a top orientation of the composite panel as opposed to the current certified design that orients the escape openings to the bottom.

NMFS finds the application warrants further consideration based on a preliminary review. Possible conditions the agency may impose on the permit, if granted, include but are not limited to, a prohibition on conducting fishing gear testing within marine protected areas, marine sanctuaries, special management zones, or areas where they might interfere with managed fisheries without additional authorization. Additionally, NMFS may require special protections for Endangered Species Act-listed species and designated critical habitat, and may require particular gear markings. A final decision on issuance of the EFP will depend on NMFS' review of public comments received on the application, consultations with the appropriate fishery management agencies of the affected states, the Gulf of Mexico Fishery Management Council, and the U.S. Coast Guard, and a determination that the activities to be taken under the EFP are consistent with all applicable laws.

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

Dated: August 23, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–18460 Filed 8–25–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC306]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public hybrid meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Crab Plan Team will meet September 12, 2022, through September 15, 2022.

DATES: The meeting will be held on Monday, September 12, 2022, through Thursday, September 15, 2022, from 9 a.m. to 5 p.m. PST.

ADDRESSES: The meetings will be a hybrid meeting. The in-person component of the meeting will be held at the Alaska Fishery Science Center in the Traynor Room 2076, 7600 Sand Point Way NE, Building 4, Seattle, WA 98115, or join the meeting online through the links at *https://meetings.npfmc.org/Meeting/Details/2950.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via video conference are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Sarah Rheinsmith, Council staff; phone; (907) 271–2809; email: *sarah.rheinsmith@noaa.gov.* For technical support, please contact our admin Council staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Monday September 12, 2022, Through Thursday, September 15, 2022

The agenda will include:

(a) summer trawl survey results;
(b) Fishery summary 2021;
(c) Ecosystem Status report;
(d) SMBKC report card;
(e) SMBKC final SAFE and rebuilding update;
(f) Climate model updates;
(g) ESP Snow crab;
(h) Snow Crab final SAFE;
(i) Snow crab rebuilding;
(j) BBRKC report card;
(k) BBRKC final SAFE;
(l) PIRKC final SAFE;
(m) Tanner crab final SAFE;
(n) Overfishing status updates;
(o) EFH stock author report update;
(p) NSRKC proposed model runs;
(q) BSFRF update;
(r) Modifying timing of Crab Assessments update; and
(s) additional topics.

The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2950* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone, or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2950.* If you are attending the meeting in-person, please note that all attendees are encouraged to wear a mask.

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/2950.*

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

Dated: August 23, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–18451 Filed 8–25–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC305]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public hybrid meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Partial Coverage Fishery Monitoring Advisory Committee (PCFMAC) will meet September 12, 2022.

DATES: The meeting will be held on Monday, September 12, 2022, from 9:30 a.m. to 5:30 p.m. PST.

ADDRESSES: The meetings will be a hybrid meeting. The in-person component of the meeting will be held at the Alaska Fishery Science Center in the Marine Mammal Conference Room 2039, 7600 Sand Point Way NE, Building 4, Seattle, WA 98115, or join the meeting online through the links at *https://meetings.npfmc.org/Meeting/Details/2948.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via video conference are given under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Sara Cleaver, Council staff; phone: (907) 271–2809 and email: *sara.cleaver@noaa.gov.* For technical support, please contact our admin Council staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Monday September 12, 2022

At this meeting, the PCFMAC will receive the partial observer coverage cost efficiencies integrated analysis and will have an opportunity to develop recommendations for NMFS and the Council. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2948* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone, or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2948.* If you are attending the meeting in-person, please note that all attendees are encouraged to wear a mask.

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/2948.*

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

Dated: August 23, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–18450 Filed 8–25–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC136]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the Area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Areas OCS–A 0486, 0487, and 0500

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Orsted Wind Power North America LLC (Orsted) for authorization to take marine mammals incidental to high resolution geophysical (HRG) site characterization surveys in coastal waters from New York to Massachusetts in the areas of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OCS–A 0486, 0487, 0500, and along potential export cable routes (ECR) to landfall locations between Raritan Bay (part of the New York Bight) and Falmouth, MA. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than September 26, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.taylor@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jessica Taylor, 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: *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act-other-energy-activities-renewable.* 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 IHA 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. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On April 19, 2022, NMFS received a request from Orsted for an IHA to take small numbers of marine mammals incidental to marine site characterization surveys in federal waters located OCS Commercial Lease Areas off the coasts from Rhode Island to Massachusetts, and along potential ECRs to landfall locations between Raritan Bay (part of the New York Bight) and Falmouth, Massachusetts. Following NMFS' review of the draft application, a revised version was submitted on July 8, 2022. The application was deemed adequate and complete on August 3, 2022. Orsted's request is for take of 16 species of marine mammals (consisting of 16 stocks) by Level B harassment only. Neither Orsted nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued IHAs and a renewal IHA to Orsted for marine site characterization HRG surveys in the OCS–A 0486, 0487, and 0500 Lease Areas (84 FR 52464, October 2, 2019; 85

FR 63508, October 8, 2020; 87 FR 13975, March 11, 2022). Orsted complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results may be found in the Effects of the Specified Activity on Marine Mammals and their Habitat section.

On August 1, 2022, NMFS announced proposed changes to the existing North Atlantic right whale vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921). Should a final vessel speed rule be issued and become effective during the effective period of this IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. These changes would become effective immediately upon the effective date of any final vessel speed rule and would not require any further action on NMFS's part.

Description of Proposed Activity

Overview

Orsted proposes to conduct HRG surveys in the Lease Areas OCS–A 0486, 0487, 0500 and ECR Area in federal waters from New York to Massachusetts to support the characterization of the existing seabed and subsurface geological conditions, which is necessary for the development of an offshore electric transmission system. The proposed project will use active HRG sources operating at frequencies lower than 180 kHz, which may result in the incidental take of marine mammals by Level B harassment. This take of marine mammals is anticipated to be in the form of behavioral harassment and no serious injury or mortality is anticipated, nor is any proposed. In-water work will include approximately 400 survey days using multiple vessels lasting from September 25, 2022 to September 24, 2023.

Dates and Duration

As described above, HRG surveys are expected to commence on September 25, 2022 and last through September 24, 2023 for up to approximately 400 survey days (Table 1). Orsted is proposing to conduct continuous HRG survey operations 12-hours per day and 24-hours per day using multiple vessels. A survey day is defined as a 24-hour activity day in which an assumed number of line km are surveyed. The number of anticipated survey days was calculated as the number of days needed to reach the overall level of effort required to meet survey objectives assuming any single vessel covers, on average 70 line kilometer (km) per 24-hour operations. A survey day accounts for multiple vessels such that two vessels operating within one 24-hour period equates to two survey days. A maximum of three vessels would work concurrently in the project area in any combination of 24-hour and 12-hour vessels. To be conservative, our exposure analysis assumes daily 24-hour operations. Although vessels may complete 20–80 km/day of actual source operations, we anticipate that vessels will average 70 line km of active IHA-regulated sources per day. As shown by Table 1, the estimated number of survey days varies by Lease Area and ECR.

TABLE 1—PROPOSED NUMBER OF SURVEY DAYS FOR EACH LEASE AREA AND ECR

Area	Total number of survey days [1]
OCS–A–0486	10
OCA–A–0487	10
OCS–A–0500	200
ECR	180
Total	400

[1] Up to three total survey vessels may be operating within both of the survey areas concurrently.

Specific Geographic Region

Orsted's survey activities would occur in the Lease Areas located approximately 14 miles (22.5 km) south of Martha's Vineyard, Massachusetts at its closest point to land, as well as along potential export cable route (ECR) corridors off the coast of New York, Connecticut, Rhode Island, and Massachusetts to landfall locations between Raritan Bay and Falmouth, MA, as shown in Figure 1. Water depths in the project area extend out from shoreline to approximately 90 m in depth.

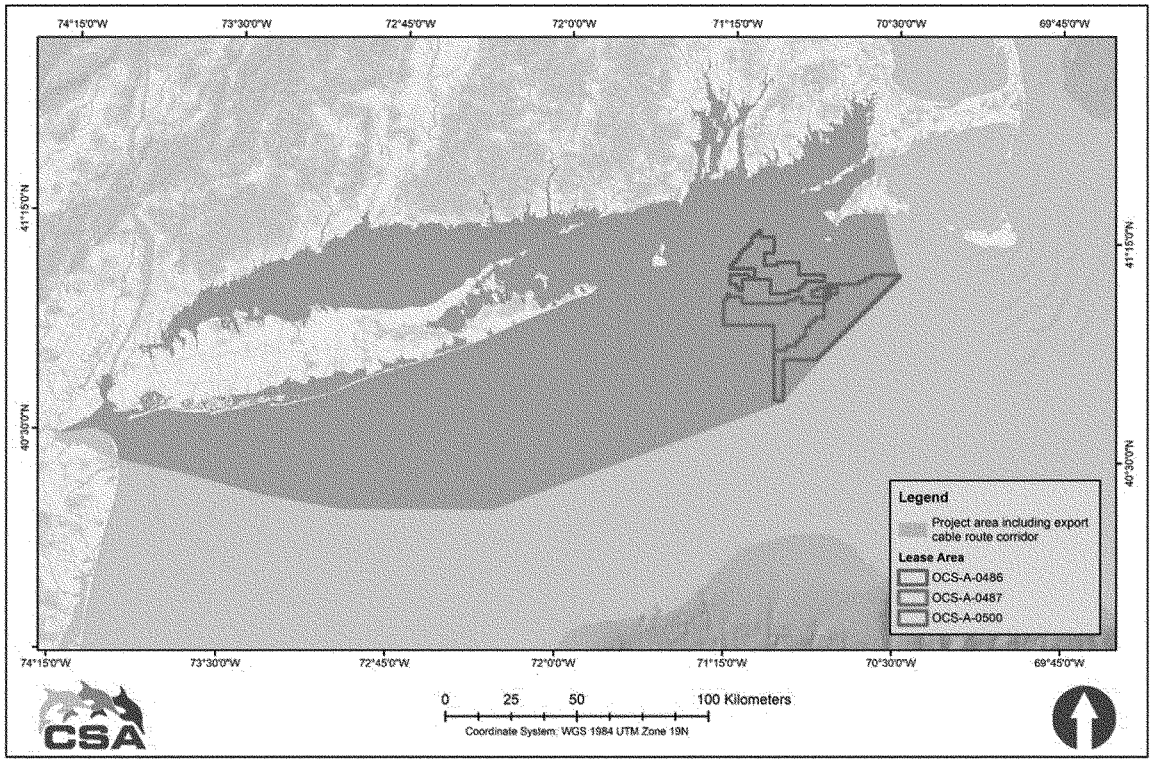

Figure 1. Project area for site characterization surveys

Detailed Description of Specific Activity

Orsted proposes to conduct HRG survey operations, including multibeam depth sounding, seafloor imaging, and shallow and medium penetration sub-bottom profiling. The HRG surveys will include the use of seafloor mapping equipment with operating frequencies above 180 kilohertz (kHz) (*e.g.,* side-scan sonar (SSS), multibeam echosounders (MBES)); magnetometers and gradiometers that have no acoustic output; and shallow- to medium-penetration sub-bottom profiling (SBP) equipment (*e.g.,* parametric sonars, compressed high-intensity radiated pulses (CHIRPs), boomers, sparkers) with operating frequencies below 180 kilohertz (kHz). No deep-penetration SBP surveys (*e.g.,* airgun or bubble gun surveys) will be conducted. HRG equipment will either be deployed from remotely operated vehicles (ROVs) or mounted to or towed behind the survey vessel at a typical survey speed of approximately 4.0 knots (7.4 km) during the site characterization activities within the Lease areas and ECR area. Equipment deployed on the ROVs would be identical to that deployed on the vessel; however, the sparker systems are not normally deployed from an ROV due to the power supply required. The extent of ROV usage in this project is unknown at this time, however NMFS expects the use of ROVs to have de minimis impacts relative to the use of vessels given the smaller sources and inherent nature of utilizing an ROV (*e.g.,* much smaller size of an ROV relative to a vessel and less acoustic exposure given location of their use in the water column). For these reasons, our analysis focuses on the acoustic sources themselves and the use of vessels to deploy such sources, rather than the specific use of ROVs to deploy the survey equipment. Therefore, ROVs are not further analyzed in this notice.

Acoustic sources planned for use during HRG survey activities proposed by Orsted for which sounds levels have the potential to result in Level B harassment of marine mammals include the following:

- Shallow penetration, non-impulsive, intermittent, mobile, non-parametric SBPs (*i.e.,* CHIRP SBPs) are used to map the near-surface stratigraphy (top 0 to 10 m) of sediment below seabed. A CHIRP system emits sonar pulses that increase in frequency from approximately 2 to 20 kHz over time. The frequency range can be adjusted to meet project variables. These sources are typically mounted on a pole, either over the side of the vessel or through a moon pool in the bottom of the hull. The operational configuration and relatively narrow beamwidth of these sources reduce the likelihood that an animal would be exposed to the signal;
- Medium penetration SBPs (boomers) are used to map deeper subsurface stratigraphy as needed. A boomer is a broad-band sound source operating in the 3.5 Hz to 10 kHz frequency range. This system is commonly mounted on a sled and towed behind the vessel. Boomers are impulsive and mobile sources; and
- Medium penetration SBPs (sparkers) are used to map deeper subsurface stratigraphy as needed. Sparkers create acoustic pulses from 50 Hz to 4 kHz omnidirectionally from the source, and are considered to be impulsive and mobile sources. Sparkers are typically towed behind the vessel with adjacent hydrophone arrays to receive the return signals.

Operation of the following survey equipment types is not reasonably expected to result in take of marine mammals and will not be discussed further beyond the brief summaries provided below:

- Parametric SBPs, also commonly referred to as sediment echosounders, are used to provide high data density in sub-bottom profiles that are typically required for cable routes, very shallow water, and archaeological surveys. Parametric SPBs are typically mounted

on a pole, either over the side of the vessel or through a moon pool in the bottom of the hull. Crocker and Fratantonio (2016) does not provide relevant measurements or source data for parametric SBPs, however, some source information is provided by the manufacturer. For the proposed project, the SBP used would generate short, very narrow-beam (1° to 3.5°) sound pulses at relatively high frequencies (generally around 85 to 100 kHz). The narrow beam width significantly reduces the potential for exposure while the high frequencies of the source are rapidly attenuated in seawater. Given the narrow beam width and relatively high frequency. NMFS does not reasonably expect there to be potential for marine mammals to be exposed to the signal;

- Acoustic cores are seabed-mounted sources with three distinct sound sources: A high-frequency parametric source, a high-frequency CHIRP sonar, and a low-frequency CHIRP sonar. The beam width is narrow (3.5° to 8°) and the source is operated roughly 3.5 m above the seabed from a seabed mount, with the transducer pointed directly downward;
- Ultra-short baseline (USBL) positioning systems are used to provide high accuracy ranges by measuring the time between the acoustic pulses transmitted by vessel transceiver and a transponder (or beacon) necessary to produce the acoustic profile. It is a two-component system with a moon pool- or side pole mounted transceiver and one or several transponders mounted on other survey equipment. USBLs are expected to produce extremely small acoustic propagation distances in their typical operating configuration;
- Multibeam echosounders (MBES) are used to determine water depths and general bottom topography. MBES sonar systems project sonar pulses in several angled beams from a transducer mounted to a ship's hull. The beams radiate out from the transducer in a fan-shaped pattern orthogonally to the ship's direction. All of the proposed MBESs have operating frequencies >180 kHz and, therefore, are outside the general hearing range of marine mammals; and
- Side scan sonars (SSS) are used for seabed sediment classification purposes and to identify natural and man-made acoustic targets on the seafloor. The sonar device emits conical or fan-shaped pulses down toward the seafloor in multiple beams at a wide angle, perpendicular to the path of the sensor through the water column. All of the proposed SSS have operating frequencies >180 kHZ and, therefore, are outside the general hearing range of marine mammals.

Table 2 identifies representative survey equipment with the expected potential to result in exposure of marine mammals and thus potentially result in take. The make and model of the listed geophysical equipment may vary depending on availability and the final equipment choices will vary depending upon the final survey design, vessel availability, and survey contractor selection.

TABLE 2—SUMMARY OF REPRESENTATIVE HRG SURVEY EQUIPMENT [1]

HRG survey equipment	Representative equipment	Operating frequency ranges (kHz)	SL (SPL dB re 1 µPa m)	SL (SEL dB re 1 µPa2 m2 s)	SL (PK dB re 1 µPa m)	Beamwidth ranges (degrees)	Pulse duration (width) (millisecond)	Pulse repetition rate (Hz)
CHIRPs (non-impulsive, non-parametric).	ET 216 (2000DS or 3200 top unit).	2–16 2–8	195	178	.....	24	20	6
	ET 424 3200–XS	4–24	176	152	.....	71	3.4	2
	ET 512i	0.7–12	179	158	.....	80	9	8
	GeoPulse 5430A	2–17	196	183	.....	55	50	10
	Teledyne Benthos Chirp III—TTV 170.	2–7	197	185	.....	100	60	15
	Pangeo SBI	4.5–12.5	188.2	165	.....	120	4.5	45
Sparker (impulsive)	AA, Dura-spark UHD Sparker (400 tips, 500 J) [2].	0.3–1.2	203	174	211	Omni	1.1	4
Sparkers and Boomers (impulsive).	AA, Dura-spark UHD Sparker Model 400 × 400 [2].	0.3–1.2	203	174	211	Omni	1.1	4
	GeoMarine, Dual 400 Sparker, Model Geo-Source 800 [2 3].	0.4–5	203	174	211	Omni	1.1	2
	GeoMarine Sparker, Model Geo-Source 200–400 [2 3].	0.3–1.2	203	174	211	Omni	1.1	4
	GeoMarine Sparker, Model Geo-Source 200 Lightweight [2 3].	0.3–1.2	203	174	211	Omni	1.1	4
	AA, triple plate S-Boom (700–1,000 J) [4].	0.1–5	205	172	211	80	0.6	4

µPa = micropascal; AA = Applied Acoustics; CF = Crocker and Fratantonio (2016); CHIRP = compressed high-intensity radiated pulses; dB = decibel; EM = equipment mounted; ET = edgetech; J = joule; Omni = omnidirectional source; re = referenced to; PK = zero-to-peak sound pressure level; PM = pole mounted; SBI = sub-bottom imager; SL = source level; SPL = root-mean-square sound pressure level; T = towed; TB = Teledyne benthos; UHD = ultra-high definition; WFA = weighting factor adjustment.

[1] Operational parameters listed here differ from those listed in the Bureau of Ocean Energy Management Biological Assessment published in February 2021 (Baker and Howson, 2021).

[2] The Dura-spark measurements and specifications provided in Crocker and Fratantonio (2016) were used for all sparker systems proposed for the survey. The data provided in Crocker and Fratantonio (2016) represent the most applicable data for similar sparker systems with comparable operating methods and settings when manufacturer or other reliable measurements are not available.

[3] The AA Dura-spark (500 J, 400tips) was used as a proxy source.

[4] Crocker and Fratantonio (2016) provide S-Boom measurements using two different power sources (CSP–D700 and CSP–N). The CSP–D700 power source was used in the 700 J measurements but not in the 1,000 J measurements. The CSP–N source was measured for both 700 J and 1,000 J operations but resulted in a lower SL; therefore, the single maximum SL value was used for both operational levels of the S-Boom.

The deployment of certain types of HRG survey equipment, including some of the equipment planned for use during Orsted's proposed activity, produces sound in the marine environment that has the potential to result in harassment of marine mammals. Proposed mitigation, monitoring, and reporting measures are described in detail later in

this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS Stock Assessment Reports (SARs; *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 website (*https://www.fisheries.noaa.gov/find-species).*

Table 3 lists all species or stocks for which take is expected and proposed to be authorized for these activities, 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. 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' SARs). While no serious injury or 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' 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 U.S. draft 2021 U.S. Atlantic and Gulf of Mexico SARs. All values presented in Table 3 are the most recent available at the time of publication and are available in the 2020 SARs (Hayes *et al.,* 2021) and draft 2021 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 3—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
North Atlantic right whale ..	*Eubalaena glacialis*	Western Atlantic	E/D, Y	368 (0; 364;[5] 2019)	0.7	7.7
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-/-, Y	1,396 (0; 1,380; 2016)	22	12.15
Fin whale	*Balaenoptera physalus*	Western North Atlantic	E/D, Y	6,802 (0.24; 5,573; 2016)	11	1.8
Sei whale	*Balaenoptera borealis*	Nova Scotia	E/D, Y	6,292 (1.02; 3,098; 2016)	6.2	0.8
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coastal	-/-, N	21,968 (0.31; 17,002; 2016)	170	10.6
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Sperm whale	*Physeter macrocephalus*	North Atlantic	E/D, Y	4,349 (0.28; 3,451; 2016)	3.9	0
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic	-/-, N	39,215 (0.3; 30,627; 2016)	306	29
Striped dolphin	*Stenella coeruleoalba*	Western North Atlantic	-, -, N	67,036 (0.29, 52,939, 2016)	529	0
Atlantic white-sided dolphin.	*Lagenorhynchus acutus*	Western North Atlantic	-/-, N	93,233 (0.71; 54,443; 2016)	544	27
Bottlenose dolphin	*Tursiops truncatus*	Western North Atlantic Offshore.	-/-, N	62,851 (0.23; 51,914; 2016)	519	28
Short-beaked Common dolphin.	*Delphinus delphis*	Western North Atlantic	-/-, N	172,974(0.21, 145,216, 2016)	1,452	390
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic	-/-, N	39,921 (0.27; 32,032; 2016)	320	0
Risso's dolphin	*Grampus griseus*	Western North Atlantic Sock.	-/-, N	35,215 (0.19; 30,051; 2016)	301	34
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy.	-/-, N	95,543 (0.31; 74,034; 2016)	851	164
Order Carnivora—Superfamily Pinnipedia						
Harbor seal	*Phoca vitulina*	Western North Atlantic	-/-, N	61,336 (0.08; 57,637; 2018)	1,729	339
Gray seal [4]	*Halichoerus grypus*	Western North Atlantic	-/-, N	27,300 (0.22; 22,785; 2018)	1,389	4,453

[1] 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: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is the coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

[4] NMFS' stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,431. The annual M/SI value given is for the total stock.

[5] The draft 2022 SARs have yet to be released; however, NMFS has updated its species web page to recognize the population estimate for NARWs is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*).

As indicated above, all 16 species (with 16 managed stocks) in Table 3 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the

proposed survey areas are included in Table 6 of the IHA application. While the blue whale (*Balaenoptera musculus*), Cuvier's beaked whale (*Ziphius cavirostris*), four species of Mesoplodont beaked whale (*Mesoplodon* spp.), dwarf and pygmy sperm whale (*Kogia sima* and *Kogia breviceps*), short-finned pilot whale (*Globicephala macrorhynchus*), northern bottlenose whale (*Hyperoodon ampullatus*), killer whale (*Orcinus orca*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), melon-headed whale (*Peponocephala electra*), white-beaked dolphin (*Lagenorhynchus albirostris*), pantropical spotted dolphin (*Stenella attenuata*), Fraser's dolphin (*Lagenodelphis hosei*), rough-toothed dolphin (*Steno bredanensis*), Clymene dolphin (*Stenella clymene*), spinner dolphin (*Stenella longirostris*), hooded seal (*Cystophora cristata*), and harp seal (*Pagophilus groenlandicus*) have been documented in the area, the temporal and/or spatial occurrence of these species is such that take is not expected to occur and they are not analyzed further.

In addition, the Florida manatee (*Trichechus manatus latirostris*) may be found in the coastal waters of the project area. However, Florida manatees are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Below is a description of the species that have the highest likelihood of occurring in the project area and are, thus, expected to potentially be taken by the proposed activities as well as further detail informing the baseline for select species (*i.e.,* information regarding current Unusual Mortality Events (UMEs) and important habitat areas).

North Atlantic Right Whale

The North Atlantic right whale ranges from calving grounds in the southeastern United States to feeding grounds in New England waters and into Canadian waters (Hayes *et al.,* 2021). Right whales have been observed in or near southern New England during all four seasons (Quintana-Rizzo *et al.,* 2021), and passive acoustic monitoring indicates the year-round presence of NARWs in the Gulf of Maine (Morano *et al.,* 2012; Bort *et al.,* 2015). Surveys have demonstrated the existence of seven areas where NARWs congregate seasonally: The coastal waters of the southeastern U.S., the Great South Channel, Jordan Basin, Georges Basin along the northeastern edge of Georges Bank, Cape Cod and Massachusetts Bays, the Bay of Fundy, and the Roseway Basin on the Scotian Shelf (Hayes *et al.,* 2018). NOAA Fisheries has designated two critical habitat areas for the NARW under the ESA: The Gulf of Maine/Georges Bank region, and the southeast calving grounds from North Carolina to Florida (81 FR 4837, January 27, 2016).

New England waters are a primary feeding habitat for NARWs during late winter through spring, with feeding moving into deeper and more northerly waters during summer and fall. Since 2010, NARWs have reduced their use of habitats in the Great South Channel and Bay of Fundy, while increasing their use of habitat within Cape Cod Bay as well as a region south of Martha's Vineyard and Nantucket Islands (Stone *et al.,* 2017; Mayo *et al.,* 2018; Ganley *et al.,* 2019; Record *et al.,* 2019; Meyer-Gutbrod *et al.,* 2021). This shift is likely due to changes in oceanographic conditions and food supply as dense patches of zooplankton are necessary for efficient foraging (Mayo and Marx, 1990; Record *et al.,* 2019). NARW use of habitats such as in the Gulf of St. Lawrence, southern New England waters, and the mid-Atlantic waters of the United States have also increased over time (Davis *et al.,* 2017; Davis and Brillant, 2019; Crowe *et al.,* 2021; Quintana-Rizzo *et al.,* 2021). Simard *et al.* (2019) documented the presence of NARWs in the southern Gulf of St. Lawrence from late April through mid-January annually from 2010–2018 using passive acoustics, with occurrences peaking in the area from August through November each year (Simard *et al.,* 2019). In addition, Pendleton *et al.* (2022) found that peak use of NARW habitat in Cape Cod Bay has shifted over the past 20 years to later in the spring, likely due to variations in seasonal conditions.

In the late fall months (*e.g.,* October), right whales are generally thought to depart from the feeding grounds in the North Atlantic and move south to their calving grounds off Georgia and Florida. However, recent research indicates our understanding of their movement patterns remains incomplete and not all of the population undergoes a consistent annual migration (Davis *et al.,* 2017). Females may remain in the feeding grounds during the winter in the years preceding and following the birth of a calf to increase their energy stores while juvenile and adult males may move to southern wintering grounds after years of abundant prey in northern feeding areas (Gowan *et al.,* 2019). Within the proposed project area, NARWs have primarily been observed during the winter and spring seasons through visual surveys although are likely present year-round (Kraus *et al.,* 2016; Quintana-Rizzo *et al.,* 2021).

NARW movements within and between habitats are extensive and the area off the coasts of Rhode Island and Massachusetts is an important migratory corridor. The proposed project area overlaps a portion of a NARW Biologically Important Area (BIA) for migration. This migratory corridor is approximately 269,488 km² in size, comprises the waters of the continental shelf offshore the east coast of the United States, and extends from Florida through Massachusetts (LaBrecque *et al.,* 2015). NARW movements may include seasonal migrations between northern feeding grounds and southern breeding grounds as well as movements between feeding habitats in Cape Cod Bay and southern New England waters (Quintana-Rizzo *et al.,* 2021). Given that Orsted's proposed surveys would be concentrated offshore of Massachusetts and Rhode Island, many NARWs in the vicinity would likely be migrating through the area, however, foraging activity may also take place as Quintana-Rizzo *et al.* (2021) observed NARWs foraging in southern New England waters year-round.

Since 2010, the western North Atlantic right whale population has been in decline (Pace *et al.,* 2017), with a 40 percent decrease in calving rate (Kraus *et al.,* 2016). In 2018, no new North Atlantic right whale calves were documented in their calving grounds; this represented the first time since annual NOAA aerial surveys began in 1989 that no new right whale calves were observed. Eighteen right whale calves were documented in 2021. As of July 14, 2022 and the writing of this proposed Notice, 15 North Atlantic right whale calves have been documented during this calving season. Presently, the best available peer-reviewed population estimate for North Atlantic right whales is 368 per the draft 2021 SARs (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*). The draft 2022 SARs have yet to be released; however, NMFS has updated its species web page to recognize the population estimate for NARWs is below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*).

NMFS regulations at 50 CFR part 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas (SMA) for right whales in 2008. SMAs were developed to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds. The Block Island SMA,

which occurs off the mouth of Long Island Sound, overlaps spatially with the proposed project area (*https://apps-nefsc.fisheries.noaa.gov/psb/surveys/MapperiframeWithText.html*). The SMA is active from November 1 through April 30 of each year and may be used by NARWs for feeding or migrating.

Right Whale Slow Zones are established when NARWs are detected both visually (*i.e.,* Dynamic Management Area) and acoustically (*i.e.,* Acoustic Slow Zone). These are areas where mariners are encouraged to avoid and/or reduce speeds to 10 kn (5.1 m/s) to avoid vessel collisions with NARWs. Slow Zones typically persist for 15 days. More information on these right whale Slow Zones can be found on NMFS' website (*https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales*).

Dynamic Management areas (DMAs) are a type of NARW Slow Zones that may be established when three or more NARWs are visually sighted within a discrete area. This criteria is based upon findings by Clapham and Pace (2001) that showed an aggregation of three or more whales is likely to remain in the area for several days, in contrast to an aggregation of fewer whales. Acoustic Slow Zones are another type of NARW Slow Zone based upon acoustic detections, and are established when three or more upcall detections from an acoustic system occur within an evaluation period (*e.g.,* 15 min). More information, as well as the most up-to-date DMA establishments, can be found on NMFS' website (*https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales*).

Elevated North Atlantic right whale mortalities have occurred since June 7, 2017 along the U.S. and Canadian coasts. As of July 2022, a total of 34 confirmed dead stranded whales (21 in Canada; 13 in the United States) have been documented. This event has been declared an Unusual Mortality Event (UME), with human interactions, including entanglement in fixed fishing gear and vessel strikes, implicated in at least 16 of the mortalities thus far. More information is available online at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2019-north-atlantic-right-whale-unusual-mortality-event.*

Humpback Whale

Humpback whales are found worldwide in all oceans. Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered. On September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the current species-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62259; September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whales that is expected to occur in the project area. Whales occurring in the project area are not necessarily from the Gulf of Maine feeding population managed as a stock by NMFS. Bettridge *et al.* (2015) estimated the size of the West Indies DPS population at 12,312 (95 percent CI 8,688–15,954) whales in 2004–05, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Stevick *et al.,* 2003; Smith *et al.,* 1999) and the increasing trend for the West Indies DPS (Bettridge *et al.,* 2015).

In New England waters, feeding is the principal activity of humpback whales, and their distribution in this region has been largely correlated to abundance of prey species (Payne *et al.,* 1986, 1990). Humpback whales are frequently piscivorous when in New England waters, feeding on herring (*Clupea harengus*), sand lance (*Ammodytes spp.*), and other small fishes, as well as euphausiids in the northern Gulf of Maine (Paquet *et al.,* 1997). During winter, the majority of humpback whales from the North Atlantic feeding area (including the Gulf of Maine) mate and calve in the West Indies, where spatial and genetic mixing among feeding groups occurs (Katona and Beard 1990; Clapham *et al.* 1993; Palsbøll *et al.,* 1997; Stevick *et al.,* 1998; Kennedy *et al.,* 2014), though significant numbers of animals are found in mid- and high-latitude regions at this time (Clapham *et al.,* 1993; Swingle *et al.,* 1993). Some individuals have been sighted repeatedly within the same winter season (Clapham *et al.,* 1993; Robbins, 2007), indicating that not all humpback whales migrate south every winter (Waring *et al.,* 2017).

Kraus *et al.* (2016) observed humpbacks in the Rhode Island/Massachusetts (RI/MA) & MA Wind Energy Areas (WEAs) and surrounding areas during all seasons. Humpback whales were observed most often during spring and summer months, with a peak from April to June. Kraus *et al.* (2016) also observed calves and one instance of courtship behavior among adults. Acoustic data indicate that this species may be present within the MA WEA year-round, with the highest rates of acoustic detections in the winter and spring (Kraus *et al.,* 2016). Stocks of sand lance appear to correlate with the years in which the most abundant whales are observed, suggesting that humpback whale distribution and occurrences could largely be influenced by prey availability (Kenney and Vigness-Raposa, 2010). Other sightings of note include 46 sightings of humpback whales in the New York-New Jersey Harbor Estuary documented from 2011–2016 (Brown *et al.,* 2017) and multiple humpbacks observed feeding off Long Island during July 2016 (Hayes *et al.,* 2020). Pendleton *et al.* (2022) documented a recent shift in humpback whale peak habitat use of Cape Cod Bay, in which maximum occupancy occurred later in the spring during May rather than April.

The most significant anthropogenic causes of mortality of humpback whales include incidental fishery entanglements, responsible for roughly eight whale mortalities, and vessel collisions, responsible for four mortalities both on average annually from 2013 to 2017 (Hayes *et al.,* 2020).

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. This event has been declared a UME. Partial or full necropsy examinations have been conducted on approximately half of the 161 known cases (as of July 14, 2022). Of the whales examined, approximately 50 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. Three previous UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2016-2021-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

Fin Whale

Fin whales have a common occurrence in waters of the U.S. Atlantic Exclusive Economic Zone (EEZ), principally from Cape Hatteras northward with a distribution in both continental shelf and deep water habitats (Hayes *et al.,* 2021). Fin whales are present north of 35-degree latitude in every season and are broadly distributed throughout the western North Atlantic for most of the year although densities vary seasonally (Edwards *et al.,* 2015; Hayes *et al.,*

2021). They are typically found in small groups of up to five individuals (Brueggeman *et al.,* 1987).

New England and Gulf of St. Lawrence waters represent major feeding grounds for fin whales (Hayes *et al.,* 2021). Two well-known feeding grounds for fin whales are present near the proposed project area in the Great South Channel and Jeffrey's Ledge and in waters directly east of Montauk, New York (Hayes *et al.,* 2019; Kenney and Vigness-Raposa, 2010). The highest occurrences are identified south of Montauk Point to south of Nantucket (Kenney and Vigness-Raposa, 2010). Cape Cod Bay, just north of the proposed project area, also represents seasonal feeding habitat for fin whales (Clapham and Seipt, 1991). Surveys conducted in the RI/MA WEA indicate fin whales may be present year-round, but sightings were the highest during the spring and summer (Kraus *et al.,* 2016). The northwest corner of the ECR Area overlaps with a fin whale BIA for feeding (LaBrecque *et al.,* 2015). The BIA is located east of Montauk Point between the 15-m and 50-m contours. Feeding is known to occur from March through October (LaBrecque *et al.,* 2015).

The fin whale is federally listed under the ESA as an endangered marine mammal and are designated as a strategic stock under the MMPA due to their endangered status under the ESA, uncertain human-caused mortality, and incomplete survey coverage of the stock's defined range. The main threats to fin whales are fishery interactions and vessel collisions (Hayes *et al.,* 2021).

Sei Whale

The Nova Scotia stock of sei whales can be found in deeper waters of the continental shelf edge waters of the northeastern U.S. and northeastward to south of Newfoundland (Hayes *et al.,* 2021). Sei whales have a regular occurrence in the proposed project area. The southern portion of the stock's range during spring and summer includes the Gulf of Maine and Georges Bank. Spring is the period of greatest abundance in U.S. waters, with sightings concentrated along the eastern margin of Georges Bank and into the Northeast Channel area, and along the southwestern edge of Georges Bank in the area of Hydrographer Canyon (CETAP, 1982; Kraus *et al.,* 2016, Roberts *et al.,* 2016; Palka *et al,.* 2017; Cholewiak *et al.,* 2018).

Sei whales are most common in deeper waters along the continental shelf edge (NMFS, 2021) but will forage occasionally in shallower, inshore waters. A sei whale BIA for feeding occurs adjacent to the east of the proposed project area. The occurrence and abundance of sei whales on feeding grounds may shift dramatically from one year to the next. CETAP surveys observed sei whales along the continental shelf edge only during the spring and summer (CETAP, 1982). In the RI/MA WEA, sei whales were also only observed during the spring (eight sightings) and summer (13 sightings). No sightings were reported in the WEA during the fall and winter (Kraus *et al.,* 2016).

Sei whales are listed as endangered under the ESA, and the Nova Scotia stock is considered strategic and depleted under the MMPA. The main threats to this stock are interactions with fisheries and vessel collisions. Impacts from environmental contaminants also present a concern as well as potential spatial shifts in distribution related to climate change (Hayes *et al.,* 2020; Sousa *et al.,* 2019).

Minke Whale

Minke whales can be found in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45° W) to the Gulf of Mexico (Hayes *et al.,* 2021). This species generally occupies waters less than 100 m deep on the continental shelf and has a common occurrence in the proposed project area. There appears to be a strong seasonal component to minke whale distribution in the survey areas, in which spring to fall are times of relatively widespread and common occurrence while during winter the species appears to be largely absent (Hayes *et al.,* 2021; Risch *et al.,* 2013).

Little is known about their specific migratory behavior compared to other large whale species; however, acoustic detections show that minke whales migrate south in mid-October to early November and return from wintering grounds starting in March through early April (Risch *et al.,* 2014). Northward migration appears to track the warmer waters of the Gulf Stream along the continental shelf, while southward migration is made farther offshore (Risch *et al.,* 2014). Surveys conducted in the RI/MA WEA, reported 103 minke whale sightings within the area, predominantly in the spring followed by summer and fall (Kraus *et al.,* 2016).

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Maine through South Carolina, with a total of 123 strandings (as of July 14, 2022). This event has been declared a UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-minke-whale-unusual-mortality-event-along-atlantic-coast.*

Sperm Whale

The distribution of the sperm whale in the U.S. EEZ occurs on the continental shelf edge, over the continental slope, and into mid-ocean regions (Hayes *et al.,* 2020). The basic social unit of the sperm whale appears to be the mixed school of adult females plus their calves and some juveniles of both sexes, normally numbering 20–40 animals in all. There is evidence that some social bonds persist for many years (Christal *et al.,* 1998). In summer, the distribution of sperm whales includes the area east and north of Georges Bank and into the Northeast Channel region, as well as the continental shelf (inshore of the 100 m isobath) south of New England. In the fall, sperm whale occurrence south of New England on the continental shelf is at its highest level, and there remains a continental shelf edge occurrence in the Mid-Atlantic Bight. In winter, sperm whales are concentrated east and northeast of Cape Hatteras (Hayes *et al.,* 2020).

CETAP and NMFS Northeast Fisheries Science Center sightings in shelf-edge and off-shelf waters included many social groups with calves/juveniles (CETAP, 1982). Sperm whales were usually seen at locations corresponding to the tops of the seamounts and rises and did not generally occur over the slopes. Sperm whales were recorded at the surface over depths varying from 800 to 3,500 m. Kraus *et al.* (2016) reported sightings of sperm whales in the RI–MA WEA during the summer and fall months, with five individuals in August, one in September, and three in June. There have also been occasional strandings in Massachusetts and Long Island (Kenney and Vigness-Raposa, 2010). Although the likelihood of occurrence within the proposed project area remains very low, the sperm whale was included as an affected species because of its high seasonal densities east of the project area.

Sperm whales are listed as endangered under the ESA, and the North Atlantic stock is considered

strategic under the MMPA. The greatest threats to sperm whales include ship strikes (McGillivary *et al.,* 2009; Carrillo and Ritter, 2010), anthropogenic sound (Nowacek *et al.,* 2015), and the potential for climate change to influence variations in spatial distribution and abundance of prey (Hayes *et al.,* 2020).

Long-Finned Pilot Whale

Long-finned pilot whales are found from North Carolina north to Iceland, Greenland, and the Barents Sea (Sergeant, 1962; Leatherwood *et al.,* 1976; Abend, 1993; Bloch *et al.,* 1993; Abend and Smith, 1999). In U.S. Atlantic waters, the species is distributed principally along the continental shelf edge off the northeastern U.S. coast in winter and early spring (CETAP 1982; Payne and Heinemann, 1993; Abend and Smith, 1999; Hamazaki, 2002). In late spring, pilot whales move onto Georges Bank and into the Gulf of Maine and more northern waters and remain in these areas through late autumn (CETAP 1982; Payne and Heinemann, 1993). Long-finned pilot whales are highly social and vocal and are typically observed in groups of 10 to 20 surface-active individuals (NOAA 2022). Within the RI–MA WEA, no sightings of pilot whales were observed during the summer, fall, or winter (Kraus *et al.,* 2016).

Striped Dolphin

Striped dolphins are widely distributed in tropical and warm temperate waters of the Western North Atlantic ranging from Nova Scotia to the Caribbean and Gulf of Mexico (Archer and Perrin, 1997; Archer, 2002; Hayes *et al.,* 2020). In waters off the northeastern U.S. coast, striped dolphins are distributed along the continental shelf edge from Cape Hatteras to the southern margin of Georges Bank, and also occur offshore over the continental slope and rise in the mid-Atlantic region (CETAP, 1982; Mullin and Fulling, 2003). During CETAP surveys, continental shelf edge sightings were generally centered along the 1,000 m depth contour in all seasons (CETAP, 1982). Striped dolphins prefer offshore waters from the continental slope to the Gulf Stream (Hayes *et al.,* 2020; Leatherwood *et al.,* 1976; Perrin *et al.,* 1994; Schmidly, 1981).

There are few reported occurrences of striped dolphins in the project area. All CETAP records reported striped dolphins in waters greater than 900m; although it was noted that the most northern sightings aligned with warm core rings of the Gulf Stream (Hayes *et al.,* 2020; Waring *et al.,* 1992). Striped dolphins would not typically be associated with shelf waters off New York and Massachusetts; however, preliminary data from site investigation surveys for offshore wind have a very small number of probable striped dolphin sightings; therefore, they have been included in this assessment. Between 2013 and 2017, strandings of striped dolphins were reported from New York (five); Massachusetts (two); and New Jersey (seven) (Hayes *et al.,* 2020). None showed definitive signs of human interaction (Hayes *et al.,* 2020).

Atlantic White-Sided Dolphin

Atlantic white-sided dolphins observed off the U.S. Atlantic coast are part of the Western North Atlantic Stock (Hayes *et al.,* 2020) which inhabits waters from central West Greenland to North Carolina (about 35° N) and primarily continental shelf waters to the 328 ft (100 m) depth contour (Doksæter *et al.,* 2008). Sighting data indicate seasonal shifts in distribution (Northridge *et al.,* 1997). From January to May, low numbers of Atlantic white-sided dolphins are found from Georges Bank to Jeffrey's Ledge off New Hampshire. From June through September, large numbers of Atlantic white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, they occur at intermediate densities from southern Georges Bank to the southern Gulf of Maine (Payne and Heinemann, 1990). Sightings south of Georges Bank, particularly around Hudson Canyon, occur year-round, but at low densities (Hayes *et al.,* 2020).

Offshore Rhode Island, Atlantic white-sided dolphins are common in continental shelf waters, with a slight tendency to occur in shallower waters in the spring (Kenney and Vigness-Raposa, 2010). Aggregations of sightings have occurred southeast of Montauk Point during the spring and summer. In the RI–MA WEA, Atlantic white-sided dolphins were sighted primarily during summer followed by fall (Kraus *et al.,* 2016).

Bottlenose Dolphin

There are two distinct bottlenose dolphin ecotypes in the western North Atlantic: The coastal and offshore forms (Duffield *et al.,* 1983; Mead and Potter, 1995; Rosel *et al.,* 2009). The migratory coastal ecotype resides in waters typically less than 20 m deep, along the inner continental shelf (within 7.5 km (4.6 miles) of shore), around islands, and is continuously distributed south of Long Island, New York into the Gulf of Mexico. Torres *et al.* (2003) found a statistically significant break in the distribution of the ecotypes at 34 km from shore based upon the genetic analysis of tissue samples collected in nearshore and offshore waters from New York to central Florida. The offshore ecotype was found exclusively seaward of 34 km and in waters deeper than 34 m. This ecotype is primarily expected in waters north of Long Island, New York (Waring *et al.,* 2017; Hayes *et al.,* 2018). The offshore form is distributed primarily along the outer continental shelf and continental slope in the Northwest Atlantic Ocean from Georges Bank to the Florida Keys and is the only type that may be present in the project area.

Common bottlenose dolphins were observed in the RI/MA WEA in all seasons with the highest seasonal abundance estimates during the fall, summer, and spring. The greatest concentrations of bottlenose dolphins were observed in the southernmost portion of the RI/MA WEA (Kraus *et al.,* 2016). Further evidence for the presence of the offshore stock in the study area is supported by seasonal stranding records which match the temporal patterns of the offshore stock better than the coastal stock (Kenney and Vigness-Raposa, 2010). Therefore, the northern migratory coastal stock is not likely to occur in the project area and will not be discussed further.

Common Dolphin

Common dolphins within the U.S. Atlantic EEZ belong to the Western North Atlantic stock, generally occurring from Cape Hatteras to the Scotian Shelf (Hayes *et al.,* 2021). Common dolphins are a highly seasonal, migratory species. Within the U.S. Atlantic EEZ, this species is distributed along the continental shelf and typically associated with Gulf Stream features (CETAP, 1982; Selzer and Payne, 1988; Hamazaki, 2002; Hayes *et al.,* 2021). Common dolphins occur from Cape Hatteras northeast to Georges Bank (35° to 42° N) during mid-January to May and move as far north as the Scotian Shelf from mid-summer to fall (Selzer and Payne, 1988). Migration onto the Scotian Shelf and continental shelf off Newfoundland occurs when water temperatures exceed 51.8 ° Fahrenheit (11° Celsius) (Sergeant *et al.,* 1970, Gowans and Whitehead 1995). Breeding usually takes place between June and September (Hayes *et al.,* 2019). Kraus *et al.* (2016) observed 3,896 individual common dolphins within the RI–MA WEA. Summer surveys included observations of the most individuals followed by fall, winter, then spring.

Atlantic Spotted Dolphin

Atlantic spotted dolphins are found in tropical and warm temperate waters ranging from southern New England, south to Gulf of Mexico and the Caribbean to Venezuela (Hayes *et al.,* 2020). The Western North Atlantic stock regularly occurs in continental shelf waters south of Cape Hatteras and in continental shelf edge and continental slope waters north of this region (Hayes *et al.,* 2020). Atlantic spotted dolphins occur in two forms, with the larger ecotype inhabiting the continental shelf and usually occurring inside or near the 200-m isobaths (Hayes *et al.,* 2020).

There are few reported occurrences of spotted dolphins (*Stenella* spp.) in the proposed project area. CETAP reported 126 spotted dolphin sightings over the course of the 3-year study, and 40 individuals south of Block Island in 1982 (CETAP, 1982). NMFS shipboard surveys conducted during June–August between central Virginia and the Lower Bay of Fundy reported 542 to 860 individual sightings from two separate visual teams (Palka *et al.,* 2017).

Risso's Dolphin

Risso's dolphins occur worldwide in both tropical and temperate waters (Jefferson *et al.,* 2008, Jefferson *et al.,* 2014). Risso's dolphins within the U.S. Atlantic EEZ are part of the Western North Atlantic stock which inhabits waters from Florida to eastern Newfoundland (Leatherwood *et al.,* 1976; Baird and Stacey, 1991). During spring, summer, and fall, Risso's dolphins are distributed along the continental shelf edge from Cape Hatteras north to Georges Bank (CETAP, 1982; Payne *et al.,* 1984). During the winter, the distribution extends outward into oceanic waters (Payne *et al.,* 1984) within the Mid-Atlantic Bight. However, little is known about their movement and migration patterns, and they are infrequently observed in shelf waters.

Offshore Rhode Island, Risso's dolphins have been observed year-round, with a peak abundance during the summer. Primarily observed along the continental shelf break, few individuals are typically seen in waters shallower than 100 m (Kenney and Vigness-Raposa, 2010).

Harbor Porpoise

The harbor porpoise occupies U.S. and Canadian waters. During summer (July to September), harbor porpoises are generally concentrated along the continental shelf within the northern Gulf of Maine, southern Bay of Fundy region, and around the southern tip of Nova Scotia, generally in waters less than 150 m deep (Gaskin, 1977; Kraus *et al.,* 1983; Palka, 1995). During fall (October to December) and spring (April to June), they are more widely dispersed from New Jersey to Maine with lower densities farther north and south. In winter (January to March), intermediate densities of harbor porpoises can be found in waters off New Jersey to North Carolina with lower densities found in waters off New York to New Brunswick, Canada (Hayes *et al.,* 2020).

There are four distinct populations of harbor porpoise in the western Atlantic: Gulf of Maine/Bay of Fundy, Gulf of St. Lawrence, Newfoundland, and Greenland (Gaskin, 1984, 1992; Hayes *et al.,* 2020). Harbor porpoises observed within the U.S. Atlantic EEZ are considered part of the Gulf of Maine/Bay of Fundy stock.

The main threat to the species is interactions with fisheries, with documented take in the U.S. northeast sink gillnet, mid-Atlantic gillnet, and northeast bottom trawl fisheries and in the Canadian herring weir fisheries (Waring *et al.,* 2020).

Harbor Seal

Harbor seals are found throughout coastal waters of the Atlantic Ocean and adjoining seas above 30° N (Burns, 2009; Desportes *et al.,* 2010; Hayes *et al.,* 2021). In the western North Atlantic, harbor seals occur year-round in coastal waters of eastern Canada and Maine (Katona *et al.,* 1993), yet they are distributed seasonally along the coast from southern New England to Virginia from September through late May (Schneider and Payne, 1983; Schroeder, 2000; Rees *et al.,* 2016, Toth *et al.,* 2018) Harbor seals are year-round inhabitants of the coastal waters of eastern Canada and Maine (Richardson and Rough, 1993), and occur seasonally from southern New England to New Jersey between September and late May (Schneider and Payne, 1983; Barlas, 1999; Schroeder, 2000). A general southward movement from the Bay of Fundy to southern New England occurs in fall and early winter (Rosenfeld *et al.,* 1988, Whitman and Payne, 1990, Barlas 1999). A northward movement from southern New England to Maine and eastern Canada takes place prior to the pupping season, which occurs from mid-May through June along the Maine coast (Richardson, 1976; Wilson, 1978; Whitman and Payne, 1990; Kenney, 1994).

In addition to coastal waters, harbor seals use terrestrial habitat as haul-out sites throughout the year, but primarily during the pupping and molting periods, which occur from late spring to late summer in the northern portion of their range. No pupping areas have been identified in southern New England, but there are several haul-out sites on Block Island and six haul-out sites have been identified in Narragansett Bay (Barlas, 1999; Kenney and Vigness-Raposa, 2010).

From July 2018 through March 2020, elevated numbers of harbor seal and gray seal mortalities occurred across Maine, New Hampshire and Massachusetts. Additionally, stranded seals showed clinical signs as far south as Virginia, although not in elevated numbers. This even was declared a UME, and the UME investigation encompassed all seal strandings from Maine to Virginia. A total of 3,152 reported strandings (both harbor and gray seals) occurred during the UME. Full or partial necropsy examinations have been conducted on some of the seals and samples have been collected for testing. Based on tests conducted as of April 30, 2021, the main pathogen found in the seals is phocine distemper virus. NMFS is performing additional testing to identify any other factors that may be involved in this UME. This UME was declared from 2018 through 2020, and is currently pending closure to become non-active. Therefore, this UME will not be addressed further in this document. Further information is available at: *https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2020-pinniped-unusual-mortality-event-along.*

Gray Seal

There are three major populations of gray seals found in the world: eastern Canada (western North Atlantic stock), northwestern Europe and the Baltic Sea. Gray seals in the project area belong to the western North Atlantic stock. The range for this stock is thought to be from New Jersey to Labrador (Davies, 1957; Mansfield, 1966; Katona *et al.,* 1993); however, stranding records as far south as Cape Hatteras (Gilbert *et al.,* 2005) have been recorded. This species inhabits temperate and sub-arctic waters and lives on remote, exposed islands, shoals, and sandbars (Jefferson *et al.,* 2008).

In U.S. waters, pupping sites are located from Maine to Massachusetts (Wood *et al.,* 2019). Historically, gray seals were relatively absent from Rhode Island and nearby waters. However, with the recent recovery of the Massachusetts and Canadian populations, their occurrence has increased in southern New England waters (Kenney and Vigness-Raposa, 2010). In New York, gray seals are typically seen alongside harbor seal

haul-outs. Two frequent sighting locations include Great Gull Island and Fisher's Island (Kenney and Vigness-Raposa, 2010). Two breeding and pupping grounds have also been identified in Nantucket Sound at Monomoy and Muskeget Island (NMFS, 2021). Gray seals have been observed using the historic pupping site on Muskeget Island in Massachusetts since 1990.

Current population trends show that gray seal abundance is likely increasing in the U.S. Atlantic EEZ (Hayes *et al.,* 2021). Although the rate of increase is unknown, surveys conducted since the 1980s indicate a steady increase in abundance in both Maine and Massachusetts (Hayes *et al.,* 2021). It is believed that recolonization by Canadian gray seals is the source of the U.S. population (Hayes *et al.,* 2021). As described above, elevated seal mortalities, including gray seals, have occurred from Maine to Virginia from 2018 through 2020. Phocine distemper virus has been the main pathogen found in stranded seals. More information is available at: *https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2020-pinniped-unusual-mortality-event-along.*

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, etc.). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Sixteen marine mammal species (14 cetacean and 2 pinniped (both phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 3. Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.,* all mysticete species), eight are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and one is classified as high-frequency cetaceans (*i.e.,* harbor porpoise and Kogia spp.).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a discussion of the ways that Orsted's specified activity may impact marine mammals and their habitat. Detailed descriptions of the potential effects of similar specified activities have been provided in other recent **Federal Register** notices, including for survey activities using the same methodology, over a similar amount of time, and occurring in the northwest Atlantic region, including waters offshore of Massachusetts and Rhode Island (*e.g.,* 85 FR 63508, October 8, 2020; 86 FR 40469, July 28, 2021; 87 FR 806, January 6, 2022; 87 FR 13975, March 11, 2022). No significant new information is available, and we refer the reader to these documents rather than repeating the details here. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by Orsted's activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Underwater sound from active acoustic sources can include one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking. The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. Marine mammals exposed to high-intensity sound, or to

lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007).

Permanent Threshold Shift—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends.

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). Animals in the vicinity of Orsted's proposed site characterization survey activities are unlikely to incur even TTS due to the characteristics of the sound sources, which include relatively low sound source levels (176 to 205 dB re 1 µPa-m) and generally very short pulses and potential duration of exposure. These characteristics mean that instantaneous exposure is unlikely to cause TTS, as it is unlikely that exposure would occur close enough to the vessel for received levels to exceed peak pressure TTS criteria, and the cumulative duration of exposure would be insufficient to exceed cumulative sound exposure level (SEL) criteria. Regarding instantaneous exposure, high-frequency cetacean species (*e.g.,* harbor porpoises) have the greatest sensitivity to potential TTS, and individuals would have to make an approach within 5 m of the vessel (the estimated isopleth distance to the peak threshold). Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.,* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim though at such a close range. Further, the restricted beam shape of many of HRG survey devices planned for use (Table 2) makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel.

Behavioral Effects—Behavioral disturbances may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010; Southall *et al.,* 2021). Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal.

The following subsections provide examples of behavioral responses that provide an idea of the variability in behavioral responses that would be expected given the differential sensitivities of marine mammal species to sound and the wide range of potential acoustic sources to which a marine mammal may be exposed. Behavioral responses that could occur for a given sound exposure should be determined from the literature that is available for each species, or extrapolated from closely related species when no information exists, along with contextual factors. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, the stock, or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2003). There are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013). Seals exposed to non-impulsive sources with a received sound pressure level within the range of calculated exposures (142–193 dB re 1 µPa (referenced to 1 micropascal), have been shown to change their behavior by modifying diving activity and avoidance of the sound source (Götz *et al.,* 2010; Kvadsheim *et al.,* 2010). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response. Due to the mobile nature of the proposed activities and mobility of marine mammals, we expect minimal effects on diving

behavior as animals would be able to move away from the sound source.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007; Melcón *et al.,* 2012). In addition, the behavioral state of the animal plays a role in the type and severity of a behavioral response, such as disruption to foraging (*e.g.,* Silve *et al.,* 2016; Wensveen *et al.,* 2017). As mentioned earlier, the proposed project area overlaps with a fin whale feeding BIA. However, due to the mobile nature of the proposed acoustic sources, as well as fin whales and their prey, fin whales would have alternate habitat available for foraging during the brief duration of acoustic activity. We, therefore, expect minimal impacts to foraging fin whales.

A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal. Goldbogen *et al.* (2013) indicate that disruption of feeding and displacement could impact individual fitness and health. However, for this to be true, we would have to assume that an individual could not compensate for this lost feeding opportunity by either immediately feeding at another location, by feeding shortly after cessation of acoustic exposure, or by feeding at a later time. There is no indication this is the case, particularly since unconsumed prey would likely still be available in the environment in most cases following the cessation of acoustic exposure. Information on or estimates of the energetic requirements of the individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal will help better inform a determination of whether foraging disruptions incur fitness consequences.

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007; Rolland *et al.,* 2012). Killer whales off the northwestern coast of the United States have been observed to increase the duration of primary calls once a threshold in observing vessel density (*e.g.,* whale watching) was reached, which has been suggested as a response to increased masking noise produced by the vessels (Foote *et al.,* 2004; NOAA, 2014). In some cases, however, animals may cease or alter sound production in response to underwater sound (*e.g.,* Bowles *et al.,* 1994; Castellote *et al.,* 2012; Cerchio *et al.,* 2014). Studies also demonstrate that even low levels of noise received far from the noise source can induce changes in vocalization and/or behavioral responses (Blackwell *et al.,* 2013, 2015). Due to the short-term duration and mobile nature of the proposed activities, we expect minimal impacts to marine mammal vocalization.

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). Avoidance is qualitatively different from the flight response, but also differs in the magnitude of the response (*i.e.,* directed movement, rate of travel, *etc.*). Avoidance is often temporary, and animals return to the area once the noise has ceased. Acute avoidance responses have been observed in captive porpoises and pinnipeds exposed to a number of different sound sources (Kastelein *et al.,* 2001; Finneran *et al.,* 2003; Kastelein *et al.,* 2006a, 2006b; 2015a, 2015b, 2018). Short-term avoidance of seismic surveys, low frequency emissions, and acoustic deterrents have also been noted in wild populations of odontocetes (Bowles *et al.,* 1994; Goold, 1996; Goold and Fish, 1998; Stone *et al.,* 2000; Morton and Symonds, 2002; Hiley *et al.,* 2021) and to some extent in mysticetes (Malme *et al.,* 1984; McCauley *et al.,* 2000; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006). Avoidance may occur for any marine mammals exposed to the proposed sound sources, however, alternate habitat is available for any animals that are temporarily displaced and mitigation measures, as described further in the Proposed Mitigation section, are expected to reduce avoidance.

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). There are limited data on flight response for marine mammals in water; however, there are examples of this response in species on land (*e.g.,* Born *et al.,* 1999; Ward *et al.,* 1999; Frid, 2003). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response. Due to proposed mitigation measures, we do not expect any marine mammals to exhibit flight responses to the proposed activities.

In addition, sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. Marine mammal communications would not likely be masked appreciably by the acoustic

signals given the directionality of the signals for most HRG survey equipment types planned for use (Table 2) and the brief period when an individual mammal is likely to be exposed.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses. Due to the short-term nature of the proposed HRG activities, we expect minimal disruption to any diel cycles of marine mammals.

To assess the strength of behavioral changes and responses to external sounds and SPLs associated with changes in behavior, Southall *et al.,* (2007) developed and utilized a severity scale, which is a 10 point scale ranging from no effect (labeled 0), effects not likely to influence vital rates (low; labeled from 1 to 3), effects that could affect vital rates (moderate; labeled 4 to 6), to effects that were thought likely to influence vital rates (high; labeled 7 to 9). Southall *et al.,* (2021) updated the severity scale by integrating behavioral context (*i.e.,* survival, reproduction, and foraging) into severity assessment. For non-impulsive sounds (*i.e.,* similar to the sources used during the proposed action), data suggest that exposures of pinnipeds to sources between 90 and 140 dB re 1 µPa do not elicit strong behavioral responses; no data were available for exposures at higher received levels for Southall *et al.,* (2007) to include in the severity scale analysis. Reactions of harbor seals were the only available data for which the responses could be ranked on the severity scale. For reactions that were recorded, the majority (17 of 18 individuals/groups) were ranked on the severity scale as a 4 (defined as moderate change in movement, brief shift in group distribution, or moderate change in vocal behavior) or lower; the remaining response was ranked as a 6 (defined as minor or moderate avoidance of the sound source).

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have shown pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud impulsive sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). Although habituation to the proposed sound sources could occur, it is not likely due to the short-term nature of the HRG activities.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function. We expect minimal stress responses to result from marine mammals due to the short-term duration of activities and proposed mitigation measures.

Potential effects on prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton) (*i.e.,* effects to marine mammal habitat). Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. The most likely impacts (if any) for most prey species in a given area would be temporary avoidance of the area. Surveys using active acoustic sound sources move through an area relatively quickly, limiting exposure to multiple pulses. In all cases, sound levels would return to ambient once a survey ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly.

Marine Mammal Habitat

The HRG survey equipment will not contact the seafloor and does not represent a source of pollution. As the HRG survey equipment introduces noise to the marine environment, there is the potential for it to result in avoidance of the area around the HRG survey activities on the part of marine mammal prey. Any avoidance of the area on the part of marine mammal prey would be

expected to be short term and temporary.

Due to the temporary nature of the disturbance, and the availability of similar habitat and resources (*e.g.,* prey species) in the surrounding area, the impacts to marine mammals and the food sources that they utilize are expected to be minimal and unlikely to cause significant or long-term consequences for individual marine mammals or their populations.

Ship Strikes

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. These interactions are typically associated with large whales, which are less maneuverable than are smaller cetaceans or pinnipeds in relation to large vessels. Ship strikes generally involve commercial shipping vessels, which are generally larger (*e.g.,* 40,000 ton container ship) and of which there is much more traffic in the ocean than geophysical survey vessels. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). For vessels used in geophysical survey activities, vessel speed while towing gear is typically approximately 4–5 kn (2.1–2.6 m/s) (as is the speed of the vessel for Orsted's proposed HRG surveys). At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are so low as to be discountable. At average transit speed for geophysical survey vessels, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again low given the smaller size of these vessels and generally slower speeds. Notably in the Jensen and Silber study, no strike incidents were reported for geophysical survey vessels during that time period.

The potential effects of Orsted's specified survey activity are expected to be limited to Level B behavioral harassment. Temporary and minimal impacts to marine mammal habitat, including prey, may occur.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact 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 certain HRG sources. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown measures, vessel strike avoidance procedures) discussed in detail below in the Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, 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 factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

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—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 or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (re 1 μPa) for continuous (*e.g.,* vibratory pile-driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

Level A Harassment—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).

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

Orsted's proposed activity includes the use of impulsive (*i.e.,* boomers and sparkers) and non-impulsive (*i.e.,* CHIRP SBPs) sources. However, as discussed above, NMFS has concluded that Level A harassment is not a reasonably likely outcome for marine mammals exposed to noise from the sources proposed for use here, and the potential for Level A harassment is not evaluated further in this document. Please see Orsted's application (Section 1.4) for a quantitative Level A exposure analysis exercise. The results indicated that maximum estimated distances to

Level A harassment isopleths were less than 3 m for all sources and hearing groups, with the exception of an estimated 18.9 m and 11.4 m distance to the Level A harassment isopleth for high-frequency cetaceans (*i.e.,* harbor porpoises) during use of the GeoPulse 5430 and TB CHIRP III, respectively (see Table 2 for source characteristics). Orsted did not request authorization of take by Level A harassment and no take by Level A harassment is proposed for authorization by NMFS.

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{p,0\text{-pk,flat}}$: 219 dB; $L_{E,p,\ LF,24h}$: 183 dB	*Cell 2:* $L_{E,p,\ LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{p,0\text{-pk,flat}}$: 230 dB; $L_{E,p,\ MF,24h}$: 185 dB	*Cell 4:* $L_{E,p,\ MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{p,0\text{-pk,flat}}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB	*Cell 6:* $L_{E,p,\ HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{p,0\text{-pk.flat}}$: 218 dB; $L_{E,p,PW,24h}$: 185 dB	*Cell 8:* $L_{E,p,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{p,0\text{-pk,flat}}$: 232 dB; $L_{E,p,OW,24h}$: 203 dB	*Cell 10:* $L_{E,p,OW,24h}$: 219 dB.

* Dual metric 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 are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0\text{-pk}}$) has a reference value of 1 µPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO 2017). The subscript "flat" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). 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 weighted 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 thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

NMFS has developed a user-friendly methodology for determining the rms sound pressure level (SPL_{rms}) at the 160-dB isopleth for the purpose of estimating the extent of Level B harassment isopleths associated with HRG survey equipment (NMFS, 2020). This methodology incorporates frequency and some directionality to refine estimated ensonified zones. Orsted used NMFS's methodology, using the source level and operation mode of the equipment planned for use during the proposed survey, to estimate the maximum ensonified area over a 24-hr period also referred to as the harassment area (Table 6). Potential takes by Level B harassment are estimated within the ensonified area (*i.e.,* harassment area) as an SPL exceeding 160 dB re 1 µPa for impulsive sources (*e.g.,* sparkers, boomers) within an average day of activity.

The harassment zone, also known as the Zone of Influence (ZOI), is a representation of the maximum extent of the ensonified area around a sound source over a 24-hr period. The ZOI was calculated for mobile sound sources per the following formula:

$$ZOI = (Distance/day \times 2r) + \pi r^2$$

Where r is the linear distance from the source to the isopleth for the Level B harassment threshold.

The estimated potential daily active survey distance of 70 km was used as the estimated areal coverage over a 24-hr period. This distance accounts for the vessel traveling at roughly 4 kn (2.1 m/s) and only for periods during which equipment <180 kHz is in operation. A vessel traveling 4 kn (2.1 m/s) can cover approximately 110 km per day; however, based on data collected since 2017, survey coverage over a 24-hour period is closer to 70 km per day as a result of delays due to, *e.g.,* weather, equipment malfunction. For daylight only vessels, the distance is reduced to 20 km per day; however, to maintain the potential for 24-hr surveys, the corresponding Level B harassment zones provided in Table 6 were calculated for each source based on the Level B threshold distances within a 24-hour (30 km) operational period.

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to harassment thresholds. In cases, when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 2 shows the HRG equipment types that may be used during the proposed surveys and the source levels associated with those HRG equipment types.

Based upon modeling results, of the HRG survey equipment planned for use by Orsted that has the potential to result in Level B harassment of marine mammals, the Applied Acoustics Dura-Spark UHD and GeoMarine Geo-Source sparkers would produce the largest Level B harassment isopleth (141 m) or ZOI. Estimated distances to Level B harassment isopleths for all sources evaluated here, including the sparkers, are provided in Table 6. Although Orsted does not expect to use sparker sources on all planned survey days, Orsted proposes to assume for purposes of analysis that the sparker would be used on all survey days. This is a conservative approach, as the actual sources used on individual survey days may produce smaller harassment distances.

TABLE 6—DISTANCE TO LEVEL B HARASSMENT THRESHOLDS (160 dB RMS)

Source	Distance to level B harassment threshold (m)
Non-impulsive, non-parametric, shallow SBP (CHIRPs)	
ET 216 CHIRP	12
ET 424 CHIRP	4
ET 512i CHIRP	6
GeoPulse 5430	29
TB CHIRP III	54
Pangeo SBI	22
Impulsive, medium SBP (Boomers and Sparkers)	
AA Triple plate S-Boom (700/1,000 J)	76
AA, Dura-spark UHD Sparkers	141
GeoMarine Sparkers	141

AA = Applied Acoustics; CHIRP = compressed high-intensity radiated pulses; ET = edgetech; HF = high-frequency; J = joules; LF = low-frequency; MF = mid-frequency; PW = phocid pinnipeds in water; SBI = sub-bottom imager; SBP = sub-bottom profiler; TB = Teledyne benthos; UHD = ultra-high definition.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations.

Habitat based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, 2022) represent the best available information regarding marine mammal densities in the project area. The density data presented by Roberts *et al.* (2016, 2022) incorporate aerial and shipboard line-transect data from NMFS and other organizations and incorporate data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and control for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *https://seamap.env.duke.edu/models/Duke/EC/.* Marine mammal density estimates in the project area (animals/km^2) were obtained using the most recent model results for all taxa (Roberts 2022). The updated models incorporate sighting data, including sightings from NOAA's Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys.

For exposure analysis, density data from Roberts (2022) were mapped using a geographic information system (GIS). Density grid cells that included any portion of the proposed project area were selected for all survey months (see Figure 3 of Orsted's application). Given the variability in level of effort between the Lease Areas and the ECR area, densities were separated for the three Lease Areas (OCS–A 0486, 0487, and 0500) and the ECR area. The densities for each species as reported by Roberts *et al.* (2022) for each of the Lease Areas and ECR were averaged by month; those values were then used to calculate the mean annual density for each species within the project area. Estimated mean monthly and annual densities (animals per km^2) of all marine mammal species that may be taken by the proposed survey are shown in Tables 8–11 of Orsted's application. Please see Table 7 for density values used in the exposure estimation process.

Given their size and behavior when in the water, seals are difficult to identify during shipboard visual surveys and limited information is currently available on their distribution. Therefore, data used to establish the density estimates from Roberts *et al.* (2022) are based on information for all seal species that may occur in the Western North Atlantic (*i.e.,* harbor, gray, hooded, harp). However, only the harbor seal and gray seal are reasonably expected to occur in the project area, and the densities were split evenly between both species.

Long- and short-finned pilot whales are also difficult to distinguish during shipboard surveys so individual habitat models were not able to be developed for these species. As only long-finned pilot whales are expected to occur within the study area, pilot whale densities within the study area were attributed to this species.

For bottlenose dolphin densities, Roberts (2022) does not differentiate by stock. As previously discussed, only the Western North Atlantic offshore stock is expected to occur in the proposed project area. Thus, all bottlenose dolphin density estimates within the project area were attributed to the offshore stock.

TABLE 7—AVERAGE ANNUAL MARINE MAMMAL DENSITY ESTIMATES ACROSS SURVEY SITES

Species	Average annual density (km^2)			
	OCS–A 0486	OCS–A 0487	OCS–A 0500	ECR
Low-frequency Cetaceans:				
Fin whale	0.0013	0.0021	0.0023	0.0015
Sei whale	0.0000	0.0001	0.0001	0.0000
Minke whale	0.0005	0.0008	0.0009	0.0005
Humpback whale	0.0012	0.0013	0.0015	0.0006
North Atlantic right whale	0.0040	0.0020	0.0034	0.0008
Mid-frequency Cetaceans:				
Sperm whale	0.0001	0.0001	0.0001	0.0001
Atlantic white sided dolphin	0.0092	0.0234	0.0367	0.0163
Atlantic spotted dolphin	0.0001	0.0003	0.0004	0.0003
Common bottlenose dolphin	0.0151	0.0078	0.0097	0.0266
Long-finned pilot whale	0.0020	0.0074	0.0090	0.0043
Risso's dolphin	0	0.0001	0.0001	0.0001
Common dolphin	0.0457	0.0924	0.0945	0.0562
Striped dolphin	0.0000	0.0000	0.0000	0.0000
High-frequency Cetaceans:				
Harbor porpoise	0.0335	0.0399	0.0384	0.0337
Pinnipeds in-water: [1]				
Gray seal	0.0104	0.0110	0.0124	0.0182
Harbor seal	0.0104	0.0110	0.0124	0.0182

[1] Seal species are not separated in the Roberts (2022) data therefore densities were evenly split between the two species expected to occur in the project area.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

Level B exposures were estimated by multiplying the average annual density of each species within the project area (Table 7) by the largest ZOI that was estimated to be ensonified to an SPL exceeding 160 dB re 1 µPa (141m; Table 6). That result was then multiplied by the number of survey days in that Lease Area or ECR (Table 1), and rounded to the nearest whole number to arrive at estimated take. This final number equals the instances of take for the entire operational period. It was assumed the sparker systems were operating all 400 survey days as it is the sound source expected to produce the largest harassment zone. A summary of this method is illustrated in the following formula with the resulting proposed take of marine mammals is shown below in Table 8:

Estimated take = species density × ZOI × # of survey days

TABLE 8—TOTAL ESTIMATED AND REQUESTED TAKE NUMBERS

[By level B harassment only]

Species	Abundance	Estimated level B takes	Requested level B takes	Max percent population
Low-frequency Cetaceans				
Fin whale	6,802	14	14	0.21
Sei whale	6,292	0	3	0.05
Minke whale	21,968	6	13	0.06
Humpback whale	1,396	8	34	2.44
North Atlantic right whale	368	17	17	4.62
Mid-frequency Cetaceans				
Sperm whale	4,349	0	2	0.05
Atlantic white-sided dolphin	93,233	210	210	0.23
Atlantic spotted dolphin	39,921	3	29	0.07
Common bottlenose dolphin	62,851	139	139	0.22
Pilot whale	39,215	17	17	0.13
Risso's dolphin	35,215	1	30	0.09
Common dolphin	172,974	601	6,000	3.47
Striped dolphin	67,036	0	20	0.03
High-frequency Cetaceans				
Harbor porpoise	95,543	287	287	0.30
Pinnipeds				
Seals:.				
Gray seal	27,300	118	118	0.43
Harbor seal	61,336	118	118	0.19

Additional data regarding average group sizes from survey effort in the region was considered to ensure adequate take estimates are evaluated. Take estimates for several species were adjusted based upon observed group sizes in the area. The adjusted take estimates for these species are indicated in bold in Table 8. These calculated take estimates were adjusted for these species as follows:

- *Sei whale:* Although no takes were estimated, prior Protected Species Observer (PSO) monitoring documented the presence of sei whales in the area. One take was requested based on the most common group size reported in Kenney and Vigness-Raposa (2010);
- *Minke and humpback whales:* Requested takes were increased to the number recorded within 500 m of an active source based on draft PSO data (see Table 13 in the application);
- *Sperm whale:* No takes were estimated but based on their occurrence in PSO data, 1 group of 2 (Barkaszi and Kelly, 2019) was added to the requested takes;
- *Atlantic spotted dolphin:* Requested takes were increased to the average number of dolphins in a group reported in Palka *et al.* (2017, 2021);
- *Risso's dolphin:* Only one take was estimated but based on their occurrence in PSO data, 1 group of 30 (Kenney and Vigness-Raposa, 2010) was added to the requested takes.
- *Common dolphin:* Requested takes were increased to 6,000. This is based on the average group size of 15 from the PSO data (calculated by dividing the total number of individuals [14,250] by the total number of detections [927] in Table 13 of the application) multiplied by the planned number of survey days (400) in Table 1.
- *Striped dolphin:* No takes were estimated but based on their occurrence in PSO data, one group of 20 dolphins (Kenney and Vigness-Raposa, 2010) was added to the requested takes.

PSO data for adjusting take estimates of minke whales, humpback whales, common bottlenose dolphins, and common dolphins was derived from draft PSO observer reports from surveys conducted in the project lease areas and ECR from 2020–2021, as shown in Table 13 of Orsted's application.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for

incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers 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.

Mitigation for Marine Mammals and Their Habitat

NMFS proposes the following mitigation measures be implemented during Orsted's proposed marine site characterization surveys. Pursuant to section 7 of the ESA, NEETMA would also be required to adhere to relevant Project Design Criteria (PDC) of the NMFS' Greater Atlantic Regional Fisheries Office (GARFO) programmatic consultation (specifically PDCs 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast (*https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation*).

Marine Mammal Shutdown Zones

Marine mammal shutdown zones would be established around impulsive HRG survey equipment (<180 kHz; *e.g.,* sparkers and boomers) for all marine mammals, and around impulsive HRG survey equipment and non-impulsive, non-parametric sub-bottom profilers (*e.g.,* CHIRPs) for North Atlantic right whales. Shutdown zones would be monitored by protected species observers (PSOs) based upon the radial distance from the acoustic source rather than being based around the vessel itself. An immediate shutdown of impulsive HRG survey equipment will be required if a whale is sighted at or within the corresponding marine mammal shutdown zones to minimize noise impacts on the animals. If a shutdown is required, a PSO will notify the survey crew immediately. Vessel operators and crews will comply immediately with any call for shutdown. The shutdown zone may or may not encompass the Level B harassment zone. Shutdown zone distances are as follows:

- A 500-meter (m) Shutdown Zone for North Atlantic right whales for use of impulsive acoustic sources (*e.g.,* boomers and/or sparkers) and non-impulsive, non-parametric sub-bottom profilers; and
- A 100-m shutdown zone for use of impulsive acoustic sources for all other marine mammals, with the exception of delphinids belonging to the Family *Delphinidae* and one of the following genera: *Delphinus, Lagenorhynchus, Stenella,* or *Tursiops,* and pinnipeds.

Shutdown will remain in effect until the minimum separation distances (detailed above) between the animal and noise source are re-established. If a marine mammal enters the respective shutdown zone during a shutdown period, the equipment may not restart until that animal is confirmed outside the clearance zone as stated previously in the pre-start clearance procedures. These stated requirements will be included in the site-specific training to be provided to the survey team.

Pre-Start Clearance

Marine mammal clearance zones would be established at the following distances around the HRG survey equipment and monitored by PSOs:

- 500 m for all ESA-listed marine mammals;
- 100 m for all other whales; and
- 50 m for dolphins and porpoises.

Orsted would implement a 30-minute pre-start clearance period prior to the initiation of ramp-up of specified HRG equipment. During this period, clearance zones will be monitored by PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective clearance zone. If a marine mammal is observed within a clearance zone during the pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective exclusion zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species). Monitoring would be conducted throughout all pre-clearance and shutdown zones as well as all visible waters surrounding the sound sources and the vessel. All marine mammals detected will be recorded as described in the Proposed Monitoring and Reporting section.

Ramp-Up of Survey Equipment

A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the acoustic source when technically feasible. The ramp-up procedure would be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the project area by allowing them to vacate the area prior to the commencement of survey equipment operation at full power. Operators should ramp-up sources to half power for 5 minutes and then proceed to full power.

The ramp-up procedure will not be initiated (*i.e.,* equipment will not be started) during periods of inclement conditions when the marine mammal pre-start clearance zone cannot be adequately monitored by the PSOs for a 30 minute period using the appropriate visual technology. If any marine mammal enters the clearance zone, ramp-up will not be initiated until the animal is confirmed outside the marine mammal clearance zone, or until the appropriate time (30 minutes for whales, 15 minutes for dolphins, porpoises, and seals) has elapsed since the last sighting of the animal in the clearance zone.

Shutdown, pre-start clearance, and ramp-up procedures are not required during HRG survey operations using only non-impulsive sources (*e.g.,* echosounders) other than non-parametric sub-bottom profilers (*e.g.,* CHIRPs).

Vessel Strike Avoidance

Orsted must adhere to the following measures except in the case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

- Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the vessel must monitor a vessel strike avoidance zone based on the

appropriate separation distance around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish protected species from other phenomena, and (2) broadly identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammal;

a. All survey vessels, regardless of size, must observe a 10-knot speed restriction in specified areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes including seasonal management areas (SMAs) and dynamic management areas (DMAs) when in effect;

b. Members of the monitoring team will consult NMFS North Atlantic right whale reporting system and Whale Alert, as able, for the presence of North Atlantic right whales throughout survey operations, and for the establishment of a DMA. If NMFS should establish a DMA in the project area during the survey, the vessels will abide by speed restrictions in the DMA;

c. All vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 will operate at speeds of 10 kn (5.1 m/s) or less at all times;

d. All vessels must reduce their speed to 10 kn (5.1 m/s) or less when mother/calf pairs, pods, or large assemblages of any species of cetaceans is observed near a vessel;

e. All vessels must maintain a minimum separation distance of 500 m from right whales and other ESA-listed large whales;

f. If a whale is observed but cannot be confirmed as a species other than a right whale or other ESA-listed large whale, the vessel operator must assume that it is a right whale and take appropriate action;

g. All vessels must maintain a minimum separation distance of 100 m from non-ESA listed whales;

- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel);
- When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Project-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary requirements throughout the survey activities.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. 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.

Proposed Monitoring Measures

Visual monitoring will be performed by qualified, NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. Orsted would employ independent, dedicated, trained PSOs, meaning that the PSOs must (1) be employed by a third-party observer provider, (2) have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for their designated task. On a case-by-case basis, non-independent observers may be approved by NMFS for limited, specified duties in support of approved, independent PSOs on smaller vessels with limited crew operating in nearshore waters.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including shutdown and pre-clearance zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established shutdown and pre-clearance zones during survey activities. It will be the responsibility of the Lead PSO on duty to communicate the

presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

During all HRG survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a minimum of one PSO must be on duty during daylight operations on each survey vessel, conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Two PSOs will be on watch during nighttime operations. The PSO(s) would ensure 360 degree visual coverage around the vessel from the most appropriate observation posts and would conduct visual observations using binoculars and/or night vision goggles and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 2 hours between watches and may conduct a maximum of 12 hours of observations per 24-hr period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all nearby survey vessels.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to exclusion zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team. Data on all PSO observations would be recorded based on standard PSO collection requirements. This would include dates, times, and locations of survey operations; dates and times of observations, location and weather, details of marine mammal sightings (*e.g.,* species, numbers, behaviors); and details of any observed marine mammal behavior that occurs (*e.g.,* notes behavioral disturbances). For more detail on the proposed monitoring requirements, see Condition 5 of the draft IHA.

Proposed Reporting Measures

Within 90 days after completion of survey activities or expiration of this IHA, whichever comes sooner, a draft comprehensive report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals observed during survey activities (by species, when known), summarizes the mitigation actions taken during surveys including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. A final report must be submitted within 30 days following any comments on the draft report. All draft and final marine mammal and acoustic monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Taylor@noaa.gov.* The report must contain at minimum, the following:

a. PSO names and affiliations;

a. Dates of departures and returns to port with port names;

b. Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;

c. Vessel location (latitude/longitude) when survey effort begins and ends; vessel location at beginning and end of visual PSO duty shifts;

d. Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;

e. Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon;

• Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and

• Survey activity information, such as type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-clearance survey, ramp-up, shutdown, end of operations, etc.).

If a marine mammal is sighted, the following information should be recorded:

a. Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);

b. PSO who sighted the animal;

c. Time of sighting;

d. Vessel location at time of sighting;

e. Water depth;

f. Direction of vessel's travel (compass direction);

g. Direction of animal's travel relative to the vessel;

h. Pace of the animal;

i. Estimated distance to the animal and its heading relative to vessel at initial sighting;

• Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species;

a. Estimated number of animals (high/low/best);

b. Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);

c. Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);

• Detailed behavior observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);

a. Animal's closest point of approach and/or closest distance from the center point of the acoustic source;

• Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, data acquisition, other); and

• Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, etc.) and time and location of the action.

If a North Atlantic right whale is observed at any time by PSOs or personnel on any project vessels, during surveys or during vessel transit, Orsted must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System: (866) 755–6622. North Atlantic right whale sightings in any location may also be reported to the U.S. Coast Guard via channel 16.

In the event that Orsted personnel discover an injured or dead marine

mammal, Orsted will report the incident to the NMFS Office of Protected Resources (OPR) and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report would include the following information:

Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

a. Species identification (if known) or description of the animal(s) involved;

b. Condition of the animal(s) (including carcass condition if the animal is dead);

c. Observed behaviors of the animal(s), if alive;

d. If available, photographs or video footage of the animal(s); and

e. General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in this activities covered by the IHA, Orsted would report the incident to NMFS OPR and the NMFS New/England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report would include the following information:

a. Time, date, and location (latitude/longitude) of the incident;

b. Species identification (if known) or description of the animal(s) involved;

c. Vessel's speed during and leading up to the incident;

d. Vessel's course/heading and what operations were being conducted (if applicable);

e. Status of all sound sources in use;

f. Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;

g. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;

h. Estimated size and length of animal that was struck;

i. Description of the behavior of the marine mammal immediately preceding and following the strike;

j. If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;

k. Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and

l. To the extent practicable, photographs or video footage of the animal(s).

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 impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), 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' 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 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, the discussion of our analysis applies to all the species listed in Table 3, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. Where there are meaningful differences between species or stocks—as is the case of the North Atlantic right whale—they are included as separate subsections below. NMFS does not anticipate that serious injury or mortality would occur as a result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is proposed to be authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential takes would be in the form of Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007, 2021). Even repeated Level B harassment of some small subset of an 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. As described above, Level A harassment is not expected to occur given the nature of the operations and the estimated small size of the Level A harassment zones.

In addition to being temporary, the maximum expected harassment zone around the survey vessel is 141 m. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the project area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the proposed project area. Several harbor and gray seal haul out sites have been identified on Block Island, Great Gull Island, and Fishers Island as wells as along Narragansett and Nantucket Sounds. As the acoustic footprint of the proposed HRG activities is relatively small, hauled seals are not expected to be impacted by these activities. In addition, cable landfall sites have yet to be determined and may not be in the vicinity of haul out sites. The proposed ECR area encompasses a feeding BIA for fin whales east of Montauk Point, NY that is active from March through October (LaBrecque *et al.,* 2015). The fin whale feeding BIA is extensive and sufficiently large (2,933 km^2), and the acoustic footprint of the proposed survey is sufficiently small (project area) that feeding opportunities for fin whales would not be reduced appreciably. Given the relatively small size of the ensonified area, it is unlikely that prey availability would be adversely affected by HRG survey

operations. In addition, feeding success is not likely to be significantly affected as minimal impacts to prey species are expected, for reasons as described above in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section.

North Atlantic Right Whale

The status of the North Atlantic right whale (NARW) population is of heightened concern and therefore, merits additional analysis. As noted previously, elevated NARW mortalities began in June 2017 and there is an active UME. Overall, preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of right whales. The proposed project area overlaps with a migratory corridor BIA for North Atlantic right whales (effective March–April; November–December) that extends from Massachusetts to Florida and, off the coast of NY and RI, from the coast to beyond the shelf break (LaBrecque *et al.,* 2015). Right whale migration is not expected to be impacted by the proposed survey due to the very small size of the project area relative to the spatial extent of the available migratory habitat in the BIA. The proposed project area also overlaps with the Block Island seasonal management area (SMA), active from November 1 to April 30. NARWs may be feeding or migrating within the SMA. Required vessel strike avoidance measures and following the speed restrictions of the SMA will decrease the risk of ship strike during NARW migration; no ship strike is expected to occur during Orsted's proposed activities. For reasons as described above, minimal impacts are expected to prey availability and feeding success. Additionally, HRG survey operations are required to maintain a 500 distance and shutdown if a NARW is sighted at or within 500 m. The 500 m shutdown zone for right whales is conservative, considering the Level B harassment isopleth for the most impactful sources (*i.e.,* GeoMarine Sparkers, AA Dura-spark UHD Sparkers, AA Triple plate S-Boom) is estimated to be 141 m, and thereby minimizes the potential for behavioral harassment of this species. Therefore only very limited take by Level B harassment of NARW has been requested and is being proposed for authorization by NMFS. As noted previously, Level A harassment is not expected, nor authorized, due to the small PTS zones associated with HRG equipment types proposed for use. NMFS does not anticipate NARW takes that result from the proposed survey activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

Other Marine Mammals With Active UMEs

As noted previously, there are several active UMEs occurring in the vicinity of Orsted's proposed project area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales.

The required mitigation measures are expected to reduce the number and/or severity of proposed takes for all species listed in Table 3, including those with active UMEs, to the level of least practicable adverse impact. In particular, they would provide animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy, thus preventing them from being exposed to more severe Level B harassment. No Level A harassment is anticipated, even in the absence of mitigation measures, or proposed for authorization.

NMFS expects that takes would be in the form of short-term Level B behavioral harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging in the area (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Required mitigation measures, such as shutdown zones and ramp up, would further reduce exposure to sound that could result in more severe behavioral harassment.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or proposed for authorization;
- Foraging success is not likely to be significantly impacted as effects on species that serve as prey species for marine mammals from the survey are expected to be minimal;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the ensonified area during the planned surveys to avoid exposure to sounds from the activity;
- Take is anticipated to be of Level B behavioral harassment only consisting of brief startling reactions and/or temporary avoidance of the ensonified area;
- While the project area is within areas noted as a migratory BIA and SMA for North Atlantic right whales, the activities would occur in such a comparatively small area such that any avoidance of the ensonified area due to activities would not affect migration. In addition, mitigation measures require shutdown at 500 m (almost four times the size of the Level B harassment isopleth (141 m), which minimizes the effects of the take on the species; and
- The proposed mitigation measures, including visual monitoring and shutdowns, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or

stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize is below one third of the estimated stock abundance for all species (in fact, take of individuals is less than 6 percent of the abundance of the affected stocks for these species, see Table 8). The figures presented in Table 8 are likely conservative estimates as they assume all takes are of different individual animals which is likely not 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.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS Office of Protected Resources (OPR) consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS OPR is proposing to authorize the incidental take of four species of marine mammals which are listed under the ESA, including the North Atlantic right, fin, sei, and sperm whale, and has determined that these activities fall within the scope of activities analyzed 107 in GARFO's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Orsted for conducting site characterization surveys off the coast of New York and Rhode Island from September 25, 2022 through September 24, 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed HRG surveys. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: August 23, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–18454 Filed 8–25–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Infrastructure Investment and Jobs Act—Application for Broadband Grant Programs

AGENCY: National Telecommunications and Information Administration (NTIA), Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before October 25, 2022.

ADDRESSES: Interested persons are invited to submit written comments by mail to Teri Caswell, Broadband

Program Specialist, Grants Management and Compliance, Office of internet Connectivity and Growth, National Telecommunication and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4826, Washington, DC 20230, or by email to *broadbandusa@ntia.gov.* Please reference, ''Digital Equity & Middle Mile Application Forms Comment'' in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Teri Caswell, Broadband Program Specialist, Grants Management and Compliance, Office of internet Connectivity and Growth, National Telecommunication and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4826, Washington, DC 20230, or via email at *tcaswell@ntia.gov; broadbandusa@ntia.gov;* or via telephone at (202) 482–2048.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Infrastructure Investment and Jobs Act, 2021 (Infrastructure Act or Act), which was adopted on November 15, 2021, and is also known as the Bipartisan Infrastructure Law, provided $65 billion of funding for programs to close the digital divide and ensure that all Americans have access to reliable, high speed, and affordable broadband service. NTIA administers six broadband connectivity grant programs funded by the Act, including the State Digital Equity Planning Grant Program and the Enabling Middle Mile Broadband Infrastructure Program. The State Digital Equity Planning Grant Program (SDEPG) provides new federal funding for grants to eligible applicants for the purpose of developing State Digital Equity Plans. Through these Plans, each State will, among other things, identify barriers to digital equity in the State and strategies for overcoming those barriers. Further, U.S. territories and possessions (other than Puerto Rico), Indian Tribes, Alaska Native entities, and Native Hawaiian organizations may also seek grants, cooperative agreements, or contracts to develop their own digital equity plans and, in the case of Tribal entities, to provide input into the digital equity plans of the States in which they are located. The purpose of SDEPG is to promote the achievement of digital equity, support digital inclusion activities, and build capacity for efforts by States relating to the adoption of broadband by residents of those States.

The Enabling Middle Mile Broadband Infrastructure Program (MMG) provides funding for the construction, improvement, or acquisition of middle mile infrastructure. The purpose of the grant program is to expand and extend middle mile infrastructure to reduce the cost of connecting areas that are unserved or underserved to the internet backbone.

On May 13, 2022, NTIA published the State Digital Equity Program's Notice of Funding Opportunity (NOFO) and the Enabling Middle Mile Grant Program's NOFO on *internetForAll.Gov* to describe the requirements under which it will award grants for the SDEPG and MMG.[1] The SDEPG NOFO outlines a separate process for U.S. Territories and Possessions, Indian Tribes, Alaska Native Entities, and Native Hawaiian organizations to submit applications for SDEPG funding.

In past application processes, such as those funded through the Consolidated Appropriations Act of 2021, NTIA provided broad guidelines to collect programmatic and project data, such as project descriptions and detailed budget information, from applicants. This approach resulted in an increased burden for both applicants and reviewers, as vital information was often left out of their application. Many applicants are Tribal governments or entities who do not possess the resources necessary for the preparation of application materials, such as project narratives and financial information, without templates to guide them. As such, NTIA sought to make this process more equitable for potential applicants of the State Digital Equity Planning Grant program and Enabling Middle Mile Broadband Infrastructure Program by providing more concrete guidance to potential applicants about NTIA's expectations for application submissions, with the goal of making the process more accessible regardless of organizational capacity. NTIA created new forms for use in the application process to provide more structured questions and guidance. These forms supported program objectives by improving both the accuracy and consistency of application information while reducing the administrative burden to both applicants and NTIA.

NTIA received emergency OMB approval to collect information from applicants using these new forms and is now seeking an extension beyond the November 30, 2022, expiration date.

NTIA will use the information collected from each applicant to effectively review the proposed applications and budgets from U.S. Territories and Possessions, Indian Tribes, Alaska Native Entities, and Native Hawaiian organizations for the State Digital Equity Program, and from States, political subdivisions of States, Tribal governments, technology companies, electric utilities, utility cooperatives, public utility districts, telecommunications companies, telecommunications cooperatives, non-profit foundations, and other eligible entities for the Middle Mile Grant Program.

II. Method of Collection

NTIA will collect data through both electronic and mail submission.

III. Data

OMB Control Number: 0660–0046.

Form Number(s): TBD.

Type of Review: Extension of a current information collection.

Affected Public (SDEPG): Territories or possessions of the United States, Indian Tribes, Alaska Native entities, and Native Hawaiian organizations applying for Infrastructure Act Broadband Grant Program funding.

Affected Public (MMG): States, political subdivisions of a State, Tribal governments, technology companies, electric utilities, utility cooperatives, public utility districts, telecommunications companies, telecommunications cooperatives, nonprofit foundations, nonprofit corporations, nonprofit institutions, nonprofit associations, regional planning councils, Native entities, economic development authorities, or any partnership of two (2) or more of these entities.

Estimated Number of Respondents: 550 for SDEGP application, 700 for MMG application.

Estimated Time per Response: 8 hours for SDEGP application, 14 for MMG application.

Estimated Total Annual Burden Hours: 14,200.

Estimated Total Annual Cost to Public: $677,766.

Respondent's Obligation: Mandatory.

Legal Authority: Section 60304(c) of the Infrastructure Investment and Jobs Act of 2021, Public Law 117–58, 135 Stat. 429 (November 15, 2021)

[1] *See* State Digital Equity Planning Grant Program (DE) Notice of Funding Opportunity (NOFO) (May 13, 2022), *https://www.internetforall.gov/program/digital-equity-act-programs. See also* Middle Mile Grant Program (MM) Notice of Funding Opportunity (NOFO) (May 13, 2022), *https://www.internetforall.gov/program/enabling-middle-mile-broadband-infrastructure-program.*

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. 2022–18408 Filed 8–25–22; 8:45 am]

BILLING CODE 3510–60–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 the Procurement List.

SUMMARY: The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

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

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 325 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, 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 service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Forklift Operator and Warehouse Service
Mandatory for: SSA, Joseph P. Addabbo Federal Building, Jamaica, NY
Designated Source of Supply: Fedcap Rehabilitation Services, Inc., New York, NY
Contracting Activity: SOCIAL SECURITY ADMINISTRATION, SSA OFC OF ACQUISITION GRANTS

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–18403 Filed 8–25–22; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and deletes product(s) and service(s) from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* September 25, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 325 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/21/2022, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) and service(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service(s) are added to the Procurement List:

Service(s)

Service Type: Kennel Caretaker Service
Mandatory for: US Customs and Border Protection, US Border Patrol-Ramey Sector, Aguadilla, PR
Designated Source of Supply: The Corporate Source, Inc., Garden City, NY
Contracting Activity: U.S. CUSTOMS AND BORDER PROTECTION, BORDER ENFORCEMENT CTR DIV

Service Type: Plant Maintenance Services
Mandatory for: GSA PBS Region 5, Paul Findley Federal Building, Springfield, IL
Designated Source of Supply: Challenge Unlimited, Inc., Alton, IL
Contracting Activity: PUBLIC BUILDINGS

SERVICE, PBS R5
Service Type: Groundskeeping Service
Mandatory for: FAA, Houston (I90) TRACON, Houston, TX
Designated Source of Supply: PRIDE Industries, Roseville, CA
Contracting Activity: FEDERAL AVIATION ADMINISTRATION, 697DCK REGIONAL ACQUISITIONS SVCS

Deletions

On 6/3/2022, 6/17/2022, and 6/24/2022, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
2520–01–398–4589—Parts Kit, Hydraulic Transmission, Utility Trucks
Designated Source of Supply: Goodwill Industries—Knoxville, Inc., Knoxville, TN
Contracting Activity: DLA LAND AND MARITIME, COLUMBUS, OH

Service(s)

Service Type: Janitorial/Custodial Service
Mandatory for: US Army Reserve, New Kensington Memorial USARC/BMA 106, New Kensington, PA, 2450 Leechburg Road, New Kensington, PA
Designated Source of Supply: Beaver County Association for the Blind, Beaver Falls, PA
Contracting Activity: DEPT OF THE ARMY, W6QK ACC–PICA
Service Type: Food Service Attendant
Mandatory for: US Air Force, Indiana ANG, 181st Intelligence Wing Dining Facility, Terre Haute, IN, 888 East Vanatti Circle, Terre Haute, IN
Designated Source of Supply: Child-Adult Resource Services, Inc., Rockville, IN
Contracting Activity: DEPT OF THE ARMY, W7M7 USPFO ACTIVITY IN ARNG
Service Type: Custodial and Grounds Maintenance
Mandatory for: US Department of Energy, Information Operations & Research Center, IF–608, Idaho Falls, ID, 1155 Foote Drive, Idaho Falls, ID
Designated Source of Supply: Development Workshop, Inc., Idaho Falls, ID
Contracting Activity: ENERGY, DEPARTMENT OF, SE–IDAHO OPERATIONS OFFICE
Service Type: Custodial service
Mandatory for: National Weather Service, Ohio River Forecast Center, Wilmington, OH, 1901 S State Route 134, Wilmington, OH
Designated Source of Supply: Goodwill Easter Seals Miami Valley, Dayton, OH
Contracting Activity: NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, EASTERN ACQUISITION DIVISION—NORFOLK

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–18404 Filed 8–25–22; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, August 25, 2022; 10:00 a.m.* Eastern Daylight Time (New York, GMT–04:00).

PLACE: *https://cpsc.webex.com/cpsc/onstage/g.php?MTID=e332cfaba4d2a326fbd2dec4fbaea1d98.*

STATUS: Commission meeting—Open to the public.

MATTER TO BE CONSIDERED: Public briefing on Magnets final rule.

CONTACT PERSON FOR MORE INFORMATION: Abioye E. Mosheim, Acting Secretary, Division of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7479.

* The Commission unanimously determined by recorded vote that Agency business requires calling the meeting without seven calendar days advance public notice.

Abioye E. Mosheim,

Acting Secretary.

[FR Doc. 2022–18489 Filed 8–24–22; 11:15 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2022–0031]

Notice of Availability and Request for Comment: CPSC's Draft Strategic Plan 2023–2026

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice of availability and request for comment.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) has approved a Draft Strategic Plan for 2023–2026 and CPSC seeks comments from the public on this document as part of its strategic planning process.

DATES: Comments must be received by September 26, 2022.

ADDRESSES: You can submit comments, identified by Docket No. CPSC–2022–0031, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by electronic mail (email), except as described below.

Mail/Hand Delivery/Courier Written Submissions: CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7479.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you must submit such comments by mail, hand delivery, or courier, or by email to: *cpsc-os@cpsc.gov.*

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2022–0031, into

the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Daniel Kim, Office of Budget, Planning and Evaluation, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7816; email: *dkim@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The CPSC is an independent federal regulatory agency with a public health and safety mission to protect the public from the unreasonable risks of injury and death from consumer products. The CPSC is providing notice that the agency is seeking public comments on its Draft Strategic Plan for 2023–2026 (draft plan).[1] Under the draft plan, CPSC's mission is ''Protecting the public from unsafe consumer products.'' The agency's overarching vision is: ''A nation free from unreasonable risks of injury and death from consumer products.'' The CPSC will work to achieve four strategic goals that will contribute to realizing the vision and achieving the mission.

The strategic goals are:

- Prevent hazardous products from reaching consumers.
- Address hazardous consumer products in the marketplace and with consumers in a fast and effective manner.
- Communicate actionable information about consumer product safety quickly and effectively.
- Efficiently and effectively support the CPSC's mission.

The CPSC's programs will align with the strategic goals, and the agency will implement strategies through initiatives and priority activities to achieve the strategic goals. The draft plan sets out how the CPSC will pursue the four strategic goals. The draft plan is available on the Commission's website at: *https://cpsc-d8-media-prod.s3.amazonaws.com/s3fs-public/CPSCDraftStrategicPlan2023-2026.* The draft plan is also available for viewing at *https://www.regulations.gov* under docket number, CPSC–2022–0031, ''Supporting and Related Material.''

The draft plan serves as a draft of the Commission's intended Strategic Plan for 2023–2026. The CPSC accordingly seeks comments on all aspects of the draft plan. CPSC has a wide range of external stakeholders from industry, trade associations, consumers and consumer groups, nonprofits, and standards development organizations, as well as from the international, congressional, federal, state, and local sectors. The agency looks forward to receiving comments from all individuals and entities involved in, and affected by, the CPSC's activities. Please provide comments as directed in the **ADDRESSES** section of this notice.

Abioye Mosheim,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–18438 Filed 8–25–22; 8:45 am]

BILLING CODE 6355–01–P

[1] The Commission voted 5–0 to approve this notice.

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2012–0058]

Agency Information Collection Activities; Submission for OMB Review; Comment Request—Safety Standard for Walk-Behind Power Lawn Mowers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC or Commission), announces that the Commission has submitted to the Office of Management and Budget (OMB) a request for extension of approval for information collection related to testing and recordkeeping requirements in the Safety Standard for Walk-Behind Power Lawn Mowers, previously approved under OMB Control No. 3041–0091. On June 8, 2022, CPSC published a notice in the **Federal Register** announcing the agency's intent to seek this extension. CPSC received one comment in response to that notice, which we address below.

DATES: Submit written or electronic comments on the collection of information by September 26, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to: *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. In addition, written comments that are sent to OMB also should be submitted electronically at: *http://www.regulations.gov,* under Docket No. CPSC–2012–0058.

FOR FURTHER INFORMATION CONTACT: Cynthia Gillham, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7991, or by email to: *cgillham@cpsc.gov.*

SUPPLEMENTARY INFORMATION: On June 8, 2022, CPSC published a notice in the **Federal Register** announcing the agency's intent to seek an extension for this information collection. 87 FR 34862. CPSC received one comment in response to that notice from the Outdoor Power Equipment Institute (OPEI). OPEI is a trade association with more than 100 manufacturers and their suppliers of gas and electric-powered outdoor power equipment, including lawn mowers. OPEI requested a meeting with CPSC to discuss two requirements in the standard: walk-behind, rotary power mower protective shields, and warning label for reel type and rotary power mowers. Accordingly, OPEI's letter has been referred to CPSC's Office of Hazard Identification and Reduction for review. Although the commenter did not provide any specific comments on the burden hour estimates made by CPSC, OPEI asserts that there are almost 6 million mowers tested and labelled to meet the CPSC standard each year. In addition, OPEI claims that member manufacturers employ multiple personnel test to the standard, label and apply warnings, and maintain records. All of these requirements, according to OPEI, ''requires the use of dedicated technicians, which requires considerable employee time per day per establishment.'' Based on OPEI's assertions, CPSC has updated the burden estimates for the collection of information, as follows:

CPSC has increased the estimated time burden for conducting a reasonable testing program from 3 hours daily, to 8 and increased the estimate of the total hour burden for testing by industry from 11,310 hours to 30,160 hours. Accordingly, the estimated annual cost burden for testing by industry is increased from $796,224 to $2,308,936.50. The CPSC hourly wage estimate matches the description of the technical expertise needed, as described by OPEI. With these changes, CPSC seeks to renew the following currently approved collection of information:

Title: Safety Standard for Walk-Behind Power Lawn Mowers.

OMB Number: 3041–0091.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of walk-behind power lawn mowers.

Estimated Number of Respondents: Approximately 29 manufacturers and importers of walk-behind power lawn mowers.

Estimated Time per Response: Walk-behind power lawn mowers are manufactured seasonally to meet demand. They are manufactured during an estimated 130 days out of the year. When they are manufactured, firms are required to test and maintain records of those tests. Staff estimates 8 hours daily for testing and recordkeeping per firm, totaling 1040 hours per firm (8 hours × 130 days). In addition, to produce labels and apply labels on the newly manufactured lawn mowers, staff estimates 1 hour daily for each firm during the production cycle for a total of 130 hours per firm (1 hour × 130 days).

Total Estimated Annual Burden: Staff estimates 30,160 hours on testing and recordkeeping (29 firms × 1,040 hours) and 3,770 hours for labeling (29 firms × 130 hours). Aggregate annual burden hours related to testing, recordkeeping, and labeling are estimated to be 1,170 hours (1040 + 130) per firm and 33,930 hours (30,160 + 3,770) for the industry. The annual testing, reporting and recordkeeping costs burden is estimated to be $2,176,044, based on 30,160 hours × $72.15 (total compensation for management, professional, and related workers in goods-producing industries); and the annual cost burden related to labeling is estimated to be $132,892.50, based on 3,770 hours × $35.25 (total compensation for all sales and office workers in goods-producing industries).[1] Aggregate annual burden costs related to testing, recordkeeping, and labeling are estimated to be $2,308,936.50 ($2,176,044 + $132,892.50) for the industry.

General Description of Collection: In 1979, the Commission issued the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR part 1205) to address blade contact injuries. Subpart B of the standard sets forth regulations prescribing requirements for a reasonable testing program to support certificates of compliance with the standard for walk-behind power lawn mowers. 16 CFR part 1205, subpart B.

In addition, section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program. The information collection is necessary because these regulations require manufacturers and importers to establish and maintain records to demonstrate compliance with the requirements for testing and labeling to support the certification of compliance.

Abioye Mosheim,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–18439 Filed 8–25–22; 8:45 am]

BILLING CODE 6355–01–P

[1] Table 4. Private industry workers by occupational and industry group—2022 Q01 Results (*bls.gov*).

U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

[DFC–007]

Submission for OMB Review; Comments Request

AGENCY: U.S. International Development Finance Corporation (DFC).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency modifying an existing information collection for OMB review and approval and requests public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received by October 25, 2022.

ADDRESSES: Comments and requests for copies of the subject information collection may be sent by any of the following methods:

- *Mail:* Deborah Papadopoulos, Agency Submitting Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.
- *Email: fedreg@dfc.gov.*

Instructions: All submissions received must include the agency name and agency form number or OMB form number for this information collection. Electronic submissions must include the agency form number in the subject line to ensure proper routing. Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Deborah Papadopoulos, (202) 357–3979.

SUPPLEMENTARY INFORMATION: This notice informs the public that DFC will submit to OMB a request for approval of the following information collection.

Summary Form Under Review

Title of Collection: Impact Assessment Questionnaire.

Type of Review: Revision of a currently approved information collection.

Agency Form Number: DFC–007.

OMB Form Number: 3015–0009.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 250.

Estimated Time per Respondent: 1.5 hours.

Total Estimated Number of Annual Burden Hours: 375 hours.

Abstract: The DFC Impact Assessment Questionnaire is the principal document used by the agency to initiate the assessment of a potential project's predicted development impact, as well as the project's ability to comply with environmental and social policies, including labor and human rights, as consistent with the agency's authorizing legislation.

Dated: August 22, 2022.

Nichole Skoyles,

Administrative Counsel, Office of the General Counsel.

[FR Doc. 2022–18376 Filed 8–25–22; 8:45 am]

BILLING CODE 3210–02–P

U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

[DFC–012]

Submission for OMB Review; Comments Request

AGENCY: U.S. International Development Finance Corporation (DFC).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is renewing an existing previously approved information collection for OMB review and approval and requests public review and comment on the submission. The agencies received no comments in response to the sixty (60) day notice. The purpose of this notice is to allow an additional thirty (30) days for public comments to be submitted. Comments

are being solicited on the need for the information; the accuracy of the burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received by September 26, 2022.

ADDRESSES: Comments and requests for copies of the subject information collection may be sent by any of the following methods:

- *Mail:* Deborah Papadopoulos, Agency Submitting Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.
- *Email: fedreg@dfc.gov*.

Instructions: All submissions received must include the agency name and agency form number or OMB form number for this information collection. Electronic submissions must include the agency form number in the subject line to ensure proper routing. Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Deborah Papadopoulos, (202) 357–3979.

SUPPLEMENTARY INFORMATION: The agency received no comments in response to the sixty (60) day notice published in **Federal Register** volume 87 page 34671 on June 7, 2022. Upon publication of this notice, DFC will submit to OMB a request for approval of the following information collection.

Summary Form Under Review

Title of Collection: Economic Questionnaire.

Type of Review: Extension without change of a currently approved information collection.

Agency Form Number: DFC–012.

OMB Form Number: 3015–0001.

Frequency: Per request of investor.

Affected Public: Business or other for-profit clients.

Total Estimated Number of Annual Number of Respondents: 20.

Estimated Time per Respondent: 0.5 hours.

Total Estimated Number of Annual Burden Hours: 10 hours.

Abstract: The DFC Economic Questionnaire is provided to DFC investors to complete information for planned revenues and exports of goods. The resulting answers determine the sector of analysis to assess risk to the U.S. economy of DFC support for a project.

Dated: August 22, 2022.

Nichole Skoyles,

Administrative Counsel, Office of the General Counsel.

[FR Doc. 2022–18377 Filed 8–25–22; 8:45 am]

BILLING CODE 3210–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board: Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Policy, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce the following Federal Advisory Committee meeting of the Defense Policy Board (DPB) will take place.

DATES:

Closed to the public; Tuesday, September 6, 2022, from 8:30 a.m. to 6 p.m.

Closed to the public; Wednesday, September 7, 2022 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The closed meetings will be held at The Pentagon, 2000 Defense Pentagon, Washington, DC 20301–2000.

FOR FURTHER INFORMATION CONTACT: Ms. Stacee Bako, (703) 571–9234 (Voice), 703–697–8606 (Facsimile), *osd.pentagon.rsrcmgmt.list.ousd-policy-defense-board-mbx@mail.mil* (Email). Mailing address is 2000 Defense Pentagon, Washington, DC 20301–2000.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., app.), the Government in the Sunshine Act (''the Sunshine Act'') (5 U.S.C. 552b), and title 41 Code of Federal Regulations (CFR), sections 102–3.140 and 102–3.150.

Due to circumstances beyond the control of the Designated Federal Officer (DFO), the DPB was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its September 6–7 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting: To obtain, review, and evaluate classified information related to the DPB's mission to advise on (a) issues central to strategic DoD planning; (b) policy implications of U.S. force structure and modernization on DoD's ability to execute U.S. defense strategy; (c) U.S. regional defense policies; and (d) other defense policy topics of special interest to the DoD, as determined by the Secretary of Defense, the Deputy Secretary of Defense, or the Under Secretary of Defense for Policy.

Agenda: On September 6, 2022, and September 7, 2022, the DPB will receive classified briefings and hold classified discussions on how China and Russia's potential development of fractional orbital bombardment systems and space-to-ground weapons could impact U.S. deterrence and strategic stability, as well as to consider U.S. response options to the potential development of such capabilities by any adversary, and participate in a classified Pacific-theater tabletop exercise. The DPB will be addressed by the Secretary of Defense, and/or the Deputy Secretary of Defense, and the Undersecretary of Defense for Policy. The DPB will receive classified briefings on (1) Chinese and Russian Space policy doctrine and capabilities from the Office of the Director of National Intelligence, the Central Intelligence Agency; (2) receive a briefing on the space strategic review from the Assistant Secretary of Defense for Space Policy, Dr. John F. Plumb; (3) U.S. space and missile defense capabilities brief from U.S. Space Command and the Missile Defense Agency; (4) receive a State Department briefing on perspectives of strategic stability and arms control from the Office of the Assistant Secretary of State, Arms Control, Verification, and Compliance and (5) hold discussions on the briefings in a classified session with the Secretary, and/or the Deputy Secretary, and the Under Secretary of Defense. Additionally, the DPB will provide advice and recommendations on a classified Pacific-theater based tabletop exercise.

Meeting Accessibility: In accordance with section 10(d) of the FACA and 41 CFR 102–3.155, the DoD has determined that this meeting shall be closed to the public. The Under Secretary of Defense (Policy), in consultation with the DoD FACA Attorney, has determined in writing that this meeting be closed to the public because the discussions fall under the purview of section 552b(c)(1) of the Sunshine Act and are so inextricably intertwined with unclassified material that they cannot reasonably be segregated into separate discussions without disclosing classified material.

Written Statements: In accordance with section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140(c), the public or interested organizations may submit written statements to the

membership of the DPB at any time regarding its mission or in response to the stated agenda of a planned meeting. Written statements should be submitted to the DPB's DFO, which is listed in this notice or can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.* Written statements that do not pertain to a scheduled meeting of the DPB may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all members.

Dated: August 23, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–18471 Filed 8–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0107]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; School Pulse Panel 2022 Quarter 4 Revision

AGENCY: Institute of Educational Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before September 26, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department, 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 ICR that is described below. The Department is especially interested in public comments 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 record.

Title of Collection: School Pulse Panel 2022 Quarter 4 Revision.

OMB Control Number: 1850–0969.

Type of Review: A revision of a currently approved collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 17,280.

Total Estimated Number of Annual Burden Hours: 4,752.

Abstract: The School Pulse Panel (SPP) is a monthly data collection originally designed to collect voluntary responses from a nationally representative sample of public schools to better understand how schools, students, and educators are responding to the ongoing stressors of the coronavirus pandemic, along with other priority items for the White House, Centers for Disease Control and Prevention, and Department of Education program offices. This collection allows NCES to comply with the January 21, 2021 E.O. 14000 Executive Order on Supporting the Reopening and Continuing Operation of Schools and Early Childhood Education Providers. The SPP study is extremely important particularly now that COVID–19 has not waned, and the pulse model is one that the agency will need after the pandemic subsides for other quick-turnaround data needs. It is one of the nation's few sources of reliable data on a wealth of information focused on school reopening efforts, virus spread mitigation strategies, services offered for students and staff, and technology use, as reported by school district staff and principals in U.S. public schools. Initially cleared as an emergency (OMB #1850–0963), the SPP monthly data collection (OMB #1850–0969) was formally cleared in April 2022, with change requests (OMB #1850–0969 v.2–3) clearing the May and June 2022 Questionnaires in April and May. A revision (complete with 30D public comment period; v.4) containing projected questionnaire items for August and September 2022 as well as further change requests (v. 5–7) were cleared in July and August 2022.

The purpose of this submission is to propose and seek 30-day public comment on new items (within the scope of research domains both previously established and minimally revised in this request; see Part A changes detailed below) to be collected on the October, November, and December instruments (Appendix B.6). These items are considered very close to final and will go through minimal testing with school personnel to examine any comprehension concerns with item wording. Feedback from this testing, as well as additional input from SPP stakeholders, will result in modifications and additions that will be reflected in future change requests. Some previously approved items that are considered core content will be collected in during these months. Specifically, items on learning modes, quarantine, and possibly items on after-school programs will be repeated to maintain trend over time. In addition to the changes in Appendix B (new items) and Part A (overall description of the study), updated screenshots were also added to Appendix A (communication materials) in order to keep the materials current, and additional details were added to the descriptions of our cognitive testing process in Part B. The costs to the government have not changed as a result of this revision nor has the projected respondent burden.

Dated: August 23, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–18446 Filed 8–25–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Extension of a Currently Approved Information Collection for the Weatherization Assistance Program

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

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years a currently approved collection of information with the Office of Management and Budget (OMB). The information collection request, Weatherization Assistance Program (WAP), was previously approved on May 31, 2020, under OMB Control No. 1910–5127 and its current expiration date is May 31, 2023. This ICR will include WAP Annual Appropriations and Weatherization Readiness Funds, Infrastructure Investment and Jobs Act (IIJA), and Multi-Family Buildings. This ICR makes updates to the WAP reporting metrics to ensure the requested information can be shared on an annual basis with Congress.

DATES: Comments regarding this collection must be received on or before October 25, 2022. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Brittany Price by email to the following address: *Brittany.Price@ee.doe.gov* with the subject line ''Weatherization Assistance Program (OMB No. 1910–5127)'' included in 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. No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments, see **ADDRESSES** section of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid–19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact the DOE staff person listed in this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Brittany Price, EE–5W, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585–0121 or by email or phone at *brittany.price@ee.doe.gov,* (240) 306–7252.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. This information collection request contains: (1) *OMB No.:* 1910–5127; (2) *Information Collection Request Title:* ''Weatherization Assistance Program (WAP)''; (3) *Type of Review:* Extension of a Currently Approved Collection; (4) *Purpose:* To collect information on the status of grantee activities related to WAP Annual Appropriations/Weatherization Readiness Fund, IIJA, and the multifamily buildings expansion—including but not limited to weatherized units, total people assisted with grant funds; expenditures; and results, to ensure that program funds are being used appropriately, effectively and expeditiously. *WAP Annual Appropriations and Weatherization Readiness Fund:* On March 15, 2022, the President signed the Consolidated Appropriations Act of 2021, which appropriated $334,000,000 to the WAP, and included $15,000,000 to be made available to establish a Weatherization Readiness Fund. As noted in WPN 22–6, WAP Grantees will be required to report metrics related to the expenditure of these funds. *Infrastructure Investments and Jobs Act (IIJA):* In addition to the reporting documents for the WAP's annual appropriations, this collection also includes reporting for the $3.168 billion delivered by IIJA. IIJA was passed by Congress on November 6, 2021 ''to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.'' The Weatherization Assistance Program is listed as an IIJA recipient under the Subtitle E—Miscellaneous section within Title V: Energy Efficiency and Building Infrastructure. *Multifamily Buildings:* The Consolidated Appropriations Act, 2021 amended Section 421 of the Energy Conservation and Production Act by inserting: ''the number of multifamily buildings in which individual dwelling units were weatherized during the previous year, the number of individual dwelling units in multifamily buildings weatherized during the previous year,'' after ''the average size of the dwellings being weatherized.'' (5) *Annual Estimated Number of Respondents:* 57; (6) *Annual Estimated Number of Total Responses:* 798; (8) *Annual Estimated Number of Burden Hours:* 7,752; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $366,824.64.

Statutory Authority: Title 42, chapter 81, subchapter III, part A of the United States Code (U.S.C.), (42 U.S.C. 6867(a)).

Signing Authority

This document of the Department of Energy was signed on August 12, 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 August 23, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–18432 Filed 8–25–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2689–000]

MTSun LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of MTSun LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 12, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: August 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–18423 Filed 8–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3509–042]

Little Falls Hydroelectric Associates, LP; Notice of Intent To Prepare an Environmental Assessment

On August 31, 2021, Little Falls Hydroelectric Associates, LP (Little Falls Associates) filed an application for a new major license for the 13.3-megawatt Little Falls Hydroelectric Project (Little Falls Project; FERC No. 3509). The Little Falls Project is located on the Mohawk River, in the City of Little Falls, Herkimer County, New York. The project does not occupy federal land.

In accordance with the Commission's regulations, on May 25, 2022, Commission staff issued a notice that the project was ready for environmental analysis (REA Notice). Based on the information in the record, including comments filed on the REA Notice, staff does not anticipate that licensing the project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare an Environmental Assessment (EA) on the application to relicense the Little Falls Project.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues EA	December 2022.[1]
Comments on EA	January 2023.

Any questions regarding this notice may be directed to Monir Chowdhury at (202) 502–6736 or *monir.chowdhury@ferc.gov.*

Dated: August 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–18422 Filed 8–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–208–000.

Applicants: Hunt Energy Network Land Company, L.L.C.

Description: Hunt Energy Network Land Company, L.L.C. submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 8/22/22.

Accession Number: 20220822–5089.

Comment Date: 5 p.m. ET 9/12/22.

Docket Numbers: EG22–209–000.

Applicants: HEN Infrastructure, L.L.C.

Description: HEN Infrastructure, L.L.C. submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 8/22/22.

Accession Number: 20220822–5091.

Comment Date: 5 p.m. ET 9/12/22.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL21–77–000.

Applicants: Tenaska Clear Creek Wind, LLC v. *Southwest Power Pool, Inc.*

Description: Southwest Power Pool, Inc. submits Revised Network Upgrade Costs.

Filed Date: 8/16/22.

Accession Number: 20220816–5123.

Comment Date: 5 p.m. ET 8/26/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–2698–000.

[1] The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) require that EAs be completed within 1 year of the federal action agency's decision to prepare an EA. This notice establishes the Commission's intent to prepare an EA for the Little Falls Project. Therefore, in accordance with CEQ's regulations, the EA must be issued within 1 year of the issuance date of this notice.

Applicants: SESCO Enterprises Canada Ltd.

Description: Notice of Cancellation of Market Based Rate Tariff and Request for Waiver of SESCO Enterprises Canada, Ltd.

Filed Date: 8/19/22.

Accession Number: 20220819–5197.

Comment Date: 5 p.m. ET 9/9/22.

Docket Numbers: ER22–2699–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2022–08–22_SA 3391 Ameren IL-Maple Flats Solar Energy Center 2nd Rev GIA (J813) to be effective 8/15/2022.

Filed Date: 8/22/22.

Accession Number: 20220822–5045.

Comment Date: 5 p.m. ET 9/12/22.

Docket Numbers: ER22–2700–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2022–08–22 Reliability Demand Response Resource—Phase 2 to be effective 12/31/9998.

Filed Date: 8/22/22.

Accession Number: 20220822–5141.

Comment Date: 5 p.m. ET 9/12/22.

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: August 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–18420 Filed 8–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–121–000]

National Grid LNG LLC; Notice of Request for Extension of Time

Take notice that on August 16, 2022, National Grid LNG LLC (National Grid) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time (2022 Extension of Time Request), until June 1, 2023, to complete construction of, and place into service, its Fields Point Liquefaction Project located in Providence, RI as authorized in the October 17, 2018 Order Issuing Certificate (Certificate Order).[1] Ordering Paragraph B(1) of the Certificate Order required National Grid to complete the construction of the proposed Fields Point Liquefaction Project facilities [2] and make them available for service within three years from issuance, or by October 17, 2021.[3]

On December 8, 2020 National Grid filed a request for an extension of time for an additional twelve months to complete construction and place into service the authorized construction at the LNG storage facility at Fields Point. National Grid was granted a one-year extension of time, until and including October 17, 2022, to complete abandonment activities authorized in the above referenced docket.

National Grid states that the Project was on-schedule to be placed in service before October 17, 2022, however, National Grid had to suspend the testing and commissioning process on May 23, 2022, due to objections from the PPL Corporation-owned LDC regarding odorant levels in the tail gas flowing into the LDC system on that date. National Grid states that despite diligent efforts to design, engineer and procure all of the components for the mercaptan removal system, supply chain delays have occurred. National Grid states that potential supply shortfall could lead to further delays in completing the testing to begin service until the following Spring. For that reason and dependence upon meteorological conditions during the Fall months, National Grid requests an extension to June 1, 2023 for the date to place the facilities in service.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on National Grid's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[4] the Commission will aim to issue an order acting on the request within 45 days.[5] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[6] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[7] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[8] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://*

[1] *National Grid LNG LLC,* 165 FERC ¶ 61,031 (2018) (Certificate Order).

[2] The Fields Point Liquefaction Project consists of the construction of one (1) new 20 million cubic feet per day (MMcf/d) gas pretreatment and liquefaction system to convert natural gas delivered by pipeline into liquefied natural gas (LNG). The liquefaction facility is designed to enable National Gas to provide up to 20,600 dekatherms per day (Dth/day) liquefaction service at its existing LNG storage facility located in Providence, RI.

[3] *Id.* at ordering para. (B)(1).

[4] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[5] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

[6] *Id.* at P 40.

[7] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[8] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

www.ferc.gov) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and three copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on September 6, 2022.

Dated: August 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–18419 Filed 8–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–9–000]

New England Winter Gas-Electric Forum; Supplemental Notice of New England Winter Gas-Electric Forum

As first announced in the Notice of Forum issued in the above-referenced proceeding on May 19, 2022, the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led forum on Thursday, September 8, 2022, from approximately 9:00 a.m. to 5:00 p.m. Eastern Time, to discuss the electricity and natural gas challenges facing the New England Region. The forum will be open to the public and held in the Emerald I & II Ballroom at the DoubleTree by Hilton Burlington Vermont, 870 Williston Rd., South Burlington, VT 05403.

The updated agenda for this forum is attached, which includes the final forum panelists. All changes to this agenda since the Commission's July 21, 2022 Supplemental Notice of New England Winter Gas-Electric Forum appear in italics.

The purpose of the forum is to bring together stakeholders in New England to discuss the challenges faced historically during New England winters and discuss the stakeholders' differing expectations of challenges for future winters. The objectives of the forum are to achieve greater consensus or agreement among stakeholders in defining the electric and natural gas system challenges in New England and identify what, if any, steps are needed to better understand those challenges before identifying solutions.

While the forum is not for the purpose of discussing any specific matters before the Commission, some forum discussions may involve issues raised in proceedings that are currently pending before the Commission. These proceedings include, but are not limited to—changes or additions to the list below appear in italics:

	Docket Nos.
Constellation Mystic Power LLC	ER18–1639–000, ER18–1639–014, ER18–1639–015, ER18–1639–017, ER22–1192–000.
ISO New England Inc	ER19–1428–000, ER19–1428–001, ER19–1428–002, ER19–1428–003, ER19–1428–004.
RENEW Northeast and American Clean Power Association vs. ISO New England Inc.	*EL22–42–000*.[1]
NextEra Energy Seabrook, LLC	*EL21–3–000*.
NECEC Transmission LLC and Avangrid, Inc. v. NextEra Energy Resources, LLC.	*EL21–6–000*.

Only Commissioners and panelists will participate in the panel discussions. The forum will be open to the public for listening and observing, and written comments may be submitted in Docket No. AD22–9–000.

Registration for in-person attendance is required, and there is no fee for attendance. A link to attendee registration is available on the New England Winter Gas-Electric Forum event page. Due to space constraints, seating for this event will be limited and registrants that get a confirmed space will be contacted via email. Only confirmed registrants can be admitted to the forum given the maximum occupancy limit at the venue (as required by fire and building safety code). Therefore, the Commission encourages members of the public who wish to attend this event in person to register at their earliest convenience. Online registration will be open, as long as attendance capacity is available, until the day before the forum (September 7). Once registration has reached capacity, registration will be closed. However, those interested in attending after capacity has been reached can join a waiting list (using the same registration link) and be notified if space becomes available. Those who are unable to attend in person may watch the free webcast.

The webcast will allow persons to listen and observe the forum remotely but not participate. Information on this forum, including a link to the webcast, will be posted prior to the event on this forum's event page on the Commission's website. A recording of the webcast will be made available after the forum in the same location on the Calendar of Events. The forum will be transcribed. Transcripts of the forum will be available for a fee from Ace-Federal Reporters, Inc. (202–347–3700).

Additionally, please note that the Commission will be implementing health and safety restrictions, as appropriate, associated with the Centers for Disease Control and Prevention (CDC) COVID Community Level mitigations. This may include requiring all participants to wear cloth face covers or masks as well as further limiting venue occupancy if Chittenden County is designated as having a high-community level in data expected to be released on the evening of Thursday, September 1. The CDC Community Level tracker may be found at the CDC COVID Data Tracker site.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please

[1] Docket descriptive corrected from July 21, 2022 supplemental notice.

send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this forum, please contact *NewEnglandForum@ferc.gov* for technical or logistical questions.

Dated: August 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–18421 Filed 8–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–497–000]

Big Dog Midstream LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on August 12, 2022, Big Dog Midstream LLC (Big Dog Midstream), 104 Bradford Road, Wexford, PA 15090, filed an application under section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations for a limited jurisdiction certificate in order to provide transportation service on the Taylor County Field gathering system in Taylor County, West Virginia (Taylor County Field), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Big Dog Midstream also seeks a determination by the Commission that the interstate transportation service proposed herein will not change the status of the Taylor County Field as being exempt from the Commission's jurisdiction under Section 1(b) of the NGA or affect the non-jurisdictional status of any other operation or service in which Big Dog Midstream is currently engaged.

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 the proposed project should be directed to Thomas C. Ryan, Partner, K&L Gates, 210 Sixth Avenue, Pittsburgh, Pennsylvania 15222; by phone at (412) 355–8335; or by email to *thomas.ryan@klgates.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 two ways to become involved in the Commission's review of this project: you can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on September 12, 2022.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before September 12, 2022.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP22–497–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You may file a paper copy of your comments by mailing them to the following address below.[2] Your written comments must reference the Project docket number (CP22–497–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

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.

The Commission considers all comments received about the project in determining the appropriate action to be taken. 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. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of

[1] 18 CFR (Code of Federal Regulations) 157.9.

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] 18 CFR 385.102(d).

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 [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is September 12, 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.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP22–497–000 in your submission.

(1) You may file your motion to intervene by using the Commission's 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 ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket number CP22–497–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Motions to intervene must be served on the applicant either by mail or email at: Thomas C. Ryan, Partner, K&L Gates, 210 Sixth Avenue, Pittsburgh, Pennsylvania 15222; or by email to *thomas.ryan@klgates.com.* Any subsequent submissions by an intervenor must be served on the applicant 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 [7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] 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.[9] 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 project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *http://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 September 12, 2022.

Dated: August 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–18418 Filed 8–25–22; 8:45 am]

BILLING CODE 6717–01–P

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2016–0178; FRL–10081–01–OW]

Proposed Information Collection Request; Comment Request; EPA Application Materials for the Water Infrastructure Finance and Innovation Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''EPA Application Materials for the Water Infrastructure Finance and Innovation Act'' (EPA ICR no. 2549.03, OMB Control No. 2040–0292) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a renewal. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before October 25, 2022.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2016–0178, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Amelia Letnes, WIFIA Management Division, Office of Wastewater Management, 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460;

telephone number: 202–564–5627; email address: *Letnes.amelia@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The collection of information is necessary in order to receive applications for credit assistance pursuant to section 5024 of the Water Infrastructure Finance and Innovation Act (WIFIA) of 2014, 33 U.S.C. 3903. The purpose of the WIFIA program is to provide Federal credit assistance in the form of direct loans and loan guarantees to eligible clean water and drinking water projects.

WIFIA requires that an eligible entity submit to the Administrator an application at such time, in such manner, and containing such information, as the Secretary or the Administrator *may require* to receive assistance under WIFIA. To satisfy these requirements, EPA must collect an application from prospective borrowers seeking funding. The Letters of Interest and Applications collected from prospective borrowers through this solicitation will be used by the EPA, WIFIA program staff, and reviewers to evaluate applications for credit assistance under the WIFIA eligibility requirements and selection criteria.

Form Numbers: EPA 6100–030, 6100–031, and 6100–032.

Respondents/affected entities: The respondents affected by this collection activity include: corporations, partnerships, joint ventures, trusts, federal, state, or local government entities, tribal governments or a consortium of tribal governments, and state infrastructure finance authorities. The Letters of Interest and Applications collected from prospective borrowers through this solicitation will be used by EPA to evaluate requests for credit assistance under the WIFIA eligibility requirements and selection criteria.

Respondent's obligation to respond: The collection is required to obtain credit assistance pursuant to section 5024 of WIFIA, 33 U.S.C. 3903.

Estimated number of respondents: 105 per year (total).

Frequency of response: one per funding round.

Total estimated burden: 10,450 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $10,000,000.00 (per year), includes no annualized capital or operation and maintenance costs.

Change in Estimates: There is a decrease of 375 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to a reduction in the expected number of collections from 55 to 45.

Andrew D. Sawyers,

Director, Office of Wastewater Management.

[FR Doc. 2022–18467 Filed 8–25–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2018–0248; FRL–10155–01–OECA]

Proposed Information Collection Request; Comment Request; Air Stationary Source Compliance and Enforcement Information Reporting (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency is planning to submit an information collection request (ICR), the Air Stationary Source Compliance and Enforcement Information Reporting (Renewal) (EPA ICR No. 0107.13, OMB Control No. 2060–0096) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the currently approved ICR. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before October 25, 2022.

ADDRESSES: Submit your comments, referencing the Docket ID number EPA–HQ–OECA–2018–0248, online using *https://www.regulations.gov/* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

The EPA's policy is that all relevant comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Mr. David A. Meredith, Enforcement Targeting and Data Division, Office of Compliance, (2222A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–4152; email address: *meredith.david@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov/* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number

for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets*.

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. Burden is defined at 5 CFR 1320.03(b). EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** document to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Air Stationary Source Compliance and Enforcement Information Reporting is an activity whereby State, Local, Native American, Territorial, and Commonwealth governments (hereafter referred to as either ''states/locals'' or ''state and local agencies'') make air stationary source compliance and enforcement information available to the U.S. Environmental Protection Agency (EPA or the Agency) on a cyclic basis via input to the Air component of the Integrated Compliance Information System (ICIS-Air). ICIS-Air supports EPA and state and local agency efforts to ensure compliance with the nation's environmental laws pertaining to air, via the collection and management of important Clean Air Act (CAA or the ''Act'') compliance and enforcement information. ICIS-Air is a subcomponent of ICIS, which provides compliance and enforcement information on thousands of facilities regulated under numerous federal statutes. The majority of delegated agencies maintain their own data system and extract data from it and report it to ICIS-Air using either electronic data transfer (EDT) or manually (''direct entry''). A small number of delegated agencies use ICIS-Air exclusively, since they have no internal air compliance and enforcement database. The information provided to EPA via ICIS-Air includes source characterization, compliance monitoring, and enforcement activities. The EPA uses this information and information from other data systems, such as the Compliance and Emissions Data Interface (CEDRI) to assess the health of the compliance and enforcement program established under the Clean Air Act (CAA), to perform oversight activities of delegated agencies, and to provide public transparency about activities and findings related to compliance and enforcement both at individual facilities or aggregated categories of facilities. The EPA also uses ICIS-Air to record comparable federal activities to support program management and transparency. Agencies receive delegation of the CAA through regulated grant authorities, and report compliance/enforcement activities undertaken at stationary sources pursuant to the Minimum Data Requirements (MDRs) as outlined in this ICR. The provisions of section 114(a)(1) of the Clean Air Act, 42 U.S.C. 7414(a)(1) provide the broad authority for the reporting of compliance monitoring and enforcement information, along with Subpart Q—Reports in 40 CFR part 51: §§ 51.324(a) and (b) and 51.327. This renewal requires the continuation of reporting of previously established MDRs via either direct, on-line entry or electronic data transfer (EDT) to ICIS-Air.

The EPA collects compliance data from regulated sources via CEDRI and tracks enforcement and compliance monitoring information for stationary sources from delegated agencies and EPA Regions via ICIS-Air. The EPA is considering a process to standardize the facility identification process so that data can easily be shared across systems. As such, the EPA seeks comments, *on a voluntary basis,* regarding the following issues and questions we consider improvements to the integration of ICIS-Air and CEDRI information.

- The EPA seeks comments on whether it would be beneficial for the EPA to import facilities from CEDRI into ICIS-Air that are currently not found in ICIS-Air and create a means to link those facilities for purposes of more comprehensive compliance tracking. Additionally, we are seeking comment on, for cases where a delegated agency uses EDT to share data with EPA, whether the delegated agency would want the ability to create facilities from CEDRI facilities and manage those data in the delegated agency's database.
- Assuming that some delegated agencies are reviewing compliance reports within CEDRI, the EPA seeks comments on how data within the CEDRI reports could be provided to ICIS-Air to reduce the need for overlapping data entry in ICIS-Air. We are seeking comment on whether delegated agencies perceive that there are identical data in CEDRI reports and data uploads into ICIS-Air, and whether data exists in CEDRI but not in ICIS-Air that would be helpful to share with ICIS-Air. We are specifically seeking comment on which data would be most helpful to share between the systems.
- The EPA is seeking comment on the utility of future functionality that would automatically flag situations within ICIS-Air when a CEDRI compliance report is due, but not received by the deadline.
- The EPA is seeking information on whether delegated agencies that do not currently provide Title V Certifications to CEDRI plan to do so in the near future.
- The EPA seeks comments on whether we should consider requiring that violations have a linkage to a discovery action, or CEDRI ID number, so that ECHO users can understand the activity that led to the violation finding(s).
- The EPA seeks comments on whether we should consider, in the future, developing a new reporting approach for delegated agencies that provide the CEDRI document ID to limit potential duplicate data entry (for example, linking certain fields that would not have to be manually entered).
- The EPA has begun collecting benzene fenceline monitoring data from refineries on a bi-weekly basis. We seek comment on whether, when deficiencies are noted that require follow-up actions by the facility, those deficiencies should be populated into ICIS-Air and shared via ECHO.
- Through CEDRI, the EPA is receiving performance reports directly from regulated entities. Some of these reports are used by delegated agencies to make compliance determinations. The EPA seeks comments on the effectiveness of the current process of making these reports accessible through the Agency's WebFIRE website and suggestions for improvements that could assist delegated agencies with making compliance determinations.
- Finally, we seek comments on whether having a common facility numbering protocol for ICIS-Air and CEDRI would improve the overall management of the CAA program and associated data.

Although we are soliciting comment on these issues, the EPA intends to continue the status quo with respect to the minimum data requirements reported to ICIS-Air at this time. We will consider any comments received as we evaluate potential future improvements to the integration of information collected via ICIS-Air and CEDRI. The anticipated burden requirements for the current minimum data requirements associated with ICIS-Air are as follows:

Respondents: State, Local, Territorial, Indian Nations, and Commonwealth governments.

Respondent's obligation to respond: Mandatory (section 114(a)(1) of the Clean Air Act, 42 U.S.C. 7414(a)(1)).

Estimated number of respondents: 99.

Frequency of response: Every 60 days.

Estimated annual burden: 26,100 hours.

Estimated annual cost: $1,280,000. There are no annualized capital/startup or operation & maintenance costs.

Changes in estimates: There is no anticipated change in burden from the most recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to several considerations. First, the ICIS-Air reporting system and minimum data reporting requirements have not changed over the past three years. Second, there is no anticipated change in the number of respondents or the number of responses from the prior ICR, so there is likely no significant change in the overall burden. For this ICR renewal, EPA will use experience from the last three years to provide burden estimates that adequately reflect the actual burden. EPA will consider any comments received and will conduct consultation with delegated agencies that are use ICIS-Air. There are no capital/startup or operation and maintenance (O&M) costs associated with this reporting activity. There is likely a slight increase in costs, due to the use of updated labor rates. This ICR will use labor rates from the most recent Office of Personnel Management (OPM), 2022 General Schedule.

John Dombrowski,

Director, Office of Compliance.

[FR Doc. 2022–18425 Filed 8–25–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–031]

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 August 15, 2022 10 a.m. EST Through August 22, 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. 20220120, Draft, FERC, VA, Virginia Electrification Project, Comment Period Ends: 10/11/2022, Contact: Office of External Affairs 866–208–3372.

Amended Notice

EIS No. 20220094, Draft, BLM, NV, Goldrush Mine Project, Comment Period Ends: 08/29/2022, Contact: Scott Distel 775–635–4093. Revision to FR Notice Published 07/08/2022; Extending the Comment Period from 08/22/2022 to 08/29/2022.

Dated: August 22, 2022.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2022–18412 Filed 8–25–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 101751]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a modified system of records.

SUMMARY: The Federal Communications Commission (FCC, Commission, or Agency) proposes to modify an existing system of records, FCC–2, Business Contacts and Certifications, subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the Agency. The Commission uses the information on individuals and businesses contained in the records in this system to collect and maintain points of contact at regulated entities and in related industries, and ensure compliance with FCC rules through certifications of information provided to the Commission. This modification expands the categories of individuals and record source categories of this system of records to include other Federal, state, local, U.S. territorial, and Tribal government entities and expands the purpose and routine uses of this system of records to include additional purposes for disclosing business contact and certification information and adding state, local, U.S. territorial, and Tribal government entities to the types of entities that may receive information from this system.

DATES: This modified system of records will become effective on August 26, 2022. Written comments on the routine uses are due by September 26, 2022. The routine uses will become effective on September 26, 2022, unless written comments are received that require a contrary determination.

ADDRESSES: Send comments to Brendan McTaggart, at *privacy@fcc.gov,* or at Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554 at (202) 418–1738.

FOR FURTHER INFORMATION CONTACT: Brendan McTaggart, (202) 418–1738, or *privacy@fcc.gov* (and to obtain a copy of the Narrative Statement and the Supplementary Document, which includes details of the modifications to this system of records).

SUPPLEMENTARY INFORMATION:

SYSTEM NAME AND NUMBER:

FCC–2, Business Contacts and Certifications

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554; Universal Service Administrative Company, 700 12th Street NW, Suite 900, Washington, DC 20005; or FISMA compliant contractor.

SYSTEM MANAGER(S):

Federal Communications Commission (FCC); Universal Service Administrative Company (USAC); or FISMA compliant contractor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 U.S.C. 151, 152, 154 (i)–(j) & (o), 155, 251(e)(3), 254, 257, 301, 303, 332, 402, 1302; and 5 U.S.C. 602(c) and 609(a)(3).

PURPOSES OF THE SYSTEM:

The FCC and organizations administering programs on behalf of the FCC use this system to collect and maintain points of contact at entities regulated by the FCC and in related industries, as well as contractors, vendors, and those performing collateral duties for the FCC, to ensure compliance with applicable Federal laws and FCC rules, including through certifications of information provided to the Commission. The FCC also uses this system to collect and maintain contact information and certifications from other Federal, state, local, U.S. territorial, and Tribal government entities that administer, support, participate in, or receive information related to, FCC programs and activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including points of contact for and those who certify on behalf of, businesses as well as Federal, state, local, U.S. territorial, or Tribal governmental entities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contact information, such as name, username, signature, phone numbers, emails, and addresses, as well as work and educational history.

RECORD SOURCE CATEGORIES:

Information in this system is provided by individuals, including points of contact for and those who certify on behalf of: FCC contractors; vendors; those providing collateral duties to the FCC; regulated entities and entities in related industries; and Federal, state, local, U.S. territorial, and Tribal government entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows.

1. Public Access—Contact information and certifications made by individuals contained in this system may be made available for public inspection to comply with FCC regulations that require public disclosure of this information, or in Commission releases, including notices of proposed rulemaking, public notices, orders, and other actions released by the Commission.

2. Authorized Third Parties—Contact information and certifications made by individuals contained in this system may be shared with authorized third parties, including individuals and businesses in regulated and related industries, FCC vendors, and their contractors, to administer, support, participate in, or receive information related to, FCC programs and activities; or to ensure compliance with the confidentiality and other rules regarding information sharing in the FCC's programs and activities.

3. Federal Agencies—Contact information and certifications made by individuals contained in this system may be shared with other Federal agencies in order to administer, support, participate in, or receive information related to, FCC programs and activities.

4. State, Local, U.S. Territorial, and Tribal Government Entities—Contact information and certifications made by individuals contained in this system may be shared with authorized state, local, U.S. territorial and Tribal government entities to administer, support, participate in, or receive information related to, FCC programs and activities.

5. Litigation—To disclose records to the Department of Justice (DOJ) when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and the use of such records by the Department of Justice is for a purpose that is compatible with the purpose for which the FCC collected the records.

6. Adjudication—To disclose records in a proceeding before a court or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.

7. Law Enforcement and Investigation—To disclose pertinent information to the appropriate Federal, State, local, Tribal agency, or a component of such an agency, responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the FCC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

8. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written request of that individual.

9. Government-wide Program Management and Oversight—To provide information to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

10. Breach Notification—To appropriate agencies, entities, and persons when: (a) the Commission suspects or has confirmed that there has been a breach of PII maintained in the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information system, programs, and operations), the Federal Government, or national security; and; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

11. Assistance to Federal Agencies and Entities Related to Breaches—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

12. Non-Federal Personnel—To disclose information to non-Federal personnel, including contractors, grantees, and volunteers who have been engaged to assist the FCC in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

REPORTING TO A CONSUMER REPORTING AGENCIES:

In addition to the routine uses cited above, the Commission may share information from this system of records with a consumer reporting agency regarding an individual who has not paid a valid and overdue debt owed to the Commission, following the procedures set out in the Debt Collection Act, 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

This an electronic system of records that resides on the FCC's network, USAC's network, or on an FCC vendor's network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system of records can be retrieved by any category field, *e.g.,* first name or email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The information in this system is maintained and disposed of in accordance with the National Archives and Records Administration (NARA) General Records Schedule 6.5, Item 020 (DAA–GRS–2017–0002–0002).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The electronic records, files, and data are stored within FCC, USAC, or a vendor's accreditation boundaries and maintained in a database housed in the FCC's, USAC's, or vendor's computer network databases. Access to the electronic files is restricted to authorized employees and contractors; and to IT staff, contractors, and vendors who maintain the IT networks and services. Other employees and contractors may be granted access on a need-to-know basis. The electronic files and records are protected by the FCC, USAC, and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), the Office of Management and Budget (OMB), and the National Institute of Standards and Technology (NIST).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing to *Privacy@fcc.gov.* Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity to gain access to records as required under 47 CFR part 0, subpart E.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

86 FR 68497 (December 2, 2021).

Federal Communications Commission.

Sheryl Todd,

Deputy Secretary.

[FR Doc. 2022–18359 Filed 8–25–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, August 31, 2022 at 10:00 a.m.

PLACE: Hybrid meeting: 1050 First Street NE, Washington, DC (12th floor) and virtual.

Note: For those attending the meeting in person, current COVID–19 safety protocols for visitors, which are based on the CDC COVID–19 Community Level in Washington, DC, will be updated on the Commission's contact page by the Monday before the meeting. See the contact page at *https://www.fec.gov/contact/.* If you would like to virtually access the meeting, see the instructions below.

STATUS: This meeting will be open to the public, subject to the above-referenced guidance regarding the COVID–19 Community Level and corresponding health and safety procedures. To access the meeting virtually, go to the Commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Draft Advisory Opinion 2022–12: Ready for Ron
Draft Advisory Opinion 2022–11: State Democracy Defenders PAC (''SDD PAC'')
Draft Advisory Opinion 2022–15: Harley Rouda and Harley Rouda for Congress
Draft Advisory Opinion 2022–16: DSCC and DNC
Proposed Interim Final Rule: Repayment of Candidate Loans
REG 2013–01 (Technological Modernization): Request for Additional Comment
Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Individuals who plan to attend in person and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Acting Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2022–18554 Filed 8–24–22; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2022–N–9]

Notice of Intent To Establish a Federal Advisory Committee on Affordable, Equitable, and Sustainable Housing

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) has determined that it is necessary and in the public interest to establish a Federal Advisory Committee on Affordable, Equitable, and Sustainable Housing. A charter has been prepared and will be filed at least 15 days following the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Erin Barry, Senior Policy Analyst, Office of Housing & Community Investment, Division of Housing Mission and Goals, *ACAESH@fhfa.gov,* (202) 649–3287, Federal Housing Finance Agency, Constitution Center, 400 7th Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, as amended), FHFA intends to establish a Federal Advisory Committee on Affordable, Equitable, and Sustainable Housing (Committee). FHFA has determined that it is necessary and in the public interest to establish this Committee in order to fulfill its strategic goal of providing

access to affordable, equitable, and sustainable housing.

Objectives and Duties of the Committee

The purpose of the Committee is to advise FHFA in the exercise of its oversight functions regarding affordable, equitable, and sustainable housing, including but not limited to, affordable, equitable, and sustainable housing needs, barriers to access, barriers to long-term sustainability, and any regulatory, guidance, or policy changes that may be necessary or beneficial to expand such housing. The Committee will focus on FHFA's regulated entities—Fannie Mae, Freddie Mac, and the Federal Home Loan Banks—and their respective roles in providing a reliable source of liquidity and funding to support housing finance and community investment in the single-family and multifamily housing markets.

The scope of the Committee's activities shall include providing information and analysis in support of advice and recommendations to FHFA. Each Committee meeting will better inform any or all the following: FHFA's policy development, rulemaking, or community and public engagement functions as they relate to affordable, equitable, and sustainable housing.

The duties of the Committee are solely advisory and shall extend only to its submission of advice and recommendations to FHFA, with supporting information and analysis (within the scope of the Committee's activities as defined herein), which shall be non-binding on FHFA.

No determinations of fact or policy shall be made by the Committee. The Committee shall have no decision-making role, and shall have no access to non-public FHFA information, including confidential supervisory or other confidential information.

Membership of the Committee

The FHFA Director shall appoint the members of the Committee. To achieve a fairly balanced membership, FHFA shall seek members representative of diverse communities, points of view, institution asset sizes, and geographical locations, with expertise in affordable, sustainable, or equitable housing in single-family and multifamily housing. The Committee will include members with expertise, applicable to Fannie Mae, Freddie Mac, or the Federal Home Loan Banks, in the areas related to the duties and authorities of the Committee, such as: (1) fair lending, fair housing, or civil rights; (2) single-family lending, servicing, development, mortgages, or capital markets; (3) multifamily lending, servicing, development, mortgages, capital markets, or investments (*i.e.* Low-Income Housing Tax Credits); (4) consumer, tenant, or community advocacy; (5) market technology; (6) state, local, or tribal government housing policies and programs; and (7) academic or non-academic affiliated housing research.

The Committee shall consist of approximately 20 members, serving two-year terms. Members shall serve at the sole discretion of the Director.

The Committee shall meet at such intervals as are required to carry out its functions. It is estimated that the Committee will meet at least twice per year. Generally, Committee meetings will be open to the public.

Applications and nominations for membership on the Committee will be solicited in a subsequent notice in the **Federal Register**.

Sandra L. Thompson,

Director, Federal Housing Finance Agency.

[FR Doc. 2022–18434 Filed 8–25–22; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Privacy Act of 1974; System of Records

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Federal Mediation and Conciliation Service (FMCS) proposes to amend and reissue a current system of records notice, titled FMCS–0006, Ethics Records. The system will cover the Executive Branch Confidential Financial Disclosure Reports, and agency ethics guidance to employees and FMCS clients. The notice amendment includes significant updates to refine details published under the system manager, authority for maintenance of the system, the purpose, categories of individuals covered, categories of records, record source categories, routine uses, record access procedures, contesting records, and history. These sections are amended to refine previously published information about the system of records. The addresses, system name and number, security classification, system location, policies and practices for storage, policies and practices for retrieval, policies and practices for retention, administrative safeguards, notification procedures, and exemptions remain unchanged. This amended SORN deletes and supersedes the SORN published on the **Federal Register** on October 27, 2021.

DATES: This system of records will be effective without further notice on September 26, 2022 unless otherwise revised pursuant to comments received. New routine uses will be effective on September 26, 2022. Comments must be received on or before September 26, 2022.

ADDRESSES: You may send comments, identified by FMCS–0006 by any of the following methods:

- *Mail:* Office of General Counsel, 250 E Street SW, Washington, DC 20427.
- *Email: ogc@fmcs.gov.* Include FMCS–0006 on the subject line of the message.
- *Fax:* (202) 606–5444.

FOR FURTHER INFORMATION CONTACT: Alisa Zimmerman, Designated Agency Ethics Official and Acting General Counsel, at *azimmerman@fmcs.gov* or 202–606–5488.

SUPPLEMENTARY INFORMATION: In accordance with ethics laws, regulations, and the Code of Professional Conduct for Labor Mediators, FMCS will collect, store, evaluate, and disclose, when necessary, information pertaining to ethics and mediators. FMCS may disclose information pertaining to FMCS parties or clients to address impartiality concerns or explain mediator reassignments. Pursuant to the Code of Professional Conduct and FMCS's mission, the FMCS ethics system may include additional documents pertaining to mediator assets and client notices concerning those assets. This system of records supplements the Office of Government Ethics GOVT–2 system. This system will collect information from FMCS employees serving as mediators and federal employees serving in mediators' supervisory chain. In evaluating ethics concerns, FMCS may also gather information from internal agency sources and departments and store information as part of this system.

The notice amendment includes updates to refine details published under the system manager, authority for maintenance of the system, the purpose, categories of individuals covered, categories of records, record source categories, routine uses, record access procedures, contesting records, and history. These sections are amended to refine previously published information about the system of records. The addresses, system name and number, security classification, system location, policies and practices for storage,

policies and practices for retrieval, policies and practices for retention, administrative safeguards, notification procedures, and exemptions remain unchanged.

SYSTEM NAME AND NUMBER:

FMCS–0006 Ethics Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Mediation and Conciliation Service, Office of General Counsel (OGC), 250 E Street SW, Washington, DC 20427.

SYSTEM MANAGER(S):

Alisa Zimmerman, Designated Agency Ethics Official and Deputy General Counsel, email *azimmerman@fmcs.gov,* or send mail to Federal Mediation and Conciliation Service, Office of General Counsel (OGC), 250 E Street Southwest, Washington, DC 20427, Attn: Alisa Zimmerman.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 172, *et seq.* as it pertains to providing mediation and conflict resolution services to clients; Ethics in Government Act of 1978, 5 U.S.C. app. 101, *et seq.;* E.O. 12674 (as modified by E.O. 12731); 5 CFR part 2634; 5 CFR part 2635; and 29 CFR part 1400.735–20.

PURPOSE(S) OF THE SYSTEM:

This amended system will reflect mediator obligations under the Code of Professional Conduct for Labor Mediators as referenced in 29 CFR 1400.735–20. This system of records supplements the Office of Government Ethics GOVT–2 system and may contain records collected and maintained to meet the requirements of Executive Order 12674, as modified, 5 CFR part 2634, and subsequent agency regulations, as well as section 107 of the Ethics in Government Act of 1978, as amended. This system includes the additional collection, documentation, and disclosure of mediator ethical concerns regarding financial conflicts of interest and impartiality, including but not limited to, ethics waivers and authorizations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals in this system include FMCS employees serving as mediators and in the mediator supervisory chain, and employees designated to file public, confidential, or alternative financial disclosure forms in accordance with 5 CFR 2634.904 and 5 U.S.C. app. 107. It also includes FMCS employees conducting or assigning conflict management cases, including but not limited to, mediations. The system of records includes both current and former Federal employees in these categories.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain statements and amended statements of personal and family holdings and other interests in property, income, gifts, reimbursements, liabilities, agreements, arrangements, outside positions, retirement products, pensions, and other information related to conflict-of-interest determinations. These statements include completed copies of the Office of Government Ethics (OGE) Form 450 and alternative confidential disclosure forms reflecting more detailed information pertaining to mediator pensions and supplemental agency ethics documents including, but not limited to cautionary memos, recusals, firewalls, waivers, authorizations, acknowledgment of duty to contact the Office of General Counsel, and any statements or certifications concerning no conflicts of interest.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

1. The Federal employee or a designated person such as a trustee, accountant, banker or relative.

2. Federal officials who review the statements to make conflict-of-interest determinations.

3. Persons alleging conflicts of interest or other violations of ethics laws and persons contacted during any investigation of the allegations.

4. FMCS clients, in accordance with 5 CFR 2635.502 and the Code of Professional Conduct for Labor Mediators, acknowledging notice of impartiality concerns.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FMCS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(a) To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule regulation or order where the record, either alone or in conjunction with other information creates an indication of a violation or potential violation of civil or criminal laws or regulations.

(b) To the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

(c) To disclose information to the National Archives and Records Administration (NARA) or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

(d) To a former employee of the agency for purposes of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable agency regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the agency requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(e) To disclose information to contractors, grantees, experts, consultants, detailees, and other non-Government employees performing or working on a contract, service, or other assignment for the Federal Government when necessary to accomplish an agency function related to this system of records.

(e) To officials of labor organizations recognized under 5 U.S.C. chapter 71 upon receipt of a formal request and in accordance with the conditions of 5 U.S.C. 7114 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

(f) To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of, and at the request of, an individual who is the subject of the record.

(g) To the Department of Justice, including Offices of the U.S. Attorneys; another Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body; another party in litigation before a court, adjudicative, or administrative body; or to a court, adjudicative, or administrative body. Such disclosure is permitted only when it is relevant and necessary to the litigation or proceeding, and one of the following is a party to the

litigation or has an interest in such litigation:

(1) FMCS, or any component thereof;

(2) Any employee or former employee of FMCS in their official capacity;

(3) Any employee or former employee of FMCS in their capacity where the Department of Justice or FMCS has agreed to represent the employee;

(4) The United States, a Federal agency, or another party in litigation before a court, adjudicative, or administrative body, upon the FMCS General Counsel's approval.

(h) To any federal agency, organization, or person for the purposes of performing audit or oversight operations related to the operation of this system of records as authorized by law, but only information necessary and relevant to such audit or oversight function.

(i) To appropriate agencies, entities, and persons when (1) FMCS suspects or has confirmed that there has been a breach of the system of records, (2) FMCS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, FMCS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FMCS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(j) To another Federal agency or Federal entity, when FMCS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(k) To disclose to the Office of Government Ethics in response to an ethics program audit, questionnaire, survey, or any other compliance inquiry directed to FMCS.

(l) To disclose information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained in paper and electronic form in locations only accessible to authorized personnel.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved by the name or other programmatic identifier assigned to an individual.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with the NARA's General Records Schedule (GRS) 2.8 Employee Ethics Records, these records are retained for six years after filing, except when filed by or with respect to a nominee and the nominee ceases to be under consideration for the position. If any records are needed in an ongoing investigation, they will be retained for the duration of the investigation. Records are destroyed by shredding or deleting.

ADMINSTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are located in a locked file storage area or stored electronically in locations requiring agency network access via username and password. FMCS buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the Office of General Counsel (OGC). Individuals must provide the following information for their records to be located and identified: (1) Full name, (2) Address, and (3) A reasonably identifying description of the record content requested. See 29 CFR 1410.3, Individual access requests.

CONTESTING RECORDS PROCEDURES:

Records are updated on a periodic basis; most record corrections can be handled through established administrative procedures. Contact the Office of General Counsel (OGC) for contesting records under the provisions of the Privacy Act. See 29 CFR 1410.6, Requests for correction or amendment of records, on how to contest the content of any records.

NOTIFICATION PROCEDURES:

See 29 CFR 1410.3(a), Individual access requests.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This amended SORN deletes and supersedes the SORN published on the **Federal Register** on October 27, 2021, at 86 FR 59387.

Dated: August 23, 2022.

Anna Davis,

Deputy General Counsel.

[FR Doc. 2022–18463 Filed 8–25–22; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Modification to FMCS Commercial Receivables Process

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: Notice of payment method for FMCS services and/or products.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS), is issuing this notice to inform the public that it is modifying its commercial receivables process to require payment through *Pay.gov.* This requirement will enable FMCS to reduce check processing costs to the agency.

DATES: This change to the payment process is effective August 26, 2022.

FOR FURTHER INFORMATION CONTACT: Will Shields, 202–606–3635, *wshields@fmcs.gov.*

SUPPLEMENTARY INFORMATION: FMCS is an independent federal agency tasked by Congress to provide mediation, conciliation, and voluntary arbitration services in the private and federal sectors. In service of its mission, non-federal sources reimburse FMCS for certain expenses including, but not limited to, processing FOIA requests under 29 CFR 1401; requests for arbitrator panels, under 29 CFR 1404; and labor relations training. Commercial receivables are typically paid in the form of physical checks sent to the agency and processed by Treasury's Administrative Resource Center (ARC), which charges FMCS a processing fee per transaction.

In 2023, FMCS expects to receive more than 6,000 commercial receivables. The costs associated with processing commercial receivables has necessitated FMCS to move to *Pay.gov.* If *Pay.gov* submission creates an undue hardship, payees may contact *payments@fmcs.gov* to explain the circumstances and receive assistance.

Dated: August 22, 2022.

Anna Davis,

Deputy General Counsel.

[FR Doc. 2022–18372 Filed 8–25–22; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than September 12, 2022.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Blythe B. Cragon, Jr., Albany, New York; Lynn Cragon Frazier, Richardson, Texas; and Robert C. Cragon, Jackson, Mississippi;* to join the Cragon Family Group, a group acting in concert, to retain voting shares of Copiah Bancshares, Inc., and thereby indirectly retain voting shares of Copiah Bank, both of Hazlehurst, Mississippi.

B. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Randall Lee Ferguson—1995 GSST Trust fbo Randall Lee Ferguson, Ferguson 1998 Trust fbo Randall Lee Ferguson, Randall Lee Ferguson, as trustee of both trusts, and Clinton Alexander Ferguson, all of Pearland, Texas;* to join the Ferguson Family Control Group, a group acting in concert, and to retain voting shares of Coastal Bancshares, Inc., and thereby indirectly retain voting shares of Pearland State Bank and First National Bank of Alvin, all of Pearland, Texas.

Additionally, Randall Lee Ferguson, individually, and Ferguson 2013 Family Trust fbo Randall Lee Ferguson, Randall Lee Ferguson, as trustee, Pearland, Texas, to join the Ferguson Family Control Group, and to acquire voting shares of Coastal Bancshares, Inc, and thereby indirectly acquire voting shares of Pearland Bank and Alvin Bank.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–18462 Filed 8–25–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Capital Assessments and Stress Testing Reports (FR Y–14A/Q/M; OMB No. 7100–0341).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Collection title: Capital Assessments and Stress Test Reports.

Collection identifier: FR Y–14A/Q/M.

OMB control number: 7100–0341.

Effective Dates: September 30, 2022; December 31, 2022; and June 30, 2023.

Frequency: Annually, quarterly, and monthly.

Respondents: These collections of information are applicable to bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), and covered savings and loan holding companies (SLHCs) with $100 billion or more in total consolidated assets, as based on: (i) the average of the firm's total consolidated assets in the four most recent quarters as reported quarterly on the firm's Consolidated Financial Statements for Holding Companies (FR Y–9C); or (ii) if the firm has not filed an FR Y–9C for each of the most recent four quarters, then the average of the firm's total consolidated assets in the most recent consecutive quarters as reported quarterly on the firm's FR Y–9C. Reporting is required as of the first day of the quarter immediately following the quarter in which the respondent meets this asset threshold, unless otherwise directed by the Board.

Estimated number of respondents: FR Y–14A/Q: 36; FR Y–14M: 34; [1] FR Y–14 On-going

Automation Revisions: 36; FR Y–14 Attestation On-going: 8.

Estimated average hours per response: FR Y–14A: 1,330 hours; FR Y–14Q: 1,999 hours; FR Y–14M: 1,071 hours; FR Y–14 On-going Automation Revisions: 480 hours; FR Y–14 Attestation On-going: 2,560 hours.

Estimated annual burden hours: FR Y–14A: 47,880 hours; FR Y–14Q: 287,852 hours; FR Y–14M: 436,968 hours; FR Y–14 On-going Automation Revisions: 17,280 hours; FR Y–14 Attestation On-going: 20,480 hours.

General description of report: This family of information collections is composed of the following three reports:

[1] The estimated number of respondents for the FR Y–14M is lower than for the FR Y–14Q and FR Y–14A because, in recent years, certain respondents to the FR Y–14A and FR Y–14Q have not met the materiality thresholds to report the FR Y–14M due to their lack of mortgage and credit activities. The Board expects this situation to continue for the foreseeable future.

• The annual FR Y–14A collects quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.[2]

• The quarterly FR Y–14Q collects granular data on various asset classes, including loans, securities, trading assets, and pre-provision net revenue (PPNR) for the reporting period.

• The monthly FR Y–14M is comprised of three retail portfolio- and loan-level schedules, and one detailed address-matching schedule to supplement two of the portfolio- and loan-level schedules.

The data collected through the FR Y–14A/Q/M reports (FR Y–14 reports) provide the Board with the information needed to help ensure that large firms have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient, given their business focus, activities, and resulting risk exposures. The data within the reports are used to set firms' stress capital buffer requirements. The data are also used to support other Board supervisory efforts aimed at enhancing the continued viability of large firms, including continuous monitoring of firms' planning and management of liquidity and funding resources, as well as regular assessments of credit risk, market risk, and operational risk, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of respondent financial institutions. Respondent firms are currently required to complete and submit up to 17 filings each year: one annual FR Y–14A filing, four quarterly FR Y–14Q filings, and 12 monthly FR Y–14M filings. Compliance with the information collection is mandatory.

Current actions: On March 1, 2022, the Board published a notice in the **Federal Register** (87 FR 11432) requesting public comment for 60 days on the extension, with revision, of the FR Y–14A/Q/M reports. The proposed revisions would have enabled the Board to better identify risks not currently captured in the stress test, facilitate data reconciliation, and mitigate ambiguity within the instructions. The comment period for this notice expired on May 2, 2022. The Board received three comment letters from banking organizations and one comment letter from a banking industry group. The Board has adopted the proposed revisions, except as discussed below.

[2] In certain circumstances, a firm may be required to re-submit its capital plan. See 12 CFR 225.8(e)(4); 12 CFR 238.170(e)(4). Firms that must re-submit their capital plan generally also must provide a revised FR Y–14A in connection with their resubmission.

Detailed Discussion of Public Comments

General

The Board proposed to implement revisions to the FR Y–14Q and FR Y–14M effective for the September 30, 2022, as of date, and revisions to the FR Y–14A effective for the December 31, 2022, as of date. To allow firms time to adequately implement, test, and confirm that they comply with the new reporting requirements, one commenter asked that all FR Y–14Q/M revisions be delayed from the proposed implementation date of September 30, 2022, until June 30, 2023 (or later), and another commenter requested implementation of these revisions be postponed until the September 30, 2023, as of date.

The Board is cognizant of firm burden as it relates to regulatory reporting. Some of the proposed changes are critical for the supervisory stress test and so need to be implemented in time for use in the 2023 supervisory stress test. Unless otherwise specified, the Board has adopted revisions as proposed, effective for the September 30, 2022, as of date for the FR Y–14Q and FR Y–14M and effective for the December 31, 2022, as of date for the FR Y–14A. However, to reduce firm burden, the Board has delayed some of the revisions to FR Y–14Q, Schedule H (Wholesale) and all the revisions to FR Y–14Q, Schedule L (Counterparty) until the June 30, 2023, as of date.

Counterparty

Client-Cleared Derivatives

On FR Y–14Q, Schedule L.5 (Derivatives and Securities Financing Transactions (SFT) Profile), firms are required to rank their top 25 counterparties by certain counterparty methodologies (methodology #1). The Board proposed to also require firms to rank their top 25 counterparties based purely on exposures to client-cleared derivatives (methodology #2), and to exclude such exposures from methodology #1. Additionally, the Board proposed adding language to the Schedule L.5 instructions requiring firms to incorporate all relevant client-cleared derivative exposures for all items in Schedule L.5, once the top 25 counterparties from methodology #1 have been identified.

One commenter did not support these proposed revisions for two reasons. First, the commenter noted that the Board already receives granular information on client-cleared derivatives throughout Schedule L.5 and stated that it would be burdensome for firms to provide the granular data on client-cleared derivatives necessary to rank them.

Second, the commenter asserted that exposures to client-cleared derivatives are currently excluded from FR Y–14A, Schedule A.5 (Counterparty Credit Risk), item 3 (Counterparty Default Losses) and 3.a (Impact of Counterparty Default Hedges). Therefore, as proposed, firms would be required to maintain dual processes for providing counterparty exposures on the FR Y–14A and FR Y–14Q reports. The commenter asserted that these dual processes, combined with the difficulties in maintaining two ranking methodologies described above, would be burdensome to firms, and that, since client-cleared derivatives are not included in the calculation of stressed losses, it is unclear what benefit this information would provide to justify the additional firm burden.

In response, the Board notes that, while granular information on client-cleared derivatives are reportable in Schedule L.5, the top-25 ranking produces valuable insights that allow the Board to more effectively monitor exposures to client-cleared derivatives and provides better information regarding the materiality of these exposures.

Further, while it is true that the exposure to client cleared derivatives is excluded from the FR Y–14A, firms are already required to report in FR Y–14Q, Schedule L.5, a wide range of information (both qualitative and quantitative) that goes beyond direct inputs used for estimating the largest counterparty default losses that are reported in FR Y–14A, Schedule A.5, items 3 and 3.a.

Additionally, the commenter recommended that, if the Board did adopt these proposed changes, the Board should provide information as to (1) if a counterparty is of sufficient size to be captured in both rankings (methodologies #1 and #2), are firms required to report this counterparty twice or only once under methodology #1, and (2) under methodology #2, whether aggregate columns, such as ''Total Net Current Exposure (CE),'' should only include client-cleared derivative exposure to the parent entity under the ranking methodology or should instead be inclusive of both

client-clearing and non-client-clearing exposure to a firm.

The Board has adopted the revision as proposed with two exceptions. First, the Board has clarified in the instructions the reporting between methodology #1 and methodology #2. Notably, the Board clarified that firms are not required to report the same counterparty in both methodologies (*i.e.,* the same counterparty should not appear in the top-25 rankings for methodology #1 and methodology #2). Second, in light of the burden of providing granular data noted by the commenter, the Board has delayed adoption of this revision until the FR Y–14Q reported as of June 30, 2023.

Securities Financing Transactions (SFTs)

The Board proposed to revise the definitions of ''Unstressed Mark-to-Market Received SFTs'' and ''Stressed Mark-to-Market Received SFTs'' on FR Y–14Q, Schedule L (Counterparty) to specify that in cases where close-out netting is not enforceable, firms must report zero. Three commenters pointed out that this guidance conflicts with two existing FR Y–14 Q&As (Y140001386 and Y140001492). Per one commenter, the guidance in Q&A Y140001386 appears to require firms to remove any consideration of the ''received'' leg of the transaction, whereas the guidance in Q&A Y140001492 would allow for consideration of the net exposure of an individual SFT but restrict netting across multiple transactions where no master netting agreement is in place. The commenter notes that their understanding of the reporting on Schedule L should align with the guidance provided in Q&A Y140001492, as that interpretation better captures the economics of a transaction, and would prefer the instructions be revised to agree with that interpretation. In addition, per the commenter, these proposed revisions may be interpreted to further restrict the offsetting of the posted and received legs in determining net current exposure of an individual transaction.

The Board agrees that the guidance provided in Q&A Y140001492 better captures the economics of a transaction, and so has modified the instructions so that firms are required to report ''Unstressed Mark-to-Market Received SFTs'' and ''Stressed Mark-to-Market Received SFTs'' in a manner that aggregates the received amount across an unenforceable agreement for each transaction that has a net positive mark-to-market value, effective for the June 30, 2023, as of date.

The general instructions for Schedule L state that ''for regular/unstressed submissions, counterparty exposures on sub-schedules L.1–L.4 should be limited to transactions for which the firm computes credit valuation adjustment (CVA) for its public financial statement reporting under generally accepted accounting principles (GAAP) or applicable standard.'' In the ''Net Current Exposure (Net CE)'' item of Schedule L.1, the Board proposed to add language clarifying that this item should be reported for both derivatives and fair-value SFTs. One commenter noted that firms do not compute CVA for SFTs in public financial statement reporting, and so asked that the Board specify whether SFTs should be included in the ''Net Current Exposure (Net CE)'' item of Schedule L.1.

In response, the Board has clarified in the instructions that in the unstressed submission, firms are required to include fair-valued SFTs in Net CE reporting, to the extent that the firm computes CVA for them for the public financial statement reporting under U.S. GAAP or applicable standard. In contrast, fair-valued SFTs are expected to be included in Stressed Net CE reporting regardless of whether the firm computes CVA, given the general instructions of Schedule L that states that ''the scope of counterparty exposures on sub-schedules L.1–L.4 in CCAR/stressed submission is expected to be larger and incorporates transactions that would not typically require CVA for public financial statement reporting under GAAP or applicable standard but which may pose a gap risk to the firm, requiring CVA, should the post-stress value of collateral be insufficient to cover post-stress derivatives exposure.'' The Board has adopted this revision effective for the June 30, 2023, as of date.

The Board proposed to clarify that firms must include SFT exposures when they act as agents on behalf of clients for which a credit guarantee has been provided against the borrowers' defaults in Schedule L.5. One commenter noted that the proposal did not address how to report guarantees provided in sponsored repurchase programs in which a firm, as a sponsoring member, guarantees the performance of the clients to a central counterparty clearing house (CCP). The commenter recommended the Board clarify how these guarantees should be reported.

The Board confirms that the guarantees associated with sponsored repurchase programs in which the firm, as a sponsoring member, guarantees the client's performance to CCPs should be reported in Schedule L.5. However, the Board has not revised the instructions, as the instructions already state that the firm should report its exposure arising from the credit guarantee it provides against the borrower's default. The Board has adopted this revision as proposed, except that it has delayed implementation until the June 30, 2023, as of date.

Other Revisions

The Board proposed to clarify that if a consolidated or parent counterparty is selected as a counterparty comprising 95% of a firm's CVA, then a firm's exposures to all the counterparties and legal entities associated with the consolidated or parent counterparty must be included and reported in Schedule L.1 (Derivatives profile by counterparty and aggregate across all counterparties), rather than including only counterparties and legal entities with which the firm has a CVA. One commenter pointed out that this proposed revision would contradict the response to FR Y–14 Q&A Y140001356, which states that firms are not required to include the active agreements that do not have actual trades on the reporting as of date. The commenter recommended that the Board instead clarify the instructions to be consistent with the interpretation in Q&A Y140001356.

The Board notes that the proposed revision is consistent with the response to Q&A Y140001356. Q&A Y140001356 covers a related case in which a firm has active agreements that do not have actual trades on the reporting date. The proposed revision related to a different case in which a firm has actual trades on the reporting date but does not compute CVA on them. In this case, while CVA is zero, not all counterparty data is expected to be zero or null (such as notional, gross CE, etc.). Under the proposed revisions, a firm would have been required to report these exposures to all the counterparties/legal entities associated with the consolidated/parent counterparty reportable in Schedule L.1, regardless of their CVA values. The Board has adopted this revision as proposed, but has delayed implementation until the June 30, 2023, as of date.

The Board proposed to clarify that in the ''Non-Cash Collateral Type'' item of Schedule L.5.1 (Derivative and SFT information by counterparty legal entity and netting set/agreement), firms must include all non-cash collateral or initial margin that was posted or received in actuality, as opposed to only non-cash collateral allowed under a given agreement. One commenter recommended the Board specify that

firms should not report this item for legally unenforceable agreements and in cases where no agreement is in place.

Given the structure of applicable transactions, the Board agrees with the commenter and has clarified the instructions so that firms should not report the ''Non-Cash Collateral Type'' field in Schedule L.5.1 in cases where there is no legal agreement in place, or the agreement is not legally enforceable. The Board has adopted this revision effective for the June 30, 2023, as of date.

The Board proposed to require firms to report counterparty attribute information (*e.g.,* industry code) at the consolidated parent level (firms were already required to report this information at the counterparty legal entity level). One commenter sought several clarifications about this proposed change. First, firms are currently required to report the internal rating of consolidated/parent counterparties in the ''Consolidated/Parent Counterparty Internal Rating'' item. Per the commenter, firms generally assign ratings and grades at the counterparty legal entity level, and a parent counterparty would only receive a grade or rating if the firm had transactions with that entity directly. The commenter suggested that the Board revise the instructions to cover situations where a parent counterparty is not rated or graded by the firm and recommended two approaches. Under the first approach, firms would report default grades (*e.g.,* the firm would report BB- for all such counterparties). Under the second approach, firms would report the mean or median rating across counterparty legal entities to form a composite rating. The commenter noted that the information provided under the second approach would have limited value to the Board as it is already reported in a separate item.

Second, in the ''Consolidated/Parent Counterparty Industry Code'' item, firms are required to report a North American Industry Classification System (NAICS) code if one is available. The commenter requested clarification on whether the primary business activity of the parent should be determined by looking at the contributions of revenue across subsidiaries or whether parent entities should be aligned to holding company NAICS codes.

The Board proposed to capture attribute information at the consolidated parent level, as it would have enabled the Board to better identify exposures to the same organizational structure (*e.g.,* parent and subsidiary). However, the Board acknowledges the concerns and data limitations raised by the commenter. Upon further review of the proposed changes considering the concerns raised in the comment, the Board has not adopted the proposed changes to require firms to report counterparty attribute information at the consolidated parent level.

The Board did not propose any revisions to the ''Agreement Role'' item on Schedule L.5.1. In this item, firms are required to report ''NA'' when the transactions do not relate to centrally cleared or exchange traded derivatives, when the reported counterparty is a CCP, or when the firm is a clearing member of a CCP or an exchange and the exchange does not guarantee the client's performance to the CCP or exchange. One commenter suggested that for back-to-back derivatives (*i.e.,* when a firm is acting as a financial intermediary on behalf of the client and enters into an offsetting transaction with a CCP or an exchange), firms should be required to report ''Principal'' instead of ''NA''. According to the commenter, this approach would enable the Board to differentiate these exposures from the firms' exposures to the CCP arising from transactions, which firms enter into as a principal in house derivatives, as well as to potentially remove these exposures as inputs to the calculation of stressed losses. The Board will consider this revision for a future proposal.

Trading

Public Welfare Investments

The Board proposed to require firms to isolate certain private equity exposures that qualify as public welfare investments in FR Y–14Q, Schedule F.24 (Private Equity). One commenter asked the Board to clarify whether the new items added for public welfare investments are intended to capture affordable housing investments not eligible for tax credits. The commenter also asked the Board to confirm that such tax oriented public welfare investments should instead be reported in Schedule F.25 (Other Fair Value Assets) if fair-value option (FVO) has been elected for the investment.

The Board confirms that the new items added to Schedule F.24 for public welfare investments were not intended to capture public welfare investments eligible for tax credits, and that such tax oriented public welfare investments should instead be reported in Schedule F.25 if held at fair value, including if FVO has been elected for the investment. The Board has adjusted the proposed revisions to the Schedule F.24 instructions to clarify both of these matters and has otherwise adopted the revisions as proposed, effective for the September 30, 2022, as of date.

Other Revisions

The Board proposed to better delineate the exposures that should be included in the ''FVO Hedges'' and ''[Accrual Loan] AL Hedges'' versions of Schedule F (Trading). One commenter was supportive of these changes, though questioned whether firms needed to provide all of the sub-schedules of Schedule F for these versions. Specifically, the commenter suggested that Schedule F.22 (IDR-Corporate Credit) and F.23 (IDR-Jump to Default) be left blank for the ''FVO Hedges'' and ''AL Hedges'' versions. The commenter's rationale is twofold. First, the data submitted on these schedules either does not affect the macro scenario projections or are not used by firms to determine macroeconomic scenario projections, and so the data are only informational or are only used in the calculation of trading incremental default losses (*i.e.,* not relevant for the macro scenario projections). Second, these schedules are operationally burdensome for firms to provide as they require firmwide aggregation and netting.

The Board agrees with the commenter's rationales and has revised the instructions to indicate that Schedules F.22 and F.23 are not required for the FVO Hedges and AL Hedges submissions, effective for the September 30, 2022, as of date.

The Board did not propose any changes to the treatment of non-fair value private equity investment exposures for determining stressed losses. However, one commenter recommended that the Board subject these exposures to the macro scenario, and not to the global market shock scenario. The Board indicated in a final FR Y–14 notice from 2020 [3] that it believes the macro scenario is more appropriate than the global market shock for evaluating losses associated with non-fair value private equity exposures but would continue to analyze the issue.

The Board is still reviewing the scenario treatment of non-fair value private equity exposures and will consider revising this treatment in a future **Federal Register** notice.

Wholesale

Informal Advised or Guidance Lines

The Board proposed to revise the definition of informal advised or guidance lines on FR Y–14Q, Schedule

[3] *See* 85 FR 86560 (December 30, 2020).

H.1 (Corporate) to be an authorization for a line of credit that is unknown to the customer. These lines are excluded from reporting on Schedule H.1. The Schedule H.1 instructions also require firms to include ''. . . any unused commitments that are reported on FR Y–9C, Schedule L [Derivatives and Off-Balance Sheet Items] that would be reported in the relevant FR Y–9C category if such loans were drawn.'' One commenter said that this proposed revision would require firms to report certain credit facilities as commitments in Schedule H.1, even though such facilities are intentionally structured and documented such that the lender is not under any legal obligation to extend credit or purchase assets (defined facilities). Two commenters further noted that there are several definitions of commitments across various Board rules and reporting forms. The commenters requested the Board align the definition of commitment on Schedule H.1 with that of FR Y–9C, Schedule L, or with the definition from the capital rule. Per the commenters, this would reduce operational burden on reporting firms and would lead to more consistent practices across firms. If the definition of commitment is not made the same across Schedule H.1, Schedule L, and the capital rule, then the commenters asked the Board to clearly delineate how these definitions differ. The commenters added that if the Board does not align the definitions as recommended, then it should clarify what lines of credit ''unknown to the customer'' means.

The clarification of the definition of informal advised or guidance lines was intended to bring Schedule H.1 more clearly into alignment with the FR Y–9C. However, the Board acknowledges the concerns raised by the commenter. To avoid confusion and clarify the relationship to the FR Y–9C, the Board has not adopted the proposed revisions to the definition of informal advised or guidance lines. Further, to ensure alignment with the FR Y–9C, the Board has removed the language surrounding the exclusions of informal advised or guidance lines. The aforementioned reference to FR Y–9C, Schedule L will remain in the instructions without any exclusions, which should mitigate ambiguity. Given the comments surrounding firm burden, the Board has delayed implementation of this revision until the June 30, 2023, as of date.

Internal Ratings Mapping

The Board proposed to add ''Minimum Probability of Default,'' ''Maximum Probability of Default,'' and ''[Probability of Default] PD Calculation Method'' items to FR Y–14Q, Schedule H.4 (Internal Risk Rating). Per the proposal, these items would enable the Board to better assess credit risk across firms by providing benchmark values for internal ratings. Two commenters raised several issues with this proposal. First, firms may segment their portfolios and assign certain PDs to internal ratings within each segment. This could lead to a wide range of PDs for firms' internal risk ratings and possibly overlapping minimum and maximum PDs across different ratings. Such overlap would not allow the Board to easily compare credit risk across firms, and so may not be appropriate for use in supervisory models. In addition, some firms may assign a single PD to a given internal rating, and so the data provided may not be very useful to accomplish the intended goal of the proposed changes. Given the diversity in practice across firms, one commenter requested that the Board acknowledge that these items would not be used by supervisory models to determine stressed losses, and another commenter recommended that the Board not adopt these proposed changes.

Second, firms are already required to report PD information at the facility level in FR Y–14Q, Schedules H.1 and H.2 (Commercial Real Estate). The commenters noted that this facility-level data provides more insight than minimum and maximum PD. The commenter added that while firms could provide the minimum and maximum PD for their internal ratings, the firm may not hold any exposures that have PDs equivalent to the minimum or maximum PD for a given internal rating. By contrast, PD data already required on Schedules H.1 and H.2 allow the Board to see the exact PDs of reported exposures. Per the commenters, the fact that firms may not have any exposures at the minimum and maximum PD for a given internal rating and the fact that firms already reported facility-level PD information mean that the additional burden of reporting the minimum and maximum PD for a given internal rating is not justified.

Third, one commenter asserted that there may be a future proposal to the capital rule to eliminate the existing internal ratings-based approach. If this occurs, it would no longer be appropriate to require the reporting of these items, per the commenter. Given the possibility of this occurring, the commenter suggests firms should not be required to provide these items due to the burden of creating a process that may be obviated in the near future.

Commenters also requested information regarding how this data will be used, how firms should report if certain ratings do not have associated PD ranges, and how firms should report situations where a PD is assigned to an internal rating but there are no exposures with that PD reportable in Schedules H.1 or H.2 (*i.e.,* whether a firm would still be required to include such a portfolio segment in establishing the range of PDs for a given rating). One commenter also suggested that these items should be changed to alpha-numeric characters to allow firms to report ''NA'' and ''Null'' values, as well as be expanded from the proposed four-decimal places to seven decimal places, as some firms have PD ranges that extend beyond four decimal places. Finally, one commenter recommended that the ''PD Calculation Method'' item instructions specify how firms should report hybrid calculation methods that consider through the cycle and point in time aspects (as proposed, firms can only select one of those two options as their PD calculation method).

The Board notes that the ''Minimum PD'' and ''Maximum PD'' items are intended to give additional context with regard to understanding a firms' internal ratings. Current reporting on Schedule H (Wholesale) without these items has resulted in inconsistent ratings detail across firms, and the addition of these items will produce useful data points for interpreting the ratings. The reporting of these items creates an opportunity for firms to provide a more robust view of their internal ratings to help the Board better assess credit risk. Additionally, the free text field will remain available for firms to provide further explanation if necessary.

In addition, reporting the calculation method at the level of the internal rating will provide the Board with additional detail in assessing the PDs reported, with a lower burden than requiring this data at a facility level. It may be the case that a firm does not hold any exposures at the minimum and maximum PDs reported for each internal rating; however, the PD information is still crucial in allowing the Board to better interpret internal ratings. Further, the Board has not issued a notice of proposed rulemaking or final rule to revise the capital rule to eliminate the existing internal ratings-based approach.

Lastly, to reduce burden and to be responsive to commenters, the Board has revised the instructions to allow for the reporting of ''NA'' for internal ratings that do not have exposures in a reporting quarter, to expand the character limit for these items to allow firms to report up to seven decimal places, and to add a hybrid calculation option to the ''Calculation Method''

item. The Board has adopted this revision effective for the September 30, 2022, as of date.

Capital

Capital Action Assumptions

Planned capital actions are the capital actions firms would expect to take under baseline conditions, and alternative capital actions are the capital actions firms would expect to take under stressed conditions. The Board proposed to change the capital action assumptions of the FR Y–14A, Schedule A (Summary) CCAR submission under the supervisory severely adverse scenario from planned capital actions to alternative capital actions. In addition, the Board proposed to add the definitions and assumptions of capital actions required per the capital plan rule, as set forth in CCAR Q&A GEN0500, to the instructions for FR Y–14A, Schedule A. One commenter was supportive of the change in the capital action assumptions for the CCAR submission under the supervisory severely adverse scenario. However, the commenter pointed out that the proposal seemed to apply two of the assumptions to alternative capital actions that were intended only to apply to planned capital actions in the severely adverse scenario. These assumptions were: (1) that the dollar value of dividends, repurchases, and redemptions of capital instructions do not vary from the amount in the Internal baseline scenario, and (2) that the dollar value of the issuance of capital instruments does not vary by scenario from the amount in the Internal baseline scenario unless the scenario directly impacts shareholder's equity or consideration paid in connection with a planned merger or acquisition.

The Board confirms that these two assumptions would not apply to alternative capital actions and are no longer necessary to include in the instructions because planned capital actions will only be used in the baseline scenario. The Board has removed these two assumptions from the instructions and has adopted this revision effective for the December 31, 2022, as of date. In addition, the Board has rescinded CCAR Q&A GEN0500 because it refers to the prior instructions, which required firms to use planned capital actions in the supervisory severely adverse scenario, and would therefore cause confusion.

Interest Expense

The Board proposed to add an ''Interest expense for the quarter (net of swaps)'' item to FR Y–14Q, Schedule C (Regulatory Capital Instruments). One commenter asked for clarification for whether firms should report quarter-to-date profit and loss (P&L) movement of the interest expense on the subordinated debt instrument only, as opposed to total interest expense.

The Board confirms that the commenter's interpretation is correct in that firms should report quarterly P&L for the specific subordinated debt instrument net of P&L attributable to swaps. The Board has revised the instructions to clarify this reporting and has adopted this revision effective for the September 30, 2022, as of date.

The Board proposed to add an ''Interest expense for the quarter (with swaps, excluding any gains or losses due to the fair value adjustment of ASC 815/FAS 133 hedges)'' item to Schedule C. One commenter asked the Board to confirm that firms would need to report quarter-to-date interest profit and loss movement on debt plus swap interest (*i.e.,* debt couponing and amortization of original issuance discount/premium) and underwriting fee plus swap interest accrued and realized cashflow in this item.

The Board confirms that the commenter's interpretation is correct in that firms should report the quarterly P&L for the specific subordinated debt instrument including any underwriting fees and income/expense due to swaps but excluding the gains/losses due to any fair value adjustments over the quarter. With respect to realized cash flow, firms should only report cash flow from swaps to the extent that they are included in interest expense on subordinated debt. The Board has revised the instructions to clarify this reporting and has adopted this revision effective for the September 30, 2022, as of date.

The Board proposed to add an ''Interest expense for the quarter (with swaps, this number should reconcile to the quarterly number reported in FR Y–9C BHCK4397 for all subordinated debt instruments)'' item to Schedule C. One commenter asked for clarification for whether firms should report quarter-to-date movement on interest plus the Financial Accounting Standards (FAS) 133 fair value adjustment for both debt and swaps in this item.

The ''Interest expense for the quarter (with swaps, this number should reconcile to the quarterly number reported in FR Y–9C BHCK4397 for all subordinated debt instruments)'' item is meant to capture the entirety of interest expense on the subordinated debt instrument, inclusive of swaps and fair value adjustments. The sum of this item across all subordinated debt securities should reconcile to the interest expense on subordinated debt that is reported on the FR Y–9C. The Board has revised the instructions to clarify this reporting and has adopted this revision effective for the September 30, 2022, as of date.

Other Revisions

The Board proposed to add a ''Fair value adjustment at the quarter end for subordinated debt securities that are carried at fair value'' item to Schedule C. One commenter asked how this proposed item would interact with the existing ''Fair value of associated swaps ($Millions)'' item also on Schedule C. Specifically, the commenter wanted clarification on whether the proposed item is meant to capture all fair value adjustments on long term debt that have a fair value hedge relationship while the existing item is meant to capture only the fair value of outstanding swaps. Additionally, the commenter also sought clarification on whether the proposed item is asking for the FAS 133 basis adjustment (if not, then firms would report a zero value, as a subordinated debt portfolio is not reported at fair value), and whether the existing item should include accrued interest.

The proposed ''Fair value adjustments at the quarter end for subordinated debt securities carried at fair value'' item was meant to capture the quarterly fair value adjustment made to the security that flows through a firm's income statement as interest expense on subordinated debt. The existing item ''Fair value of associated swaps ($ Millions)'' captures the total fair value of outstanding swaps on this security, and not the quarterly movements (*e.g.,* fair value adjustments). The Board has revised the instructions to clarify this reporting and has adopted this revision effective for the September 30, 2022, as of date.

Retail

Modified Loans

The Board proposed to clarify that ''Modification Type'' (FR Y–14M, Schedule A (Domestic First Lien), item 74; Schedule B (Domestic Home Equity), item 77) should only be completed if firms report ''1'' in ''Workout Type Completed'' (Schedule A, item 77; Schedule B, item 61), indicating that a loan has been modified. The instructions for ''Workout Type Completed'' specify that firms must report ''1'' in the month that the modification is complete and the new loan terms are in effect. One commenter asked the Board to clarify whether ''Modification Type'' should only be completed in the month that

modification is complete and the new loan terms are in effect.

The Board notes that ''Workout Type Completed'' should only be reported in the month the workout was completed. Per the instructions, ''Modification Type'' should be filled out for all months the loan is currently operating under modified terms (including the month that ''Workout Type Completed'' = 1). The Board has revised the instructions for ''Modification Type'' to clarify how to report this item and has adopted the revision, effective for the September 30, 2022, as of date.

One commenter pointed out that ''Modification Type'' requires firms to report ''0'' if a loan has not been modified, but this is inconsistent with the proposed changes requiring firms to only report this item if a loan has been modified, as indicated in ''Workout Type Completed.'' The commenter asked for clarification for how to report this item for loans that have not been modified.

The Board notes that if a loan is not operating under modified terms, then ''Modification Type'' should be populated as ''0 = Loan has not been modified.'' If ''Workout Type Completed'' = 1 (Modification), then ''Modification Type'' should be coded with an allowable value other than ''0.'' The Board has updated the instructions to clarify this point and has adopted the revision, effective for the September 30, 2022, as of date.

The Board proposed several revisions to the ''Modification Type'' item to allow for multiple types of modifications to a loan, such as modifications caused by the COVID event. One commenter sought clarification from the Board on how COVID-related deferral or forbearance plans should be reported in ''Modification Type.'' Per an April 2020, interagency statement,[4] COVID-related deferral or forbearance plans should not be treated as modifications, as they are temporary plans to reduce the hardships faced by the borrower. The commenter recommended that firms only report ''Modification Type'' in cases where the modification is due to loss or mitigation efforts, and not to capture COVID-related deferrals or forbearances.

In response, the Board notes that it proposed to add ''Workout Type Started'' to Schedule A (item 143) and Schedule B (item 120) of the FR Y–14M. All forbearances should be reported under ''Workout Type Started'' and ''Workout Type Completed,'' regardless of the cause of the forbearance. If any modification to the terms of the loan occurs as a result, then it should be reported in ''Modification Type.'' The Board has adopted the revision as proposed, effective for the September 30, 2022, as of date.

One commenter asked how non-loss mitigation-related modification plans (non-default) (*e.g.,* plans under the Service Members Relief Act (SCRA)) should be treated in ''Modification Type.'' The commenter notes that in FR Y–14 Q&A Y140001307, the Board indicated that loans under SCRA plans should be considered as active loss mitigation.

The Board has clarified that if the loan is active under loss mitigation, then ''Modification Type'' should reflect the type of accommodation the loan is undergoing (per Q&A Y140001307, SCRA plans should be considered as active loss mitigation).

One commenter asked how firms should report ''Modification Type'' in cases where the type of modification is unknown. Per the commenter, a loan that was modified under a Home Affordable Modification Program (HAMP) may have offered the borrower a variety of types of modification, and this level of detail is not available in certain loan systems, particularly for loans that were modified prior to 2013.

The Board acknowledges that there may be cases where loan modification information is unknown. Firms must report the value that reflects the current modification arrangement using all information available. To address this comment, the Board has added option ''99=Other'' to ''Modification Type.'' Firms should report ''99=Other'' if no information regarding the modification is available. The Board has also updated ''Modification Type'' to remove reference to any specific program (such as HAMP). The Board has adopted this revision effective for the September 30, 2022, as of date.

The Board proposed to add an option to ''Modification Type'' for firms to report when the loan modification results in recapitalization. One commenter asked the Board to provide a definition for the ''Recapitalization'' option.

The Board has added a definition for ''Recapitalization'' to ''Modification Type'' to capture instances where accrued and/or deferred principal, interest, servicing advances, expenses, fees, etc. are capitalized into the unpaid principal balance of the modified loan. The Board has adopted this revision effective for the September 30, 2022, as of date.

The Board proposed to retire several options in the ''Modification Type'' and ''Workout Type Completed'' items, considering the proposed addition of other items. One commenter asked how historical reporting would be updated or aligned to the new values.

The Board notes that historical reporting will remain unchanged from the current practice, which requires firms to report items and values based on the forms and instructions for a given as of date. The Board has adopted these revisions as proposed, effective for the September 30, 2022, as of date.

The Board proposed to add several reportable values to ''Modification Type'' on Schedule B, one of which was ''99 = Other''. However, this item already had the ''26 = Other'' option. One commenter asked what the difference was between the options of ''26 = Other'' and ''99 = Other'' for ''Modification Type'' on Schedule B.

The Board did not intend to have two values indicating the same modification type, and so has removed ''26=Other'' from ''Modification Type'' on Schedule B, effective for the September 30, 2022, as of date.

The Board proposed to retire the ''9 = Proprietary Other'' option of ''Modification Type'' on Schedules A and B. FR Y–14 Q&A Y140000738 previously specified that firms should report home equity modifications that do not meet the definition of modification, as defined in the FR Y–14M instructions, as ''9 = Proprietary Other'' in ''Modification Type.'' One commenter asked how firms should report such loans once the ''9 = Proprietary Other'' option has been retired.

Firms should report the code that reflects the current modification arrangement using all information available. If no information regarding the modification type is available, then firms should report as ''99=Other.'' The Board has adopted this revision as proposed, effective for the September 30, 2022, as of date.

One commenter asked whether the Board proposed to retire the ''13 = HELOC Line Renewal (Regular)'' and ''14 = HELOC Line Renewal (loss mitigation strategy)'' options from ''Modification Type'' on Schedule B. The instructions for these values have been stricken out, but the options themselves were not.

The Board did not intend to strike out the instructions for these values and has updated the instructions accordingly. These values were not removed from ''Modification Type'' on Schedule B,

[4] ''Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (Revised)'' April 7, 2020. Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (Revised) (*federalreserve.gov*).

and the Board did not propose any revisions to these values. The Board has adopted this revision effective for the September 30, 2022, as of date.

The Board proposed to add an option to ''Workout Type Completed'' for firms to report ''17=Partial Claim/Junior Lien'' on Schedules A and B. The proposed instructions for ''Workout Type Completed'' would have required firms to report ''17=Partial Claim/Junior Lien'' in the month that a loan partial claim or the origination of a junior lien resulting from loss mitigation was completed. One commenter noted that some modifications, such as Federal Housing Authority (FHA)-HAMP Combination Loan Modifications and Partial Claims, may result in a partial claim. These modifications establish an affordable monthly payment, resolve the outstanding mortgage payment arrearages, and permanently modify the first mortgage monthly payment. The commenter added that these modifications are zero-interest subordinate liens that will include a portion of the amount to be resolved and if borrowers meet the requirements, a principal deferment. The remainder is added to the principal loan balance of the first mortgage and extends the term for 30 years at a fixed interest rate. The commenter would like the Board to clarify how to report these types of modifications in the ''Workout Type Completed'' items.

If a workout program results in a partial claim or junior lien, then ''Workout Type Completed'' should be coded as ''17=Partial Claim/Junior Lien.'' If the workout program results in a change to terms of the loan, then ''Workout Type Completed'' should be reported as ''1—Modification'' and ''Modification Type'' should be reported using the code that best reflects the modification. The Board has adopted this revision as proposed, effective for the September 30, 2022, as of date.

The Board proposed to add a ''Workout Type Started'' item to Schedule A. Firms would be required to report this item for any loan where a loss mitigation effort has started or is in progress for the current month. One commenter asked how firms should report situations where a modification plan that was reported in a prior period fails and in the current reporting period, a new plan starts.

In cases where loss mitigation efforts fail, firms should report ''Workout Type Completed'' as ''0=No workout completed or unsuccessful resolution of loss mitigation effort.'' If in the current month a new effort begins, firms should report ''Workout Type Started'' with the relevant allowable value. The Board has revised the instructions to clarify this reporting, effective for the September 30, 2022, as of date.

One commenter asked how firms should report situations where they offer a borrower a trial period for a modified loan that could subsequently result in a loan modification. In these cases, the commenter sought clarification as to whether firms should report the date that the trial period began or when the modification program began.

Firms should report ''Workout Type Started'' with the appropriate value in the month(s) the trial started and throughout the trial period for loans that enter a trial period for a modification. The Board has adopted the revision as proposed, effective for the September 30, 2022, as of date.

The Board proposed to add new options for the ''Workout Type Completed'' item on Schedule B. However, the Board did not provide proposed definitions for these new options. One commenter asked the Board to provide these definitions.

The Board has updated the instructions to provide definitions for all new values in ''Workout Type Completed'' on Schedule B that align with the definitions for the ''Workout Type Completed'' item on Schedule A. The Board has adopted this revision effective for the September 30, 2022, as of date.

The Board proposed to revise the language in the instructions for FR Y–14M, Schedule A, items 87 (''Principal Deferred Amount'') and 89 (''Principal Write-Down Amount'') to expand the circumstances under which firms would report these items, as currently these items are only reported if a loan has been modified. One commenter pointed out that the Board did not propose to revise the equivalent items on Schedule B (items 59 and 73, respectively), even though these items are also only reported if a loan has been modified. The commenter suggested that the Board also make these revisions to the corresponding Schedule B items, for consistency.

The Board agrees that the corresponding items on Schedule B should have been updated and has revised the instructions to align the applicable items on Schedule B with those on Schedule A. The Board has adopted these revisions effective for the September 30, 2022, as of date.

Other Revisions

The Board proposed to require firms to provide the loan-level fair value of loans reported on FR Y–14M, Schedule A, if those loans are measured under the FVO or are held-for-sale (HFS). Currently, firms are required to indicate whether a loan is measured at fair value under the FVO or is HFS but are not required to provide the fair value of a given loan. One commenter raised two objections to this proposal. First, many firms do not have the fair value of FVO or HFS loans readily available. Rather, per the commenter, fair value adjustments on FVO or HFS loans are recorded and accounted for as a block and are not individually broken out. The commenter added that requiring firms to provide loan-level fair values would be burdensome on firms and would require significant manual effort as the data is not readily available.

Second, firms are already required to report aggregated fair value FVO and HFS amounts for retail loans on FR Y–14Q, Schedule J (Retail FVO/HFS). In the commenter's view, since the Board currently collects similar information at the portfolio level, firms should not be required to report fair value amounts at the loan level.

Collecting loan-level fair value information for mortgages allows the Board to better monitor and assess risks surrounding FVO mortgages, which is limited when using the aggregated FR Y–14Q data. Receiving timely information regarding the fair value of mortgages is essential since these assets are highly sensitive to current market conditions, which can change rapidly. Therefore, mortgages held at fair value have different risk profile than those held at amortized cost. Given this, it is imperative that the Board receives loan-level fair value data for these exposures. The Board has adopted this revision as proposed, effective for the September 30, 2022, as of date.

The Board proposed to remove items 57 (''Capitalization'') and 98 (''Interest Rate Reduced'') from FR Y–14M, Schedule A, as they are no longer needed. One commenter suggested that, for consistency, the Board should also remove the equivalent items (items 57 and 71, respectively) from Schedule B.

The Board agrees that the equivalent items on Schedule B should also be removed, as they are no longer needed given other adopted revisions. The Board has updated the instructions to remove these items from Schedule B. The Board has adopted these revisions effective for the September 30, 2022, as of date.

The Board proposed to add ''Actual Payment Amount'' (item 142) to Schedule A. In this item, firms would have reported the actual dollar amount of the interest payment received in the reporting month, excluding fee payments. One commenter questioned

how to report situations where there is an additional principal curtailment received with the payment, and how firms should report if multiple payments are received in a given reporting month.

To reduce ambiguity, the Board has modified the proposed instructions to indicate that firms should report the total payment received in a given month, including principal curtailment received with the payment.

One commenter asked whether principal and interest reversals should be factored into ''Actual Payment Amount,'' or if it should only capture received amounts.

For clarity, the Board has modified the proposed instructions to indicate that firms should report the total payment received in a given month, net of any reversals. The Board has adopted the proposal to add the ''Actual Payment Amount'' item to Schedule A, with these modifications, effective for the September 30, 2022, as of date.

The Board proposed to add options for the Bloomberg Short-Term Bank Yield (BSBY) to the ''[Adjustable Rate Mortgage] ARM Index'' item on Schedules A (item 32) and B (item 29). There were no comments on the proposed changes; however, one commenter did have two questions about this item. First, the commenter noted that the Federal Home Loan Bank of San Francisco announced earlier this year that it will stop publishing all Cost of Fund Indices (COFI). The ''ARM Index'' item currently contains options for firms to report COFI. The commenter further noted that loans that reference COFI have been updated to reference other indices and sought clarification as to whether firms should continue to report COFI, which was the reference index at origination, or the updated indices. Second, the commenter also pointed out that the ''ARM Index'' item requires firms to report origination values. The commenter recommended that this be changed so that firms report the current index values, as it would provide more useful information to the Board and be less burdensome on firms, as the current index information is readily available.

The Board notes that COFI has not been retired and firms can continue to report COFI in ''ARM Index.'' Firms should continue to report legacy loans that reference COFI using the COFI options in ''ARM Index.'' In addition, origination values allow the Board to adequately assess underwriting decisions at the time of origination, which can inform changes in credit availability over time. The Board acknowledges that receiving current value information would also be beneficial and will consider this suggestion for a future proposal. The Board has adopted the revision as proposed, effective for the September 30, 2022, as of date.

Balances

In general, bank cards allow firms to pay outstanding balances over time, while charge cards must be fully paid off each billing cycle. Some products have features of both bank and charge cards, in that only a portion of the outstanding balance can be rolled over to the next billing cycle. The Board proposed to revise the definition of ''Charge cards'' (item 3.b) on FR Y–14Q, Schedule M.1 (Quarter-end balances) to specify that if a charge card loan has a pay-over-time feature, then the entire balance must be reported in this item. One commenter said that this revision would cause misalignment between Schedule M and item 6.a. (Credit cards) of FR Y–9C, Schedule C (Loans and Leases), and asked whether this misalignment was intentional.

The definition of item 3.b on FR Y–14Q, Schedule M requires firms to report the applicable balance that is also reported in FR Y–9C, Schedule HC–C, items 6.a and 6.d (Other consumer loans). Therefore, the Schedule M.1 and FR Y–9C, Schedule HC–C instructions would align, and the Board has adopted the revision as proposed, effective for the September 30, 2022, as of date.

Several items on FR Y–14Q, Schedule M.1, reference various FR Y–9C items where applicable balances are reported. The Board proposed to add a reference to FR Y–9C, Schedule HC–C, item 9.a (Loans to nondepository financial institutions) to Schedule M.1, item 2.c (SME cards and corporate cards), as balances required in item 2.c could be reported in item 9.a. One commenter requested that the Board also add references to FR Y–9C, Schedule HC–C, items 2.a (Loans to U.S. banks and other U.S. depository institutions), 2.b (Loans to foreign banks), 3 (Loans to finance agricultural production and other loans to farmers), and 7 (Loans to foreign governments and official institutions) to Schedule M.1, item 2.c, as balances reported in those FR Y–9C items could also meet the definition listed for item 2.c. Relatedly, the commenter noted that for congruency, any FR Y–9C items added to be referenced to Schedule M.1, item 2.c, should also be added to Schedule M.2 (FR Y–9C Reconciliation), item 2 (SME cards and corporate cards).

The Board agrees with the commenter that there could be loans reported in other FR Y–9C items that meet the definition for reporting in Schedule M.1, item 2.c. Given this, the Board has revised the instructions for item 2.c to add references to FR Y–9C, Schedule HC–C, items 2.a, 2.b, 3, and 7. In response to the comment and for data reconciliation purposes, the Board has also added applicable items to Schedule M.2, item 2. The Board has adopted these revisions effective for the September 30, 2022, as of date.

Board of Governors of the Federal Reserve System, August 22, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–18396 Filed 8–25–22; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice and request for comment.

SUMMARY: The FTC requests that the Office of Management and Budget (OMB) extend for three years the current Paperwork Reduction Act (PRA) clearance for information collection requirements contained in the Telemarketing Sales Rule (TSR or Rule). That clearance expires on September 30, 2022.

DATES: Comments must be received by September 26, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. The *reginfo.gov* web link is a United States Government website produced by OMB and the General Services Administration (GSA). Under PRA requirements, OMB's Office of Information and Regulatory Affairs (OIRA) reviews Federal information collections.

FOR FURTHER INFORMATION CONTACT: Benjamin R. Davidson, Attorney, Bureau of Consumer Protection, (202) 326–3055, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Title: Telemarketing Sales Rule, 16 CFR part 310.

OMB Control Number: 3084–0097.

Type of Review: Extension of a currently approved collection.

Abstract: As required by the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108 (the Telemarketing Act), the TSR mandates certain disclosures for telephone sales and requires telemarketers to retain certain records regarding advertising, sales, and employees. The required disclosures provide consumers with information necessary to make informed purchasing decisions. The required records are to be made available for inspection by the Commission and other law enforcement personnel to determine compliance with the Rule. Required records may also yield information helpful to measuring and redressing consumer injury stemming from Rule violations.

Likely Respondents: Telemarketers to consumers.

Estimated Annual Hours Burden: 1,228,050 hours.

- *Disclosures (for live telemarketing calls and prerecorded calls):* 1,215,946 hours (which is derived from 826,389 hours for pre-sales disclosures + 363,048 hours for general sales disclosures + 26,509 hours for specific sales disclosures).
- *Reporting:* 219 hours.
- *Recordkeeping:* 11,885 hours.

Estimated Annual Labor Cost Burden: $18,367,441 (which is derived from $441,169 (recordkeeping) + $17,923,044 (disclosure) + $3,228 (reporting).[1]

Estimated Annual Non-Labor Cost: $4,596,656 [2] (which is derived from $219,250 (office supplies) + $4,377,406 (telephone charges)).

On April 19, 2022, the FTC sought comment on the information collection requirements associated with the Rule. 87 FR 23177. The FTC received no germane comments during the public comment period. Pursuant to OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule. For more details about the Rule requirements and the basis for the calculations summarized below, see 87 FR 15995.

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2022–18406 Filed 8–25–22; 8:45 am]

BILLING CODE 6750–01–P

[1] The hourly wage rates for sales and related workers are based on mean hourly wages found at *https://www.bls.gov/news.release/ocwage.t01.htm* (''Occupational Employment and Wages—May 2021,'' U.S. Department of Labor, released March 2022, Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2021'').

[2] This estimate corrects the prior estimate of $4,642,347 that was set out in the 60-Day **Federal Register** notice.

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (''PRA''), the Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comment on its proposal to extend for an additional three years the FTC's portion of the information collection requirements contained in the rules implementing the Hart-Scott-Rodino Antitrust Improvements Act (''HSR Rules'') and corresponding Notification and Report Form for Certain Mergers and Acquisitions (''Notification and Report Form''). The current clearance expires on January 31, 2023.

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

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Paperwork Reduction Act Comment: FTC File No. P072108'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Robert L. Jones, Assistant Director, Premerger Notification Office, Bureau of Competition, Federal Trade Commission, Room CC–5301, 600 Pennsylvania Avenue NW, Washington, DC 20580, or by telephone to (202) 326–2740.

SUPPLEMENTARY INFORMATION:

Title: HSR Rules and Notification and Report Form, 16 CFR parts 801–803.

OMB Control Number: 3084–0005.

Type of Review: Extension of a currently approved collection.

Abstract: Section 7A of the Clayton Act (''Act''), 15 U.S.C. 18a, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Public Law 94–435, 90 Stat. 1390, requires all persons contemplating certain mergers or acquisitions to file notification with the Commission and the Assistant Attorney General and to wait a designated period of time before consummating such transactions. Congress empowered the Commission, with the concurrence of the Assistant Attorney General, to require ''that the notification . . . be in such form and contain such documentary material and information . . . as is necessary and appropriate'' to enable the agencies ''to determine whether such acquisitions may, if consummated, violate the antitrust laws.'' 15 U.S.C. 18a(d). Congress similarly granted rulemaking authority to, among other things, ''prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.'' *Id.* Pursuant to that section, the Commission, with the concurrence of the Assistant Attorney General, developed the HSR Rules and the corresponding Notification and Report Form.

Likely Respondents: Merging Parties.

Estimated Annual Hours Burden: 264,947 hours [derived from 7,160 non-index filings × 37 hours each) + (12 index filings × two hours each) + (one withdrawn transaction later restarted × three hours)].

Estimated Annual Cost Burden: $121,875,620, which is derived from $460/hour × 264,947 hours.

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the HSR Rules and corresponding Notification and Report Form.

Burden Statement

The following burden estimates are primarily based on FTC data concerning the number of HSR filings and FTC staff's informal consultations with leading HSR counsel for outside parties.

Estimated Total Annual Hours

In fiscal year 2022, FTC staff estimates that the FTC will receive a total of 6,580 non-index filings.[1] Based on an average annual increase in filings of 4.3% in the pre-COVID fiscal years 2017–2019, FTC staff projects an average of 7,160 non-index filings per year for fiscal years 2023–2025, the time period for which PRA clearance will be requested from OMB.[2] For index filings, FTC staff projects an average of 12 index filings for fiscal years 2022–2025, based on a rough average of 12 such filings per year over fiscal years 2017–2019. Retaining prior assumptions, FTC staff estimates that non-index filings require, on average, approximately 37 hours per filing and that index filings require an average of two hours per filing.[3]

On rare occasions, a transaction for which the HSR filing is automatically withdrawn during the merger review process (due to the parties' Securities and Exchange Commission filing indicating that the transaction has been terminated) could be subsequently restarted. Based on experience to date, this would occur approximately once every fifteen years, *i.e.,* a historical frequency of 0.067 transactions per year. FTC staff believes that this new filing would require the same work and diligence as any new non-index filing. Assuming, then, an average of 37 hours for one transaction, when applied to a historical frequency of 0.067, this amounts to an annual average of three hours, rounded up, for a withdrawn transaction later restarted.

Thus, the total estimated hours burden is 264,947 hours [(7,160 non-index filings × 37 hours each) + (12 index filings × two hours each) + (one withdrawn transaction later restarted × three hours))].

Estimated Total Annual Labor Cost

Using the burden hours (264,947) estimated above and applying an estimated average of $460/hour for executive and/or attorney compensation, FTC staff estimates that the total labor cost associated with the HSR Rules and the Notification and Report Form is approximately $121,875,620.

Estimated Total Annual Non-Labor Cost

The applicable requirements impose minimal start-up costs, as businesses subject to the HSR Rules generally have or obtain necessary equipment for other business purposes. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, but such training would be subsumed within the ordinary training that employees receive.

Request for Comments

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of maintaining records and providing disclosures to consumers. All comments must be received on or before October 25, 2022.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before October 25, 2022. Write ''Paperwork Reduction Act Comment: FTC File No. P072108'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Paperwork Reduction Act Comment: FTC File No. P072108'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,''

[1] The estimate is based on actual data for the first three quarters of fiscal year 2022 and a projected number of filings for the last quarter that is the average of the number of filings received in the second and third quarter of fiscal year 2022. The second FR Notice will have the actual number of filings for fiscal year 2022, and all calculations based on the projected number of filings for fiscal year 2022 will be updated accordingly.

[2] Due to the exceptional volatility in the number of filings in fiscal years 2020 and 2021, data for these years was not included in the estimation of the annual growth rate of filings.

[3] Index filings pertain to certain transactions described in Sections 7A(c)(6) and (c)(8) of the Clayton Act that are subject to the approval of other agencies and are exempt from the requirements of the premerger notification program. Index filings are incorporated into the FTC's currently cleared burden estimates, because the parties to these exempt transactions must file copies of the information submitted to the other agencies with the Commission and the Assistant Attorney General. However, the task of filing a copy of information provided to another agency requires significantly less time than the preparation of a filing for a non-exempt transaction.

and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 25, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2022–18407 Filed 8–25–22; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–22IK]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Study to Explore Early Development (SEED) Follow-up Study to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on October 4, 2021 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

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

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(d) 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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Study to Explore Early Development (SEED), Follow-up Study—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2016, an estimated one in 54 children eight years of age living in 11 communities across the United States had autism spectrum disorder (ASD), a developmental disability that can cause significant social, communication, and behavior challenges. Total annual costs associated with ASD have been estimated between $11.5–60.9 billion (2011, US dollars), yet major gaps in knowledge remain about risk factors for ASD, and associated challenges and needs for persons with ASD and their families. Additionally, while most research on ASD has focused on children, ASD is considered a lifelong condition, and although an estimated 70,000 to 111,000 youth with ASD turn 18 years of age annually, little is known about the transition to adolescence and adulthood for persons with ASD. Despite the call to address transition and lifespan issues in the Autism CARES Acts of 2014 and 2019, only 2% of ASD funding from 2008–2018 was spent on lifespan issues. The 2016–2017 Interagency Autism Coordinating Committee (IACC) Strategic Plan highlighted the need for more information about the services and support needed to maximize the quality of life for people on the autism spectrum, especially as individuals with ASD progress into adulthood.

The Study to Explore Early Development (SEED) was originally initiated to address the Children's Health Act of 2000, which mandated CDC to conduct ASD surveillance and implement research programs to address the number, incidence, and causes of ASD and related developmental disabilities. SEED was a multi-phase, multi-site, case-control study comparing children with ASD, identified at ages 2–5 years, to children with other non-ASD developmental disabilities (DD), and from the general population (POP). SEED was initially implemented in three phases during 2007–2021. The current information collection request is to conduct longitudinal follow-up studies of SEED 1–3 participants at older ages, thereby addressing the priorities established in the Autism CARES Acts of 2014 and 2019, and the need for research highlighted in the IACC Strategic Plan.

Given the size of the original SEED birth cohorts and the wealth of baseline information collected, a follow-up study of participants can help us address the research gaps described above. The information collected from this study will allow us to better understand the developmental trajectory of children with ASD, their health outcomes and co-occurring conditions at older ages, and the associated early predictors of these outcomes, including intellectual abilities.

The data collected in this study also provides the opportunity to obtain important self-reported measures of well-being among young adults with ASD. Recent evidence suggests that individuals with ASD, with average to above average levels of intellectual functioning, may still struggle with

activities of daily living. Yet, adults with special needs are often required to have an intellectual disability in order to qualify for services. This data will allow investigators to describe the gap between intellectual ability and daily living skills in adolescents with ASD to inform public policies on eligibility for services. Additionally, because most SEED 1 participants will reach young adulthood (*i.e.,* age 18 years) in years 2021–2026, data collected through this study will provide an opportunity to assess changes in service access and utilization that may occur following high school exit. This period is particularly challenging for young adults with ASD who can experience poor outcomes across multiple domains (*i.e.,* employment, education, social engagement, independent living, and access to health and mental health care service, in association with the loss of well-integrated school-based services). Hence, through surveying SEED 1 participants before and after their anticipated exit from high school, data collected through this study could provide important information on the loss of services and emerging issues that can inform service delivery and programs on the supports needed to achieve greater independence.

Initial follow-up surveys of SEED participants will be conducted with the parents of the children who previously participated in SEED because it is the parents who provided consent for follow-up studies. However, many emerging issues surrounding the transition to adulthood among adolescents with ASD require self rather than parental report (*e.g.,* self-reported symptoms of anxiety, depression, quality of life, social camouflaging, gender identity, sexuality, and relationships). Therefore, children who originally participated at age 2–5 years who are now adolescents and young adults, will be contacted through their parents and asked if they wish to provide informed consent for participation in surveys.

CDC requests OMB approval for an estimated 2,089 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Caregiver	Review of enrollment call script and consent for first follow-up survey	2,057	1	10/60
Caregiver	First follow-up core survey of SEED 1–3 caregivers	1,234	1	40/60
Caregiver	First follow-up survey supplement for caregivers of children	411	1	20/60
Caregiver	First follow-up survey supplement for caregivers of adolescents	411	1	20/60
Caregiver	First follow-up survey supplement for caregivers of young adults	411	1	20/60
Caregiver	Review of enrollment call script and consent, and Second follow-up survey of SEED 1 caregivers.	350	1	10/60
Caregiver and Adult Child.	Review of enrollment call script and consent by caregivers and young adults.	165	1	10/60
Adult Child	Second follow-up survey of SEED 1 adult children	165	1	30/60
Children aged 8–22 years and their caregivers.	Review of enrollment and informed consent or assent, In-person assessment of intellectual abilities.	229	1	90/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–18440 Filed 8–25–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–0666; Docket No. CDC–2022–0101]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National Healthcare Safety Network (NHSN). This collection provides data necessary to identify problem areas, measure the progress of prevention efforts, and ultimately eliminate healthcare-associated infections (HAIs) nationwide.

DATES: CDC must receive written comments on or before October 25, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0101 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a

60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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

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

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

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

5. Assess information collection costs.

Proposed Project

National Healthcare Safety Network (NHSN) (OMB Control No. 0920–0666, Exp. 1/31/2025)—Revision—National Center for Emerging and Zoonotic Infection Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Division of Healthcare Quality Promotion (DHQP), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC) collects data from healthcare facilities in the National Healthcare Safety Network (NHSN) under OMB Control Number 0920–0666. NHSN provides facilities, states, regions, and the nation with data necessary to identify problem areas, measure the progress of prevention efforts, and ultimately eliminate healthcare-associated infections (HAIs) nationwide. NHSN allows healthcare facilities to track blood safety errors and various healthcare-associated infection prevention practice methods such as healthcare personnel influenza vaccine status and corresponding infection control adherence rates. NHSN currently has six components: Patient Safety (PS), Healthcare Personnel Safety (HPS), Biovigilance (BV), Long-Term Care Facility (LTCF), Outpatient Procedure (OPC), Dialysis, and Neonatal Component.

Data reported under the Patient Safety Component are used to determine the magnitude of the healthcare-associated adverse events and trends in the rates of the events, in the distribution of pathogens, and in the adherence to prevention practices. Data will help detect changes in the epidemiology of adverse events resulting from new medical therapies and changing patient risks. Additionally, reported data is being used to describe the epidemiology of antimicrobial use and resistance and to better understand the relationship of antimicrobial therapy to this rising problem. Under the Healthcare Personnel Safety Component, protocols and data on events—both positive and adverse—are used to determine: (1) the magnitude of adverse events in healthcare personnel; and (2) compliance with immunization and sharps injuries safety guidelines. Under the Biovigilance Component, data on adverse reactions and incidents associated with blood transfusions are reported and analyzed to provide national estimates of adverse reactions and incidents. Under the Long-Term Care Facility Component, data is captured from skilled nursing facilities. Reporting methods under the LTCF component have been created by using forms from the PS Component as a model with modifications to specifically address the specific characteristics of LTCF residents and the unique data needs of these facilities reporting into NHSN. The Respiratory Tract Infection (RTI)Form will not to be used by NHSN users, but as part of an EIP project with four EIP sites. The Form is titled *Denominators for Healthcare Associated Infections (HAIs): Respiratory Tract Infections.* The purpose of this form is to allow testing prior to introducing a new module and forms to NHSN users. The CDC's Epidemiology Research & Innovations Branch (ERIB) team will use the form to perform field testing of variables to explore the utilization, applicability, and data collection burden associated with these variables. This process will inform areas of improvement prior to incorporating the new module, including protocol, forms, and instructions into NHSN. The Dialysis Component offers a simplified user interface for dialysis users to streamline their data entry and analysis processes as well as provide options for expanding in the future to include dialysis surveillance in settings other than outpatient facilities. The Outpatient Procedure Component (OPC) gathers data on the impact of infections and outcomes related to operative procedures performed in Ambulatory Surgery Centers (ASCs). The OPC is used to monitor two event types: Same Day Outcome Measures and Surgical Site Infections (SSIs). The Neonatal Component focuses on premature neonates and the healthcare associated events that occur as a result of their prematurity. This component currently has one module, which includes Late Onset-Sepsis and Meningitis.

NHSN has increasingly served as the operating system for HAI reporting compliance through legislation established by the states. As of August 2022, 37 states, the District of Columbia and the City of Philadelphia, Pennsylvania have opted to use NHSN as their primary system for mandated reporting. Reporting compliance is completed by healthcare facilities in their respective jurisdictions, with emphasis on those states and municipalities acquiring varying consequences for failure to use NHSN. Additionally, healthcare facilities in five U.S. territories (Puerto Rico, American Samoa, the U.S. Virgin Islands, Guam, and the Northern Mariana Islands) are voluntarily reporting to NHSN. Additional territories are projected to follow with similar use of NHSN for reporting purposes. NHSN's data is used to aid in the tracking of HAIs and guide infection prevention activities/practices that protect patients.

The Centers for Medicare and Medicaid Services (CMS) and other payers use these data to determine incentives for performance at healthcare facilities across the U.S. and surrounding territories, and members of the public may use some protected data to inform their selection among available providers. Each of these parties is dependent on the completeness and accuracy of the data. CDC and CMS work closely and are fully committed to ensuring complete and accurate reporting, which are critical for protecting patients and guiding national, state, and local prevention priorities. CMS collects some HAI data and healthcare personnel influenza vaccination summary data, which is done on a voluntary basis as part of its Fee-for-Service Medicare quality reporting programs, while others may report data required by a federal mandate. Facilities that fail to report quality measure data are subject to partial payment reduction in the applicable Medicare Fee-for-Service payment system. CMS links their

quality reporting to payment for Medicare-eligible acute care hospitals, inpatient rehabilitation facilities, long-term acute care facilities, oncology hospitals, inpatient psychiatric facilities, dialysis facilities, and ambulatory surgery centers. Facilities report HAI data and healthcare personnel influenza vaccination summary data to CMS via NHSN as part of CMS's quality reporting programs to receive full payment. Still, many healthcare facilities, even in states without HAI reporting legislation, submit limited HAI data to NHSN voluntarily. NHSN's data collection updates continue to support the incentive programs managed by CMS. For example, survey questions support requirements for CMS' quality reporting programs. Additionally, CDC has collaborated with CMS on a voluntary National Nursing Home Quality Collaborative, which focuses on recruiting nursing homes to report HAI data to NHSN and to retain their continued participation.

The ICR was previously approved in January of 2022 for 5,943,401 responses and 1,321,991 burden hours. The proposed changes in this new ICR include revisions to nine existing data collection forms. In this Revision, CDC requests OMB approval for an estimated 1,614,345 annual burden hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Form number & name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total burden (in hours)
57.100 NHSN Registration Form	2,000	1	5/60	167
57.101 Facility Contact Information	2,000	1	10/60	333
57.103 Patient Safety Component—Annual Hospital Survey	6,765	1	90/60	10,148
57.104 Facility Administrator Change Request Form	800	1	5/60	67
57.105 Group Contact Information	1,000	1	5/60	83
57.106 Patient Safety Monthly Reporting Plan	7,821	12	15/60	23,463
57.108 Primary Bloodstream Infection (BSI)	5,775	5	38/60	18,288
57.111 Pneumonia (PNEU)	1,800	2	30/60	1,800
57.112 Ventilator-Associated Event	5,463	8	28/60	20,395
57.113 Pediatric Ventilator-Associated Event (PedVAE)	334	1	30/60	167
57.114 Urinary Tract Infection (UTI)	6,000	5	20/60	10,000
57.115 Custom Event	600	91	35/60	31,850
57.116 Denominators for Neonatal Intensive Care Unit (NICU)	1,100	12	4/60	880
57.117 Denominators for Specialty Care Area (SCA)/Oncology (ONC)	500	12	5/60	500
57.118 Denominators for Intensive Care Unit (ICU)/Other locations (not NICU or SCA)	5,500	60	5/60	27,500
57.120 Surgical Site Infection (SSI)	6,000	9	35/60	31,500
57.121 Denominator for Procedure	6,000	602	10/60	602,000
57.122 HAI Progress Report State Health Department Survey	55	1	28/60	26
57.123 Antimicrobial Use and Resistance (AUR)-Microbiology Data Electronic Upload Specification Tables	4,000	12	5/60	4,000
57.124 Antimicrobial Use and Resistance (AUR)-Pharmacy Data Electronic Upload Specification Tables	4,000	12	5/60	4,000
57.125 Central Line Insertion Practices Adherence Monitoring	500	213	25/60	44,375
57.126 MDRO or CDI Infection Form	720	11	30/60	3,960
57.127 MDRO and CDI Prevention Process and Outcome Measures Monthly Monitoring	5,500	29	15/60	39,875
57.128 Laboratory-identified MDRO or CDI Event	4,800	79	20/60	126,400
57.129 Adult Sepsis	50	250	25/60	5,208
57.135 Late Onset Sepsis/Meningitis Denominator Form: Data Table for monthly electronic upload	300	6	5/60	150
57.136 Late Onset Sepsis/Meningitis Event Form: Data Table for Monthly Electronic Upload	300	6	5/60	150
57.137 Long-Term Care Facility Component—Annual Facility Survey	17,700	1	120/60	35,400
57.138 Laboratory-identified MDRO or CDI Event for LTCF	1,998	24	20/60	15,984
57.139 MDRO and CDI Prevention Process Measures Monthly Monitoring for LTCF	1,998	12	20/60	7,992
57.140 Urinary Tract Infection (UTI) for LTCF	339	36	35/60	7,119
57.141 Monthly Reporting Plan for LTCF	2,011	12	5/60	2,011
57.142 Denominators for LTCF Locations	339	12	35/60	2,373
57.143 Prevention Process Measures Monthly Monitoring for LTCF	130	12	5/60	130
57.150 LTAC Annual Survey	620	1	82/60	847
57.151 Rehab Annual Survey	1,340	1	82/60	1,831
57.200 Healthcare Personnel Safety Component Annual Facility Survey	50	1	480/60	400
57.204 Healthcare Worker Demographic Data	50	200	20/60	3,333
57.205 Exposure to Blood/Body Fluids	50	50	60/60	2,500
57.206 Healthcare Worker Prophylaxis/Treatment	50	30	15/60	375
57.207 Follow-Up Laboratory Testing	50	50	15/60	625
57.210 Healthcare Worker Prophylaxis/Treatment-Influenza	50	50	10/60	417
57.300 Hemovigilance Module Annual Survey	500	1	85/60	708
57.301 Hemovigilance Module Monthly Reporting Plan	500	12	60/60	6,000
57.303 Hemovigilance Module Monthly Reporting Denominators	500	12	70/60	7,000
57.305 Hemovigilance Incident	500	10	10/60	833
57.306 Hemovigilance Module Annual Survey—Non-acute care facility	500	1	35/60	292
57.307 Hemovigilance Adverse Reaction—Acute Hemolytic Transfusion Reaction	500	4	20/60	667

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form number & name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total burden (in hours)
57.308 Hemovigilance Adverse Reaction—Allergic Transfusion Reaction	500	4	20/60	667
57.309 Hemovigilance Adverse Reaction—Delayed Hemolytic Transfusion Reaction	500	1	20/60	167
57.310 Hemovigilance Adverse Reaction—Delayed Serologic Transfusion Reaction	500	2	20/60	333
57.311 Hemovigilance Adverse Reaction—Febrile Non-hemolytic Transfusion Reaction	500	4	20/60	667
57.312 Hemovigilance Adverse Reaction—Hypotensive Transfusion Reaction	500	1	20/60	167
57.313 Hemovigilance Adverse Reaction—Infection	500	1	20/60	167
57.314 Hemovigilance Adverse Reaction—Post Transfusion Purpura	500	1	20/60	167
57.315 Hemovigilance Adverse Reaction—Transfusion Associated Dyspnea	500	1	20/60	167
57.316 Hemovigilance Adverse Reaction—Transfusion Associated Graft vs. Host Disease	500	1	20/60	167
57.317 Hemovigilance Adverse Reaction—Transfusion Related Acute Lung Injury	500	1	20/60	167
57.318 Hemovigilance Adverse Reaction—Transfusion Associated Circulatory Overload	500	2	20/60	333
57.319 Hemovigilance Adverse Reaction—Unknown Transfusion Reaction	500	1	20/60	167
57.320 Hemovigilance Adverse Reaction—Other Transfusion Reaction	500	1	20/60	167
57.400 Outpatient Procedure Component—Annual Facility Survey	700	1	10/60	117
57.401 Outpatient Procedure Component—Monthly Reporting Plan	700	12	15/60	2,100
57.402 Outpatient Procedure Component Same Day Outcome Measures	200	1	40/60	133
57.403 Outpatient Procedure Component—Monthly Denominators for Same Day Outcome Measures	200	400	40/60	53,333
57.404 Outpatient Procedure Component—SSI Denominator	700	100	40/60	46,667
57.405 Outpatient Procedure Component—Surgical Site (SSI) Event	700	5	40/60	2,333
57.500 Outpatient Dialysis Center Practices Survey	7,400	1	125/60	15,417
57.501 Dialysis Monthly Reporting Plan	7,400	12	5/60	7,400
57.502 Dialysis Event	7,400	30	27/60	99,900
57.503 Denominator for Outpatient Dialysis	7,400	24	10/60	29,600
57.504 Prevention Process Measures Monthly Monitoring for Dialysis	1,730	12	75/60	25,950
57.505 Dialysis Patient Influenza Vaccination	615	50	10/60	5,125
57.506 Dialysis Patient Influenza Vaccination Denominator	615	5	10/60	3075
57.507 Home Dialysis Center Practices Survey	450	1	36/60	270
Weekly Healthcare Personnel Influenza Vaccination Cumulative Summary for Non-Long-Term Care Facilities	125	52	60/60	6,500
Weekly Healthcare Personnel Influenza Vaccination Cumulative Summary for Long-Term Care Facilities	1,200	52	60/60	62,400
Weekly Resident Influenza Vaccination Cumulative Summary for Long-Term Care Facilities	2,500	52	60/60	130,000
Annual Healthcare Personnel Influenza Vaccination Summary	5,000	1	120/60	10,000
Total				1,614,345

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

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BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–1166; Docket No. CDC–2022–0100]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Poison Center Collaborations for Public Health Emergencies. This proposed collection will allow CDC to quickly characterize potential exposures identified through the National Poison Data System (NPDS), help determine potential risk factors, identify illnesses related to the public health emergency, and improve the public health response to the incident.

DATES: CDC must receive written comments on or before October 25, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0100 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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

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

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

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

5. Assess information collection costs.

Proposed Project

Poison Center Collaborations for Public Health Emergencies (PCCPHE) (OMB Control No. 0920–1166, Exp. 04/30/2023)—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) is requesting a three-year Paperwork Reduction Act (PRA) Revision of the Generic Information Collection Request (Generic ICR) titled Poison Center Collaborations for Public Health Emergencies (PCCPHE) (OMB Control No. 0920–1166; Expiration date 04/30/2023).

CDC's key partner is America's Poison Centers ™, formerly known as the American Association of Poison Control Centers (AAPCC). America's Poison Centers ™ is a national network of 55 poison centers working to prevent and treat poison exposures. America's Poison Centers ™ manages its existing surveillance system called the National Poison Data System (NPDS) and provides CDC access to monitor this system under a cooperative agreement and a data license agreement.

When a public health emergency of interest emerges in NPDS, the CDC and America's Poison Centers ™ hold a meeting to mutually decide whether the incident needs further investigation. For a public health emergency to be selected for call-back, adverse health effects must have occurred, and a response is needed to prevent further morbidity and mortality. The event must meet the following criteria: (1) the event is a public health emergency causing adverse health effects; (2) timely data are urgently needed to inform rapid public health action to prevent or reduce injury, disease, or death; (3) the event is characterized by a natural or man-made disaster, contaminated food or water, a new or existing consumer product, or an emerging public health threat; (4) the event has resulted in calls to a poison center, and the poison center agrees to conduct the call-back data collection; (5) the event is domestic; and (6) data collection will be completed in 60 days or less.

The purpose of this Generic ICR is to create a timely mechanism to allow poison centers, supported by CDC, to follow-up with callers during select public health emergencies on exposure and health. These PCCPHE Generic information collections (GenICs) will obtain information on sources of exposure, scenario of exposure, health seeking behaviors following exposure, and awareness of health communication messaging. These additional data can help CDC identify interventions to improve health messaging meant to reduce exposure; improve disaster and emergency response; and prevent future events for the specific area or incident of interest.

Trained poison center staff will conduct the call-back telephone survey or will facilitate the call-back web survey, after administering consent. Respondents will include individuals who call poison centers about exposures related to the select public health emergencies. These respondents include adults, 18 years and older; adolescents, 15 to less than 18 years; and parents or guardians on behalf of their children less than 15 years of age.

In 2019, a PCCPHE GenIC, titled ''Risk Factors for Harmful Algal Blooms (HABs),'' was conducted to identify sources of and risk factors for HAB exposures. New information gained about HAB exposures were used improve HAB incident response, communication, and outreach at the state and national level.

During the past three-year approval period, no PCCPHE GenICs were conducted; however, two NPDS-related follow-up studies were implemented using the Secretary's Public Health Emergency PRA Waiver for COVID–19. During a non-pandemic situation, these two studies would have used this Generic ICR. These studies assessed unintentional exposures associated with cleaning products (*e.g.,* bleach, hand sanitizers) in home settings to determine knowledge, attitudes, and practices regarding cleaning behaviors and help guide public health messaging.

Based on CDC's past experience, the following revisions affecting public burden are proposed. CDC plans to increase the annual number of public health emergencies of interest from two to three per year. CDC will reduce the estimated time per response from 40 minutes to 10 minutes. CDC plans to add web surveys as a second secure mode of collection to the currently approved telephone surveys. CDC will also increase the annual number of

respondents from 150 to 500 per call-back investigation.

Based on these revisions, the total number of annual respondents requested is 1,500, which is an increase of 1,200 over the 300 respondents previously approved. The annual time burden requested is 250 hours, which is an increase of 50 hours over the 200 hours previously approved. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Adult Poison Center Callers	Call-back Questionnaire for Self	1,200	1	10/60	200
Adolescent Poison Center Callers	Call-back Questionnaire for Self	150	1	10/60	25
Parent or Guardian Poison Center Callers.	Call-back Questionnaire for Proxy	150	1	10/60	25
Total					250

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–1291; Docket No. CDC–2022–0097]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Generic Information Collection Request for Cognitive Testing and Pilot Testing for the National Center for Chronic Disease Prevention and Health Promotion. The Generic Clearance is needed to support methodological studies that improve information quality and the efficiency of information collection.

DATES: CDC must receive written comments on or before October 25, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0097 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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

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

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

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

5. Assess information collection costs.

Proposed Project

Generic Information Collection Request (ICR) for Cognitive Testing and Pilot Testing for the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) (OMB Control No. 0921–1291, Exp. 03/31/2023)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC's National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) plans has established a Generic Clearance (OMB Control No. 0920–1291) to support information collection for cognitive testing and pilot testing activities. Information collections that support the

Behavioral Risk Factor Surveillance System (BRFSS) and other NCCDPHP programs are expected to be the major focus of activity under this Generic mechanism. Additional information collections may also be considered for submission through this Generic Clearance if they are relevant to BRFSS and NCCDPHP programs or collaborations.

Cognitive testing and pilot testing are methodological procedures conducted to prepare for a large scale or key information collection. Cognitive and pilot testing activities are designed to improve information quality and the efficiency of information collection by addressing issues such as the use of new or existing survey questions, question formatting, survey protocols, data collection software systems and other related processes.

Cognitive testing is a technique used to clarify the meaning of survey questions and/or the response options for questions and contributes to the understanding of the validity and reliability of questions used for a variety of public health purposes. Cognitive testing is conducted early in the process of considering questions for use in a survey or other information collection activity. This type of testing is usually conducted in a controlled setting, and respondents participate in a discussion or interview with a trained interviewer and may respond individually or as members of focus groups.

Questions may undergo cognitive testing because they have not been used in previous surveys; for example, questions related to the emergence of a new public health concern (such as e-cigarettes). In addition, testing may be conducted on previously used questions to assess their use in a different information collection mode. Testing might be conducted to convert questions developed for a paper survey to an interview format or an electronic survey format; or testing might be conducted to identify issues specific to a subpopulation or language translation. Respondents are asked to review questions and/or surveys to discuss their impressions of the items under consideration, the questions, the response set, individual words within the question, or the focus of the questionnaire itself. Incentives may be offered to respondents who participate in the in-person phase of cognitive testing since these activities involve additional burden and inconvenience.

Pilot testing is used to determine whether methods or modes of data collection (such as phone or mail surveys, in-person interviews or online data collection) are appropriate and efficient ways of collecting data. Pilot testing may include testing of changes in sampling or contacting potential respondents.

The majority of participants in cognitive and pilot testing activities are expected to be adults >18 years of age. Information may be collected during the recruitment process to assist in the selection of respondents. Respondents may be recruited to take part in testing through online, mobile devices, mailings, or newspaper advertisements. If the participants are not recruited to be present at a physical location, they may be called and recruited by telephone.

Cognitive and pilot testing are efficient means of identifying problems with questions and procedures prior to implementation of data collection. Thus, they are cost effective approaches to providing evidence on survey questionnaire performance. A consequence of cognitive and pilot testing is to maintain high levels of participation in the information collection process itself.

Initial response and burden estimates are based on anticipated information collection needs for the BRFSS, with an additional allocation for a variety of NCCDPHP programs and collaborators. Each information collection activity conducted through this Generic Clearance will be submitted to OMB for approval in a project-specific information collection request that describes its purpose and methods.

Participation in cognitive and pilot testing is voluntary, but respondents will be encouraged to participate by explanations of the need for their input in the introduction of each survey. CDC requests OMB approval for an estimated 8,950 annual burden hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden (in hrs)
General U.S. Population or Selected Subpopulation.	Screening for cognitive testing	2,500	1	15/60	625
	Screening for pilot testing	2,400	1	15/60	600
	Cognitive testing in person	1,500	1	60/60	1,500
	Cognitive testing by phone	1,500	1	45/60	1,125
	Cognitive testing by ABS/mail/web	600	1	60/60	600
	Pilot testing in person	1,000	1	30/60	500
	Pilot testing by phone	3,000	1	30/60	1,500
	Pilot testing by ABS/mail/web	5,000	1	30/60	2,500
Total					8,950

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–0009]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''National Disease Surveillance Program—I. Case Reports'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on May 23, 2022, to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

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

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(d) 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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Disease Surveillance Program—I. Case Reports (OMB Control No. 0920–0009, Exp. 08/31/2022)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Surveillance of the incidence and distribution of disease has been an important function of the US Public Health Service (PHS) since an 1878 Act of Congress authorized the PHS to collect morbidity reports. After the Malaria Control in War Areas Program had fulfilled its original 1942 objective of reducing malaria transmission, its basic tenets were carried forward and broadened by the formation of the Communicable Disease Center (CDC) in 1946. CDC was conceived of as a well-equipped, broadly staffed agency used to translate facts about analysis of morbidity and mortality statistics on communicable diseases and through field investigations. It was soon recognized that control measures (such as the DDT spraying for malaria) did not alleviate the threat of disease reintroduction. In 1950, the Malaria Surveillance Program began and in 1952, the National Surveillance Program started. Both programs were based on the premise that diseases cannot be diagnosed, prevented, or controlled until existing knowledge is expanded and new ideas developed and implemented. The original scope of the National Surveillance Program included the study of malaria, murine typhus, smallpox, psittacosis, diphtheria, leprosy, and sylvatic plague. Over the years, the mandate of CDC has broadened in preventive health activities and the surveillance systems maintained have expanded. This program is authorized under the Public Health Service Act, Section 301 and 306 (42 U.S.C. 241 and 242K).

This ICR covers surveillance activities for four, rare diseases:

1. Creutzfeldt-Jakob Disease (CJD)
2. Reye Syndrome
3. Kawasaki Syndrome
4. Acute Flaccid Myelitis

CDC requests OMB approval for an estimated 98 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Epidemiologist	Creutzfeldt-Jakob Disease (CJD)	10	2	20/60
	Reye Syndrome	1	1	20/60
	Kawasaki Syndrome	20	2	15/60
	Acute Flaccid Myelitis	100	4	12/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–18441 Filed 8–25–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0412]

Authorization and Revocations of Emergency Use of Certain In Vitro Diagnostic Devices for Detection and/or Diagnosis of COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of one, and revocation of three, Emergency Use Authorizations (EUAs) (the Authorizations) issued to STS Lab Holdco (a subsidiary of *Amazon.com* Services LLC) (''STS''). FDA issued one Authorization under the Federal Food, Drug, and Cosmetic Act (FD&C Act), as requested by STS, for the Amazon Real-Time RT–PCR DTC Test for Detecting SARS–CoV–2. The Authorization contains, among other things, conditions on the emergency use of the authorized product. The Authorization follows the February 4, 2020, determination by the Secretary of Health and Human Services (HHS) that there is a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad, and that involves the virus that causes COVID–19, and the subsequent declaration on February 4, 2020, that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of the virus that causes COVID–19, subject to the terms of any authorization issued under the FD&C Act. The Authorization, which includes an explanation of the reasons for issuance, is listed in this document, and further information can be accessed on FDA's website from the links indicated. FDA is also announcing the subsequent revocation of the Authorization issued to STS for the Amazon Real-Time RT–PCR DTC Test for Detecting SARS–CoV–2. In addition, FDA is announcing the revocation of the Authorizations issued to STS for the Amazon Multi-Target SARS–CoV–2 Real-Time RT–PCR DTC Test and Amazon Multi-Target SARS–CoV–2 Real-Time RT–PCR Test. FDA issued and revoked the Authorizations under the FD&C Act. The revocations, which include an explanation of the reasons for each revocation, are reprinted in this document.

DATES: The Authorization for the Amazon Real-Time RT–PCR DTC Test for Detecting SARS–CoV–2 was effective May 28, 2021. The revocations for the Amazon Real-Time RT–PCR DTC Test for Detecting SARS–CoV–2, Amazon Multi-Target SARS–CoV–2 Real-Time RT–PCR DTC Test, and Amazon Multi-Target SARS–CoV–2 Real-Time RT–PCR Test are effective as of July 19, 2022.

ADDRESSES: Submit written requests for a single copy of the Authorization or the revocations to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the documents may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the documents.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. With this EUA authority, FDA can help ensure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by biological, chemical, nuclear, or radiological agents when there are no adequate, approved, and available alternatives.

II. Criteria for EUA Authorization

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) a determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces, including personnel operating under the authority of title 10 or title 50 of the U.S. Code, of attack with (A) a biological, chemical, radiological, or nuclear agent or agents; or (B) an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces;[1] (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d–6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Under section 564(h)(1) of the FD&C Act, revisions to an authorization shall be made available on the FDA website. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under section 505, 510(k), 512, or 515 of the FD&C Act (21 U.S.C. 355, 360(k), 360b, or 360e) or section 351 of the PHS Act (42 U.S.C. 262), or

[1] In the case of a determination by the Secretary of Defense, the Secretary of HHS shall determine within 45 calendar days of such determination, whether to make a declaration under section 564(b)(1) of the FD&C Act, and, if appropriate, shall promptly make such a declaration.

conditionally approved under section 571 of the FD&C Act (21 U.S.C. 360ccc). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the applicable circumstances), FDA [2] concludes: (1) that an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that (A) the product may be effective in diagnosing, treating, or preventing (i) such disease or condition; or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; (4) in the case of a determination described in section 564(b)(1)(B)(ii), that the request for emergency use is made by the Secretary of Defense; and (5) that such other criteria as may be prescribed by regulation are satisfied. No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act

[2] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

III. Authorizations

Having concluded that the criteria for the issuance of the Authorization under section 564(c) of the FD&C Act are met, on May 28, 2021, FDA issued an EUA to STS for the Amazon Real-Time RT–PCR DTC Test for Detecting SARS–CoV–2, subject to the terms of the Authorization. Notice of the issuance of this Authorization is provided, as required by section 564(h)(1) of the FD&C Act.[3]

On August 11, 2021, FDA issued EUAs to STS Lab Holdco for the Amazon Multi-Target SARS–CoV–2 Real-Time RT–PCR DTC Test and Amazon Multi-Target SARS–CoV–2 Real-Time RT–PCR Test, subject to the terms of the respective Authorizations. Notice of the issuance of these Authorizations was published in the **Federal Register** on October 28, 2021 (86 FR 59738), as required by section 564(h)(1) of the FD&C Act. Subsequent updates to the Authorizations were made available on FDA's website.

The authorization of a device for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

[3] An explanation of the reasons for issuance of the Authorization is provided, as required by section 564(h)(1) of the FD&C Act. As set forth in the EUA for the Amazon Real-Time RT–PCR DTC Test for Detecting SARS–CoV–2, FDA has concluded that (1) SARS–CoV–2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the Amazon Real-Time RT–PCR DTC Test for Detecting SARS–CoV–2 may be effective in diagnosing COVID–19, and that the known and potential benefits of the Amazon Real-Time RT–PCR DTC Test for Detecting SARS–CoV–2 when used for diagnosing COVID–19, outweigh the known and potential risks of the Amazon Real-Time RT–PCR DTC Test for Detecting SARS–CoV–2; and (3) there is no adequate, approved, and available alternative to the emergency use of Amazon Real-Time RT–PCR DTC Test for Detecting SARS–CoV–2.

IV. EUA Revocation Requests

On July 11, 2022, STS Lab Holdco requested revocation of, and on July 19, 2022, FDA revoked, the Authorizations for the Amazon Real-Time RT–PCR DTC Test for Detecting SARS–CoV–2, Amazon Multi-Target SARS-CoV–2 Real-Time RT–PCR DTC Test, and Amazon Multi-Target SARS–CoV–2 Real-Time RT–PCR Test. Because STS Lab Holdco has notified FDA that there is no viable (non-expired) Amazon Real-Time RT–PCR DTC Test for Detecting SARS–CoV–2, Amazon Multi-Target SARS–CoV–2 Real-Time RT–PCR DTC Test, or Amazon Multi-Target SARS–CoV–2 Real-Time RT–PCR Test remaining in distribution in the United States and requested FDA revoke the Authorizations for these devices, FDA has determined that it is appropriate to protect the public health or safety to revoke these Authorizations.

V. Electronic Access

An electronic version of this document and the full text of the revocations are available on the internet at *https://www.regulations.gov/*. The full text of the Authorization, including any revisions, and of the revocations and can be accessed from the FDA web page available at: *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization-archived-information.*

VI. The Revocations

Having concluded that the criteria for revocation of the Authorizations under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUAs for STS Lab Holdco's Amazon Real-Time RT–PCR DTC Test for Detecting SARS–CoV–2, Amazon Multi-Target SARS–CoV–2 Real-Time RT–PCR DTC Test, and Amazon Multi-Target SARS–CoV–2 Real-Time RT–PCR Test. The revocations in their entirety follow and provide an explanation of the reasons for each revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–01–P

July 19, 2022

Jon Nakamoto
Amazon.com Services LLC
c/o Amazon Legal Dept
410 Terry Ave. N.
Seattle, WA 98109
Re: Revocation of EUA210308

Dear Jon Nakamoto:

This letter is in response to a request from STS Lab Holdco (a subsidiary of Amazon.com Services LLC), received July 11, 2022, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the Amazon Real-Time RT-PCR DTC Test for Detecting SARS-CoV-2 issued on May 28, 2021, re-issued on January 26, 2022, and amended on December 17, 2021. FDA understands there is no viable (non-expired) Amazon Real-Time RT-PCR DTC Test for Detecting SARS-CoV-2 remaining in distribution in the United States.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety. Because STS Lab Holdco (a subsidiary of Amazon.com Services LLC) has notified FDA that there is no viable (non-expired) Amazon Real-Time RT-PCR DTC Test for Detecting SARS-CoV-2 remaining in distribution in the United States and requested FDA revoke the authorization of the Amazon Real-Time RT-PCR DTC Test for Detecting SARS-CoV-2, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA210308 for the Amazon Real-Time RT-PCR DTC Test for Detecting SARS-CoV-2, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Amazon Real-Time RT-PCR DTC Test for Detecting SARS-CoV-2 is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

cc: Kenneth Bedsted, Director, Amazon Labs

U.S. FOOD & DRUG ADMINISTRATION

July 19, 2022

Jon Nakamoto
Amazon.com Services LLC
c/o Amazon Legal Dept
410 Terry Ave. N.
Seattle, WA 98109
Re: Revocation of EUA210480

Dear Jon Nakamoto:

This letter is in response to a request from STS Lab Holdco (a subsidiary of Amazon.com Services LLC), received July 11, 2022, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the Amazon Multi-Target SARS-CoV-2 Real-Time RT-PCR DTC Test issued on August 11, 2021, re-issued on January 26, 2022, and updated on December 17, 2021. FDA understands there is no viable (non-expired) Amazon Multi-Target SARS-CoV-2 Real-Time RT-PCR DTC Test remaining in distribution in the United States.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety. Because STS Lab Holdco (a subsidiary of Amazon.com Services LLC) has notified FDA that there is no viable (non-expired) Amazon Multi-Target SARS-CoV-2 Real-Time RT-PCR DTC Test remaining in distribution in the United States and requested FDA revoke the authorization of the Amazon Multi-Target SARS-CoV-2 Real-Time RT-PCR DTC Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA210480 for the Amazon Multi-Target SARS-CoV-2 Real-Time RT-PCR DTC Test, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Amazon Multi-Target SARS-CoV-2 Real-Time RT-PCR DTC Test is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

cc: Kenneth Bedsted, Director, Amazon Labs

U.S. FOOD & DRUG ADMINISTRATION

July 19, 2022

Jon Nakamoto
Amazon.com Services LLC
c/o Amazon Legal Dept
410 Terry Ave. N.
Seattle, WA 98109
Re: Revocation of EUA210481

Dear Jon Nakamoto:

This letter is in response to a request from STS Lab Holdco (a subsidiary of Amazon.com Services LLC), received July 11, 2022, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the Amazon Multi-Target SARS-CoV-2 Real-Time RT-PCR Test issued on August 11, 2021, and amended on December 17, 2021, and January 26, 2022. FDA understands there is no viable (non-expired) Amazon Multi-Target SARS-CoV-2 Real-Time RT-PCR Test remaining in distribution in the United States.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety. Because STS Lab Holdco (a subsidiary of Amazon.com Services LLC) has notified FDA that there is no viable (non-expired) Amazon Multi-Target SARS-CoV-2 Real-Time RT-PCR Test remaining in distribution in the United States and requested FDA revoke the authorization of the Amazon Multi-Target SARS-CoV-2 Real-Time RT-PCR Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA210481 for the Amazon Multi-Target SARS-CoV-2 Real-Time RT-PCR Test, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Amazon Multi-Target SARS-CoV-2 Real-Time RT-PCR Test is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

cc: Kenneth Bedsted, Director, Amazon Labs

Dated: August 22, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–18529 Filed 8–25–22; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0407–30D]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before September 26, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular

information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Submit requests to Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 264–0041. When submitting comments or requesting information, please include the document identifier OS–0990–0407–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Think Cultural Health (TCH) website Quality Improvement Effort.

Type of Collection: Reinstatement with Change.

OMB No.: 0990–0407.

Abstract: The Office of Minority Health (OMH), Office of the Secretary (OS), Department of Health and Human Services (HHS) is requesting approval by OMB on a reinstatement with change to a previously approved data collection. The Think Cultural Health (TCH) website is an initiative of the HHS OMH's Center for Linguistic and Cultural Competence in Health Care (CLCCHC) and is a repository of resources and tools to promote cultural and linguistic competency in health and health care. The TCH website offers a suite of e-learning programs that afford health and health care professionals the ability to earn continuing education credits through training in cultural and linguistic competency. The revision to this information collection request includes revisions to the online website registration form to streamline and change response options for some elements.

Need and Proposed Use of the Information: The data will be used to ensure that the offerings on the TCH website are relevant, useful, and appropriate to their target audiences. The findings from the data collection will be of interest to HHS OMH in supporting maintenance and revisions of the offerings on the TCH website.

Likely Respondents: Likely respondents are users of the TCH e-learning program(s) and/or e-resource(s). There are no requirements for annual, quarterly or monthly responses. A single respondent completes the registration process to access an e-learning program or e-resource on the website only one time and completes a course-specific evaluation form for each e-learning program course/unit or e-resource per completion. A respondent may be invited to participate in the follow-up survey, a focus group, or a key informant interview and will not be asked to participate in more than one follow-up activity (*i.e.,* survey, focus group, or key informant interview).

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Forms	Respondents	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
Registration Form	Health and Health Care Professionals.	9,460	1	3/60	473
Course/unit Evaluation Form	Health and Health Care Professionals.	9,460	1	5/60	788
Follow-Up Survey	Health and Health Care Professionals.	4,208	1	10/60	701
Focus Groups	Health and Health Care Professionals.	15	1	120/60	29
Key Informant Interviews	Health and Health Care Professionals.	13	1	60.60	13
Total		23,156			2,004

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–18415 Filed 8–25–22; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Career Development for Clinicians/Health Professionals Study Section Clinical career development.

Date: October 3–4, 2022.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maurizio Grimaldi, Ph.D., MD, Scientific Review Officer, Scientific Review Branch, NIA (National Institute on Aging), Gateway Building, Rm 2W200, 7201 Wisconsin Ave., Bethesda, MD 20892, 301–496–9374, *maurizio.grimaldi@nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 23, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18479 Filed 8–25–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Career Development for Established Investigators and Conference Grants Study Section.

Date: October 6, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–402–1622, *bissonettegb@mail.nih.gov*

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 23, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18475 Filed 8–25–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; AD\ADRD.

Date: October 31–November 1, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Bldg., Suite 2W200, Bethesda, MD 20892, (301) 496–9667, *prasadnb@nia.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 23, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18478 Filed 8–25–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Career Development Facilitating The Transition to Independence Study Section.

Date: October 13–14, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joshua Jin-Hyouk Park, Ph.D., Scientific Review Officer, Scientific Review Branch, NIA (National Institute on Aging), GWY BG RM 2W200, 7201 Wisconsin Ave., Bethesda, MD 20892, (301) 496–6208, *joshua.park4@nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 23, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18476 Filed 8–25–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Alcohol Abuse and Alcoholism, September 08, 2022, 11:00 a.m. to September 08, 2022, 05:00 p.m., National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20817 which was published in the **Federal Register** on July 28, 2022, FR Doc. 2022–16212, 87 FR 45347.

This notice is being amended to remove the visitor testing requirement for entering NIH facilities due to CDC updates published August 11, 2022,

regarding screening testing. The meeting is partially closed to the public.

Dated: August 23, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18411 Filed 8–25–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0345]

Port Access Route Study: The Pacific Coast From Washington to California

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability of draft study and request for comments.

SUMMARY: The Coast Guard announces the availability of the draft Pacific Coast Port Access Route Study (PAC–PARS) and requests public comments on the draft. This study evaluates safe access routes for the movement of vessel traffic proceeding to or from ports or places along the western seaboard of the United States and aims to determine whether a shipping safety fairway (''fairway'') and/or routing measures should be established, adjusted or modified.

DATES: Comments must be submitted to the online docket via *https://www.regulations.gov* on or before October 25, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0345 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email LCDR Sara Conrad, Coast Guard Pacific Area (PAC–54), U.S. Coast Guard; telephone (510) 437–3813, email *Sara.E.Conrad@uscg.mil* or Mr. Tyrone Conner, Eleventh Coast Guard District (dpw), U.S. Coast Guard; telephone (510) 437–2968, email *Tyrone.L.Conner@uscg.mil* or Mr. John Moriarty, Thirteenth Coast Guard District (dpw), U.S. Coast Guard; telephone (206) 220–7274, email *John.F.Moriarty@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Public Participation and Comments

We encourage you to submit comments regarding the results of the draft Pacific Coast Port Access Route Study. We will consider all submissions and may adjust our final action based on your comments. If you submit a comment, please include the docket number for this notice, 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 *http://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2021–0345 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 your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in docket. To view documents mentioned in this notice 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 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 in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Public Meeting

We plan to hold several public meetings to receive oral comments on this draft PAC–PARS. The dates, times, and locations will be announced on our project web page *Pacific Coast Port Access Route Study (PAC–PARS)* and via a separate document published in the **Federal Register**.

Background

The Ports and Waterways Safety Act, (PWSA)(46 U.S.C. 70003(c)(1)), authorizes the Commandant of the Coast Guard to designate necessary fairways and traffic separations schemes (TSSs) to provide safe access routes for vessels proceeding to and from United States ports. The designation of fairways and TSSs recognizes the paramount right of navigation over all other uses in the designated areas.

Before establishing or adjusting fairways, 46 U.S.C. 70003(c)(1) requires the Coast Guard to study potential traffic density and assess the need for safe access routes for vessels. During this process, the Coast Guard considers the views of the maritime community, environmental groups, and other stakeholders to reconcile the need for safe access routes with reasonable waterway uses. *See* 46 U.S.C. 70003(c)(3).

On July 29, 2021, the Coast Guard announced that the Coast Guard Pacific Area Command would conduct a Pacific Coast Port Access Route Study (PAC–PARS) (86 FR 40791). The study area encompasses all vessel traffic patterns approaching and departing major ports along the west coast to include all current Traffic Separation Schemes and vessel maneuvering along the Pacific Coast from Washington to California and all federal navigable waters out to the EEZ. The PAC–PARS is focused on vessel traffic and navigation mitigation techniques to improve and support safe navigation transits within the major Pacific Coast Ports and the United States EEZ.

The PAC–PARS aims to enhance navigational safety by examining existing shipping routes and waterway uses and, to the extent practicable, reconciling the paramount right of navigation within designated port access routes with other waterway uses such as the development of aquaculture farms, offshore renewable energy, commercial space ports/re-entry sites, marine sanctuaries, ports supporting Panamax vessels, potential LNG ports and additional commercial vessel traffic.

After analyzing current and historical vessel traffic, fishing vessel information, agency and stakeholder experience in vessel traffic management, navigation, ship handling, and effects of weather, we have determined that there is a need to establish voluntary fairways for coastwise and nearshore vessel traffic to promote safety of navigation in the study area. As part of the draft PAC–PARS report, which is available for public review in this docket, charts of the recommended fairways are included as Appendices I, II, and III. Examples of public notice and outreach documents are included in Appendices IV–XI. Two vessel traffic analyses, for coastal waters and port approaches, are included as

Enclosures 1 and 2, respectively. Earlier **Federal Register** announcements associated with this effort are included as Enclosures 3 and 4. Finally, the three memorandums from each Coast Guard command involved in this study are provided in Enclosures 5, 6, and 7. The draft and appendices can also be found on our project web page.

We request your comments on any aspect of this study. Information received during this additional public comment period may result in changes to the study's recommendations prior to any future rulemakings or appropriate international agreements.

This notice is issued under authority of 46 U.S.C. 70003(c)(1).

Dated: August 22, 2022.

A.J. Tiongson,

Vice Admiral, U.S. Coast Guard, Commander, Pacific Area.

[FR Doc. 2022–18453 Filed 8–25–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0013; OMB No. 1660–0061]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Federal Assistance to Individuals and Households Program

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of renewal and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. This notice seeks comments concerning FEMA's Individuals and Households Program, providing financial assistance to individuals whose primary residences were destroyed as a result of a Presidentially-declared disaster.

DATES: Comments must be submitted on or before September 26, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Brian Thompson, Supervisory Program Specialist, FEMA, Recovery Directorate by telephone at (540) 686–3602 or email at *Brian.Thompson6@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The *Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Public Law 93–288,* as amended, is the legal basis for the Federal Emergency Management Agency (FEMA) to provide financial assistance and services to individuals applying for disaster assistance benefits in the event of a federally declared disaster. Regulations in *44 CFR 206.110—Federal Assistance to Individuals and Households* (IHP) implements the policy and procedures set forth in section 408 of the *Stafford Act, 42 U.S.C. 5174,* as amended. This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured, necessary expenses and serious needs, and are unable to meet such expenses or needs through other means.

This proposed information collection previously published in the **Federal Register** on April 13, 2022, at 87 FR 21894 with a 60 day public comment period. FEMA received one comment.

Comment: ''There needs to be a limit on how long you allow those displaced to find new arrangements. The rebuilding time and building in a known flood zone simply does not make sense. The new development on the shore of an ocean and on the banks of rivers that will have new heights makes no sense at all. [FEMA] needs to look ahead as well as behind and prevent new development in flood zones.''

FEMA Response: An eligible applicant may receive Continued Temporary Housing Assistance based on their need and generally only when adequate, alternate housing is not available, or when the applicant's permanent housing plan has not been fulfilled through no fault of the applicant. While FEMA may provide financial temporary housing assistance up to 18 months, *i.e.,* the end of the period of assistance, FEMA generally expects that pre-disaster renters will use their initial Rental Assistance to obtain permanent housing and that all recipients of financial assistance will obtain and occupy permanent housing at the earliest possible time. Regardless, in order to receive Continued Temporary Housing Assistance, applicants must submit to FEMA documentation, showing they have a temporary housing need, and must continue to work toward obtaining permanent housing to remain eligible for Continued Temporary Housing Assistance.

With regard to flood zones and coastal areas, the National Flood Insurance Reform Act and FEMA regulations require applicants who receive Federal financial assistance to purchase flood insurance for future flood damage to any insurable property for acquisition or construction purposes. This requirement applies only to real and personal property that is, or will be, in a designated Special Flood Hazard Area (SFHA) and can be insured under the National Flood Insurance Program (NFIP). Applicants who live in a designated SFHA and receive Individuals and Households Program (IHP) assistance for Home Repair, Home Replacement, Personal Property, or Permanent Housing Construction (PHC) must obtain and maintain flood insurance coverage for at least the amount of disaster assistance they receive from FEMA for NFIP-insurable real or personal property items. Applicants may satisfy the insurance requirement by purchasing private insurance or a policy through the NFIP. Applicants who do not obtain and maintain flood insurance will be ineligible for IHP assistance for flood-damaged real or personal property in future disasters with flood-related damage.

The NFIP was created to reduce the impact of flooding on private and public structures by providing affordable insurance to property owners and by encouraging communities to adopt and enforce floodplain management regulations.

Further, the Coastal Barrier Resources Act (CBRA) protects coastal areas from development by limiting Federal financial assistance for development-related activities in designated Coastal Barrier Resources System (CBRS) areas. CBRS areas are coastal areas that protect valuable habitat for fish and wildlife and are subject to wave, wind, and tidal forces, and are mapped by the U.S. Fish and Wildlife Service. The CBRS contains two types of coastal barrier areas: CBRS Units and otherwise protected areas (OPAs). An eligible applicant whose pre-disaster primary

residence is located within a CBRS Unit may not be considered for Home Repair Assistance, Home Replacement Assistance, PHC, or certain types of Other Needs Assistance. Whereas an eligible applicant whose pre-disaster residence is located within an OPA may be considered for all forms of IHP assistance; however, the residence is also subject to NFIRA requirements for sanctioned communities and SFHAs, if applicable.

The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Federal Assistance to Individuals and Households Program.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0061.

FEMA Forms: FEMA Form FF–104–FY–21–114 (formerly 010–0–11), Individuals and Households Program (IHP)—Other Needs Assistance Administrative Option Selection; Development of State/Tribal Administrative Plan (SAP) for Other Needs Provision of IHP; FEMA Form FF–104–FY–21–115 (English) (formerly 010–0–12), Individuals and Households Program Application for Continued Temporary Housing Assistance; FEMA Form FF–104–FY–21–115–A (Spanish) (formerly 010–0–12S), Programa de Individuos y Familias Solicitud Para Continuar La Asistencia de Vivienda Temporera; Request for Approval of Late Registration; Appeal of Program Decision; FEMA Form FF–104–FY–21–116 (English) (formerly 009–0–95), Request for Advance Disaster Assistance; FEMA Form FF–104–FY–21–116–A (Spanish) (formerly 009–0–95S), Solicitud de Adelanto de la Asistencia por Desastre; FEMA Form FF–104–FY–21–117 (English) (formerly 009–0–96), Request to Stop Payment and Reissue Disaster Assistance Check; FEMA Form FF–104–FY–21–117–A (Spanish) (formerly 009–0–96S), Solicitud para Detener el Pago y Reemitir el Cheque de Asistencia por Desastre; FEMA Form FF–104–FY–21–118—(English) (formerly 140–003d–1S), Authorization for the Release of Information Under the Privacy Act; FEMA Form FF–104–FY–21–118–A—(Spanish) (formerly 140–003d–1S), Autorización para la Divulgación de Información bajo el Acta de Privacidad.

Abstract: This information collection provides disaster survivors the opportunity to request approval of late applications, continued temporary housing assistance, request advance disaster assistance, stop payments not received in order to be reissued funds, and to appeal program decisions. This collection also allows for the establishment of an annual agreement between FEMA and states, territories, and tribal governments regarding how the Other Needs Assistance provision of IHP will be administered: by FEMA, by the state, territory, or tribal government, or jointly. This collection allows survivors to provide additional information after the initial disaster assistance registration period in support of their applications for assistance from FEMA's IHP. If the information in this collection is not collected, a delay in assistance provided to disaster survivors would occur.

Affected Public: Individuals or households, State, local or Tribal government.

Estimated Number of Respondents: 67,785.

Estimated Number of Responses: 112,089.

Estimated Total Annual Burden Hours: 98,609.

Estimated Total Annual Respondent Cost: $3,906,709.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $1,109,953.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–18459 Filed 8–25–22; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0025; OMB No. 1660–0140]

Agency Information Collection Activities: Proposed Collection; Comment Request; Integrated Public Alert and Warning Systems (IPAWS) Memorandum of Agreement Applications

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension, with change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Integrated Public Alert and Warning Systems (IPAWS) Memorandum of Agreement Applications.

DATES: Comments must be submitted on or before October 25, 2022.

ADDRESSES: To avoid duplicate submissions to the docket, submit comments at *www.regulations.gov* under Docket ID FEMA–2022–0025. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Wade Witmer, Deputy for the Integrated Public Alert and Warning System (IPAWS) Program, FEMA, National Continuity Programs, (202) 646–2523, *wade.witmer@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Public Law 114–143, the Integrated Public Alert and Warning System Modernization Act of 2015, and Presidential Executive Order 13407, Public Alert and Warning System, establishes the policy for an effective, reliable, integrated, flexible, and comprehensive system to alert and warn the American people in situations of war, terrorist attack, natural disaster, or other hazards to public safety and wellbeing. The Integrated Public Alert and Warning System (IPAWS) is the Department of Homeland Security's response to the Executive Order. The Stafford Act (42 U.S.C. 5121, *et seq.,* Pub. L. 93–288, as amended) requires that FEMA make IPAWS available to Federal, State, and local agencies for the purpose of providing warning to governmental authorities and the civilian population in areas endangered by disasters. The information collected is used by FEMA to create a Memorandum of Agreement that regulates the management, operations, and security of the information technology system connection between a Federal, State, Tribal, territorial, or local alerting authority and IPAWS–OPEN (Open Platform for Emergency Notifications).

The IPAWS Public Alerting Authorization application captures information detailing which types of events the local jurisdiction wants to be configured to use IPAWS for and which primary dissemination channels should be available. For example, if a community wants to send a Civil Emergency message (CEM) to broadcast across radio, television, and cable, they will request ''CEM'' for ''EAS''—the Emergency Alert System. These requested permissions are reviewed by either the State or by Tribal authorities for compliance with established overall alerting policies and plans. IPAWS uses the approved information to configure permissions in IPAWS–OPEN.

Collection of Information

Title: Integrated Public Alert and Warning Systems (IPAWS) Memorandum of Agreement Applications.

Type of Information Collection: Extension, with change, of a currently approved information collection.

OMB Number: 1660–0140.

FEMA Forms: FEMA Form FF–302–FY–22–102 (formerly 007–0–25), IPAWS Memorandum of Agreement (MOA) Application; FEMA Form FF–302–FY–22–103 (formerly 007–0–26a/b), IPAWS Public Alerting Authority (PAA) Application.

Abstract: A Federal, State, Tribal, territorial, or local alerting authority that applies for authorization to use IPAWS is designated as a Collaborative Operating Group (COG) by the IPAWS Program Management Office (PMO). Access to IPAWS is free; however, to send a message using IPAWS, an organization must procure its own IPAWS compatible software. To become a COG, a Memorandum of Agreement governing system security must be executed between the sponsoring organization and FEMA.

Affected Public: State, Tribal, or local Government.

Estimated Number of Respondents: 841.

Estimated Number of Responses: 841.

Estimated Total Annual Burden Hours: 526.

Estimated Total Annual Respondent Cost: $34,527.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $123,164.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–18458 Filed 8–25–22; 8:45 am]

BILLING CODE 9111–AB–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7052–N–05]

60-Day Notice of Proposed Information Collection: Economic Development Initiative Community Project Funding Grants, OMB Control No.: 2506–0217

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* October 25, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Management Analyst, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5535 (this is not a toll-free number) or email at *anna.p.guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Holly A. Kelly Department of Housing and Urban Development, 451 7th Street, SW, (7128), Washington, DC 20410; telephone 202–402–6324, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Anna Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Economic Development Initiative Community Project Funding Grants.

OMB Approval Number: 2506–0217.

Type of Request: Revision of Currently Approved Collection.

Form Number: Application for Federal Assistance (SF–424); Assurances for Non-Construction Programs (SF–424B); Assurances for Construction Programs (SF–424D); Disclosure of Lobbying Activities (SF–LLL); Disclosure/Update Report (Form HUD–2880); Direct Deposit Sign-Up (SF–1199A); eLOCCS Access Authorization Form (HUD 27054); Change of Address Request (HUD 27056); and Grant Reporting (DRGR).

Description of the need for the information and proposed use:

Information collection	Number of respondents	Frequency of response	Responses per annual	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Application for Federal Assistance (SF–424)	0	0	0	0	0	0	0
Assurances for Non-Construction Programs (SF–424B)	0	0	0	0	0	0	0
Assurances for Construction Programs (SF–424D)	0	0	0	0	0	0	0
Disclosure of Lobbying Activities (SF–LLL)	0	0	0	0	0	0	0
Disclosure/Update Report (Form HUD–2880)	1,000	1	1,000	.5	500	$32.73	$16,365.00
Direct Deposit Sign-Up (SF–1199A)	0	0	0	0	0	0	0
eLOCCS Access Authorization Form (HUD 27054)	1,000	1	1,000	1	1,000	32.73	32,730.00
Change of Address Request (HUD 27056)	1,000	1	1,000	.5	500	32.73	16,365.00
Grant Reporting (DRGR)	1,000	2	2,000	3	6,000	32.73	196,380.00
Total	1,000	5	5,000	5	8,000	32.73	261,840.00

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

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

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Acting General Deputy Assistant Secretary for Community Planning and Development, Jemine A. Bryon, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Nacheshia Foxx, who is the Federal Register Liaison for HUD, for purposes of publication in the Federal Register.

Nacheshia Foxx,

Federal Register Liaison, Department of Housing and Urban Development.

[FR Doc. 2022–18398 Filed 8–25–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–47]

30-Day Notice of Proposed Information Collection: Comprehensive Listing of Transactional Documents for Mortgagors, Mortgagees and Contractors, OMB Control No.: 2502–0605

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* September 26, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *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: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

Copies of available documents submitted to OMB may be obtained from Mr. Hartung.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A and are available for review at: *www.hud.gov/232comments.* The following documents have been updated since the 60-Day Notice of Proposed Information Collection (FR–7038–N–17) as published on November 12, 2021. These documents include revisions for the implementation of the Section 232 Green Mortgage Insurance Premium as published in the **Federal Register** on May 19, 2022 (FR–6302–N–01): HUD–9001–ORCF, HUD–9002–ORCF, HUD–9003–ORCF, HUD–9004–ORCF, HUD–9005–ORCF, HUD–9005a–ORCF, HUD–9006–ORCF, HUD–9007–ORCF, HUD–9007a–ORCF, HUD–90013–ORCF, HUD–91124–ORCF, HUD–92466–ORCF,

HUD–92467–ORCF, HUD–92464–ORCF, HUD–92476–ORCF.

A. Overview of Information Collection

Title of Information Collection: Comprehensive Listing of Transactional Documents for Mortgagors, Mortgagees and Contractors.

OMB Approval Number: 2502–0605.

OMB Expiration Date: November 30, 2022.

Type of Request: Revision of a currently approved collection.

Form Numbers: HUD–9001–ORCF, HUD–9002–ORCF, HUD–9003–ORCF, HUD–9004–ORCF, HUD–9005–ORCF, HUD–9005a–ORCF, HUD–9006–ORCF, HUD–9007–ORCF, HUD–9007a–ORCF, HUD–9009–ORCF, HUD–90010–ORCF, HUD–90011–ORCF, HUD–9444–ORCF, HUD–90012–ORCF, HUD–90013–ORCF, HUD–90014–ORCF, HUD–90015–ORCF, HUD–90016–ORCF, HUD–90017–ORCF, HUD–90018–ORCF, HUD–90021–ORCF, HUD–9442–ORCF, HUD–90023–ORCF, HUD–91123–ORCF, HUD–91124–ORCF, HUD–91125–ORCF, HUD–91127–ORCF, HUD–91129–ORCF, HUD–92328–ORCF, HUD–92403–ORCF, HUD–92408–ORCF, HUD–92415–ORCF, HUD–92437–ORCF, HUD–92441–ORCF, HUD–92441a–ORCF, HUD–92442–ORCF, HUD–92448–ORCF, HUD–92450–ORCF, HUD–92452–ORCF, HUD–92452A–ORCF, HUD–92455–ORCF, HUD–92456–ORCF, HUD–92479–ORCF, HUD–92485–ORCF, HUD–92554–ORCF, HUD–93305–ORCF, HUD–95379–ORCF, HUD–2–ORCF, HUD–935.2D–ORCF, HUD–941–ORCF, HUD–9445–ORCF, HUD–9839–ORCF, HUD–90022–ORCF, HUD–90024–ORCF, HUD–91116–ORCF, HUD–91126–ORCF, HUD–91130–ORCF, HUD–92000–ORCF, HUD–92264a–ORCF, HUD–92434–ORCF, HUD–90020–ORCF, HUD–92322–ORCF, HUD–92211–ORCF, HUD–92331–ORCF, HUD–92333–ORCF, HUD–92334–ORCF, HUD–92335–ORCF, HUD–92336–ORCF, HUD–92337–ORCF, HUD–92339–ORCF, HUD–92340–ORCF, HUD–92341–ORCF, HUD–92342–ORCF, HUD–92343–ORCF, HUD–2205A–ORCF, HUD–91110–ORCF, HUD–91111–ORCF, HUD–91112–ORCF, HUD–91118–ORCF, HUD–91710–ORCF, HUD–92023–ORCF, HUD–92070–ORCF, HUD–92071–ORCF, HUD–92223–ORCF, HUD–92323–ORCF, HUD–92324–ORCF, HUD–92330–ORCF, HUD–92330A–ORCF, HUD–92420–ORCF, HUD–92435–ORCF, HUD–92466–ORCF, HUD–92466A–ORCF, HUD–92468–ORCF, HUD–94000–ORCF, HUD–94000–ORCF–ADD, HUD–94000B–ORCF, HUD–94001–ORCF, HUD–94001–ORCF–RI, HUD–9443–ORCF, HUD–91071–ORCF, HUD–91128–ORCF, HUD–92412–ORCF, HUD–92414–ORCF, HUD–92464–ORCF, HUD–92476–ORCF, HUD–92476B–ORCF, HUD–92476C–ORCF, HUD–91117–ORCF, HUD–91725–ORCF, HUD–91725–INST–ORCF, HUD–91725–CERT–ORCF,HUD–92325–ORCF, HUD–92327–ORCF, HUD–1044–D–ORCF, HUD–2537–ORCF, HUD–2747–ORCF, HUD–9250–ORCF, HUD–9807–ORCF, HUD–90019–ORCF, HUD–90029–ORCF, HUD–90030–ORCF, HUD–90031–ORCF, HUD–90032–ORCF, HUD–90033–ORCF, HUD–92080–ORCF, HUD–92117–ORCF, HUD–92228–ORCF, HUD–92266–ORCF, HUD–92266A–ORCF, HUD–92266B–ORCF, HUD–92417–ORCF, HUD–93332–ORCF, HUD–93333–ORCF, HUD–93334–ORCF, HUD–93335–ORCF, HUD–93479–ORCF, HUD–93480–ORCF, HUD–93481–ORCF, HUD–93486–ORCF, HUD–91116A–ORCF, HUD–92211A–ORCF, HUD–92323A–ORCF, HUD–92324A–ORCF, HUD–92333A–ORCF, HUD–92338–ORCF, HUD–92340A–ORCF, HUD–92434A–ORCF, HUD–92441B–ORCF, HUD–92467–ORCF, HUD–92467A–ORCF, HUD–94000A–ORCF, HUD–94001A–ORCF.

Description of the need for the information and proposed use: The issuance of this notice is modeled on the public review and input process that HUD utilized in the establishment of the healthcare facility documents for Section 232 of the National Housing Act (Section 232) program. The collection includes documents comprising the application for FHA mortgage insurance of residential care facilities, and for servicing of the mortgages. The information is submitted from HUD-approved mortgagees, sponsors, mortgagors and contractors. The included documents are necessary for the application, review, commitment, initial/final endorsement, administration, servicing, technical oversight and audit of the Office of Residential Care Facilities projects pursuant to FHA Programs 232, 241, 223(f), 223(a)(7), 223(d) and 232(i) as authorized by the National Housing Act (sections 232, 241.)

Respondents: Businesses or other for profits.

Estimated Number of Respondents: 5,451.

Estimated Number of Responses: 27,163.

Frequency of Response: 730.

Average Hours per Response: 5.32.

Total Estimated Burden: 50,122.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

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

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2022–18414 Filed 8–25–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–46]

30-Day Notice of Proposed Information Collection: Requisition for Disbursements of Sections 202 & 811 Capital Advance/Loan Funds OMB No.: 2502–0187

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* September 26, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *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: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 25, 2021 at 86 FR 58922.

A. Overview of Information Collection

Title of Information Collection: Requisition for Disbursement of Sections 202 & 811 Capital Advance/Loan Funds.

OMB Approval Number: 2502–0187.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Form Numbers: HUD–92403–CA and HUD–92403–EH.

Description of the need for the information and proposed use: Owner entities submit requisitions to HUD during construction to obtain Section 202/811 capital advance/loan funds. This collection helps to identify the owner, project, type of disbursement, items covered, name of the depository, and account number.

Respondents: Affected Public.

Estimated Number of Respondents: 178.

Estimated Number of Responses: 356.

Frequency of Response: 4.

Average Hours per Response: .50.

Total Estimated Burden: 178.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

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

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2022–18416 Filed 8–25–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAK3003100/A0C904040.99990]

Annual Meeting of Federal Partners and Tribal 477 Workgroup Under Indian Employment, Training and Related Services Act of 2017

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Bureau of Indian Affairs (BIA), announces the annual meeting of Federal agencies and Tribes that participate in the Indian Employment, Training, and Related Services Act of 2017 also known as the ''Public Law 477 Work Group.'' The meeting will be conducted virtually via MS Teams and by telephone.

DATES:

- *Meeting:* The annual Federal Partner and Tribal 477 Work Group meeting will be held on Monday, September 12, 2022, from 2:00 p.m. to 4 p.m. Eastern Daylight Time (EDT).
- *Comments:* Interested persons are invited to submit comments on or before October 25, 2022. Please see **ADDRESSES** below for details on how to submit written comments.

ADDRESSES: All Work Group activities and meetings will be conducted online and by phone. See the **SUPPLEMENTARY INFORMATION** section of this notice for directions to join MS Teams and by telephone. Send your comments to Johnna Blackhair, Acting Deputy Bureau Director, Indian Services, Bureau of Indian Affairs, 849 C Street NW, MS–3645–MIB, Washington, DC 20240; or by email to *Johnna.Blackhair@bia.gov.* Please reference the Public Law 477 Work Group in the subject line of your email.

FOR FURTHER INFORMATION CONTACT: Johnna Blackhair, Acting Deputy Bureau Director, Indian Services, Bureau of Indian Affairs, *Johnna.Blackhair@bia.gov* (202) 513–7640.

SUPPLEMENTARY INFORMATION: The annual Federal Partner and Tribal 477 Work Group meeting will be held virtually by MS Teams video conference using the Teams link provided below or by audio only using the call-in and passcode identified below.

Background

In 2017, Congress enacted the Indian Employment Training and Related Services Consolidation Act of 2017, Public Law 115–93, codified at 25 U.S.C. 3401–3417 (''2017 Act''). The 2017 Act amended and expanded the Indian Employment and Related Services Demonstration Act of 1992, Public Law 102–477 by, in part, identifying twelve Federal agencies that are now subject to the amended law (as amended by the 2017 Act, ''PL477'').

Under PL477, Tribes may propose to integrate eligible grant programs from the Departments of the Interior, Agriculture, Commerce, Education, Energy, Health & Human Services, Homeland Security, Housing & Urban Development, Justice, Labor, Transportation, and Veterans Affairs, consolidate and reprogram grant funds in accordance with a single plan, budget, and report approved by the Secretary of the Interior (''477 Plan''). As required by PL477, the Department of the Interior and its eleven partner Federal agencies entered into a Memorandum of Agreement (MOA) governing the implementation of PL477. That MOA is being renegotiated among the twelve Federal partners and Tribal representatives.

Annual Meeting

As directed by PL477, the meeting will be co-chaired by the Assistant Secretary—Indian Affairs, Bryan

Newland, and the 477 Tribal Workgroup Committee Co-Chairs, Margaret Zientek (Contiguous 48) and Holly Morales (Alaska). The meeting will be held virtually, and the agenda will include:

I. Status of renegotiated Memorandum of Agreement
II. Status of Labor Force Report
III. Summary Status of Participating 477 Tribes (FY 2022)
A. 477 Programs Integrated
B. Plan Approval/Denial Process
C. Waiver Approvals/Denials
D. Fund Transfer
E. Annual Reports—Annual Report Roll Up/Statistical and Financial Summary
F. Discussion of OMB 1076–0135 (version 2) Reporting Form (extended to 02–28–24)
IV. Tribal Recognitions
V. 2022 Report(s) from the 12 Federal Partners
VI. Miscellaneous
A. Establish Annual Meeting and Bi-monthly meeting between Tribes and Federal agencies
B. Discussion of Procedures for updating the 477 Annual Report form
C. Forum and Discussion regarding Conflict Resolution
VII. Adjourn

Virtual Meeting Access

To join and participate in the virtual meeting, please use the following connection information:

- *Virtual (via MS Teams): https://teams.microsoft.com/l/meetup-join/19%3ameeting_OWQ0Njc0YzAtNjk3NS00NGI3LTljZTQtNzgxMDc2ZDM4ZTAz%40thread.v2/0?context=%7b%22Tid%22%3a%220693b5ba-4b18-4d7b-9341-f32f400a5494%22%2c%22Oid%22%3a%228c3cb591-9152-407a-a266-1d4d82c42be6%22%7d*
- *Meeting ID:* 266 231 890 013
- *Passcode:* aiNWGU

Audio Meeting Access

To join and participate in the virtual meeting, please use the following connection information:

- *Call in (audio only):* (202) 640–1187
- *Passcode:* 189 696 857#

Authority

This notice is published in accordance with 25 U.S.C. 3410(a)(3)(B)(i).

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–18464 Filed 8–25–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2231A2100DD/AAKC001030/A0A501010.999900]

Advisory Board of Exceptional Children

AGENCY: Bureau of Indian Affairs, Interior

ACTION: Notice of meeting.

SUMMARY: The Bureau of Indian Education (BIE) is announcing that the Advisory Board for Exceptional Children will hold a two-day in-person and virtual meeting. The purpose of the meeting is to meet the mandates of the Individuals with Disabilities Education Act of 2004 (IDEA) for Indian children with disabilities.

DATES: The BIE Advisory Board meeting will be held Thursday, September 15, 2022 from 8:00 a.m. to 4:45 p.m., Eastern Daylight Time (EDT); and Friday, September 16, 2022 from 8:00 a.m. to 4:30 p.m., Eastern Daylight Time (EDT).

ADDRESSES:

- *Meeting:* The public meeting will be held at the 7th floor South Penthouse room, located between the 7200 and 7300 corridors, at Department of the Interior, 1849 C Street NW, Washington, DC 20240. For individuals who are not able to attend the meeting in-person, the meetings will also be conducted virtually. See the **SUPPLEMENTARY INFORMATION** section of this notice for information on how to join the meeting.
- *Comments:* Public comments can be emailed to the DFO at *Jennifer.davis@bie.edu;* or faxed to (602) 265–0293 Attention: Jennifer Davis, DFO; or mailed or hand delivered to the Bureau of Indian Education, Attention: Jennifer Davis, DFO, 2600 N Central Ave., 12th floor, Suite 2500, Phoenix, AZ 85004. Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis, Designated Federal Officer, Bureau of Indian Education, 2600 N Central Ave., 12th floor, Suite 250, Phoenix, AZ 85004, *Jennifer.davis@bie.edu,* or (202) 860–7845. 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.

SUPPLEMENTARY INFORMATION: The Advisory Board was established under the Individuals with Disabilities Act of 2004 (20 U.S.C. 1400 *et seq.*) to advise the Secretary of the Interior, through the Assistant Secretary-Indian Affairs, on the needs of Indian children with disabilities. All meetings, including virtual sessions (webinar and phone), are open to the public in their entirety. Interested persons are invited to submit comments for the Advisory Board. Comments submitted prior to the meeting will be provided to the Advisory Board in advance for consideration. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Agenda

The following general agenda items will be for the September 15, 2022 and September 16, 2022 meeting. A detailed agenda will be posted on the BIE website 24 to 48 hours prior to the first meeting day at *https://www.bie.edu/landing-page/special-education.* The discussions and reports are regarding special education topics for children with disabilities within the BIE school system:

- Discussions with the Office of the Assistant Secretary-Indian Affairs, U.S. Department of the Interior.
- Discussions with the U.S. Department of Education/Office of Special Education and Rehabilitative Services (OSERS)/and Office of Special Education Programs (OSEP).
- Updates from the BIE Central Office.
- Updates from the BIE/Division of Performance and Accountability (DPA)/Special Education Program.
- Updates from the BIE Office of Sovereignty in Indian Education.
- The Advisory Board members will be working on and finalizing the 2022 annual report.
- Orientation for the Advisory Board members.
- Three Public Commenting Sessions will be provided during both meeting days.
  - On Thursday, September 15, 2022 two sessions (15 minutes each) will be provided, 11:15 a.m. to 11:30 a.m. EDT; and 2:15 p.m. to 2:30 p.m. EDT. Public

comments can be provided in-person, webinar, or telephone conference call.

○ On Friday, September 16, 2022 one 15-minute session will be provided, 11:45 a.m. to 12:00 p.m. EDT. Public comments can be provided in-person, webinar, or telephone conference call.

Meeting Access

To access the two-day in-person and virtual meeting (Thursday, September 15, 2022 and Friday, September 16, 2022) you can join through any of the following means.

Join Meeting by webinar: https://www.zoomgov.com/j/1618293969?pwd=VWltN0IvYVRtQTRGTE1HMy9QVUMrdz09.

Meeting ID: 161 829 3969.

Passcode: 982875.

Join Meeting by phone:

One tap mobile: +16692 545252,,1618293969#,,,,*982875# US (San Jose). +16692161590,,161829 3969#,,,,*982875# US (San Jose).

Dial by your location: +1 669 254 5252 US (San Jose); +1 669 216 1590 US (San Jose); +1 646 828 7666 US (New York); +1 551 285 1373 US).

Meeting ID: 161 829 3969.

Passcode: 982875.

Find your local number: https://www.zoomgov.com/u/adPtsqdJT6.

Authority: 5 U.S.C. appendix 5; 20 U.S.C. 1400 *et seq.*

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–18465 Filed 8–25–22; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1325]

Institution of Investigation; Certain Soft Projectile Launching Devices, Components Thereof, Ammunition, and Products Containing Same

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 21, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Hasbro, Inc. of Pawtucket, Rhode Island and Spin Master, Inc. of Los Angeles, California. Supplements to the complaint were filed on July 29, 2022, and August 3, 2022. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain soft projectile launching devices, components thereof, ammunition, and products containing same by reason of the infringement of certain claims of U.S. Patent No. 8,371,282 (''the '282 patent'') and U.S. Patent No. 8,640,683 (''the '683 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained 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 at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 22, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–15 and 17–21 of the '282 patent and claims 1–6 and 10–15 of the '683 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''projectile launchers designed to launch ammunition made of a hydrated super absorbent polymer (SAP) material, components of such projectile launchers, SAP ammunition for use in connection with such projectile launchers, and products containing same'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Hasbro, Inc., 1027 Newport Avenue, Pawtucket, RI 02861

Spin Master, Inc., 5880 W. Jefferson Blvd., Los Angeles, CA 90016

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Shenzhen Yi Jin Electronics Science, 101–501, Building 10, Dawang Industrial Park, No. 66, Xin Xia Road, Shan Xia Community, Longgang District, Shenzhen City, Guangdong Province, China 518111

Guangdong Yu Lee Technology Corporation, No 357 Qingfeng Rd, QingXi Town, Dongguan City, Guangdong Province, China 523645

Yu Lee Company Ltd., 1801–5, 18/F., King Palace Plaza, 52A Sha Tsui Rd, Tsuen Wan, N.T. Hong Kong

Gel Blaster, Inc. f/k/a Gel Blaster, LLC, 5000 Plaza on the Lake, Suite 265, Austin, Texas 78746

S-Beam Precision Products Ltd., Building D & E, Dongcheng Industrial Park, Xinping 2nd Road, Mingzhong Town, Zhongshan City, Guangdong Province, China 528441

Splat-R-Ball, LLC, 1700 N 2nd St, Rogers, Arkansas 72756

Daisy Manufacturing Company, 1700 N 2nd St, Rogers, Arkansas 72756

Prime Time Toys Ltd., Suite 5 2/F Kwong Sang Hong Centre, 151–153 Hoi Bun Rd, Kwun Tong, Hong Kong SAR

Prime Time Toys LLC, 200 Wanaque Ave, Suite 101, Pompton Lakes, New Jersey 07442

Easebon Services Ltd., Suite 5 2/F Kwong Sang Hong Centre, 151–153 Hoi Bun Rd, Kwun Tong, Hong Kong SAR

(c) The Office of Unfair Import Investigations, U.S. International Trade

Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainants of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 22, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–18370 Filed 8–25–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Outdoor and Semi-Outdoor Electronic Displays, Products Containing Same, and Components Thereof, DN 3636;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Katherine M. Hiner, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Manufacturing Resources International, Inc. on August 19, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of regarding certain outdoor and semi-outdoor electronic displays, products containing same, and components thereof. The complainant names as respondents: Samsung Electronics Co., Ltd. of Korea; Samsung Electronics America, Inc. of Ridgefield Park, NJ; Samsung SDS Co. Ltd. of Korea; Samsung SDS America, Inc. of Ridgefield Park, NJ; Coates Signco Pty Limited of Australia; Coates Visual LLC of Chicago, IL; and Industrial Enclosure Corporation d/b/a Palmer Digital Group of Aurora, IL. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders and impose a bond upon respondent's alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3636'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing

Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: August 22, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–18369 Filed 8–25–22; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 1 meeting of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to this meeting can be obtained from Daniel Beattie, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506; *beattied@arts.gov,* or call 202/682–5688.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chair of the NEA on March 11, 2022, this session will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meeting is:

Literature Fellowships (review of applications): This meeting will be closed.

Date and time: September 13, 2022, 2 p.m. to 4:00 p.m.

Dated: August 22, 2022.

Daniel Beattie,

Director, National Endowment for the Arts.

[FR Doc. 2022–18382 Filed 8–25–22; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8943; NRC–2022–0153]

Crow Butte Resources, Inc.; In Situ Uranium Recovery Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental assessment supplement and finding of no significant impact; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft finding of no significant impact (FONSI) and accompanying draft supplement to the NRC staff's environmental assessment (EA) for the license renewal of the Crow Butte Resources, Inc. (CBR) in situ uranium recovery (ISR) facility located in Dawes County, Nebraska. Based on the analysis in the draft EA Supplement, the NRC staff has preliminarily concluded that there will be no significant impacts to cultural resources from the renewal of CBR's license and, therefore, a finding of no significant impact (FONSI) remains appropriate.

DATES: Submit comments by September 26, 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–2022–0153. 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:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.
- *Email comments to: CrowButte-LicRenSEA@nrc.gov.*

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: Jean Trefethen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0867; email: *Jean.Trefethen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0153 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this action by the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0153.
- *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 draft Supplemental EA can be found in ADAMS under Accession No. ML22223A161.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's Public Document Room (PDR), Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.
- *Project Website:* Information related to the CBR project can be accessed on the NRC's CBR website at *https://www.nrc.gov/info-finder/materials/uranium/licensed-facilities/crow-butte.html.* Under the section titled ''Operating,'' scroll down to ''Key Documents'' and click on Draft EA, Draft Report for Comment.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0153 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

The NRC is issuing for public comment the draft FONSI and accompanying draft Supplement to the NRC staff's EA for the license renewal of CBR's ISR facility. The draft Supplement describes the NRC staff's efforts to address the deficiencies identified in the Atomic Safety and Licensing Board's partial initial decision (LBP–16–7), which found that the NRC staff did not meet its identification obligations under the National Historic Preservation Act (NHPA) and was deficient under the National Environmental Policy Act (NEPA) ''for failing to take a hard look at potential TCPs [traditional cultural properties] within the Crow Butte license area[.]'' Specifically, the Supplement describes the methodology, implementation, and results of the 2021 tribal cultural survey to identify sites of significance to the Oglala Sioux Tribe. It also documents the NRC staff's evaluation of the identified sites according to the criteria for listing in the National Register of Historic Places (NRHP) and the NRC staff's assessment of potential impacts of the license renewal on the identified sites under the NHPA (for sites eligible for the NRHP) or NEPA (for other sites of significance to the Tribe). Based on these evaluations in the EA Supplement, the NRC staff preliminarily concludes that there will be no significant impacts to cultural resources identified during the 2021 tribal cultural survey. Accordingly, based on the 2014 EA and the draft EA Supplement, the staff has preliminarily concluded that an environmental impact statement is not necessary and a FONSI remains appropriate.

III. Draft Finding of No Significant Impact

Based on its review of the proposed action, in accordance with the requirements in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC staff has preliminarily concluded that the proposed action, renewal of NRC Source Materials License No. SUA–1534 for CBR's ISR facility located in Crawford, Nebraska, will not have a significant impact on the cultural resources discussed in the EA Supplement and will not significantly affect the quality of the human environment. Therefore, the NRC staff has preliminarily determined, pursuant to 10 CFR 51.31, that preparation of an environmental impact statement is not required for the proposed action and a FONSI is appropriate.

Dated: August 23, 2022.

For the Nuclear Regulatory Commission.

John M. Moses,

Deputy Director, Division of Rulemaking, Environmental and Financial Support, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2022–18435 Filed 8–25–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–255 and 72–007; NRC–2022–0158]

Holtec Decommissioning International, LLC, Palisades Nuclear Plant, Post-Shutdown Decommissioning Activities Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt; availability; public meeting; and request for comment.

SUMMARY: On December 23, 2020, Holtec Decommissioning International, LLC (HDI) submitted to the U.S. Nuclear Regulatory Commission (NRC) a letter enclosing the post-shutdown decommissioning activities report (PSDAR) for the Palisades Nuclear Plant (Palisades), contingent upon the transfer of the Palisades license to HDI. The PSDAR, which includes the site-specific decommissioning cost estimate (DCE), provides an overview of HDI's planned activities, schedule, projected costs, and environmental impacts for the decommissioning of the Palisades. The Palisades license transfer transaction closed on June 28, 2022. Accordingly, the NRC is noticing receipt of the PSDAR and making it available for public comment. The NRC will hold a public meeting in the vicinity of the Palisades site to discuss the PSDAR's content and receive comments.

DATES: Submit comments by December 27, 2022. Comments received after this date will be considered, if it is practical to do so, but the NRC is able to ensure consideration only for comments

received on or before this date. The public meeting will be held on Thursday, September 22, 2022, from 6:00 p.m. until 8:00 p.m. Central Time (CT), at the South Haven campus of Lake Michigan College, located at 125 Veterans Boulevard, in South Haven, Michigan. The public meeting is also accessible through an online webinar. See Section III, ''Request for Comment and Public Meeting,'' of this document for additional information.

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–2022–0158. 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:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Marlayna Doell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone: 301–415–3178; email: *Marlayna.Doell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0158 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–2022–0158.
- *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 Palisades PSDAR is available in ADAMS under Accession No. ML20358A232.
- *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. Eastern Time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0158 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

HDI has the authority to conduct licensed activities under Renewed Facility Operating License No. DPR 20 for Palisades and the general license for the Palisades independent spent fuel storage installation. These licenses provide, among other things, that the respective facilities are subject to all rules, regulations, and orders of the NRC now or hereafter in effect. Palisades is a pressurized-water reactor located in Covert, Michigan, in Van Buren County, that is permanently shut down.

On December 23, 2020, HDI submitted to the NRC the PSDAR for Palisades, contingent upon the transfer of the Palisades license to HDI. Paragraph 50.82(a)(4)(i) of title 10 of the *Code of Federal Regulations* (10 CFR), ''Termination of license,'' states that a PSDAR must contain a description of the planned decommissioning activities along with a schedule for their accomplishment, a discussion that provides the reasons for concluding that the environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate previously issued environmental impact statements, and a site-specific DCE, including the projected cost of managing irradiated fuel. The Palisades license transfer transaction closed on June 28, 2022. Accordingly, pursuant to 10 CFR 50.82(a)(4)(ii), the NRC is noticing receipt of the PSDAR and making it available for public comment.

III. Request for Comment and Public Meeting

The NRC is requesting public comments on the PSDAR, including the DCE, for Palisades. The NRC is planning to hold a public meeting in the vicinity of Palisades to discuss the PSDAR's content and receive comments on Thursday, September 22, 2022, from 6:00 p.m. until 8:00 p.m. (CT), at the at the South Haven campus of Lake Michigan College, located at 125 Veterans Boulevard, in South Haven, Michigan. Please contact Marlayna Doell no later than September 9, 2022, if accommodations or special equipment is needed to attend or to provide comments. Additional information regarding the public meeting, including webinar information, will be posted on the NRC's public meeting website at least 10 calendar days before the meeting. The NRC's public meeting website is located at *https://www.nrc.gov/public-involve.html.* The NRC requests that comments that are not provided during the meeting be submitted as noted in Section I, ''Obtaining Information and Submitting Comments,'' of this document in writing by December 27, 2022.

Dated: August 22, 2022.

For the Nuclear Regulatory Commission.

Shaun M. Anderson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–18387 Filed 8–25–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2020–15]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 30, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2020–15; *Filing Title:* USPS Notice of Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Contract 67, Filed Under Seal; *Filing Acceptance Date:* August 19, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 30, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–18456 Filed 8–25–22; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–655, OMB Control No. 3235–0717]

Proposed Collection; Comment Request; Extension: Exchange Act Rule 3a71–3

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 3a71–3 (17 CFR 240.3a71–3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

The compliance date for Rule 3a71–3 was in November 2021. The representations contemplated by Rule 3a71–3 will be relied upon by counterparties to determine whether such transaction is a ''transaction conducted through a foreign branch'' of a U.S. bank counterparty, as defined in Rule 3a71–3(a)(3)(i), as well as to verify whether a security-based swap counterparty is a ''U.S. person.'' Counterparties to security-based swap transactions may voluntarily give such representations to one another to reduce operational costs and allow each party to ascertain whether such transaction is subject to certain Title VII requirements. Because any representations provided to counterparties under Rule 3a71–3 will constitute voluntary third-party disclosures, the Commission will not typically receive these disclosures.

The Commission believes that the representations contemplated by Rule 3a71–3 will, in most cases, be made through amendments to the parties' existing trading documentation (*e.g.,* the schedule to a master agreement). The Commission believes that, because trading relationship documentation is established between two counterparties, whether a counterparty is able to represent that it is entering into a ''transaction conducted through a foreign branch'' or that it does not meet the criteria of the ''U.S. person'' definition will not change on a transaction-by-transaction basis and, therefore, such representations will generally be made in the schedule to a master agreement, rather than in individual confirmations. The Commission anticipates that counterparties may elect to develop and incorporate these representations in trading documentation following the effective date of the Commission's security-based swap regulations, rather than incorporating specific language on a transactional basis. The Commission believes that counterparties will be able to adopt, where appropriate, standardized language across all of their security-based swap trading relationships. The Commission believes that this standardized language may be developed by individual respondents or through a combination of trade associations and industry working groups.

a. Representations Regarding a ''Transaction Conducted Through a Foreign Branch''

Pursuant to Rule 3a71–3, parties to security-based swaps are permitted to

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

rely on certain representations from their counterparties when determining whether a transaction falls within the definition of a ''transaction conducted through a foreign branch.'' Based on its understanding of the current state of the security-based swap market, the Commission staff estimates that nine entities will incur burdens under this collection of information, whether solely in connection with the business conduct requirements or also in connection with the application of the *de minimis* exception.

The Commission estimates the one-time third-party disclosure burden associated with developing representations under this collection of information will be, for each U.S. bank counterparty that will make such representations, no more than five hours, and up to $2,000 for the services of outside professionals. Across the nine respondents, this amounts to approximately 45 hours, or 15 hours per year when annualized over three years. This estimate assumes little or no reliance on standardized disclosure language.

The Commission expects that the majority of the burden associated with the new disclosure requirements will be experienced during the first year as language is developed and trading documentation is amended. The Commission further believes that the ongoing third-party disclosure burden associated with this requirement will be 10 hours per U.S. bank counterparty for verifying representations with existing counterparties, for a total of approximately 90 hours across the nine respondents.[1]

The Commission believes that some of the entities that will comply with Rule 3a71–3 will seek outside counsel to help them develop new representations contemplated by Rule 3a71–3. For PRA purposes, the Commission assumes that all nine respondents will seek outside counsel for the first year only and will, on average, consult with outside counsel for a cost of up to $2,000. The Commission also assumes that none of the nine respondents will seek outside legal services for year two or year three. Thus, the Commission expects the aggregate cost to the nine respondents over the three-year period will be $18,000, or $6,000 per year when annualized over three years. The Commission expects the total labor cost per respondent will be approximately $666.67 when annualized over three years.

b. Representations Regarding U.S.-Person Status

Pursuant to Rule 3a71–3(a)(4)(iv), persons may rely on representations from a counterparty that the counterparty does not satisfy the criteria defining U.S. person set forth in Rule 3a71–3(a)(4)(i), unless such person knows or has reason to know that the representation is not accurate. Commission staff has estimated, based on its understanding of OTC derivatives markets, including the domiciles of counterparties that are active in the market, that approximately 3,000 entities will provide representations that they do not meet the criteria necessary to be U.S. persons.

As with representations regarding whether a transaction is conducted through a foreign branch, the Commission estimates the maximum total third-party disclosure burden associated with developing new representations will be, for each counterparty that will make such representations, no more than five hours and up to $2,000 for the services of outside professionals. Across the 3,000 respondents, this aggregates to a maximum of approximately 15,000 hours, or 5,000 hours per year when annualized over three years. This estimate assumes little or no reliance on standardized disclosure language.

The Commission expects that the majority of the burden associated with the disclosure requirements will be experienced during the first year as language is developed and trading documentation is amended. After the new representations are developed and incorporated into trading documentation, the Commission believes that the annual third-party disclosure burden associated with this requirement will be no more than approximately 10 hours per counterparty for verifying representations with existing counterparties and onboarding new counterparties. Across the 3,000 respondents, this aggregates to a maximum of approximately 30,000 hours.

The Commission believes that some of the entities that comply with Rule 3a71–3 will seek outside counsel to help them develop new representations. For PRA purposes, the Commission assumes that all 3,000 respondents will seek outside legal for the first year only and will, on average, consult with outside counsel for a cost of up to $2,000. The Commission also assumes that none of those 3,000 respondents will seek outside legal services for year two or year three. Thus, the Commission expects that the aggregate cost over those 3,000 respondents over the three-year period will be $6 million, or $2 million per year when annualized over three years,. The Commission expects the total labor cost per respondent will be approximately $666.67 when annualized over three years.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing by October 25, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 22, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–18386 Filed 8–25–22; 8:45 am]

BILLING CODE 8011–01–P

[1] The Commission staff estimates that this burden will consist of 10 hours of in-house counsel time for each security-based swap market participant that will make such representations. See Business Conduct Adopting Release, at 30097, note 1581.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–255, OMB Control No. 3235–0305]

Submission for OMB Review; Comment Request; Extension: Rule 13e–1

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously

approved collection of information discussed below.

Rule 13e–1 (17 CFR 240.13e–1) under the Securities Exchange Act of 1934 (U.S.C. 78 *et seq.*) makes it unlawful for an issuer who has received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Exchange Act to purchase any of its equity securities during the tender offer, unless it first files a statement with the Commission containing information required by the rule. This rule is in keeping with the Commission's statutory responsibility to prescribe rules and regulations that are necessary for the protection of investors. Public companies are the respondents. We estimate that it takes approximately 10 burden hours per response to provide the information required under Rule 13e–1 and that the information is filed by approximately 10 respondents. We estimate that 25% of the 10 hours per response (2.5 hours) is prepared by the company for a total annual reporting burden of 25 hours (2.5 hours per response × 10 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by September 26, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: August 22, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–18385 Filed 8–25–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Tribal Consultation for Ownership and Control and Contractual Assistance; Requirements for the 8(a) Business Development (BD) Program and other Planned 8(a) BD Program Regulatory Proposals

AGENCY: Small Business Administration.

ACTION: Notice of tribal consultation meeting; request for comments.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) announces that it is holding tribal consultation meetings in Anchorage, Alaska, Albuquerque, New Mexico, Oklahoma City, Oklahoma and Washington, DC, as well as a Listening Session in Honolulu, Hawaii, concerning forthcoming proposed revisions to the 8(a) Business Development (BD) program regulations. Additionally, SBA requests comments and input on how best to propose several program policies the Agency is contemplating that would impact Alaska Native Corporations (ANC), tribes, Native Hawaiian Organizations (NHO) (collectively, ''entities''), and 8(a) Participants owned by such entities. Testimony presented at these tribal consultations will become part of the administrative record for SBA's consideration when the Agency deliberates on approaches to changes in the 8(a) BD program regulations.

DATES: The Tribal Consultation meeting dates are as follows:

1. Wednesday, September 14, 2022, 9:00 a.m. to 2:30 p.m. (AKDT), Anchorage, Alaska. Pre-registration for this Tribal Consultation meeting is requested by September 9, 2022.

2. Tuesday, September 20, 2022, 10:00 a.m. to 3:00 p.m. (MDT), Albuquerque, New Mexico. Pre-registration for this Tribal Consultation meeting is requested by September 16, 2022.

3. Thursday, September 22, 2022, 10:00 a.m. to 3:00 p.m. (CDT), Oklahoma City, Oklahoma. Pre-registration for this Tribal Consultation meeting is requested by September 19, 2022.

4. Wednesday, October 5, 2022, 10:00 a.m. to 3:00 p.m. (EDT), Washington, DC. Pre-registration for this Tribal Consultation meeting is requested by September 30, 2022.

5. The Listening Session will be held on Wednesday, September 28, 2022, 10:00 a.m. to 3:00 p.m. (HST), Honolulu, Hawaii. Pre-registration for this Listening Session is requested by September 23, 2022.

ADDRESSES:

Meeting Locations:

1. The Tribal Consultation meeting in Anchorage, Alaska will be held at the Z.J. Loussac Public Library, 3600 Denali Street, Anchorage, AK 99503.

2. The Tribal Consultation meeting in Albuquerque, New Mexico will be held at the Indian Pueblo Cultural Center, 2401 12th Street NW, Albuquerque, New Mexico 87104.

3. The Tribal Consultation meeting in Oklahoma City, Oklahoma will be held at the Metro Technology Centers, Springlake Campus Health Careers Center, 1720 Springlake Drive, Oklahoma City, OK 73111.

4. The Tribal Consultation meeting in Washington, DC will be held at SBA Headquarters, 409 Third Street SW, Washington, DC 20416. Commenters and attendees may participate in-person or remotely at this consultation meeting.

5. The Listening Session in Honolulu, Hawaii will be held at the SBA Hawaii District Office, 500 Ala Moana Boulevard, Suite 1–306, Honolulu, Hawaii 96813.

Pre-registration: Send pre-registration requests to attend and/or testify to Chequita Carter of SBA's Office of Native American Affairs, U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416; *Chequita.Carter@sba.gov;* or Facsimile to (202) 481–2177.

Comments: You may submit comments, identified by Regulations Identifier Number (RIN) 3245–AH70, by any of the following methods:

- *Email:* to Jackson S. Brossy, Assistant Administrator, Office of Native American Affairs, U.S. Small Business Administration, at *tribalconsulation@sba.gov.*
- *Mail (for paper, disk, or CD–ROM submissions):* to Jackson S. Brossy, Assistant Administrator, Office of Native American Affairs, U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416.

Instructions: All submissions received will become part of the administrative record for any rulemaking resulting from these tribal consultation meetings and listening session. As such, comments received may be posted on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit the comments to Jackson S. Brossy and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will make a final determination as to whether the comments will be published.

FOR FURTHER INFORMATION CONTACT: Chequita Carter, Program Assistant for

SBA's Office of Native American Affairs, at *Chequita.Carter@sba.gov* or (202) 205–6680 or by facsimile to (202) 481–2177. This phone number can also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION:

I. Background

SBA is planning to issue a proposed rule concerning the 8(a) BD program regulations under RIN 3245–AH70. The proposed rule is intended to clarify regulatory provisions relating to both program eligibility and 8(a) contracts to eliminate confusion among small businesses and procuring activities. SBA anticipates that the proposed rule will be published prior to the tribal consultation meetings and the Listening Session announced in this Notice. SBA is seeking comments and input on the changes identified in the proposed rule.

Among other things, the proposed rule would require an entity, as part of its entity-owned business concern's 8(a) application, to establish a Community Benefits Plan laying out its commitments to give back to the Native community in several specific identified ways. SBA understands that not all of those commitments will come to fruition. Projected givebacks may be unattainable where actual revenues do not meet expectations or if other unforeseen business needs occur. However, SBA believes that there should be some programmatic consequences where estimated revenues were obtained but not all the committed benefits are given to the community. SBA is considering proposing certain consequences to the regulations to encourage entities to meet their commitments. SBA is seeking comments on what type of consequences should be imposed where SBA determines that an entity has not made good faith efforts to meet its stated commitments. One possibility that SBA is considering would be to disallow that entity from admitting any new business concerns to the 8(a) BD program until the entity meets the previous commitments with its business concern(s) already participating in the program. SBA is also considering whether there should be any other restrictions, such as restricting the award of additional sole source 8(a) contracts to any 8(a) Participant owned by the entity if SBA determines that the entity did not make good faith efforts to meet the commitments set forth in its Community Benefits Plan. SBA specifically asks for comments as to whether these consequences would be fair and reasonable. Additionally, SBA is seeking input on how best to encourage entities to meet their stated give-back goals.

In addition to the above referenced regulatory proposals, SBA is contemplating making the following substantive changes to the regulations governing the 8(a) BD program, and requests comments and input on how best to develop proposed regulatory revisions. Any such revisions would not be promulgated under RIN 3245–AH70; rather, SBA would propose them under a separate rulemaking after considering testimony from the tribal consultation meetings and the Listening Session.

The 8(a) BD program has positively impacted Native American communities through individual as well as tribal, ANC, and NHO participation. The dual purposes of tribal/ANC/NHO participation in the 8(a) BD program are: to develop viable small business concerns while at the same time creating opportunities to provide significant benefits to the Native communities that they serve. In this regard, SBA accepts that a portion of an entity-owned Participant's receipts must be retained for business development purposes. However, the clear legislative intent of entity participation in the 8(a) BD program is to benefit Native and underserved communities using the revenues derived from the program. Thus, while SBA recognizes that in-kind contributions can be beneficial to Native and underserved communities, SBA believes entities participating in the 8(a) BD program should contribute a portion of their receipts to the communities they serve. SBA seeks to ensure that both of these purposes are advanced and invites comments on how best that can be accomplished.

Since 2011, the 8(a) BD regulations have required each Participant owned by a Tribe, ANC, or NHO to annually submit to SBA information showing how the Tribe, ANC, or NHO has provided benefits to the applicable Native community due to the Tribe's/ANC's/NHO's participation in the 8(a) BD program through one or more firms. SBA is considering a proposal to require more precise cash benefit distributions to the applicable Native community to standardize SBA's collection and tracking of community benefits and in response to an observation that not all entities appear to be allocating an appropriate share of their 8(a) receipts to the communities they serve. To this end, some entity-owned Participants appear to report significant benefits primarily or exclusively in the form of in-kind contributions and, specifically, volunteer work performed by principals of the entity or its Participants.

SBA is considering a rule that would propose to establish a target that a certain percentage of the entity's 8(a) receipts combined from all its Participants should be distributed as a cash contribution to benefit the Native or underserved community. SBA is specifically seeking comments on: the target percentage amount that should be distributed as a cash contribution; whether the target should be tied to an entity's gross 8(a) receipts, or to profits derived by the entity's 8(a) Participants; whether the target percentage amount should increase based on how long an entity has owned business concerns participating in the 8(a) BD program or based on the number of Participants an entity owns; whether certain non-cash contributions or investments in the community should be considered in this measurement, including, but not limited to, community member employment; and any other measures SBA should consider to promote the dual purposes of tribal/ANC/NHO participation in the 8(a) BD program. The SBA additionally welcomes any estimates of costs to meet this requirement annually, as well as any feasibility concerns with such a requirement. The SBA also welcomes comments from any entity that has other proposed methods to track community benefits and reinvestment.

II. Tribal Consultation Meetings

The purpose of these tribal consultation meetings is to conform to the requirements of Executive Order 13175, Consultation and Coordination With Indian Tribal Governments (65 FR 67249), and SBA's Tribal Consultation Policy (*https://www.sba.gov/document/support-sba-tribal-consultation-policy*); to provide interested parties with an opportunity to discuss their views on the issues; and for SBA to obtain the views of SBA's stakeholders on approaches to the 8(a) BD program regulations. SBA considers tribal consultation meetings a valuable component of its deliberations and believes that this tribal consultation meeting will allow for constructive dialogue with the Tribal community, Tribal Leaders, Tribal Elders, elected members of Alaska Native Villages or their appointed representatives, and principals of tribally-owned and ANC-owned firms participating in the 8(a) BD program.

The format of these tribal consultation meetings will consist of a panel of SBA representatives who will preside over the session. The oral and written

testimony as well as any comments SBA receives will become part of the administrative record for SBA's consideration. Written testimony may be submitted in lieu of oral testimony. SBA will analyze the testimony, both oral and written, along with any written comments received. SBA officials may ask questions of a presenter to clarify or further explain the testimony. The purpose of the tribal consultation is to assist SBA with gathering information to guide SBA's review process and to potentially develop new proposals. SBA requests that the comments focus on SBA's planned rulemaking relating to the 8(a) BD program, general issues as they pertain to the 8(a) BD regulations, or the unique concerns of the Tribal communities. SBA requests that commenters do not raise issues pertaining to other SBA small business programs. Presenters are encouraged to provide a written copy of their testimony. SBA will accept written material that the presenter wishes to provide that further supplements his or her testimony. Electronic or digitized copies are encouraged.

Each tribal consultation meeting will be held for one day. The meeting in Anchorage, Alaska will begin at 9:00 a.m. and end at 2:30 p.m. (AKST), with a break from 12:00 p.m. to 1:00 p.m.; the meeting in Albuquerque, New Mexico will begin at 10:00 a.m. and end at 3:00 p.m. (MDT), with a break from 12:30 p.m. to 1:30 p.m.; the meeting in Oklahoma City, Oklahoma will begin at 10:00 a.m. and end at 3:00 p.m. (CDT), with a break from 12:30 p.m. to 1:30 p.m.; the meeting in Washington, DC will begin at 10:00 a.m. and end at 3:00 p.m. (EDT), with a break from 12:30 p.m. to 1:30 p.m.; and the Listening Session in Honolulu, Hawaii will begin at 10:00 a.m. and end at 3:00 p.m. (HST), with a break from 12:30 p.m. to 1:30 p.m. SBA will adjourn early if all those scheduled have delivered their testimony.

III. Registration

SBA respectfully requests that any elected or appointed representative of the tribal communities or principal of a tribally-owned, ANC-owned, or NHO-owned 8(a) firm that is interested in attending please pre-register in advance and indicate whether you would like to testify at the hearing. However, pre-registration is not required for attendance. SBA requests that attendees register with SBA no later than: September 9, 2022, for the consultation meeting in Anchorage; September 16, 2022, for the consultation meeting in Albuquerque; September 19, 2022, for the consultation meeting in Oklahoma City; September 30, 2022, for the consultation meeting in Washington, DC; and September 23, 2022, for the Listening Session in Honolulu. To register, please contact Chequita Carter of SBA's Office of Native American Affairs in writing at *Chequita.Carter@sba.gov* or by facsimile to (202) 481–2177. If you are interested in testifying, please include the following information relating to the person testifying: Name, Organization affiliation, Address, Telephone number, Email address and Fax number. For those who wish to remotely attend or participate in the Washington, DC, tribal consultation meeting, SBA will provide further instructions upon registration. SBA will attempt to accommodate all interested parties that wish to present testimony. Based on the number of registrants it may be necessary to impose time limits to ensure that everyone who wishes to testify has the opportunity to do so. SBA will confirm in writing the registration of presenters and attendees.

IV. Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the tribal consultation meeting, contact Chequita Carter at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority: 15 U.S.C. 634 and E.O. 13175, 65 FR 67249.

Jackson S. Brossy,

Assistant Administrator, Office of Native American Affairs.

[FR Doc. 2022–18393 Filed 8–25–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17579 and #17580; PENNSYLVANIA Disaster Number PA–00120]

Administrative Declaration of a Disaster for the Commonwealth of Pennsylvania

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 08/19/2022.

Incident: Heavy Rain and Flash Flooding.

Incident Period: 08/05/2022.

DATES: Issued on 08/19/2022.

Physical Loan Application Deadline Date: 10/18/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 05/19/2023.

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: Westmoreland.

Contiguous Counties:

Pennsylvania: Allegheny, Armstrong, Cambria, Fayette, Indiana, Somerset, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.375
Homeowners without Credit Available Elsewhere	2.188
Businesses with Credit Available Elsewhere	6.080
Businesses without Credit Available Elsewhere	3.040
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	3.040
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17579 6 and for economic injury is 17580 0.

The State which received an EIDL Declaration # is Pennsylvania.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2022–18397 Filed 8–25–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17581 and #17582; CALIFORNIA Disaster Number CA–00362]

Administrative Declaration of a Disaster for the State of California

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 08/19/2022.

Incident: McKinney Fire.

Incident Period: 07/29/2022 and continuing.

DATES: Issued on 08/19/2022.

Physical Loan Application Deadline Date: 10/18/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 05/19/2023.

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: Siskiyou.

Contiguous Counties:

California: Del Norte, Humboldt, Modoc, Shasta, Trinity.

Oregon: Jackson, Josephine, Klamath.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.375
Homeowners without Credit Available Elsewhere	2.188
Businesses with Credit Available Elsewhere	6.080
Businesses without Credit Available Elsewhere	3.040
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	3.040
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17581 5 and for economic injury is 17582 0.

The States which received an EIDL Declaration # are California, Oregon.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2022–18394 Filed 8–25–22; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2022–0046]

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget Attn: Desk Officer for SSA

Comments: https://www.reginfo.gov/public/do/PRAMain. Submit your comments online referencing Docket ID Number [SSA–2022–0046].

(SSA) Social Security Administration, OLCA Attn: Reports Clearance Director 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2022–0046].

SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than September 26, 2022. Individuals can obtain copies of these OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Supplemental Statement Regarding Farming Activities of Person Living Outside the United States—0960–0103. When a beneficiary or claimant reports farm work from outside the United States, SSA documents this work on Form SSA–7163A–F4. Specifically, SSA uses the form to determine if we should apply foreign work deductions to the recipient's Title II benefits. We collect the information either annually or every other year, depending on the respondent's country of residence. Once respondents complete the form, they mail it back to SSA. Respondents are Social Security recipients engaged in farming activities outside the United States.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–7163A–F4	19	1	60	19	* $16.70	** $317

* We based this figure on the average farming occupations hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes450000.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Information About Joint Checking/Savings Account—20 CFR 416.1201 and 416.1208—0960–0461. SSA considers a person's resources when evaluating eligibility for SSI. Generally, we consider funds in checking and savings accounts as resources owned by the individuals whose names appear on the account. However, individuals applying for SSI may rebut this assumption of ownership in a joint account by submitting certain evidence to establish the funds do not belong to them. SSA uses Form SSA–2574 to collect information from SSI applicants and recipients who object to the assumption that they own all or part of the funds in a joint checking or savings account bearing their names. SSA collects information about the account from both the SSI applicant or recipient and the other account holder(s). After receiving the completed form, SSA determines if we should consider the account to be a resource for the SSI applicant and recipient. The respondents are applicants and recipients of SSI, and individuals who list themselves as joint owners of financial accounts with SSI applicants or recipients.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA–2574 (Paper)	50,000	1	7	5,833	* $19.86		*** $115,843
SSA–2574 (SSI Claim System)	150,000	1	7	17,500	* 19.86	** 21	*** 1,390,200
Totals	200,000			23,333			*** 1,506,043

* We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure by averaging the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

3. Real Property Current Market Value Estimate—0960–0471. SSA considers an individual's resources when evaluating eligibility for SSI payments. The value of an individual's resources, including non-home real property, is one of the eligibility requirements for SSI payments. SSA obtains current market value estimates of the claimant's real property through Form SSA–L2794. We allow respondents to use readily available records to complete the form, or we can accept their best estimates. We use this form as part of initial applications and in post-entitlement situations. SSA fills out Form SSA–L2794, and mails it to the respondent along with a cover letter explaining why we need the information and what information we are requesting, and a prepaid envelope to send the SSA–L2794 back to SSA. The respondents are small business operators in real estate; state and local government employees tasked with assessing real property values; and other individuals knowledgeable about local real estate values.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–L2794	300	1	20	100	* $23.45	** $2,345

* We based this figure on the median hourly salary of Real Estate Brokers and Sales Agents, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. Employer Verification of Earnings After Death—20 CFR 404.821 and 404.822—0960–0472. When SSA records show a wage earner is deceased, and we receive wage reports from an employer for the wage earner for a year subsequent to the year of death, SSA mails the employer Form SSA–L4112 (Employer Verification of Earnings After Death) with a prepaid envelope to send back to SSA. SSA uses the information Form SSA–L4112 provides to verify wage information previously received from the employer is correct for the employee and the year in question (the year subsequent to the year of death), to ensure we avoid wage fraud on the deceased's account. The respondents are employers who report wages for employees who died.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–L4112	13,114	1	10	2,186	* $28.01	** $61,230

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

5. Child Care Dropout Questionnaire—20 CFR 404.211(e)(4)—0960–0474. If individuals applying for Title II disability benefits care for their own or their spouse's children under age 3, and have no steady earnings during the time they care for those children, they may exclude that period of care from the disability computation period. We call this the child-care dropout exclusion. SSA uses the information from Form SSA–4162 to determine if an individual qualifies for this exclusion. Respondents are applicants for Title II disability benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–4162	1,563	1	10	261	* $11.70	** 24	*** $10,366

* We based this figure on the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf).*
** We based this figure on the average FY 2022 wait times for field offices, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

6. Medical Report on Adult with Allegation of Human Immunodeficiency Virus Infection; Medical Report on Child with Allegation of Human Immunodeficiency Virus Infection—20 CFR 416.933–416.934—0960–0500. Section 1631(e)(i) of the Act authorizes the Commissioner of SSA to gather information to make a determination about an applicant's claim for SSI payments. Section 1631(a)(4) of the Act provides that the Commissioner may pay SSI payments to an applicant for a period not exceeding six months prior to the determination of the individual's disability, if the individual is presumptively disabled and is determined to be otherwise eligible for benefits; this procedure is called Presumptive Disability (PD). SSA uses Forms SSA–4814 and SSA–4815 to collect information necessary to determine if an individual with human immunodeficiency virus infection, who is applying for SSI disability benefits, meets the requirements for PD. The respondents are the medical sources of the applicants for SSI disability payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA–4814	1,307	1	8	174	* $16.02	** 19	*** $9,420
SSA–4815	20	1	10	3	* 16.02	** 19	*** 144
Totals	1,327			177			*** 9,564

* We based this figure on the average Healthcare Support Occupations, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes310000.htm*).
** We based this figure on the average FY 2022 wait times for teleservice centers, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

7. Certificate of Election for Reduced Widow(er)s and Surviving Divorced Spouse's Benefits—20 CFR 404.335—0960–0759. Section 202(q) of the Act provides SSA the authority to reduce benefits under certain conditions when elected by a Title II beneficiary. However, reduced benefits are not payable to an already entitled spouse (or divorced spouse) who:

- Is at least age 62 and under full retirement age in the month of the number holder's death; and
- Is receiving both reduced spouse's (or divorced spouse's) benefits and either retirement or disability benefits in the month before the month of the number holder's death.

To elect reduced widow(er) benefits, a recipient completes Form SSA–4111, and mails it back to SSA. SSA uses the information collected to pay a qualified dually entitled widow(er) (or surviving divorced spouse) who elects to receive a reduced widow(er) benefit. The respondents are qualified dually entitled widow(er)s (or surviving divorced spouse) who elect to receive a reduced widow(er) benefit.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–4111	30,000	1	2	1,000	* $28.01	** $28,010

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: August 22, 2022.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2022–18391 Filed 8–25–22; 8:45 am]

BILLING CODE 4191–02–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 312 (Sub-No. 5X)]

South Carolina Central Railroad Company, LLC—Abandonment Exemption—in Darlington County, S.C.

South Carolina Central Railroad Company, LLC (SCRF), has filed with the Surface Transportation Board (Board) a petition under 49 CFR 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to abandon approximately two miles of rail line over six railroad tracks that most recently served the Sonoco Products Company (Sonoco) in Hartsville, Darlington County, S.C. The rail line consists of the following: (1) Track 1 between Sonoco Lead mileposts 312.7 and 313.24, and its associated leads, Tracks 1a and 1b; (2) Tracks 2 and 2a, which do not have mileposts; and (3) Track 3 between Hartsville mileposts 312.85 and 313.56 (the Line). The Line traverses U.S. Postal Service Zip Code 29550 and has no rail stations.

According to SCRF, the Line is the stub end of a rail line over which SCRF provided rail service to Sonoco. SCRF states, however, that Sonoco is re-tooling its facility for a different commodity and will no longer require rail service, and that, following the abandonment, SCRF plans to transfer its interest in the Line to Sonoco to facilitate Sonoco's development of its property. Attached as an exhibit to the petition is a letter from Sonoco supporting the proposed abandonment.

SCRF states that, based on information in its possession, the Line does not contain federally granted rights-of-way. Any documentation in SCRF's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 25, 2022.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 120 days after the filing of the petition for exemption, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner. Persons interested in submitting an OFA must first file a formal expression of intent to file an offer by September 6, 2022, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(1)(i).

Following abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for interim trail use/rail banking under 49 CFR 1152.29 will be due no later than September 15, 2022.[1]

All pleadings, referring to Docket No. AB 312 (Sub-No. 5X), must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on SCRF's representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market Street, Suite 2620, Philadelphia, PA 19103. Replies to the petition are due on or before September 15, 2022.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0294. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any other agencies or persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available at *www.stb.gov.*

Decided: August 17, 2022.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2022–18402 Filed 8–25–22; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36635]

Patriot Rail Company LLC, SteelRiver Transport Ventures LLC, Global Diversified Infrastructure Fund (North America) LP, First State Infrastructure Managers (International) Limited, and Mitsubishi UFJ Financial Group, Inc.—Control Exemption—Pioneer Lines, Inc., et al.

Patriot Rail Company LLC (Patriot), SteelRiver Transport Ventures LLC; Global Diversified Infrastructure Fund (North America) LP; First State Infrastructure Managers (International) Limited; and Mitsubishi UFJ Financial Group, Inc. (MUFG) (collectively, Patriot Rail), have filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to acquire control of 15 Class III rail carriers (the Pioneer Short Lines) [1] controlled by Pioneer Lines, Inc. (Pioneer). Patriot Rail currently controls 16 Class III rail carriers (the Patriot Short Lines) in 14 states.[2]

[1] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

[1] The verified notice lists the Pioneer Short Lines as follows: Alabama & Florida Railway Co., Inc.; Decatur Junction Railway Co.; Elkhart & Western Railroad Co.; Fort Smith Railroad Co.; The Garden City Western Railway, Inc.; Georgia Southern Railway Co.; Gettysburg & Northern Railroad Co.; Indiana Southwestern Railway Co.; Kendallville Terminal Railway Co.; Keokuk Junction Railway Co.; Keokuk Union Depot Co.; Michigan Southern Railroad Co.; Mississippi Central Railroad Co.; Pioneer Industrial Railway Co.; and Vandalia Railroad Co.

[2] The verified notice lists the Patriot Short Lines as follows: Columbia & Cowlitz Railway, LLC; DeQueen and Eastern Railroad, LLC; Georgia Northeastern Railroad Company, LLC; Golden Triangle Railroad, LLC; Kingman Terminal Railroad, LLC; Louisiana and North West Railroad Company, LLC; Merced County Central Valley Railroad, L.L.C.; Patriot Woods Railroad, LLC; Rarus Railway, LLC (d/b/a Butte, Anaconda & Pacific Railway Co.); Sacramento Valley Railroad, LLC; Salt Lake Garfield and Western Railway Company; Temple & Central Texas Railway, LLC; Tennessee Southern Railroad LLC; Texas, Oklahoma and

The transaction may be consummated on or after September 9, 2022, the effective date of the exemption (30 days after the verified notice was filed).

According to the verified notice, through a Stock Purchase Agreement, Patriot (an indirect holding of MUFG) will acquire a controlling interest in Pioneer, and, consequently, an indirect controlling interest in several Pioneer subsidiaries, including the Pioneer Short Lines.

The verified notice indicates that: (1) none of the Patriot Short Lines connect with any of the Pioneer Short Lines; (2) the transaction is not part of a series of anticipated transactions that would connect any of the Patriot Short Lines or Pioneer Short Lines; and (3) the transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than September 2, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36635, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Patriot Rail's representative, Robert A. Wimbish, Fletcher & Sipple LLC, 29 N Wacker Drive, Suite 800, Chicago, IL 60606.

According to Patriot Rail, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Eastern Railroad, LLC; Utah Central Railway Company, LLC; and West Belt Railway LLC.

Decided: August 23, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2022–18436 Filed 8–25–22; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2022–0010]

2022 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) requests comments that identify online and physical markets to be considered for inclusion in the 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List). The Notorious Markets List identifies examples of online and physical markets that reportedly engage in or facilitate substantial copyright piracy or trademark counterfeiting. The issue focus for the 2022 Notorious Markets List will examine the impact of online piracy on U.S. workers.

DATES:

October 7, 2022, at 11:59 p.m. ET: Deadline for submission of written comments.

October 21, 2022, at 11:59 p.m. ET: Deadline for submission of rebuttal comments and other information USTR should consider during the review.

ADDRESSES: You should submit written comments through the Federal eRulemaking Portal: *http://www.regulations.gov* (*Regulations.gov*). Follow the instructions for submitting comments in section III below. For alternatives to online submissions, please contact Ariel Gordon at *notoriousmarkets@ustr.eop.gov* or (202) 395–4510 before transmitting a comment and in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT: Ariel Gordon, Director for Innovation and Intellectual Property, at *notoriousmarkets@ustr.eop.gov* or (202) 395–4510. You can find information about the Special 301 Review, including the Notorious Markets List, at *www.ustr.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The United States is concerned with trademark counterfeiting and copyright piracy on a commercial scale because these illicit activities cause significant financial losses for right holders, legitimate businesses, and governments. In addition, they undermine critical U.S. comparative advantages in innovation and creativity to the detriment of American workers, and can pose significant risks to consumer health and safety and privacy and security. Conducted under the auspices of the Special 301 program and the authority of the U.S. Trade Representative to address practices that have significant adverse impact on the value of U.S. innovation, the Notorious Markets List identifies examples of online and physical markets that reportedly engage in or facilitate substantial copyright piracy or trademark counterfeiting that infringe on U.S. intellectual property (IP).

Beginning in 2006, USTR identified notorious markets in the annual Special 301 Report. In 2010, USTR announced that it would publish the Notorious Markets List as an out-of-cycle review, separate from the annual Special 301 Report. USTR published the first Notorious Markets List in February 2011. USTR develops the annual Notorious Markets List based upon public comments solicited through the **Federal Register** and in consultation with Federal agencies that serve on the Special 301 Subcommittee of the Trade Policy Staff Committee.

The United States encourages owners and operators of markets reportedly involved in piracy or counterfeiting to adopt business models that rely on the licensed distribution of legitimate content and products and to work with right holders and enforcement officials to address infringement. USTR also encourages foreign government authorities to intensify their efforts to investigate reports of piracy and counterfeiting in such markets, and to pursue appropriate enforcement actions. The Notorious Markets List does not purport to reflect findings of legal violations, nor does it reflect the U.S. Government's analysis of the general IP protection and enforcement climate in the country or countries concerned. For an analysis of the IP climate in particular countries, please refer to the annual Special 301 Report, published each spring no later than 30 days after USTR submits the National Trade Estimate to Congress.

II. Public Comments

USTR invites written comments concerning examples of online and physical markets that reportedly engage in and facilitate substantial copyright piracy or trademark counterfeiting that infringe on U.S. IP. USTR also invites written comments for the Notorious Markets List issue focus that highlights an issue related to the facilitation of substantial trademark counterfeiting or copyright piracy. The issue focus for the 2022 Notorious Markets List will examine the impact of online piracy on U.S. workers.

To facilitate the review, written comments should be as detailed as possible. Comments must clearly identify the market and the reasons why the commenter believes that the market should be included in the Notorious Markets List. Commenters should include the following information, as applicable:

For online markets that engage in or facilitate substantial counterfeiting:

- The domain name(s) of the market, the name(s) of the owner(s) or operator(s), the geographic area(s) where the market operates, and whether the market is owned, operated, or otherwise affiliated with a government entity.
- Estimate of the number of goods sold or otherwise made available on the market and any other indicia of the market's scale, reach, or relative significance in a given geographic area or with respect to a category of goods.
- Estimate of the number and types of goods sold or otherwise made available on the market that are counterfeit, either in aggregate or in relation to the total number and types of goods sold or otherwise made available on the market, a description of the methodology used to create the estimate and the timeframe the estimate was conducted, and information supporting the claims of counterfeiting.
- Estimate of economic harm to right holders resulting from the counterfeit goods and a description of the methodology used to calculate the harm.
- Whether the number and types of counterfeit goods or the economic harm has increased or decreased from previous years, and an approximate calculation of that increase or decrease for each year.
- Whether the counterfeit goods sold or otherwise made available on the market pose a risk to public health or safety.
- Any known contractual, civil, administrative, or criminal enforcement activity against the market and the outcome of that enforcement activity.
- Any actions taken by right holders, such as discussing concerns with the market, submitting takedown notices or requests to remove counterfeit goods, sending cease and desist letters, or requesting that the market enforce its terms of service or terms of use, and the outcome of these actions.
- Any actions taken by the market owners or operators to remove, limit, or discourage the availability of counterfeit goods, including policies to prevent or remove access to such goods, or to disable seller or user accounts, the effectiveness of market policies and guidelines in addressing counterfeiting, and the level of cooperation with right holders and law enforcement.
- Any other additional information relevant to the review.

For online markets that engage in or facilitate substantial piracy:

- The domain name(s) of the market, the name(s) and location(s) of the hosting provider(s), the name(s) and location(s) of the owner(s) or operator(s), the geographic area(s) where the market operates, and whether the market is owned, operated, or otherwise affiliated with a government entity.
- Revenue sources such as sales, subscriptions, donations, upload incentives, or advertising, the methods by which that revenue is collected, and the entities that help facilitate the market's revenue.
- Description and estimate of economic harm to right holders resulting from piracy and a description of the methodology used to calculate the harm.
- Whether the number of pirated goods or files, or the economic harm, has increased or decreased from previous years, and an approximate calculation of that increase or decrease for each year.
- Any known contractual, civil, administrative, or criminal enforcement activity against the market and the outcome of that enforcement activity.
- Any actions taken by right holders, such as discussing concerns with the market, submitting takedown notices or requests to remove URLs or pirated content, sending cease and desist letters, or requesting that the market enforce its terms of service or terms of use, and the outcome of these actions.
- Any actions taken by the market owners or operators to remove, limit, or discourage the availability of pirated goods or services, including policies to prevent or remove access to such goods or services, or to disable seller or user accounts, the effectiveness of market policies and guidelines in addressing piracy, and the level of cooperation with right holders and law enforcement.
- Any other additional information relevant to the review.

For physical markets that engage in or facilitate substantial counterfeiting or piracy:

- The market's name(s), street address, neighborhood or shopping district, city, and the identity of the principal owner(s) or operator(s).
- Whether the market is owned, operated, or otherwise affiliated with a government entity.
- Types of counterfeit or pirated products or services sold, traded, distributed, or otherwise made available at the market.
- Volume of counterfeit or pirated goods or services or other indicia of the market's scale, reach, or relative significance in a given geographic area or with respect to a category of goods or services.
- Description and estimate of economic harm to right holders resulting from the piracy or counterfeiting and a description of the methodology used to calculate the harm.
- Whether the volume of counterfeit or pirated goods or estimates of harm has increased or decreased from previous years, and an approximate calculation of that increase or decrease for each year.
- Whether the infringing goods or services sold, traded, distributed, or made available pose a risk to public health or safety.
- Any known contractual, civil, administrative, or criminal enforcement activity against the market and the outcome of that enforcement activity.
- Additional actions taken by right holders, such as discussing concerns with the market, sending cease and desist letters, sending warning letters to landlords or requests to enforce the terms of their leases, and the outcome of these actions.
- Additional actions taken by the market owners or operators to remove, limit, or discourage the availability of counterfeit or pirated goods or services, the effectiveness of market policies and guidelines in addressing counterfeiting and piracy, and the level of cooperation with right holders and law enforcement.
- Any other additional information relevant to the review.

III. Submission Instructions

All submissions must be in English and sent electronically via *Regulations.gov.* To submit comments, locate the docket (folder) by entering the docket number USTR–2022–0010 in the 'Enter Keyword or IP' window at the *Regulations.gov* homepage and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting

'notice' under 'document type' on the left side of the search-results page, and click on the link entitled 'comment now!' You should provide comments in an attached document, and name the file according to the following protocol, as appropriate: Commenter Name or Organization_2022 Notorious Markets. Please include the following information in the 'type comment' field: 2022 Review of Notorious Markets for Counterfeiting and Piracy. USTR prefers submissions in Microsoft Word (.docx) or Adobe Acrobat (.pdf) format. If the submission is in another file format, please indicate the name of the software application in the 'type comment' field. For further information on using *Regulations.gov,* please select 'how to use *Regulations.gov*' on the bottom of any page.

Please do not attach separate cover letters to electronic submissions. Instead, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

Please include the name, email address, and phone number of an individual USTR can contact if there are issues or questions with the submission. The contact information can be included in the submission or sent to Ariel Gordon, Director for Innovation and Intellectual Property, at *notoriousmarkets@ustr.eop.gov* or (202) 395–4510.

For any comment submitted electronically that contains business confidential information (BCI), the file name of the business confidential version should begin with the characters 'BCI'. Any page containing BCI must be clearly marked 'BUSINESS CONFIDENTIAL' on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and that they would not customarily release it to the public. Additionally, the submitter should type 'Business Confidential 2022 Review of Notorious Markets for Counterfeiting and Piracy' in the 'comment' field. Filers of comments containing BCI also must submit a public version. Begin the file name of the public version with the character 'P'. USTR will place the non-business confidential version in the docket at *Regulations.gov* and it will be available for public inspection.

As noted, USTR strongly urges submitters to file comments through *Regulations.gov* You must make any alternative arrangements in advance of the relevant deadline and before transmitting a comment by contacting Ariel Gordon at *notoriousmarkets@ustr.eop.gov* or (202) 395–4510.

USTR will post comments in the docket for public inspection, except properly designated BCI. You can view comments on *Regulations.gov* by entering docket number USTR–2022–0010 in the search field on the home page.

Daniel Lee,

Assistant U.S. Trade Representative for Innovation and Intellectual Property, Office of the United States Trade Representative.

[FR Doc. 2022–18405 Filed 8–25–22; 8:45 am]

BILLING CODE 3290–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Release Certain Properties From All Terms, Conditions, Reservations and Restrictions of a Quitclaim Deed Agreement Between the City of Gainesville and the Federal Aviation Administration for the Gainesville Regional Airport, Gainesville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The FAA hereby provides notice of intent to release 6.71 acres at the Gainesville Regional Airport, Gainesville, FL from the conditions, reservations, and restrictions as contained in a Quitclaim Deed agreement between the FAA and the City of Gainesville , dated October 15, 1948. The release of property will allow the City of Gainesville to dispose of the property for other than aeronautical purposes. The property is located on the in the North one-half of Section 23 and 24, Township 9 South, Range 20 East, Gainesville, Alachua County, Florida. The parcel is currently designated as surplus property. The property will be released of its federal obligations for the purpose of selling the property at fair market value for light industrial future commercial development. The fair market value lease of this parcel has been determined to be $216,000. Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Gainesville Regional Airport and the FAA Airports District Office.

DATES: Comments are due on or before September 26, 2022.

ADDRESSES: Documents are available for review at Gainesville Regional Airport, and the FAA Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819. Written comments on the Sponsor's request must be delivered or mailed to: Jenny Iglesias-Hamann, Community Planner, Orlando Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819.

FOR FURTHER INFORMATION CONTACT: Jenny Iglesias-Hamann, Community Planner, Orlando Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819, (407) 487–7234.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) requires the FAA to provide an opportunity for public notice and comment prior to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

Revision Date: August 23, 2022.

Bartholomew Vernace,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 2022–18392 Filed 8–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent of Waiver With Respect to Land; French Lick Municipal Airport, French Lick, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to change 18.23 Acres of airport land from aeronautical use to non-aeronautical use and to authorize the sale of airport property located at French Lick Municipal Airport, French Lick, IN. The aforementioned land is not needed for aeronautical use. The current county road adjacent to the subject property was constructed on previous airport property sold by the Airport to Orange County; however, due to unforeseen geological conditions, the road has failed multiple times. As a corrective action, Orange County, in partnership with the Indiana Department of Transportation seek to realign a portion of the road to a location to avoid the region with the geologic issues. In order to facilitate this realignment, the Airport was approached with a second request to

transfer additional land to Orange County. This land is located on the opposite side of the new road that was recently constructed and is not contiguous with the airport land that supports aeronautical use. Therefore, the French Lick Municipal Airport Board of Aviation Commissioners (BOAC) would like to release 18.23 acres of land to the Orange County Commissioners, for the purpose of allowing Orange County to construct a realigned County Road 300 South.

DATES: Comments must be received on or before September 26, 2022.

ADDRESSES: Documents are available for review by appointment at the FAA Chicago Airports District Office, Joseph D. Wejman, Program Manager, 2300 East Devon Avenue, Des Plaines, Illinois, 60018. Telephone: (847) 294–7526/Fax: (847) 294–7046. and Matthew Carson, Airport Manager, 9764 West County Road 375 South, French Lick, IN 47432. Telephone: (812) 936–2222/Fax: (812) 936–3134.

Written comments on the Sponsor's request must be delivered or mailed to: Joseph D. Wejman, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone Number: (847) 294–7526/FAX Number: (847) 294–7046.

FOR FURTHER INFORMATION CONTACT: Joseph D. Wejman, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone Number: (847) 294–7526/FAX Number: (847) 294–7046.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The subject land is part of two parcels. Parcel 1 was acquired fee simple by the French Lick Board of Aviation Commissioners from a private owner with the assistance of federal funds under Federal Aid to Airport Program Project No. 9–12–041–6301 in 1963. The subject sub-parcels (1, 1A and 1B) within Parcel 1 total approximately 10.209 acres. Parcel 2 was acquired fee simple by the French Lick BOAC from a private owner with the assistance of federal funds under Airport Improvement Program (AIP) grant number 3–18–0027–08 in 2010. The subject sub-parcel (2) is approximately 8.021 acres. The Sponsor is seeking FAA approval for release of land covenants associated with fee simple ownership to provide right of way for the Orange County Commissioners to re-align and re-construct County Road CR 300 South/Airport Road that will provide a safe roadway that meets current roadway design standards. The aforementioned land is not needed for aeronautical use, as shown on the Airport Layout Plan. There are no impacts to the airport by allowing the airport to dispose of the property. No cash proceeds are expected as a result of the land release. The combined Fair Market Value of the parcels to be released is appraised at $73,085. The FMV received for the parcels will come in the form of excess materials (soil/fill) from the county road project that will be stockpiled on airport property for its ultimate use for an upcoming apron expansion project at French Lick Municipal Airport. Based on an engineering analysis that looked at the quality and dollar value of the fill, its value far exceeds the appraised value of the land parcels being released to Orange County for the relocated County Road CR 300/Airport Road. This in-kind project material value benefits the Airport and since it exceeds the estimated value of the land to be released.

The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the French Lick Municipal Airport, French Lick, Indiana from federal land covenants, subject to a reservation for continuing right of flight as well as restrictions on the released property as required in FAA Order 5190.6B section 22.16. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Land Description

Sub-Parcel 1

A part of the Northeast Quarter of the Southwest Quarter of Section 21, Township 1 North, Range 2 West, French Lick Township, Orange County, Indiana, and being that part of the grantor(s) land lying within the right-of-way lines depicted on the attached Right-of-Way Parcel Plat, marked EXHIBIT ''B'', described as follows: Commencing at the northeast corner of said quarter section designated as point ''422'' on said Parcel Plat; thence South 1 degree 18 minutes 58 seconds East 1,332.46 feet along the east line of said southwest quarter section to the southwest corner of said quarter-quarter section designated as point ''402'' on said Parcel Plat; thence South 89 degrees 02 minutes 26 seconds West 524.33 feet along the north line of said quarter-quarter section to the western boundary of Airport Road as defined in Instrument Number 193232; thence North 10 degrees 51 minutes 16 seconds East 8.01 feet along said western boundary; thence along said western boundary Northerly 88.52 feet along an arc to the left having a radius of 550.00 feet and subtended by a long chord having a bearing of North 6 degrees 14 minutes 37 seconds East and a length of 88.43 feet to the point designated as ''1000'' on said Parcel Plat and the POINT OF BEGINNING of this description: thence North 12 degrees 28 minutes 00 seconds West 137.56 feet to the point designated ''1001'' on said Parcel Plat; thence North 27 degrees 51 minutes 52 seconds West 154.16 feet to the point designated ''1002'' on said Parcel Plat; thence North 13 degrees 45 minutes 17 seconds West 124.79 feet to the point designated ''1003 '' on said Parcel Plat; thence North 3 degrees 10 minutes 59 seconds East 192.36 feet to the western boundary of said Airport Road designated as point ''1004'' on said Parcel Plat; thence along the western boundary the following (4) courses: 1) South 14 degrees 52 minutes 36 seconds East 211.97 feet; 2) South 2 degrees 45 minutes 07 seconds West 52.50 feet; 3) South 16 degrees 37 minutes 15 seconds East 175.97 feet to the Pls; 4) Southerly 159.59 feet along an arc to the right having a radius of 550.00 feet and subtended by a long chord having a bearing of South 6 degrees 40 minutes 48 seconds East and a length of 159.03 feet to the POINT OF BEGINNING and containing 0.422 acres, more or less.

Sub-Parcel 1A

A part of the Northeast Quarter of the Southwest Quarter of Section 21, Township 1 North, Range 2 West, French Lick Township, Orange County, Indiana, and being that part of the grantor(s) land lying within the right-of-way lines depicted on the attached Right-of-Way Parcel Plat, marked EXHIBIT ''B'', described as follows: BEGINNING on the east line of said quarter section at a point South 1 degree 18 minutes 58 seconds East 184.62 feet from the northeast corner of said quarter section designated as point ''422'' on said Parcel Plat, which point is on the eastern boundary of Airport Road as defined in Instrument Number 193232;

thence continuing South 1 degree 18 minutes 58 seconds East 306.00 feet along the east line of said quarter section to the point designated ''1008'' on said Parcel Plat; thence South 83 degrees 52 minutes 36 seconds West 276.46 feet to the point designated ''1007'' on said Parcel Plat; thence South 22 degrees 47 minutes 35 seconds West 318.85 feet to the point designated ''1006'' on said Parcel Plat; thence South 1 degree 18 minutes 07 seconds West 271.68 feet to the eastern boundary of said Airport Road designated as point ''1005'' on said Parcel Plat; thence along the eastern boundary of said Airport Road the following (6) courses: (1) Northerly 26.31 feet along an arc to the left having a radius of 655.00 feet and subtended by a long chord having a bearing of North 13 degrees 50 minutes 31 seconds West and a length of 26.31 feet; (2) North 14 degrees 59 minutes 34 seconds West 414.56 feet; (3) Northerly 316.68 feet along an arc to the right having a radius of 390.00 feet and subtended by a long chord having a bearing of North 8 degrees 16 minutes 10 seconds East and a length of 308.05 feet; (4) North 74 degrees 46 minutes 47 seconds East 244.25 feet; (5) North 64 degrees 32 minutes 17 seconds East 236.60 feet; (6) North 76 degrees 12 minutes 52 seconds East 18.00 feet to the POINT OF BEGINNING and containing 4.070 acres, more or less.

Sub-Parcel 1B

A part of the South Half of the Northeast Quarter of Section 21, Township 1 North, Range 2 West, French Lick Township, Orange County, Indiana, and being that part of the grantor(s) land lying within the right-of-way lines depicted on the attached Right-of-Way Parcel Plat, marked EXHIBIT ''B'', described as follows: BEGINNING on the south line of said quarter section at a point North 89 degrees 12 minutes 11 seconds East 686.92 feet from the southwest corner of said quarter section designated as point ''422'' on said Parcel Plat, which point is on the southern boundary of said Airport Road as defined in Instrument Number 193232; thence along the southern boundary of said Airport Road the following (7) courses: (1) North 58 degrees 51 minutes 47 seconds East 132.00 feet; (2) North 74 degrees 14 minutes 22 seconds East 406.73 feet; (3) Easterly 662.21 feet along an arc to the right having a radius of 1,435.00 feet and subtended by a long chord having a bearing of North 87 degrees 27 minutes 35 seconds East and a length of 656.35 feet; (4) South 86 degrees 24 minutes 29 seconds East 202.61 feet; (5) South 79 degrees 19 minutes 12 seconds East 50.00 feet; (6) South 65 degrees 39 minutes 32 seconds East 148.19 feet; (7) South 10 degrees 40 minutes 47 seconds West 105.36 feet (105.44 feet by Instrument Number 193232 to the south line of said quarter section; thence South 89 degrees 12 minutes 11 seconds West 1,527.12 feet along said south line to the POINT OF BEGINNING and containing 5.717 acres, more or less.

Sub-Parcel 2

A part of the North Half of the Southeast Quarter of Section 21, Township 1 North, Range 2 West, French Lick Township, Orange County, Indiana, and being that part of the grantor(s) land lying within the right-of-way lines depicted on the attached Right-of-Way Parcel Plat, marked EXHIBIT ''B'', described as follows: BEGINNING at the intersection of the southern boundary of Airport Road as defined in Instrument Number 193231 and the west line of said quarter section, which point is located South 1 degree 18 minutes 58 seconds East 184.62 feet of the northwest corner of said quarter section designated as point ''422'' on said Parcel Plat; thence along the southern boundary of said Airport Road the following (4) courses: (1) North 76 degrees 12 minutes 52 seconds East 184.58 feet (183.09 feet by Instrument Number 193231); (2) South 89 degrees 58 minutes 51 seconds East 210.41 feet (210.96 feet by Instrument Number 193231); (3) North 85 degrees 32 minutes 57 seconds East 50.99 feet (50.64 feet by Instrument Number 193231); (4) North 58 degrees 51 minutes 47 seconds East 282.85 feet (282.44 feet by Instrument Number 193231); to the north line of said quarter section; thence North 89 degrees 12 minutes 11 seconds East 1,210.67 feet along said north line to the easternmost corner of the grantor(s) land designated as point ''1010'' on said Parcel Plat; thence South 75 degrees 36 minutes 52 seconds West 1,947.97 feet along the southern line of the grantor(s) land to the west line of said quarter section designated as point ''1009'' on said Parcel Plat; thence North 1 degree 18 minutes 58 seconds West 273.07 feet along said west line to the POINT OF BEGINNING and containing 8.021 acres, more or less.

Issued in Des Plaines, Illinois, on August 19, 2022.

Debra L. Bartell,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2022–18379 Filed 8–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2009–0078]

Petition for Amendment of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated July 5, 2022, the American Short Line and Regional Railroad Association (ASLRRA) petitioned the Federal Railroad Administration (FRA) to amend a waiver of compliance from certain provisions of the Federal hours of service (HOS) laws contained at 49 U.S.C. 21103(a)(4), which, in part, require a train employee to receive 48 hours off duty after initiating an on-duty period for 6 consecutive days. The relevant FRA Docket Number is FRA–2009–0078.

Specifically, ASLRRA seeks to amend its existing waiver to add 13 railroads that did not participate in the original waiver, but now wish to participate. ASLRRA states the following railroads expressed a desire to participate in the waiver, and maintain at their headquarters supporting documentation of employee support, as required:

- Elkhart and Western Railroad;
- Fort Smith Railroad;
- Garden City Western Railway;
- Georgia Southern Railway Company;
- Gettysburg and Northern Railway;
- Huron and Eastern Railway; [1]
- Indiana Southwestern Railway;
- Kendallville Terminal Railway Company;
- Keokuk Junction Railway Company;
- Merced County Central Valley Railroad;
- Michigan Southern Railroad Company;
- Mississippi Central Railroad; and
- Napoleon, Defiance, and Western Railway.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires

[1] ASLRRA notes that Huron and Eastern Railway has been operating under this waiver since 2010, but due to a clerical error, it was not included in the list of waiver participants.

an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by October 11, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–18373 Filed 8–25–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0065; Notice 1]

Columbus Trading-Partners USA, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Columbus Trading-Partners USA, Inc., (CTP), has determined that certain Cybex child restraint systems distributed by CTP do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child Restraint Systems.* CTP filed an original noncompliance report dated June 30, 2022. CTP petitioned NHTSA on July 5, 2022, and amended the petition on August 4, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of CTP's petition.

DATES: Send comments on or before September 26, 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 may be 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 dockets. 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).

FOR FURTHER INFORMATION CONTACT: Kelley Adams-Campos, Safety Compliance Engineer, NHTSA, Office of Vehicle Safety Compliance, *kelley.adamscampos@dot.gov,* (202) 366–7479.

SUPPLEMENTARY INFORMATION:

I. Overview: CTP has determined that certain child restraint systems manufactured under the brand name CYBEX and distributed by CTP do not fully comply with paragraph S5.4.1.2(b)(1) of FMVSS No. 213, *Child Restraint Systems* (49 CFR 571.213). CTP filed an original noncompliance report dated June 30, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* CTP petitioned NHTSA on July 5, 2022, and amended the petition on August 4, 2022, 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 CTP'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. Child Restraint Systems Involved: Approximately 31,080 Aton M, Aton 2, Aton, Aton Q, and Cloud Q model child restraint systems manufactured by CYBEX approximately between June 6, 2017,[1] and November 1, 2020, are potentially involved.

III. Rule Requirements: Paragraphs S5.4.1.2(a) and S5.4.1.2(b)(1) of FMVSS No. 213 include the requirements relevant to this petition. The webbing of belts provided with a child restraint system which are used to restrain the child within the system shall, after being subjected to abrasion as specified in S5.1(d) or S5.3(c) of FMVSS No. 209 (§ 571.209), have a breaking strength of

[1] In its June 30, 2022, Part 573 submission, CTP reported production dates between March 7, 2017 and November 1, 2020.

not less than 75 percent of the new webbing strength when tested in accordance with S5.1(b) of FMVSS No. 209. ''New webbing'' means webbing that has not been exposed to abrasion, light, or micro-organisms as specified elsewhere in FMVSS No. 213.

IV. Noncompliance: After being subjected to abrasion, the breaking strength of the adjuster webbing on the subject child restraint systems was less than 75 percent of the new webbing strength as required by S5.4.1.2(b)(1) of FMVSS No. 213.

V. Summary of CTP's Petition: CTP explains that the adjuster webbing retained only 56.9 percent of the new webbing strength following the hex bar abrasion test [2] as specified in S5.1(d) of FMVSS No. 209.[3] CTP also acknowledges the noncompliance based on the ''through-adjuster'' [4] test methodology it employed towards satisfying S5.3(c) of FMVSS No. 209. The views and arguments provided by CTP are presented in this section, ''V. Summary of CTP's Petition.'' They have not been evaluated by the Agency and do not reflect the views of the Agency. CTP describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

After receiving a July 2021 Information Request from NHTSA relating to this noncompliance, CTP, together with its supplier Holmbergs, took certain investigative actions, including reviewing prior test results. CTP learned that Holmbergs did not have any historical test data for the hex bar or its through-adjuster abrasion testing pursuant to FMVSS No. 213 S5.4.1.2(b)(1).[5] CTP retained webbing samples from 2018 central adjuster webbing production that would have been used on the (US) Aton M child restraint systems and conducted testing on them, ''pursuant to FMVSS 213, § 5.4.1.2(b)(1).'' The results from this testing were that the webbing abraded using the hex bar test subceeded the required 75 percent of the new webbing breaking strength, averaging 64 percent, and the webbing abraded using CTP's through-adjuster test exceeded the required 75 percent of the new webbing breaking strength. CTP shared the results with NHTSA, submitting that FMVSS No. 213 S5.4.1.2(b)(1) provides two alternative abrasion test compliance options. The first, as provided in FMVSS No. 209 S5.1(d), (hex bar test) and the second, as provided in FMVSS No. 209 S5.3(c), (through-adjuster test). CTP explains that in its investigation, NHTSA concluded that CTP's through-adjuster test methods were not an appropriate interpretation of FMVSS No. 209 S5.3(c). CTP acknowledges the noncompliances with S5.1(d) and S5.3(c) of FMVSS No. 209, and outlines its rationale for why ''any noncompliance'' is inconsequential to child safety.

CTP believes that the subject noncompliance with the hex bar test is inconsequential to motor vehicle safety based on results from overload dynamic crash tests it conducted on CYBEX Aton M child restraints assembled using abraded adjuster webbing from the samples averaging 64 percent retained breaking strength. CTP asserts that because the adjuster webbing loads in the dynamic tests were only a small fraction (11 percent) of the abraded webbing's retained strength, a significant safety margin is built into the central adjuster webbing making it ''sufficient for this application,'' (Aton M and similar). This difference, CTP explains, shows that significantly more degradation (of webbing strength) could be tolerated. According to internal crash test data collected from tests varying in configuration, ATDs, attachment methods and crash severities, CTP states that the peak central adjuster strap load recorded was 4745 N. CTP also states that the dynamic crash tests of the child restraints with the hex bar abraded webbing showed that structural integrity of the child restraint was maintained and that the occupant was retained.

CTP notes that NHTSA's laboratory test procedure for FMVSS No. 209 Seat Belt Assemblies [6] ''specifies that for webbing resistance to abrasion tests performed pursuant to FMVSS § 4.2(d), 5.1(d), and 5.3(c) the assembly ''*shall* be subjected to the buckle abrasion test'' if the ''assembly contain [*sic*] a manual adjusting device'' with the emphasis applied, and explains its methodology for the through-adjuster testing it employed. FMVSS No. 209 S5.3(c) *Resistance to buckle abrasion,* requires, CTP states in part, that ''[t]he *webbing* shall be pulled back and forth through the *buckle* or *manual adjusting device* as shown schematically in Figure 7 . . .'' and ''[t]he *webbing* shall pass through the *buckle.* . .'' with the emphases applied. CTP contends that the referenced schematic in Figure 7 of Standard No. 209 ''should only be viewed as a general visual aid,'' and that the schematic ''contradict[s] the plain language of the FMVSS.'' CTP states that although the schematic (in Figure 7 of Standard No. 209) does not appear to show the buckle or adjusting device opening and closing, ''that action certainly must occur to meet the plain language and clear intent of the regulation.'' When CTP performed its through-adjuster testing on the 2018 production retained webbing samples, the webbing was cycled through the central adjuster containing a cam lock. CTP states that the cam lock ''must be opened during the lengthening stroke'' otherwise the adjuster will ''not allow webbing to move,'' *i.e.,* pass through it. CTP investigated a variety of test conditions related to FMVSS No. 209 S5.3(c) ''varying the amount and timing of the central adjuster cam opening'' in each. CTP believes the through-adjuster abrasion test it used accurately exposes the webbing to the abrading environment that exists in the real-world application. Nonetheless, CTP acknowledges the noncompliance of the central adjuster webbing using its test methodology, submitting it too is inconsequential ''as the language of the regulation, as well as the stated purpose of the regulation, should control the test methodology employed.''

Holmbergs provided to CTP evidence of its internal procedures and control plans designed to ensure all regulatory requirements are satisfied. CTP's Quality Management System (QMS) requires review and acceptance of Holmbergs' Control Plan prior to supplying the subject webbing to CTP. CTP explains it ''relies on its suppliers to self-certify compliance to certain standards and requirements'' and that Holmbergs ''was following the Aton M US Control Plan'' based on CTP's On-going Quality Control (OQC) reports. CTP provided the Control Plan, OQC and other documents in its April 14, 2022, supplemental response to NHTSA.

CTP claims it has implemented replacement central adjuster webbing on new child restraints manufactured beginning October 27, 2021, and that this webbing complies with all retained tensile strength requirements after having been subject to both hex bar and through-adjuster testing. Additionally, CTP states it has clarified to its webbing supplier that the supplied webbing must comply with both available abrasion tests in its specificiations. Finally, CTP states that since 2017 no central adjuster webbing or central adjuster assembly issues have been observed.

[2] OVSC compliance test report available at *https://static.nhtsa.gov/odi/ctr/9999/TRTR-647389-2020-001.pdf.*

[3] In its petition, CTP mistakenly referred to FMVSS No. 209 as FMVSS No. 213.

[4] In its petition, CTP refers to S5.3(c) of FMVSS No. 209 *Resistance to buckle abrasion* as through-adjuster test.

[5] In section 2 of its petition, CTP mistakenly referred to S5.4.1.2(b)(1) of FMVSS No. 213 as S5.4.2.1(b)(1).

[6] Dated December 7, 2007.

Details of CTP's investigation and testing can be found in its amended petition at *https://www.regulations.gov/document/NHTSA-2022-0065-0001*.

CTP concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and 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 child restraints that CTP no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve child restraint distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant child restraints under their control after CTP 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. 2022–18417 Filed 8–25–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On August 15, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. CEPHUS, Sayma Syrenius (a.k.a. CEPHAS, Syrenius; a.k.a. CEPHUS, Cyrenius; a.k.a. CEPHUS, Syrenius; a.k.a. CEPHUS, Syrennius), Liberia; DOB 21 Sep 1965; POB Saykleken, Liberia; nationality Liberia; Gender Male; Passport PP0010178 (Liberia) expires 31 Oct 2022; alt. Passport AP0003208 (Liberia) expires 21 Oct 2023 (individual) [GLOMAG]

Designated pursuant to section 1(a)(ii)(B)(1) of Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,'' 82 FR 60839, 3 CFR, 2018 Comp., p. 399, (E.O. 13818) for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

2. TWEHWAY, Bill (a.k.a. TWEHWAY, Bill Teah), Monrovia, Liberia; DOB 27 Oct 1965; POB River Cess Town, Liberia; nationality Liberia; Gender Male; Passport DP0003004 (Liberia) expires 27 Dec 2022 (individual) [GLOMAG]

Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

3. MCGILL, Nathaniel (a.k.a. MCGILL, Nathaniel F.), Paynesville, Liberia; DOB 01 Jan 1971; POB Belle Yella, Liberia; nationality Liberia; Gender Male; Passport DP0002800 (Liberia) expires 19 Apr 2023 (individual) [GLOMAG]

Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

Dated: August 15, 2022.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

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Part II

Department of The Treasury

Internal Revenue Service

26 CFR Part 54

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2590

Department of Health and Human Services

45 CFR Part 149

Requirements Related to Surprise Billing; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 9965]

RIN 1545–BQ01 and 1545–BQ02

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AB99 and 1210–AC00

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 149

[CMS–9909–F and CMS–9908–F]

RIN 0938–AU62 and RIN 0938–AU63

Requirements Related to Surprise Billing

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Final rules.

SUMMARY: This document includes final rules under the No Surprises Act, which was enacted as part of the Consolidated Appropriations Act, 2021 (CAA). The document finalizes certain disclosure requirements relating to information that group health plans, and health insurance issuers offering group or individual health insurance coverage, must share about the qualifying payment amount (QPA) under the interim final rules issued in July 2021, titled *Requirements Related to Surprise Billing; Part I* (July 2021 interim final rules). Additionally, this document finalizes select provisions under the October 2021 interim final rules, titled *Requirements Related to Surprise Billing; Part II* (October 2021 interim final rules), to address certain requirements related to consideration of information when a certified independent dispute resolution (IDR) entity makes a payment determination under the Federal IDR process.

DATES: *Effective date:* These final rules are effective on October 25, 2022.

Applicability date: See Section III of the **SUPPLEMENTARY INFORMATION** section for information on the applicability dates.

FOR FURTHER INFORMATION CONTACT: Shira McKinlay, Internal Revenue Service, Department of the Treasury, at 202–317–5500; Elizabeth Schumacher or David Sydlik, Employee Benefits Security Administration, Department of Labor, at 202–693–8335; Deborah Bryant, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at 301–492–4293; Lindsey Murtagh, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at 301–492–4106.

Customer Service Information

Individuals interested in obtaining information from the Department of Labor (DOL) concerning employment-based health coverage laws may call the Employee Benefits Security Administration (EBSA) Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the DOL's website (*www.dol.gov/agencies/ebsa*).

In addition, information from the Department of Health and Human Services (HHS) on private health insurance coverage, coverage provided by non-Federal governmental group health plans, and requirements that apply to health care providers, health care facilities, and providers of air ambulance services can be found on the Centers for Medicare & Medicaid Services (CMS) website (*www.cms.gov/cciio*), and information on surprise medical bills can be found at *www.cms.gov/nosurprises.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Preventing Surprise Medical Bills Under the CAA

On December 27, 2020, the CAA, which includes the No Surprises Act, was enacted.[1] The No Surprises Act provides Federal protections against surprise billing by limiting out-of-network cost sharing and prohibiting ''balance billing,'' in many of the circumstances in which surprise bills arise most frequently. Balance billing refers to the practice of out-of-network providers billing patients for the difference between: (1) the provider's billed charges, and (2) the amount collected from the plan or issuer plus the amount collected from the patient in the form of cost sharing (such as a copayment, coinsurance, or amounts paid toward a deductible). In particular, the No Surprises Act added new provisions applicable to group health plans and health insurance issuers offering group or individual health insurance coverage to Subchapter B of chapter 100 of the Internal Revenue Code (Code), Part 7 of the Employee Retirement Income Security Act (ERISA), and Part D of title XXVII of the Public Health Service Act (PHS Act). Section 102 of the No Surprises Act added section 9816 of the Code, section 716 of ERISA, and section 2799A–1 of the PHS Act,[2] which contain limitations on cost sharing and requirements regarding the timing of initial payments and notices of denial of payment for emergency services furnished by nonparticipating providers and emergency facilities, and for non-emergency services furnished by nonparticipating providers with respect to patient visits to participating health care facilities, defined as hospitals, hospital outpatient departments, critical access hospitals, and ambulatory surgical centers. Section 103 of the No Surprises Act amended section 9816 of the Code, section 716 of ERISA, and section 2799A–1 of the PHS Act to establish a Federal IDR process that allows plans and issuers and nonparticipating providers and facilities to resolve disputes regarding out-of-network rates. Section 105 of the No Surprises Act added section 9817 of the Code, section 717 of ERISA, and section 2799A–2 of the PHS Act. These sections contain limitations on cost sharing and requirements for the timing of initial payments and notices of denial of payment for air ambulance services furnished by nonparticipating providers of air ambulance services, and allow plans and issuers and nonparticipating providers of air ambulance services to access the Federal IDR process described in section 9816 of the Code, section 716 of ERISA, and section 2799A–1 of the PHS Act.

The No Surprises Act provisions that apply to health care providers, facilities, and providers of air ambulance services, such as prohibitions on balance billing for certain items and services and requirements related to disclosures about balance billing protections, were added to title XXVII of the PHS Act in a new part E.

The Departments of the Treasury, Labor, and Health and Human Services

[1] Public Law 116–260 (December 27, 2020).

[2] Section 102(d)(1) of the No Surprises Act amended the Federal Employees Health Benefits Act, 5 U.S.C. 8901 *et seq.,* by adding a new subsection (p) to 5 U.S.C. 8902. Under this new provision, each Federal Employees Health Benefits (FEHB) Program contract must require a carrier to comply with requirements described in sections 9816 and 9817 of the Code, sections 716 and 717 of ERISA, and sections 2799A–1 and 2799A–2 of the PHS Act (as applicable) in the same manner as these provisions apply with respect to a group health plan or health insurance issuer offering group or individual health insurance coverage.

(the Departments) previously issued interim final rules implementing provisions of sections 9816 and 9817 of the Code, sections 716 and 717 of ERISA, and sections 2799A–1 and 2799A–2 of the PHS Act to protect consumers from surprise medical bills for emergency services, non-emergency services furnished by nonparticipating providers with respect to patient visits to participating facilities in certain circumstances, and air ambulance services furnished by nonparticipating providers of air ambulance services.[3] The interim final rules also implement provisions requiring the Departments to create a Federal IDR process to determine payment amounts when there is a dispute between payers and providers or facilities over the out-of-network rate due for emergency services, non-emergency services furnished by nonparticipating providers with respect to patient visits to participating facilities in certain circumstances, and air ambulance services furnished by nonparticipating providers of air ambulance services.[4] To implement these provisions, the Departments published in the **Federal Register** the July 2021 interim final rules on July 13, 2021 (86 FR 36872), and the October 2021 interim final rules on October 7, 2021 (86 FR 55980).[5] The July 2021 interim final rules and October 2021 interim final rules generally apply to group health plans and health insurance issuers offering group or individual health insurance coverage (including grandfathered health plans) with respect to plan years (in the individual market, policy years) beginning on or after January 1, 2022; and to health care providers and facilities, and providers of air ambulance services with respect to items and services provided during plan years (in the individual market, policy years) beginning on or after January 1, 2022.[6]

[3] 86 FR 36872 (July 13, 2021) and 86 FR 55980 (October 7, 2021).

[4] The Federal IDR process does not apply if an All-Payer Model Agreement under section 1115A of the Social Security Act or a specified State law applies.

[5] The interim final rules also include interim final regulations under 5 U.S.C. 8902(p) issued by the Office of Personnel Management that specify how certain provisions of the No Surprises Act apply to health benefit plans offered by carriers under the Federal Employees Health Benefits Act.

[6] 86 FR 36872 (July 13, 2021) and 86 FR 55980 (October 7, 2021). These provisions apply to carriers in the Federal Employees Health Benefits Program with respect to contract years beginning on or after January 1, 2022. The disclosure requirements at 45 CFR 149.430 regarding patient protections against balance billing are applicable as of January 1, 2022.

B. July 2021 Interim Final Rules

The July 2021 interim final rules implement sections 9816(a)–(b) and 9817(a) of the Code, sections 716(a)–(b) and 717(a) of ERISA, and sections 2799A–1(a)–(b), 2799A–2(a), 2799A–7, 2799B–1, 2799B–2, 2799B–3, and 2799B–5 of the PHS Act.

Among other requirements, the July 2021 interim final rules generally prohibit balance billing for items and services subject to the requirements in those interim final rules.[7] The July 2021 interim final rules also specify that consumer cost-sharing amounts for emergency services furnished by nonparticipating providers or facilities, and for non-emergency services furnished by nonparticipating providers with respect to patient visits to certain participating facilities, must be calculated based on the ''recognized amount,'' which is defined as one of the following amounts: (1) an amount determined by an applicable All-Payer Model Agreement under section 1115A of the Social Security Act; (2) if there is no such applicable All-Payer Model Agreement, an amount determined by a specified State law; or (3) if there is no such applicable All-Payer Model Agreement or specified State law, the lesser of the billed charge or the QPA. The July 2021 interim final rules establish the methodology for calculating the QPA, which in most circumstances will be the plan's or issuer's median contracted rate that was in effect for the particular item or service on January 31, 2019, increased for inflation. Cost-sharing amounts for air ambulance services provided by nonparticipating providers of air ambulance services must be the same as the cost-sharing amounts that would apply if the services were provided by a participating provider of air ambulance services, and these cost-sharing amounts must be calculated using the lesser of the billed charge or the QPA.

The No Surprises Act directs the Departments to specify the information that a plan or issuer must share with a nonparticipating provider, nonparticipating emergency facility, or nonparticipating provider of air ambulance services, as applicable, after determining the QPA. Therefore, 26 CFR 54.9816–6T(d), 29 CFR 2590.716–6(d), and 45 CFR 149.140(d) require that plans and issuers make certain disclosures about the QPA with each initial payment or notice of denial of payment, and that plans and issuers provide certain additional information upon request of the provider, facility, or provider of air ambulance services. This information must be provided in writing, either on paper or electronically, to a nonparticipating provider, facility, or provider of air ambulance services, as applicable, when the QPA serves as the recognized amount.

[7] 45 CFR 149.410(a), 149.420(a), and 149.440(a).

With an initial payment or notice of denial of payment, a plan or issuer must provide the QPA for each item or service involved as well as a statement certifying that, based on the determination of the plan or issuer: (1) the QPA applies for purposes of the recognized amount (or, in the case of air ambulance services, for calculating the participant's, beneficiary's, or enrollee's cost sharing), and (2) each QPA shared with the provider, facility, or provider of air ambulance services was determined in compliance with the methodology outlined in the July 2021 interim final rules.

A plan or issuer is also required to provide a statement that, if the provider, facility, or provider of air ambulance services wishes to initiate a 30-day open negotiation period for purposes of determining the amount of total payment, the provider, facility, or provider of air ambulance services may contact the appropriate person or office to initiate open negotiation, and that if the 30-day open negotiation period does not result in an agreement on the payment amount, the provider, facility, or provider of air ambulance services typically may initiate the Federal IDR process within 4 days after the end of the open negotiation period. The Departments note that these time frames are measured in business days, and plans and issuers should reflect this in the statement. The plan or issuer must provide contact information, including a telephone number and email address, for the appropriate office or person for the provider, facility, or provider of air ambulance services to contact to initiate open negotiation for purposes of determining an amount of payment (with the amount including cost sharing) for the item or service.

It has come to the Departments' attention that some plans and issuers are requiring nonparticipating providers, nonparticipating emergency facilities, and nonparticipating providers of air ambulance services to utilize plan- or issuer-owned web systems to initiate an open negotiation period. As discussed earlier, the July 2021 interim final rules require plans and issuers to provide a telephone number and email address for providers, facilities, and providers of air ambulance services to initiate the open

negotiation period. When a party to a payment dispute chooses to initiate the open negotiation period, the October 2021 interim final rules specify that the party must use the standard notice of initiation of open negotiation issued by the Departments and may satisfy the requirement to provide notice to the opposing party by sending the notice electronically if the party sending the notice has a good faith belief that the electronic method is readily accessible to the other party and the notice is also provided free of charge in paper form upon request.[8] For example, it is reasonable for a provider, facility, or provider of air ambulance services to have a good faith belief that an email address provided by a plan or issuer with the initial payment or notice of denial of payment is readily accessible to the plan or issuer. Thus, if a provider, facility, or provider of air ambulance services sends the standard notice of initiation of open negotiation to the email address identified by the plan or issuer in the notice of denial of payment or initial payment, that transmission would satisfy the regulatory requirement to provide notice to the opposing party (so long as the provider, facility, or provider of air ambulance services also sends the notice free of charge in paper form upon request).[9] Although plans and issuers may encourage the use of an online portal for nonparticipating providers, facilities, and providers of air ambulance services to submit the information necessary to initiate the open negotiation period, or may seek additional information to inform good faith open negotiations, such as through use of a supplemental open negotiation form, the July 2021 interim final rules require plans and issuers to provide a telephone number and email address for providers, facilities, and providers of air ambulance services to initiate the open negotiation period, and the October 2021 interim final rules permit a party to initiate the open negotiation period by sending the standard notice of initiation electronically to the email address identified in the notice of denial of payment or initial payment. Accordingly, a plan or issuer cannot refuse to accept the standard notice of initiation of open negotiation from a provider, facility, or provider of air ambulance services because the provider or facility did not utilize the plan's or issuer's online portal when the standard notice of initiation of open negotiation is provided in a manner consistent with the requirements of the July 2021 and October 2021 interim final rules.

In addition, upon request by the provider, facility, or provider of air ambulance services, a plan or issuer must provide, in a timely manner, information about whether the QPA includes contracted rates that were not set on a fee-for-service basis for the specific items and services and whether the QPA for those items and services was determined using underlying fee schedule rates or a derived amount.[10] If an eligible database was used to determine the QPA, the plan or issuer must provide information to identify which database was used. Similarly, if a related service code was used to determine the QPA for an item or service billed under a new service code, the plan or issuer must provide information to identify which related service code was used.

Finally, upon request by the provider, facility, or provider of air ambulance services, the plan or issuer must provide a statement, if applicable, that the plan's or issuer's contracted rates include risk-sharing, bonus, penalty, or other incentive-based or retrospective payments or payment adjustments that were excluded for purposes of calculating the QPA for the items and services involved.

C. October 2021 Interim Final Rules

The October 2021 interim final rules build on the July 2021 interim final rules and implement the Federal IDR process under sections 9816(c) and 9817(b) of the Code, sections 716(c) and 717(b) of ERISA, and sections 2799A–1(c) and 2799A–2(b) of the PHS Act.

The October 2021 interim final rules provide for a Federal IDR process that group health plans and health insurance issuers offering group or individual health insurance coverage and nonparticipating providers, facilities, and providers of air ambulance services may use to determine the out-of-network rate for items and services that are emergency services, non-emergency services furnished by nonparticipating providers with respect to patient visits to participating facilities, and air ambulance services furnished by nonparticipating providers of air ambulance services, where an All-Payer Model Agreement or specified State law does not apply. The October 2021 interim final rules generally specify rules to implement the Federal IDR process, including the requirements governing the open negotiation period; the initiation of the Federal IDR process; the Federal IDR process following initiation, including the selection of a certified IDR entity, submission of offers, payment determinations, and written decisions; costs of the Federal IDR process; certification of IDR entities, including the denial or revocation of certification of an IDR entity; and the collection of information related to the Federal IDR process from certified IDR entities to satisfy reporting requirements under the statute.

The October 2021 interim final rules provide that, not later than 30 business days after selection of a certified IDR entity, the certified IDR entity must select one of the offers submitted by the plan or issuer and the provider, facility, or provider of air ambulance services to be the out-of-network rate for the qualified IDR item or service.[11] For each qualified IDR item or service, the amount by which this out-of-network rate exceeds the cost-sharing amount for the qualified IDR item or service is the total plan or coverage payment (with any initial payment made by the plan or issuer counted towards the total plan or coverage payment).

The October 2021 interim final rules state that, in selecting the offer, the certified IDR entity must consider the QPA for the applicable year for the same or similar item or service, or, in the case of batched or bundled items or services, the QPA or QPAs for the applicable year. The preamble to the July 2021 interim final rules provides that if multiple items and services are reimbursed under non-fee-for-service contractual arrangements, such as a bundled or capitated arrangement, and are billed for under a single billing code, plans and issuers must calculate a QPA for each item or service using the underlying fee schedule rates for the relevant items and services if the underlying fee schedule rates are available.[12] If there is no underlying fee schedule rate for an item or service, the plan or issuer must calculate the QPA

[8] 26 CFR 54.9816–8T(b)(2)(iii)(B), 29 CFR 2590.716–8(b)(2)(iii)(B), and 45 CFR 149.510(b)(2)(iii)(B).

[9] 86 FR 55980, 55990 (Oct. 7, 2021).

[10] 26 CFR 54.9816–6T(d)(2)(i), 29 CFR 2590.716–6(d)(2)(i), and 45 CFR 149.140(d)(2)(i). Under the July 2021 interim final rules, plans and issuers are required to calculate the QPA using underlying fee schedule rates or derived amounts when the plan or issuer has sufficient information to calculate the median of its contracted rates, but the payments under the contractual agreements are not on a fee-for-service basis (such as bundled or capitation payments). 26 CFR 54.9816–6T(b)(2)(iii), 29 CFR 2590.716–6(b)(2)(iii), 45 CFR 149.140(b)(2)(iii). Plans and issuers are not otherwise permitted to use underlying fee schedule rates or derived amounts to calculate the QPA.

[11] Qualified IDR item or service has the same meaning as set forth in 26 CFR 54.9816–8T(a)(2)(xii), 29 CFR 2590.716–8(a)(2)(xii), and 45 CFR 149.510(a)(2)(xii).

[12] 86 FR 36893 (July 13, 2021).

using a derived amount.[13] In addition, the October 2021 interim final rules state that the certified IDR entity must also consider information requested by, or submitted by the parties to, the certified IDR entity relating to the offer, to the extent a party provides credible information that is not otherwise prohibited under 26 CFR 54.9816–8T(c)(4)(v), 29 CFR 2590.716–8(c)(4)(v), and 45 CFR 149.510(c)(4)(v).

The October 2021 interim final rules also require the parties to provide certain information to the certified IDR entity, including practice size and practice specialty or type; geographic region used to calculate the QPA; the QPA for the applicable year for the same or similar item or service as the qualified IDR item or service; and, if applicable, information showing that the Federal IDR process is inapplicable to the dispute. In addition, prior to vacatur in the United States District Court for the Eastern District of Texas, in the cases of *Texas Medical Association, et al.* v. *United States Department of Health and Human Services, et al.,* Case No. 6:21–cv–425 (E.D. Tex.) (*Texas Medical Association*) (February 23, 2022) and *LifeNet, Inc.* v. *United States Department of Health and Human Services, et al.,* Case No. 6:22–cv–162 (E.D. Tex.) (*LifeNet*) (July 26, 2022), these interim final rules specified that the certified IDR entity may request additional information relating to the parties' offers and must consider credible additional information submitted, as further described in the next paragraph, that relates to the parties' offers and the qualified IDR item or service that is the subject of a payment determination to determine if the information submitted clearly demonstrates that the QPA is materially different from the appropriate out-of-network rate (unless the information relates to a factor that the certified IDR entity is prohibited from considering). For this purpose, the October 2021 interim final rules specify that credible information is information that upon critical analysis is worthy of belief and is trustworthy.[14] Prior to vacatur in *Texas Medical Association,* the term ''material difference'' was defined to mean a substantial likelihood that a reasonable person with the training and qualifications of a certified IDR entity making a payment determination would consider the information important in determining the out-of-network rate and view the information as showing that the QPA is not the appropriate out-of-network rate.[15]

For items and services that are not air ambulance services, in determining which offer to select, the certified IDR entity must consider the following additional information under certain circumstances:

1. The level of training, experience, and quality and outcomes measurements of the provider or facility that furnished the qualified IDR item or service (such as those endorsed by the consensus-based entity authorized in section 1890 of the Social Security Act).

2. The market share held by the provider or facility or that of the plan or issuer in the geographic region in which the qualified IDR item or service was provided.

3. The acuity of the participant, beneficiary, or enrollee who received the qualified IDR item or service, or the complexity of furnishing the qualified IDR item or service to the participant, beneficiary, or enrollee.

4. The teaching status, case mix, and scope of services of the facility that furnished the qualified IDR item or service, if applicable.

5. Demonstration of good faith efforts (or lack thereof) made by the provider or facility or the plan or issuer to enter into network agreements with each other, and, if applicable, contracted rates between the provider or facility and the plan or issuer during the previous 4 plan years.

Under the October 2021 interim final rules, the certified IDR entity may only consider this information submitted by the parties if the information is credible and relates to the offer submitted by either party.[16] The certified IDR entity may not consider any information submitted on the prohibited factors, including usual and customary charges (including payment or reimbursement rates expressed as a proportion of usual and customary charges); the amount that would have been billed if the provider, facility, or provider of air ambulance services were not subject to a prohibition on balance billing; and payment or reimbursement rates payable by a public payor, in whole or in part, for items and services furnished by the providers, facilities, or providers of air ambulance services.[17]

The October 2021 interim final rules also provided, prior to vacatur in *Texas Medical Association* and *LifeNet,* that after considering the QPA, additional information requested by the certified IDR entity from the parties, and all of the credible information submitted by the parties that is consistent with the requirements and is not prohibited information, the certified IDR entity must select the offer closest to the QPA, unless the certified IDR entity determined that the credible information submitted by the parties clearly demonstrates that the QPA is materially different from the appropriate out-of-network rate, or if the offers are equally distant from the QPA but in opposing directions. In those cases, the October 2021 interim final rules required the certified IDR entity to select the offer that the certified IDR entity determines best represents the value of the item or service, which could be either party's offer.

Not later than 30 business days after the selection of the certified IDR entity, the certified IDR entity must notify parties to the dispute of the selection of the offer and provide a written decision,[18] which must be submitted to the parties and the Departments through the Federal IDR portal.[19] The October 2021 interim final rules also provided that if the certified IDR entity did not choose the offer closest to the QPA, this written decision must include an explanation of the credible information that the certified IDR entity determined demonstrated that the QPA was materially different from the appropriate out-of-network rate.

The October 2021 interim final rules also implemented the Federal IDR process for qualified IDR services that are air ambulance services. The process for a certified IDR entity to select an offer in a dispute related to qualified IDR services that are air ambulance services is essentially the same as that for other qualified IDR items or services. As with disputes related to qualified IDR items or services that are not air

[13] The Departments also specify an alternative method to calculate the QPA when there is insufficient information based on contracted rates. *See* 26 CFR 54.9816–6T(c)(2)–(4), 29 CFR 2590.716–6(c)(2)–(4), and 45 CFR 149.140(c)(2)–(4).

[14] 26 CFR 54.9816–8T(a)(2)(v), 29 CFR 2590.716–8(a)(2)(v), and 45 CFR 149.510(a)(2)(v).

[15] 26 CFR 54.9816–8T(a)(2)(viii), 29 CFR 2590.716–8(a)(2)(viii), and 45 CFR 149.510(a)(2)(viii).

[16] This requirement was vacated by the District Court in *Texas Medical Association.*

[17] 26 CFR 54.9816–8T(c)(4)(v), 29 CFR 2590.716–8(c)(4)(v), and 45 CFR 149.510(c)(4)(v). For this purpose, payment or reimbursement rates payable by a public payor include payments or reimbursement rates under the Medicare program under title XVIII of the Social Security Act, the Medicaid program under title XIX of the Social Security Act, the Children's Health Insurance Program under title XXI of the Social Security Act, the TRICARE program under chapter 55 of title 10, United States Code, chapter 17 of title 38, United States Code, and payment rates for demonstration projects under section 1115 of the Social Security Act.

[18] 26 CFR 54.9816–8T(c)(4)(vi)(A), 29 CFR 2590.716–8(c)(4)(vi)(A), and 45 CFR 149.510(c)(4)(vi)(A).

[19] The Federal IDR portal is available at *https://www.nsa-idr.cms.gov* and must be used throughout the Federal IDR process to maximize efficiency and reduce burden.

ambulance services, in determining which offer to select, the No Surprises Act and October 2021 interim final rules provide that the certified IDR entity must consider the QPA for the applicable year for the qualified IDR services that are air ambulance services. The No Surprises Act and the October 2021 interim final rules likewise specified additional circumstances, in addition to the QPA, that the certified IDR entity must consider in making the payment determination for air ambulance services. With respect to air ambulance services, the certified IDR entity is required to consider, to the extent the parties provide credible information, a different set of additional circumstances:

1. The quality and outcomes measurements of the provider that furnished the services.

2. The acuity of the condition of the participant, beneficiary, or enrollee receiving the service, or the complexity of furnishing the service to the participant, beneficiary, or enrollee.

3. The training, experience, and quality of the medical personnel that furnished the air ambulance services.

4. Ambulance vehicle type, including the clinical capability level of the vehicle.

5. Population density of the point of pick-up (as defined in 42 CFR 414.605) for the air ambulance (such as urban, suburban, rural, or frontier).

6. Demonstrations of good faith efforts (or lack thereof) made by the nonparticipating provider of air ambulance services or the plan or issuer to enter into network agreements with each other and, if applicable, contracted rates between the provider of air ambulance services and the plan or issuer during the previous 4 plan years.

As with qualified IDR items or services that are not air ambulance services, the October 2021 interim final rules provide that after considering the QPA, additional information requested by the certified IDR entity from the parties, and all of the credible information submitted by the parties that is consistent with the requirements and is not prohibited information, the certified IDR entity must select the offer closest to the QPA, unless the certified IDR entity determined that the credible information submitted by the parties clearly demonstrates that the QPA is materially different from the appropriate out-of-network rate, or if the offers are equally distant from the QPA but in opposing directions. In those cases, the October 2021 interim final rules require the certified IDR entity to select the offer that the certified IDR entity determined best represents the value of the item or service, which could be either party's offer.

D. Public Comments Received in Response to the July 2021 and October 2021 Interim Final Rules

In response to the July 2021 and October 2021 interim final rules, the Departments received thousands of comments on many different aspects of the rules. In particular, the Departments received many comments related to a clarification in the preamble to the October 2021 interim final rules [20] stating that the July 2021 interim final rules do not require the plan or issuer to calculate the participant's, beneficiary's, or enrollee's cost sharing using the QPA for the service code submitted by the provider or facility, and that instead the plan or issuer could calculate the participant's, beneficiary's, or enrollee's cost sharing using the QPA for a downcoded service code that the plan or issuer determined was more appropriate. Many of these comments addressed the information required by the July 2021 interim final rules that must be shared about the QPA, the importance of this disclosure, and how additional disclosures related to the QPA would be useful in the context of the Federal IDR process, particularly when the QPA is based on a service code or modifier that is different than the one the provider or facility billed. The Departments also received many comments related to the payment determination standards under the Federal IDR process, including the provisions that govern the certified IDR entity's consideration of the enumerated factors. These final rules address only the provisions related to these comments, and they make changes in light of the decisions in *Texas Medical Association* and *LifeNet.* The Departments intend to address comments related to other provisions of the July 2021 and October 2021 interim final rules, including comments received in response to the July 2021 interim final rules related to the disclosure requirements that are not specifically related to downcoded service codes, at a later date.

1. QPA Disclosure Requirements

With respect to the information that must be shared about the QPA, the Departments received comments on both the July 2021 interim final rules and the October 2021 interim final rules supporting the disclosure requirement and emphasizing the importance of ensuring that the QPA and other information related to the item or service are provided to providers, facilities, and providers of air ambulance services at the time of the initial payment or notice of denial of payment. Many commenters on the July 2021 interim final rules stressed that the methodology to calculate the QPA should be transparent, and that the Departments should expand the range of information that is shared with providers, facilities, and providers of air ambulance services with the QPA. Some commenters felt the degree of disclosure was insufficient, and that it provided too much power and discretion to plans and issuers. Others, however, questioned whether plans, in particular, would be able to obtain the information required under the July 2021 interim final rules, as much of the information may be in the control of vendors or other service providers. In particular, the Departments received comments in response to the July 2021 interim final rules and the October 2021 interim final rules requesting that the disclosures that must be provided with each initial payment or notice of denial of payment include additional information about how the QPA was determined to ensure that providers, facilities, and providers of air ambulance services have sufficient information when the Federal IDR process is used for a payment determination. For example, commenters requested that plans and issuers be required, without a request, to provide information on the number of contracts and the geographic region used to calculate the QPA, whether the QPA is based on downcoding [21] of the billed claim, information about the use of modifiers in calculating the QPA, the types of specialties and subspecialties that have contracted rates included in the data set used to determine the QPA, and whether bonuses and supplemental payments were paid to in-network providers.

The manner in which items and services are coded, including the concept of downcoding claims was reflected in both the July 2021 interim final rules and the October 2021 interim final rules. The preamble to the July 2021 interim final rules noted that it is important that the QPA methodology account for modifiers that affect payment rates.[22] The preamble to the

[20] See 86 FR 55997–98 n.35.

[21] Downcode is defined in these final rules at 26 CFR 54.9816–6, 29 CFR 2590.716–6, and 45 CFR 149.30, to mean the alteration by a plan or issuer of a service code to another service code, or the alteration, addition, or removal by a plan or issuer of a modifier, if the changed code or modifier is associated with a lower QPA than the service code or modifier billed by the provider, facility, or provider of air ambulance services.

[22] The preamble to the July 2021 interim final rules also noted that modifiers affect the payment

October 2021 interim final rules noted that the Departments are aware that some plans and issuers review claims and alter the service code or modifier submitted by the provider or facility to another service code or modifier that the plan or issuer determines to be more appropriate (a practice commonly referred to as ''downcoding'' when the adjustment results in a lower reimbursement, as noted in the preamble to the October 2021 interim final rules).[23] Some commenters expressed concern that plans and issuers may calculate the QPA for a lower level service code (and/or modifier) instead of calculating the QPA for the particular service code or modifier specified in the claim submitted for reimbursement. These commenters stated that it is important for providers and facilities to know whether the plan or issuer has downcoded a particular claim that is subject to the balance billing protections in the No Surprises Act to ensure that providers receive information that may be relevant to the open negotiation process and that could inform a provider's offer in the Federal IDR process, and which the provider has no other means of ascertaining. Several commenters requested that these final rules require plans and issuers to disclose whether the claim has been downcoded for purposes of computing the QPA and include an explanation of why the claim was downcoded, as well as what the QPA would have been had the claim not been downcoded.

2. Payment Determination Standards Under the Federal IDR Process

With respect to the payment determination standards under the Federal IDR process, the Departments received numerous comments from various stakeholders about the provisions that govern the certified IDR entity's consideration of the statutory factors during the payment determination process. Many commenters supported the approach set forth in the October 2021 interim final rules that directs the certified IDR entity to begin with the QPA as a baseline when making a payment determination, which those commenters highlighted as an important part of the payment determination process that would ensure that the surprise billing provisions lead to lower health care costs for all consumers. Furthermore, some commenters stated that the approach taken in the October 2021 interim final rules is crucial to achieving the budget savings the Congressional Budget Office calculated. Those commenters stated that the approach taken would shield consumers from surprise bills and ever higher insurance premium costs. Commenters stated that the October 2021 interim final rules reinforce the statutory directive that the QPA is the primary consideration for the certified IDR entity. Commenters also stated this use of the QPA represents a reasonable, market-based rate and would encourage greater participation in health plan networks.

Commenters noted that there may be circumstances in which the appropriate out-of-network rate would exceed the QPA, and that the October 2021 interim final rules properly provide a pathway for the certified IDR entity to reach that determination when it can be justified. These commenters highlighted that nothing in the October 2021 interim final rules required a certified IDR entity to default to the selection of the QPA or the offer closest to it, but rather that the rule correctly mandated that all credible information be considered. Commenters also stated that it was not unreasonable to require a party to document why the QPA is not the appropriate payment amount. Other commenters raised concerns about giving the same weight to all factors because many of the additional circumstances outlined in the rule, such as patient acuity and complexity of care, could already be incorporated into the QPA calculation. Commenters also noted that the October 2021 interim final rules provide clear guidance to certified IDR entities, which would reduce variability in payment determinations and better position the parties to settle disputes before reaching the Federal IDR process, by giving the parties a better sense of how payment determinations would be made.

Other commenters disagreed with the approach under the October 2021 interim final rules and expressed opposition to the emphasis placed on the QPA during the Federal IDR process. Many of these commenters criticized the rule as establishing a rebuttable presumption in favor of the QPA as the out-of-network rate while failing to equip the parties with the necessary information to rebut the presumption. Some commenters stated that the Departments disregarded bipartisan Congressional intent and tipped the scales in the Federal IDR process in favor of health plans and issuers. Commenters expressed concern that emphasizing the QPA ignores the complexity of billing factors, such as modifiers and the practice of bundling multiple health care services under a single billing code, and creates an incentive for the plan or issuer to downcode claims in bad faith. Commenters also expressed concern that the prominence of the QPA could drive down reimbursement rates for providers that are currently reimbursed above the median contracted rate, which they argued could jeopardize network adequacy and viability of physician practices and, commenters claimed, further drive down the QPA. A number of commenters stated that the emphasis given to the QPA would provide an incentive for plans and issuers to prefer out-of-network care, potentially resulting in reduced networks, because, ultimately, plans and issuers would pay the QPA rather than a market rate driven by the particular circumstances of the care delivered. Commenters also asserted that showing that the QPA is materially different from the appropriate out-of-network rate would burden providers and facilities who lack the resources to gather and submit this information during the Federal IDR process.

Commenters who disagreed with the approach set forth in the October 2021 interim final rules stated that certain provisions created a rebuttable presumption that the QPA is the appropriate out-of-network rate, and these commenters requested that the Departments remove these provisions, and instead issue rulemaking and guidance that instructs certified IDR entities to consider all permissible and relevant information submitted by the parties. Other commenters suggested alternative approaches for the provisions that govern the certified IDR entity's consideration of the enumerated factors. Some commenters requested that equal weight be given to the QPA and the contracted rates between the provider or facility and plan or issuer during the previous 4 years. Other commenters requested that the Departments replace the QPA as the baseline in the Federal IDR process with a different amount, such as the actual amount paid to a particular out-of-network provider for the same or similar item or service or the median contracted rate based on the amount negotiated under each contract the provider has with a plan or issuer.

3. Payment Determinations for Air Ambulance Services

A majority of commenters raised similar points with regard to the Federal IDR process for both non-air ambulance items and services and air ambulance

rate because, for example, modifiers can be used to indicate that the work required to provide a service in a particular instance was significantly greater—or significantly less—than the service typically required. *See* 86 FR 36891.

[23] *See* 86 FR 55997–98.

services. Some supported the emphasis on the QPA, while others disagreed with the use of the QPA as the baseline in the Federal IDR process. These commenters raised concerns about the transparency of the calculation of the QPA, and questioned whether the QPA is the appropriate out-of-network rate. Several commenters stressed that the use of the QPA as a baseline also raises concerns that are unique to air ambulance services. Some commenters highlighted the prevalence of single-case agreements for air ambulance services, which the commenters interpreted as including settlements of post-service claims. The commenters asserted that, because of the prevalence of these agreements, the QPA does not adequately reflect market rates for air ambulance services and the QPA would be lower than appropriate. Other commenters argued that hospital-based providers of air ambulance services are subsidized by the related hospitals, so including the rates of these providers in the QPA calculation with the rates of other air ambulance providers would improperly lower the QPA and therefore the use of the QPA as a baseline would not be appropriate. Another commenter argued that the negotiated rates of the few in-network providers for air ambulance services tend to be inflated by their disproportionately large market power, leading to artificially high air ambulance rates and an inflated QPA value. These commenters proposed that the rules should direct the certified IDR entities to take into account market concentration and prices charged by non-profit affiliated air ambulance providers because air ambulance services owned by private equity and publicly-traded companies receive higher payments and subsequently generate larger and more frequent surprise bills than their non-profit-affiliated counterparts. Other commenters disagreed and stated that the Federal IDR process should not make such a distinction among providers of air ambulance services. One commenter stated that Congress clearly recognized the variation in air ambulance services in distinguishing the six ''additional circumstances'' [24] specific to air ambulance services that certified IDR entities should consider.

4. The Certified IDR Entity's Written Decision

With respect to the certified IDR entity's written decision, several commenters supported the requirement for the certified IDR entity to provide a written decision, including the explanation of the underlying rationale for the certified IDR entity's determination. Other commenters stressed, however, that requiring the explanation of the rationale only if the certified IDR entity determined that the QPA was materially different from the appropriate out-of-network rate could discourage certified IDR entities from considering additional factors. A few commenters requested an explanation be required when the certified IDR entity selected the amount closest to the QPA, including how the information about the other required considerations was assessed while others stated that a robust explanation should be required of the certified IDR entity in all cases. Commenters also stated that requiring an explanation in all cases would ensure that certified IDR entities considered all information submitted by the parties and allow the parties to fully understand the rationale behind the certified IDR entity's determination. Commenters asserted that this could improve the quality and efficiency of the IDR process over time, as parties become better informed as to the types of information certified IDR entities find credible and the circumstances in which the parties should pursue the IDR process. Other commenters requested the Departments either eliminate the requirement for a written decision or require a similar analysis in all written decisions.

E. Litigation Regarding Requirements Related to Surprise Billing; Part II

On October 28, 2021, the Texas Medical Association, a trade association representing physicians, and a Texas physician filed a lawsuit against the Departments and the Office of Personnel Management (OPM), asserting that certain provisions of the October 2021 interim final rules relating to the certified IDR entities' consideration of the QPA, as well as additional factors related to items and services that are not air ambulance services, should be vacated. Plaintiffs argued that the interim final rules ignored Congress's intent that certified IDR entities weigh the QPA and other factors without favoring any factor, and they asserted that, as a result, the rules would skew IDR results in favor of plans and issuers. On February 23, 2022, the United States District Court for the Eastern District of Texas (District Court) issued a memorandum opinion and order that vacated portions of the October 2021 interim final rules governing aspects of the Federal IDR process related to non-air ambulance qualified IDR items or services including: (1) the definition of ''material difference;'' (2) the requirement that a certified IDR entity must select the offer closest to the QPA unless the certified IDR entity determines that credible information submitted by either party under 26 CFR 54.9816–8T(c)(4)(i), 29 CFR 2590.716–8(c)(4)(i), and 45 CFR 149.510(c)(4)(i) clearly demonstrates that the QPA is materially different from the appropriate out-of-network rate for non-air ambulance qualified IDR items or services, or if the offers are equally distant from the QPA but in opposing directions; (3) the requirement that the certified IDR entity may only consider the additional information submitted by either party to the extent that the credible information related to the circumstances under 26 CFR 54.9816–8T(c)(4)(i), 29 CFR 2590.716–8(c)(4)(i), and 45 CFR 149.510(c)(4)(i) clearly demonstrates that the QPA is materially different from the appropriate out-of-network rate for non-air ambulance qualified IDR items or services; (4) the dispute resolution examples; and (5) the requirement that, if the certified IDR entity does not choose the offer closest to the QPA, the certified IDR entity's written decision must include an explanation of the credible information that the certified IDR entity determined demonstrated that the QPA was materially different from the appropriate out-of-network rate, based on the factors certified IDR entities are permitted to consider with respect to the qualified IDR item or service.[25]

On April 27, 2022, LifeNet, Inc., a provider of air ambulance services, filed a lawsuit against the Departments and OPM seeking the vacatur of additional provisions of the October 2021 interim final rules applicable to air ambulance services. In particular, LifeNet alleged that the requirement codified in the last sentence of 26 CFR 54.9817–2T(b)(2), 29 CFR 2590.717–2(b)(2), and 45 CFR

[24] Under section 9817(b)(5)(C) of the Code, section 717(b)(5)(C) of ERISA, and section 2799A–2(b)(5)(C) of the PHS Act, those six additional circumstances are: (1) the quality and outcomes measurements of the provider that furnished such services; (2) the acuity of the individual receiving such services or the complexity of furnishing such services to such individual; (3) the training, experience, and quality of the medical personnel that furnished such services; (4) the ambulance vehicle type, including the clinical capability level of such vehicle; (5) population density of the point of pick-up (such as urban, suburban, rural, or frontier); and (6) demonstrations of good faith efforts (or lack of good faith efforts) made by the nonparticipating provider or nonparticipating facility or the plan or issuer to enter into network agreements and, if applicable, contracted rates between the provider and the plan or issuer, as applicable, during the previous 4 plan years.

[25] *Tex. Med. Ass'n, et al.* v. *U.S. Dept. of Health and Human Servs., et al.,* Case No. 6:21–cv–425 (E.D. Tex.).

149.520(b)(2) that the certified IDR entity may consider information submitted by a party only if the information ''clearly demonstrate[s] that the qualifying payment amount is materially different from the appropriate out-of-network rate'' should be vacated. On July 26, 2022, the District Court issued a memorandum opinion and order vacating this language.[26]

F. Scope and Purpose of This Rulemaking

As discussed in more detail later in this preamble, upon review of the comments the Departments received on the information that must be shared about the QPA when a service is downcoded and with respect to the Federal IDR process, and in light of the District Court's memorandum opinions and orders in *Texas Medical Association* and *LifeNet,* the Departments have determined that it is appropriate to issue these final rules to finalize parts of the July 2021 and October 2021 interim final rules related to the information that must be disclosed about the QPA under 26 CFR 54.9816–6T(d), 29 CFR 2590.716–6(d), and 45 CFR 149.140(d) to address downcoding; related to the certified IDR entity's consideration of the statutory factors when making a payment determination under the Federal IDR process at 26 CFR 54.9816–8T(c)(4)(iii)–(iv) and 54.9817T–2(b), 29 CFR 2590.716–8(c)(4)(iii)–(iv) and 2590.717–2(b), and 45 CFR 149.510(c)(4)(iii)–(iv) and 149.520(b); and related to the certified IDR entity's written decision at 26 CFR 54.9816–8T(c)(4)(vi)(B), 29 CFR 2590.716–8(c)(4)(vi)(B), and 45 CFR 149.510(c)(4)(vi)(B). These final rules also include changes to remove from the regulations the language vacated by the District Court.

This rulemaking is purposefully narrow in scope and is intended to address only certain issues critical to the implementation and effective operation of the Federal IDR process. The Departments intend to finalize the remaining provisions of the July 2021 and October 2021 interim final rules after further consideration of comments.

II. Overview of Final Rules

A. Information To Be Shared About the Qualifying Payment Amount

As described earlier in this preamble, the July 2021 interim final rules require plans and issuers to make certain disclosures with each initial payment or notice of denial of payment. When the QPA serves as the recognized amount, or as the amount upon which cost sharing is based with respect to air ambulance services, plans and issuers must disclose the QPA and certain information related to the QPA for the item or service involved, as well as certain additional information, upon request of the provider, facility, or provider of air ambulance services for each item or service involved.[27]

As stated in the preamble to the July 2021 interim final rules, the Departments seek to ensure transparent and meaningful disclosure of information relating to the calculation of the QPA for providers, facilities, and providers of air ambulance services, while at the same time minimizing administrative burdens on health plans and issuers and on the Federal IDR process. The Departments sought to balance those competing interests by, on the one hand, requiring plans and issuers to make certain disclosures with each initial payment or notice of denial of payment and to provide certain additional information upon request by the provider, facility, or provider of air ambulance services and, on the other hand, avoiding more wide-reaching disclosure requirements that could add to the costs and burdens of adjudicating claims subject to the surprise billing protections in the No Surprises Act.

After review of the comments submitted on the July 2021 interim final rules regarding downcoding and on the clarification in the preamble to the October 2021 interim final rules stating that, under the July 2021 interim final rules, a plan or issuer may calculate the QPA using a downcoded service code, including the comments suggesting how the disclosure requirements could be modified in light of this clarification, the Departments have concluded that additional disclosure of information about the QPA is appropriate.[28] This additional disclosure will ensure that providers, facilities, and providers of air ambulance services receive information regarding the QPA that aids in their meaningful participation in open negotiation and the Federal IDR process in all payment disputes that involve qualified items or services that have been subject to downcoding.

Specifically, the Departments are of the view that additional information would be helpful in cases in which the plan or issuer has downcoded the billed claim to ensure that providers, facilities, and providers of air ambulance services receive the relevant information from a plan or issuer that is needed to engage in a productive open negotiation period. Without information on what the QPA would have been had the claim not been downcoded, the provider, facility, or provider of air ambulance services may be at a disadvantage compared to the plan or issuer. In cases in which the plan or issuer has downcoded the billed claim and asserts that the QPA that corresponds with the downcoded claim is the correct total payment amount, it is of particular importance that the provider, facility, or provider of air ambulance services knows that the item or service in question has been downcoded and has information regarding both the QPA for the downcoded claim and the amount that would have been the QPA had the service code or modifier not been downcoded. In the Departments' view, this information may be critical to the provider, facility, or provider of air ambulance services in developing an offer or submitting information if it believes that the QPA calculated by the plan or issuer does not best represent the value of the item or service provided.

Furthermore, the requirement to disclose this additional information will increase transparency by ensuring that the provider, facility, or provider of air ambulance services has sufficient information about the QPA to submit an informed offer, including how it relates to the billed claim. This increased transparency will aid in the open negotiation process by helping providers, facilities, and providers of air ambulance services to understand how the plan or issuer arrived at the relevant QPA in relation to the billed claim. This increased transparency will inform the provider's, facility's, or provider of air ambulance services' decision whether to initiate open negotiation and the Federal IDR process, as well as its determination of the amount that it submits as its offer.[29] Further, this requirement will help a provider, facility, or provider of air ambulance services ascertain what information to provide the certified IDR entity to demonstrate that the provider's, facility's, or provider of air ambulance

[26] *LifeNet, Inc.* v. *United States Department of Health and Human Services, et al.,* Case No. 6:22–cv–162 (E.D. Tex.).

[27] 26 CFR 54.9816–6T(d), 29 CFR 2590.716–6(d), and 45 CFR 149.140(d).

[28] 86 FR 55997–98 (October 7, 2021).

[29] The Departments understand that many plans and issuers make initial payments that are equivalent to or are informed by the corresponding QPA for the item or service at issue. As noted in in the preamble to the July 2021 interim final rules, the initial payment should be an amount that the plan or issuer reasonably intends to be payment in full based on the relevant facts and circumstances, which may be higher or lower than the QPA, as required under the terms of the plan or coverage, prior to the beginning of any open negotiation or initiation of the Federal IDR process. 86 FR 36872, 36900 (July 13, 2021).

services' offer best represents the value of the item or service. If submitted for the certified IDR entity's consideration, this information will also aid the certified IDR entity in selecting the offer that best represents the value of the item or service by ensuring that the certified IDR entity will have additional pertinent information about the item or service. For example, in a dispute that concerns a qualified IDR service for which the plan or issuer downcoded the billed service code, the provider, facility, or provider of air ambulance services may present information showing that the billed service code was more appropriate than the downcoded service code. In such an instance, the certified IDR entity could determine that the QPA based on the downcoded service code does not sufficiently encompass the complexity of furnishing the qualified IDR service because it was based on a service code for a different service from the one furnished. If the certified IDR entity makes such a determination, then the amount that would have been the QPA had the service code or modifier not been downcoded may be relevant to the certified IDR entity in determining which offer best represents the value of the qualified IDR item or service.

Therefore, the Departments are issuing these final rules to add a definition for the term ''downcode'' to 26 CFR 54.9816–6, 29 CFR 2590.716–6, and 45 CFR 149.140; and final rules under 26 CFR 54.9816–6(d), 29 CFR 2590.716–6(d), and 45 CFR 149.140(d) to require additional information about the QPA that must be provided with an initial payment or notice of denial of payment, without a provider, facility, or provider of air ambulance services having to make a request for this information, in cases in which the plan or issuer has downcoded the billed claim. Although ''downcoding'' is being defined for the first time in these final rules, the concept was reflected in both sets of interim final rules. Though neither set of interim final rules specifically defines a term for this practice, the interim final rules described the practice and explained that it was permissible under certain circumstances. See 86 FR 55997–98 n.35 (clarification in October 2021 interim final rules regarding requirements of July 2021 interim final rules). Indeed, as described previously, the Departments received several comments in response to the July 2021 interim final rules and the October 2021 interim final rules requesting that the disclosures that must be provided with each initial payment or notice of denial of payment include additional information about how the QPA was calculated to ensure that providers, facilities, and providers of air ambulance services have sufficient information when the Federal IDR process is used for a payment determination. For example, commenters requested that plans and issuers be required, without a request, to provide information on the number of contracts and the geographic region used to calculate the QPA, whether the QPA was calculated based on a downcoded billed claim, information about the use of modifiers in calculating the QPA, the types of specialties and subspecialties that have contracted rates included in the data set used to determine the QPA, and whether bonuses and supplemental payments were paid to in-network providers.

These final rules define the term ''downcode,'' as described in the preamble to the October 2021 interim final rules, to mean the alteration by a plan or issuer of a service code to another service code, or the alteration, addition, or removal by a plan or issuer of a modifier, if the changed code or modifier is associated with a lower QPA than the service code or modifier billed by the provider, facility, or provider of air ambulance services.

These final rules also specify that, if a QPA is based on a downcoded service code or modifier, in addition to the information already required to be provided with an initial payment or notice of denial of payment, a plan or issuer must provide a statement that the service code or modifier billed by the provider, facility, or provider of air ambulance services was downcoded; an explanation of why the claim was downcoded, including a description of which service codes were altered, if any, and which modifiers were altered, added, or removed, if any; and the amount that would have been the QPA had the service code or modifier not been downcoded.

The Departments are continuing to consider comments on the July 2021 interim final rules about whether additional disclosures related to the QPA calculation methodology should be required to be provided with an initial payment or notice of denial of payment, or upon request. The Departments note that the statute places the responsibility for monitoring the accuracy of plans' and issuers' QPA calculation methodologies with the Departments (and applicable state authorities) by requiring audits of plans' and issuers' QPA calculation methodologies,[30] and the Departments have committed to conducting audits. The Departments also stress that payment determinations in the Federal IDR process should center on a determination of a total payment amount for a particular item or service based on the facts and circumstances of the dispute at issue, rather than an examination of a plan's or issuer's QPA methodology.

B. Payment Determinations Under the Federal IDR Process

The October 2021 interim final rules provide that, not later than 30 business days after the selection of the certified IDR entity, the certified IDR entity must select one of the offers submitted by the plan or issuer or the provider, facility, or provider of air ambulance services as the out-of-network rate for the qualified IDR item or service. In determining which offer to select, the October 2021 interim final rules provided, prior to *Texas Medical Association* and *LifeNet,* that the certified IDR entity must first look to the QPA, as it represents a reasonable market-based payment for relevant items and services, and then to additional information requested by the certified IDR entity from the parties and other additional information submitted by the parties. After considering the QPA and additional information, the October 2021 interim final rules required the certified IDR entity to select the offer closest to the QPA, unless the certified IDR entity determined that the additional information requested by the certified IDR entity and the credible information submitted by the parties demonstrated that the QPA was materially different from the appropriate out-of-network rate, or if the offers were equally distant from the QPA but in opposing directions. In instances in which the certified IDR entity determined that the credible information submitted by the parties clearly demonstrated that the QPA was materially different from the appropriate out-of-network rate, or when the offers were equally distant from the QPA but in opposing directions, the October 2021 interim final rules state that the certified IDR entity must select the offer that the certified IDR entity determined best represents the value of the item or service, which could be either party's offer.

As stated earlier in this preamble, on February 23, 2022 and July 26, 2022, the District Court in *Texas Medical Association* and *LifeNet* issued memorandum opinions and orders that vacated certain provisions of the October 2021 interim final rules that govern aspects of the Federal IDR process, including provisions that

[30] 86 FR 36872, 36899 (July 13, 2021).

provided guidance to certified IDR entities on selecting the appropriate out-of-network rate in a payment determination. In the October 2021 interim final rules, the Departments required certified IDR entities to view the QPA as an appropriate payment amount, subject to consideration of the information submitted by the parties related to the additional circumstances outlined in the statute, as a mechanism to ensure that certified IDR entities approached making payment determinations in the Federal IDR process in a consistent manner. The regulatory text required certified IDR entities to select the offer closest to the QPA unless the certified IDR entity determined that credible information submitted by a party clearly demonstrated that the QPA was materially different from the appropriate out-of-network rate. The preamble to the October 2021 interim final rules described the relevant instructions to certified IDR entities as a ''rebuttable presumption'' in favor of the QPA.

The District Court in *Texas Medical Association* and *LifeNet* vacated the portions of the October 2021 interim final rules that it construed as creating a rebuttable presumption in favor of the QPA. The Departments note that these final rules are not intended to impose a rebuttable presumption for payment determinations in the Federal IDR process. The regulatory text in these final rules does not include the provisions that the District Court reasoned would have the effect of imposing such a presumption.

The Departments note that, in all cases, the QPA, which is generally based on the median contracted rate for a qualified IDR item or service, will be relevant to a payment determination, as it represents the typical payment amount that a plan or issuer that is a party to a payment determination will pay in-network providers, facilities, and providers of air ambulance services for that particular qualified IDR item or service. The Departments also note that, to the extent the QPA is calculated in a manner that is consistent with the detailed rules issued under the July 2021 interim final rules, and is communicated in a way that satisfies the applicable disclosure requirements, the QPA will meet the credibility requirement that applies to the additional information and circumstances set forth in these final rules.[31] The credibility requirement is designed to ensure that the additional information submitted by the parties to a payment determination meet the same credibility standard that the QPA already meets through other mechanisms, by virtue of the requirements related to the QPA set forth in the July 2021 interim final rules. The Departments also note that the credibility requirement is designed to ensure that certified IDR entities have clear guidance on how to evaluate potentially voluminous and complex information in a methodical and consistent manner. Absent clear guidance on a process for evaluating the different factors, there would be no guarantee of consistency in how certified IDR entities reached determinations in different cases. The Departments are of the view that this guidance is also important because the QPA must be a quantitative figure, like the offers that will be submitted in a payment determination. Generally, these quantitative figures will be unlike the information received related to the additional circumstances, which will often be qualitative and open to subjective evaluation. Although the QPA is a quantitative figure, the amount that best represents the value of the qualified IDR items and services may be more or less than the QPA due to additional circumstances that are not easily quantifiable such as the care setting or the teaching status of the facility. It therefore is reasonable to ensure that certified IDR entities consider the QPA, a quantitative figure, and then consider the additional, likely-qualitative factors, when determining the out-of-network rate—another quantitative figure.

1. Requirement To Consider the QPA and Additional Information Submitted

In light of the *Texas Medical Association* and *LifeNet* decisions, and in response to comments received on these provisions, the Departments are finalizing rules that remove the provisions that the District Court vacated and that adopt standards for making a payment determination that are intended to achieve the statutory aims articulated earlier in this preamble.

Congress granted the Departments statutory authority to ''establish by regulation one independent dispute resolution process'' under which certified IDR entities determine the amount of payment for an out-of-network item or service.[32] The Federal IDR process that the Departments establish under this authority is to be ''in accordance with the succeeding provisions of'' the cited statutory subsections,[33] including the statutory provisions describing the factors for the certified IDR entity to consider in determining the out-of-network payment amount. Under sections 9816(c)(5) and 9817(b)(5) of the Code, sections 716(c)(5) and 717(b)(5) of ERISA, and sections 2799A–1(c)(5) and 2799A–2(b)(5) of the PHS Act, the statute provides that with respect to payment determinations, the certified IDR entity must always consider the QPA without the parties specifically bringing it to the certified IDR entity's attention. Next, the statute provides that the certified IDR entity must also consider ''additional information'' or ''additional circumstances'' submitted to the certified IDR entity.

As explained later in this preamble, the Departments are of the view that it is appropriate to exercise their authority under this provision, and that it is in accordance with these statutory provisions, to adopt a Federal IDR process that encourages a consistent methodology for evaluation of information when making a payment determination. The Departments are of the view that there is value in ensuring that all certified IDR entities approach payment determinations in a similar manner, which will promote consistency and predictability in the process, thereby lowering administrative costs and encouraging consistency in appropriate payments for out-of-network services.[34] The statute requires certified IDR entities to always consider the QPA when making a payment determination, as it is the one statutory consideration that will always be present in each payment determination, whereas the parties may or may not choose to submit

[31] To the extent there is a question whether a plan or issuer has complied with the July 2021 interim final rules' requirements for calculating the QPA, it is the Departments' (or applicable State authorities') responsibility, not the certified IDR entity's, to monitor the accuracy of the plan's or issuer's QPA calculation methodology by conducting an audit of the plan's or issuer's QPA calculation methodology. However, a provider or facility may always assert to the certified IDR entity that additional information points in favor of the selection of its offer as the out-of-network payment amount, even where that offer is for a payment amount that is different from the QPA.

[32] *See* section 9816(c)(2)(A) of the Code, section 716(c)(2)(A) of ERISA, and section 2799A–1(c)(2)(A) of the PHS Act; *see also* section 9817(b)(2)(A) of the Code, section 717(b)(2)(A) of ERISA, and section 2799A–2(b)(2)(A) of the PHS Act.

[33] *Id.*

[34] *See* Cong. Budget Office, *H.R. 5826, the Consumer Protections Against Surprise Medical Bills Act of 2020, as Introduced on February 10, 2020: Estimated Budgetary Effects* at 1 (Feb. 11, 2020) (arbitrators ''would be instructed to look to the health plan's median payment rate for in-network rate care,'' and as a result ''average payment rates for both in- and out-of-network care would move toward the median in-network rate,'' thereby lowering health insurance premiums and budget deficits); *see also* H.R. Rep. No. 116–615, pt. I, at 57–58 (2020).

information related to the additional circumstances as part of their offer. Consideration of the QPA, which is the first-listed statutory factor and a quantitative figure, will aid certified IDR entities in their consideration of each of the other statutory factors, as these entities will then be in a position to evaluate whether the ''additional'' factors present information that may not have already been captured in the calculation of the QPA.

As commenters noted, there may be instances in which the QPA would not adequately account for one or more of the additional factors. The Departments note that these final rules do not require certified IDR entities to default to the offer closest to the QPA or to apply a presumption in favor of that offer. The Departments are of the view that it will often be the case that the QPA represents an appropriate out-of-network rate, as the QPA is largely informed by similar information to what would be provided as information in support of the additional statutory circumstances. Nonetheless, the Departments acknowledge that the additional factors may be relevant in determining the appropriate out-of-network rate, because the QPA may not account for information specific to a particular item or service. Therefore, these final rules do not require the certified IDR entity to select the offer closest to the QPA. Rather, these final rules specify that certified IDR entities should select the offer that best represents the value of the item or service under dispute after considering the QPA and all permissible information submitted by the parties.

Accordingly, in determining which offer to select during the Federal IDR process under these final rules, the certified IDR entity must consider the QPA for the applicable year for the same or similar item or service and then must consider all additional information submitted by a party to determine which offer best reflects the appropriate out-of-network rate, provided that the information relates to the party's offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination (and does not include information that the certified IDR entity is prohibited from considering in making the payment determination under section 9816(c)(5)(D) of the Code, section 716(c)(5)(D) of ERISA, and section 2799A–1(c)(5)(D) of the PHS Act).[35] For this purpose, the Departments understand that information requested by a certified IDR entity, or submitted by a party, would be information relating to a party's offer if it tends to show that the offer best represents the value of the item or service under dispute. Therefore, these rules require the certified IDR entity to evaluate whether the information relates to the offer submitted by either party for the payment amount for the qualified IDR item or service that is the subject of the payment determination. In considering this additional information, the certified IDR entity should evaluate whether information that is offered is credible and should not give weight to information that is not credible.[36] The appropriate out-of-network rate must be the offer that the certified IDR entity determines best represents the value of the qualified IDR item or service.

For non-air ambulance items and services, the additional information to be considered includes information related to the following factors:

1. the level of training, experience, and quality and outcomes measurements of the provider or facility that furnished the qualified IDR item or service (such as those endorsed by the consensus-based entity authorized in section 1890 of the Social Security Act);

2. the market share held by the provider or facility or that of the plan or issuer in the geographic region in which the qualified IDR item or service was provided;

3. the acuity of the participant, beneficiary, or enrollee receiving the qualified IDR item or service, or the complexity of furnishing the qualified IDR item or service to the participant, beneficiary, or enrollee;

4. the teaching status, case mix, and scope of services of the facility that furnished the qualified IDR item or service, if applicable; and

5. the demonstration of good faith efforts (or lack thereof) made by the provider or facility or the plan or issuer to enter into network agreements with each other, and, if applicable, contracted rates between the provider or facility, as applicable, and the plan or issuer, as applicable, during the previous 4 plan years.

Under these final rules, the certified IDR entity must also consider information related to the offer provided in response to a request from the certified IDR entity under 26 CFR 54.9816–8T(c)(4)(i)(A)(*2*), 29 CFR 2590.716–8(c)(4)(i)(A)(*2*), and 45 CFR 149.510(c)(4)(i)(A)(*2*).

2. Avoidance of Double-Counting Information

When considering the additional information under 26 CFR 54.9816–8(c)(4)(iii), 29 CFR 2590.716–8(c)(4)(iii), and 45 CFR 149.510(c)(4)(iii), the certified IDR entity should evaluate the information and should not give weight to that information if it is already accounted for by any of the other information submitted by the parties. The certified IDR entity should consider whether the additional information is already accounted for in the QPA and should not give weight to information related to a factor if the certified IDR entity determines the information was already accounted for in the calculation of the QPA, to avoid weighting the same information twice. In addition, if the parties submit information related to more than one of the additional factors, the certified IDR entity should also consider whether the information submitted regarding those factors is already accounted for by information submitted relating to other credible information submitted to the certified IDR entity in relation to another factor and, if so, should not weigh this information more than once.

Numerous comments received on the October 2021 interim final rules highlighted that, in many cases, certain factors, such as patient acuity or the complexity of furnishing the qualified IDR item or service to the participant, beneficiary, or enrollee, will already be accounted for in the calculation of the QPA and should therefore not receive additional weight. For example, because the plan or issuer is required to calculate the QPA using median contracted rates for service codes, as well as modifiers (if applicable), and because service codes and modifiers in many cases reflect patient acuity and the complexity of the service provided, these factors will often already be reflected in the QPA.

Commenters also acknowledged that there could be instances in which the QPA would not adequately account for the acuity of the patient or complexity of the service: for example, if the complexity of a case is an outlier such that the time or intensity of care exceeds what is typical for a service code. A certified IDR entity may also conclude that the QPA does not already account for patient acuity or the complexity of furnishing the qualified IDR item or service in instances where the parties disagree on what service code or modifier accurately describes the qualified IDR item or service, such as when a plan or issuer has downcoded a claim and the QPA is based on the

[35] *See also* 26 CFR 54.9816–8T(c)(4)(v), 29 CFR 2590.716–8(c)(4)(v), and 45 CFR 149.510(c)(4)(v).

[36] For this purpose, credible information is information that upon critical analysis is worthy of belief and is trustworthy. 26 CFR 54.9816–8T(a)(2)(v), 29 CFR 2590.716–8(a)(2)(v), and 45 CFR 149.510(a)(2)(v).

downcoded service code or modifier, rather than the billed service code or modifier.

The Departments agree with the commenters that, in many cases, the additional factors for the certified IDR entity to consider other than the QPA will already be reflected in the QPA. The QPA is generally calculated to include characteristics that affect costs, including medical specialty, geographic region, and patient acuity and case severity, all captured in different billing codes or the QPA calculation methodology.[37] Therefore, in the Departments' view, giving additional weight to information that is already incorporated into the calculation of the QPA would be redundant, possibly resulting in the selection of an offer that does not best represent the value of the qualified IDR item or service and potentially over time contributing to higher health care costs. As noted earlier in this preamble, the Departments are also aware that there are instances when certain factors related to the qualified IDR item or service may not be adequately reflected in the QPA. Under these final rules, certified IDR entities are required to consider the QPA and then must consider all additional information submitted by the parties relating to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination, but each factor should be weighted only once in the evaluation of each party's payment offer. To the extent a factor is not already reflected in the QPA, the certified IDR entity should accord that factor appropriate weight based on information related to it provided by the parties. For example, some providers and facilities that provide high-acuity care, such as level 1 trauma or neonatal care, may contend that additional factors such as their case mix and the scope of services offered were not accounted for in the QPA and could justify the selection of a higher amount as the out-of-network payment amount.

3. Examples Provided

These final rules also include examples to illustrate the consideration of factors when making a payment determination, including whether and how to give weight to additional information submitted by a party. Each example assumes that the Federal IDR process applies for purposes of determining the out-of-network rate, that both parties have submitted the information parties are required to submit as part of the Federal IDR process, including the applicable QPA(s), and the submitted information does not include information on the prohibited factors.

In the first new example, a level 1 trauma center that is a nonparticipating emergency facility submits an offer that is higher than the QPA. Along with the offer, the nonparticipating emergency facility submits additional written information showing that the scope of services available at the nonparticipating emergency facility was critical to the delivery of care for the qualified IDR item or service provided, given the particular patient's acuity, and the information is determined to be credible by the certified IDR entity. The nonparticipating emergency facility also submits information showing that the contracted rates used to calculate the QPA were based on a level of service that is typical in cases in which the services are delivered by a facility that is not a level 1 trauma center and that does not have the capability to provide the scope of services provided by a level 1 trauma center. This information is also determined to be credible by the certified IDR entity. The issuer submits an offer equal to the QPA. No additional information is submitted by either party. The certified IDR entity determines that the information submitted by the nonparticipating emergency facility relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination. If the certified IDR entity determines that it is appropriate to give weight to the additional credible information submitted by the nonparticipating emergency facility and that this information demonstrates that the facility's offer best represents the value of the qualified IDR item or service, the certified IDR entity should select the facility's offer.

In the second new example, a nonparticipating provider submits an offer that is higher than the QPA. Along with the offer, the nonparticipating provider submits additional written information regarding the level of training and experience of the provider, and the information is determined to be credible by the certified IDR entity, but the certified IDR entity finds that the provider does not demonstrate that the level of training and experience relates to the offer for the appropriate payment amount for the qualified IDR item or service that is the subject of the payment determination (for example, the information does not show that the level of training and experience was necessary to provide the qualified IDR service or that the training or experience made an impact on the care that was provided). The nonparticipating provider does not submit any additional information. The issuer submits an amount equal to the QPA as its offer, with no additional information. Even if the certified IDR entity determines that the additional information regarding the level of training and experience is credible, if the certified IDR entity determines that the information does not relate to the offer for the payment amount for the qualified IDR service that is the subject of the payment determination, the certified IDR entity should not give weight to the additional information. In the absence of any other credible information that relates to a party's offer, the certified IDR entity should select the issuer's offer as the offer that best represents the value of the qualified IDR service.

In the third new example, in connection with an emergency department visit for the evaluation and management of a patient, a nonparticipating provider submits an offer that is higher than the QPA. Along with the offer, the nonparticipating provider submits additional written information showing that the acuity of the patient's condition and the complexity of the qualified IDR service required the taking of a comprehensive history, a comprehensive examination, and medical decision making of high complexity, and the information is determined to be credible by the certified IDR entity. The issuer submits an offer equal to the QPA for Current Procedural Terminology (CPT) code 99285, which is the CPT code for an emergency department visit for the evaluation and management of a patient requiring a comprehensive history, a comprehensive examination, and medical decision making of high complexity. The issuer also submits additional written information showing that this CPT code accounts for the acuity of the patient's condition, and the information is determined to be credible by the certified IDR entity. The certified IDR entity determines that this information relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination. Neither party submits any additional information. If the certified IDR entity determines the information on the acuity of the patient and complexity of the service is already accounted for in the calculation of the QPA, the certified IDR entity should not

[37] Plans and issuers are required to calculate separate QPAs for the same service code by provider specialty if the plan or issuer has contracted rates for the service code that vary based on provider specialty. *See* 26 CFR 54.9816–6T(b)(3), 29 CFR 2590.716–6(b)(3), and 45 CFR 149.140(b)(3).

give weight to the additional information provided by the nonparticipating provider. If, after evaluating the information submitted by the parties, the IDR entity determines that the issuer's offer best represents the value of the qualified IDR service, then the certified IDR entity should select the issuer's offer.

In the fourth new example, the issuer submits an offer that is higher than the QPA and that is equal to the nonparticipating emergency facility's prior contracted rate (adjusted for inflation) with the issuer for the previous year for the qualified IDR service. Although the facility is not participating in the issuer's network this year, it was a participating facility in the issuer's network in the previous 4 plan years. Along with the offer, the issuer submits additional written information showing that the contracted rates between the nonparticipating facility and the issuer during the previous 4 plan years were higher than the QPA, and that these prior contracted rates took into account the case mix and scope of services typically furnished at the facility. The certified IDR entity determines that the information is credible and that it relates to the offer submitted by the facility for the payment amount for the qualified IDR service that is the subject of the payment determination. The nonparticipating emergency facility submits an offer that is higher than both the QPA and the prior contracted rate (adjusted for inflation) and submits additional written information intending to show that the case mix and scope of services available at the facility that furnished the qualified IDR service were integral to the services provided. The certified IDR entity determines this information is credible and relates to the offer submitted by the facility for the payment amount for the qualified IDR service that is the subject of the payment determination. If the certified IDR entity determines that the information submitted by the facility regarding the case mix and scope of services available at the facility includes information that is also accounted for in the information that the issuer submitted regarding prior contracted rates, then that same information that has been submitted twice should be weighted only once by the certified IDR entity. The certified IDR entity also should not give weight to the same information provided by the nonparticipating emergency facility in relation to any other factor. If the certified IDR entity determines that the issuer's offer best represents the value of the qualified IDR service, the certified IDR entity should select the issuer's offer.

In the fifth new example, regarding a qualified IDR service for which the issuer downcoded the service code that the provider billed, the issuer submits an offer equal to the QPA (which was calculated using the downcoded service code). The issuer also submits the additional written information that it was required to disclose to the nonparticipating provider at the time of the initial payment. The certified IDR entity determines the additional information to be credible and that it relates to the offer for the payment amount for the qualified IDR service that is the subject of the payment determination. The nonparticipating provider submits an offer equal to the amount that would have been the QPA had the service code not been downcoded. The nonparticipating provider submits additional written information that includes the same documentation provided by the issuer, as well as information that explains why the billed service code was more appropriate than the downcoded service code, as evidence that the provider's offer best represents the value of the service furnished, given its complexity. Neither party submits any additional information. The certified IDR entity determines that the information submitted by the provider is credible and that it is related to the offer for the payment amount for the qualified IDR service that is the subject of the payment determination. If the certified IDR entity determines that it is appropriate to give weight to the additional credible information submitted by the provider and that this information demonstrates that the provider's offer best represents the value of the qualified IDR service, the certified IDR entity should select the provider's offer.

The Departments note that the statute and the October 2021 interim final rules continue to provide that when making a payment determination, a certified IDR entity must not consider information on the prohibited factors, such as the usual and customary charges (including payment or reimbursement rates expressed as a proportion of usual and customary charges); the amount that would have been billed by the provider, facility, or provider of air ambulance services with respect to the qualified IDR item or service had the balance billing provisions of 45 CFR 149.410, 149.420, and 149.440 (as applicable) not applied; or the payment or reimbursement rate for items and services furnished by the provider, facility, or provider of air ambulance services payable by a public payor.[38] [39] In considering all the permissible information submitted by the parties, the Departments expect that the certified IDR entity will conduct a thorough review of the information submitted to evaluate whether the information includes any of the prohibited factors, so as to ensure that prohibited factors are not considered in any payment determinations. In conducting this review, the certified IDR entity may request additional information from the disputing parties, including confirmation that information submitted does not include information on the prohibited factors.

The Departments are committed to establishing a fair, cost-effective, and reasonable IDR payment determination process that does not have an inflationary impact on health care costs. To that end, the Departments will monitor the effects of these payment determination requirements and make appropriate adjustments as necessary to achieve the intended goals articulated in this preamble.

C. Payment Determinations Under the Federal IDR Process for Air Ambulance Services

As discussed in section I.C of this preamble, the process for a certified IDR entity to select an offer in a dispute

[38] Contracted rates are frequently based on a percentage of rates payable by a public payor, such as Medicare. In these cases, because contracting parties have chosen to set their rates in this way, the contracted rates represent an independent decision by contracting parties. Thus, if a party submits information on such rates to a certified IDR entity, consideration of these contracted rates does not violate the prohibition on considering the factors described in 26 CFR 54.9816–8T(c)(4)(v), 29 CFR 2590.716–8(c)(4)(v), and 45 CFR 149.510(c)(4)(v). In contrast, if a party submits evidence showing that its offer was a percentage of the rates paid by Medicare, a certified IDR entity is prohibited from considering such information.

[39] Under 5 U.S.C. 8904(b), in the case of a retired individual who is over age 65 and enrolled in the Federal Employees Health Benefits (FEHB) Program but not covered by Medicare part A or B, fee-for-service FEHB carriers may not pay a charge imposed by a hospital provider for inpatient services or a physician to the extent that charge exceeds applicable Medicare limits. The Departments, after consulting with OPM, clarify that a certified IDR entity is not considered to violate the prohibition on considering the payment or reimbursement rate for items and services furnished by the provider, facility, or provider of air ambulance services payable by a public payor to the extent the certified IDR entity's selection of an offer is made to allow compliance with 5 U.S.C. 8904(b) and 5 CFR part 890, subpart I. That is, if 5 U.S.C. 8904(b) applies, and either offer exceeds the applicable Medicare limit referenced in 5 U.S.C. 8904(b), the certified IDR entity must ensure that the payment determination does not exceed the applicable Medicare limit. A certified IDR entity would not be considered to violate the prohibition on considering Medicare reimbursement rates when it selects an offer on this basis.

related to qualified IDR services that are air ambulance services is generally the same as the process applicable to disputes related to qualified IDR items or services that are not air ambulance services. However, section 9817(b)(5)(C) of the Code, section 717(b)(5)(C) of ERISA, section 2799A–2(b)(5)(C) of the PHS Act, and the October 2021 interim final rules specify different additional circumstances, in addition to the QPA, that the certified IDR entity must consider in making the payment determination for air ambulance services. Upon review of the comments the Departments received on the Federal IDR process, and in light of the District Court's memorandum opinions and orders in *Texas Medical Association* and *LifeNet,* the Departments have determined that it is appropriate to issue the final rules under the Federal IDR process for air ambulance services.

As for non-air ambulance items and services, these final rules provide that in determining which offer to select in a dispute related to air ambulance services, the certified IDR entity must consider certain additional information submitted by a party. Also, for non-air ambulance items and services, these final rules for air ambulance services provide that the certified IDR entity must consider the QPA for the applicable year for the same or similar service and then consider all additional permissible information to determine the appropriate out-of-network rate. For air ambulance services, this information includes information related to the following factors:

1. quality and outcomes measurements of the provider that furnished the services;

2. the acuity of the condition of the participant, beneficiary, or enrollee receiving the service, or the complexity of furnishing the service to the participant, beneficiary, or enrollee;

3. training, experience, and quality of the medical personnel that furnished the air ambulance service;

4. ambulance vehicle type, including the clinical capability level of the vehicle;

5. population density of the point of pick-up; and

6. demonstrations of good faith efforts (or lack thereof) by the disputing parties to enter into network agreements with each other, as well as, if applicable, contracted rates between the parties during the previous 4 plan years.

Additionally, as with non-air ambulance disputes, the certified IDR entity must also consider information related to the offer provided in a response to the certified IDR entity's request under 26 CFR 54.9816–8T(c)(4)(i)(A)(*2*), 29 CFR 2590.716–8(c)(4)(i)(A)(*2*), and 45 CFR 149.510(c)(4)(i)(A)(*2*). The certified IDR entity must also consider other information provided by the parties under 26 CFR 54.9816–8(c)(4)(iii)(D), 29 CFR 2590.716–8(c)(4)(iii)(D), and 45 CFR 149.510(c)(4)(iii)(D).

As with non-air ambulance disputes, the certified IDR entity should evaluate whether each piece of submitted information is credible, relates to the offer for the payment amount for the qualified IDR service submitted by either party, and does not include information on factors described in 26 CFR 54.9816–8T(c)(4)(v), 29 CFR 2590.716–8(c)(4)(v), or 45 CFR 149.510(c)(4)(v) (regarding prohibited considerations). When considering the additional information listed above, the certified IDR entity should not give weight to the information to the extent it is not credible, does not relate to either party's offer for the payment amount for the qualified IDR service, or is included in the QPA calculation or other credible information. The Departments note that these final rules do not require certified IDR entities to default to the offer closest to the QPA or to apply a presumption in favor of that offer. Rather, these final rules specify that certified IDR entities should select the offer that best represents the value of the air ambulance service under dispute after considering the QPA and all permissible information submitted by the parties.

D. The Certified IDR Entity's Written Decision

Under section 9816(c)(7) of the Code, section 716(c)(7) of ERISA, and section 2799A–1(c)(7) of the PHS Act, the Departments are required to publish a variety of information relating to the Federal IDR process, including the number of times a payment amount determined or agreed to under this process exceeds the QPA; the amount of each offer submitted in the Federal IDR process expressed as a percentage of the QPA; and any other information specified by the Departments. The statute also instructs certified IDR entities to submit to the Departments such information as the Departments determine necessary to carry out the provisions of section 9816(c) of the Code, section 716(c) of ERISA, and section 2799A–1(c) of the PHS Act, which include these reporting requirements as well as the Departments' obligations to establish and oversee the Federal IDR process. The Departments have determined it is necessary under this provision to require certified IDR entities to submit certain information, including a written statement of the certified IDR entity's reasons for a particular determination of an out-of-network rate.

Under the October 2021 interim final rules, the certified IDR entity must explain its payment determination and the underlying rationale in a written decision submitted to the parties and the Departments, in a form and manner specified by the Departments. The October 2021 interim final rules also required the certified IDR entity to include in its written decision an explanation of the credible information that the certified IDR entity determined demonstrated that the QPA was materially different from the appropriate out-of-network rate if the certified IDR entity did not choose the offer closest to the QPA.

As stated earlier in this preamble, on February 23, 2022, the District Court in *Texas Medical Association* issued a memorandum opinion and order that invalidated the requirement to provide an explanation of the credible information that the certified IDR entity determined demonstrated that the QPA was materially different from the appropriate out-of-network rate (but not the general requirement that a certified IDR entity issue a written decision). The Departments are of the view that, in all cases, a written decision with a comprehensive discussion of the rationale for the decision is important to ensure that the parties understand the outcome of a payment determination under the Federal IDR process. The Departments note that commenters generally supported the requirement that certified IDR entities provide a written rationale for determinations. The Departments agree with commenters' assertions that the certified IDR entity should be required to provide an explanation for its decision in all cases, and not only when the offer furthest from the QPA is determined to best represent the value of the qualified IDR item or service. This requirement will ensure that all parties understand the certified IDR entity's payment determination and how the various information was considered.

The Departments are finalizing standards for the written decision that are intended to achieve transparency and consistency in the Federal IDR process. Accordingly, similar to the October 2021 interim final rules these final rules require that the certified IDR entity explain in all cases its determination in a written decision provided to the parties and the Departments, in a form and manner specified by the Departments in separate guidance. Additionally, these final rules

continue to require that the rationale be included in the written decision. In response to comments requesting additional transparency and explanation, these final rules also provide that the certified IDR entity's written decision must include an explanation of its determination, including what information the certified IDR entity determined demonstrated that the offer selected as the out-of-network rate is the offer that best represents the value of the qualified IDR item or service, including the weight given to the QPA and any additional credible information submitted in accordance with these final rules. This requirement will help ensure that certified IDR entities carefully evaluate all credible information and promote transparency with respect to payment determinations. These final rules also provide that, if the certified IDR entity relies on additional information or additional circumstances in selecting an offer, its written decision must include an explanation of why the certified IDR entity concluded that this information was not already reflected in the QPA. The Departments are of the view that, in these cases, the certified IDR entity should provide this additional explanation so that the Departments may fulfill their statutory functions to monitor and to report on how often, and why, an offer that is selected exceeds the QPA for a given qualified IDR item or service. Additionally, this requirement will provide the Departments with valuable information to inform future policy making, in particular, policy making related to the QPA methodology. As stated elsewhere in this preamble, the Departments are committed to establishing a reasonable and fair Federal IDR process.

Finally, the Departments are also including two technical corrections to address a regulatory cross-references in the provisions that set forth the requirements for the certified IDR entity to include a rationale for its written decision for both air ambulance and non-air ambulance qualified IDR items and services in monthly reporting to the Departments, and to clarify that the certified IDR entity should report to the Departments the extent to which the decision relied on 26 CFR 54.9816–8(c)(4)(iii)(B)–(D), 29 CFR 2590.716–8(c)(4)(iii)(B)–(D), and 45 CFR 149.510(c)(4)(iii)(B)–(D). This requirement aligns the reporting requirement with the requirement for the written decision, and with the intent of the October 2021 interim final rules to gather such information.

III. Applicability of the Final Rules

These rules finalize certain provisions of the July 2021 and October 2021 interim final rules and address the decisions in *Texas Medical Association* and *LifeNet.* The July 2021 and October 2021 interim final rules apply for plan years (in the individual market, policy years) beginning on or after January 1, 2022, except to the extent provided below.

The final rules that implement the requirements related to the additional information that must be provided with each initial payment or notice of denial of payment if the QPA is based on a downcoded service code or modifier are applicable with respect to items or services furnished on or after October 25, 2022, for plan years (in the individual market, policy years) beginning on or after January 1, 2022.

With respect to the additional information that must be provided with each initial payment or notice of denial of payment if a QPA is based on a downcoded service code or modifier, the Departments recognize that plans and issuers often provide these notices through an automated or other streamlined system for efficiency and that plans and issuers may need additional time to update their operating systems to amend the notices that are currently generated to satisfy the QPA disclosure requirements under the July 2021 interim final rules. Plans and issuers may use reasonable methods to provide this additional disclosure with the initial payment or notice of denial of payment while plan or issuer systems and procedures are updated to provide the additional notice in a more streamlined and automated manner. Even when using other reasonable methods, plans and issuers must provide the required information starting on the date these final rules are applicable to the relevant plan or policy and in accordance with the timeframes specified in the July 2021 interim final rules. The Departments expect that plans and issuers will work to make sure that systems are updated in a timely fashion, and the Departments may provide additional guidance, as warranted.

For requirements that finalize certain provisions of the October 2021 interim final rules, the final rules addressing the payment determination standards for certified IDR entities, written decisions, and reporting are applicable with respect to items or services provided or furnished on or after October 25, 2022, for plan years (in the individual market, policy years) beginning on or after January 1, 2022. This approach will ensure uniformity and predictability in standards for qualified IDR items and services (including between non-air ambulance items and services and air ambulance services, to the extent applicable), and will allow time for the Departments to provide updated guidance to certified IDR entities and stakeholders.

If any provision in this rulemaking is held to be invalid or unenforceable facially, or as applied to any person, plaintiff, or circumstance, the provision shall be severable from the remainder of this rulemaking, and shall not affect the remainder thereof, and the invalidation of any specific application of a provision shall not affect the application of the provision to other persons or circumstances.

IV. Regulatory Impact Analysis

A. Summary

The Departments have examined the effects of these final rules as required by Executive Order 12866,[40] Executive Order 13563,[41] the Paperwork Reduction Act of 1995,[42] the Regulatory Flexibility Act,[43] section 202 of the Unfunded Mandates Reform Act of 1995,[44] Executive Order 13132,[45] and the Congressional Review Act.[46]

B. 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 costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, ''significant'' regulatory actions are subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive order defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity,

[40] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[41] Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 18, 2011).

[42] 44 U.S.C. 3506(c)(2)(A) (1995).

[43] 5 U.S.C. 601 *et seq.* (1980).

[44] 2 U.S.C. 1501 *et seq.* (1995).

[45] Federalism, 64 FR 153 (Aug. 4, 1999).

[46] 5 U.S.C. 804(2) (1996).

competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. Based on the Departments' estimates, OMB's Office of Information and Regulatory Affairs has determined this rulemaking is ''economically significant'' under section 3(f)(1) of Executive Order 12866 as measured by the $100 million threshold.[47] Therefore, the Departments have prepared a Regulatory Impact Analysis that presents the costs, benefits, and transfers associated with this rulemaking. Pursuant to the Congressional Review Act, OMB has designated these final rules as a ''major rule,'' as defined by 5 U.S.C. 804(2).

C. Need for Regulatory Action

On December 27, 2020, the CAA, which includes the No Surprises Act, was enacted.[48] The No Surprises Act provides Federal protections against surprise billing by limiting out-of-network cost sharing and prohibiting balance billing in many of the circumstances in which surprise bills arise most frequently.

On July 13, 2021, the Departments published the July 2021 interim final rules.[49] The July 2021 interim final rules implemented provisions of the No Surprises Act to protect participants, beneficiaries, and enrollees in group health plans and group and individual health insurance coverage from surprise medical bills when they receive emergency services, non-emergency services furnished by nonparticipating providers with respect to patient visits to certain participating facilities, and air ambulance services provided by nonparticipating providers of air ambulance services.

On October 7, 2021, the Departments published the October 2021 interim final rules.[50] The October 2021 interim final rules build on the July 2021 interim final rules and implement the Federal IDR process.[51] The October 2021 interim final rules generally apply to group health plans and health insurance issuers offering group or individual health insurance coverage (including grandfathered health plans) with respect to plan years (in the individual market, policy years) beginning on or after January 1, 2022; and to health care providers and facilities, providers of air ambulance services, and certified IDR entities beginning on January 1, 2022 with respect to items and services furnished during a plan year (in the individual market, policy year) beginning on or after January 1, 2022.

On February 23, 2022, the District Court in *Texas Medical Association* issued a memorandum opinion and order that vacated portions of the October 2021 interim final rules governing aspects of the Federal IDR process, as discussed earlier in this preamble. On July 26, 2022, the District Court in *LifeNet* issued a memorandum opinion and order that vacated additional portions of the October 2021 interim final rules, as discussed earlier in this preamble.

In response to the decisions in *Texas Medical Association* and *LifeNet* and comments received on the October 2021 interim final rules and July 2021 interim final rules, these final rules address certain issues critical to the implementation and effective operation of the Federal IDR process, including the disclosure requirements relating to information that group health plans and health insurance issuers offering group or individual health insurance coverage must share about the QPA, and certain requirements related to consideration of information when a certified IDR entity makes a payment determination under the Federal IDR process.

i. Final Rules on Information To Be Shared About the Qualifying Payment Amount

As described earlier in this preamble, the July 2021 interim final rules require plans and issuers to make certain disclosures with each initial payment or notice of denial of payment in cases in which the recognized amount with respect to an item or service furnished by a nonparticipating provider or nonparticipating emergency facility, or the amount upon which cost sharing is based for air ambulance services furnished by a nonparticipating provider of air ambulance services, is the QPA. After review of the comments on the July 2021 interim final rules and October 2021 interim final rules, the Departments are finalizing parts of the July 2021 interim final rules to add a new definition and make changes to require additional information about the QPA that is provided by a plan or issuer with an initial payment or notice of denial of payment in certain cases. These disclosures are required in cases in which the recognized amount with respect to an item or service furnished by a nonparticipating provider or nonparticipating emergency facility, or the amount upon which cost sharing is based for air ambulance services furnished by a nonparticipating provider of air ambulance services, is the QPA. Specifically, these final rules provide a definition of the term ''downcode'' to mean the alteration by a plan or issuer of a service code to another service code, or the alteration, addition, or removal by a plan or issuer of a modifier, if the changed code or modifier is associated with a lower QPA than the service code or modifier billed by the provider, facility, or provider of air ambulance services. These final rules also specify that when a QPA is calculated based on a downcoded service code or modifier, in addition to the information already required to be provided with an initial payment or notice of denial of payment under the July 2021 interim final rules, a plan or issuer must provide a statement that the claim was downcoded; an explanation of why the claim was downcoded, including a description of which service codes were altered, if applicable, and a description of which modifiers were altered, added, or removed, if applicable; and the amount that would have been the QPA had the service code or modifier not been downcoded. The Departments are of the view that this additional disclosure of information about the QPA will be helpful to ensure that providers, facilities, and providers of air ambulance services receive the information regarding the QPA that may assist in their meaningful participation in open negotiation and in the Federal IDR process in all payment disputes that involve qualified items or services that have been subject to downcoding. In particular, in cases in which the plan or issuer has downcoded the billed claim, it is of particular importance that the

[47] This rulemaking builds on the July 2021 and October 2021 interim final rules described in this preamble. The interim final rules were deemed to be economically significant. The economic analyses for each of these interim final rules can be found in the **Federal Register** at 86 FR 36872 and 86 FR 55980.

[48] Pub. L. 116–260 (Dec. 27, 2020).

[49] 86 FR 36872 (July 13, 2021).

[50] 86 FR 55980 (October 7, 2021).

[51] The July 2021 and October 2021 interim final rules also include interim final regulations under 5 U.S.C. 8902(p) issued by OPM that specify how certain provisions of the No Surprises Act apply to health benefit plans offered by carriers under the Federal Employees Health Benefits Act. The rules apply to carriers in the FEHB Program with respect to contract years beginning on or after January 1, 2022.

provider, facility, or provider of air ambulance services has information regarding both the QPA (based on the downcoded service code or modifier) and the amount that would have been the QPA had the service code or modifier not been downcoded in order to ascertain what information will demonstrate that the provider's, facility's, or provider of air ambulance services' offer best represents the value of the item or service and aid the certified IDR entity in selecting an offer that best represents the value of the item or service provided.

ii. Final Rules on Payment Determinations Under the Federal IDR Process

As discussed earlier in this preamble, the October 2021 interim final rules provided that, not later than 30 business days after the selection of the certified IDR entity, the certified IDR entity must select one of the offers submitted by the plan or issuer or the provider, facility, or provider of air ambulance services to be the out-of-network rate for the qualified IDR item or service. In determining which offer to select, the October 2021 interim final rules provided that the certified IDR entity must select the offer closest to the QPA unless the certified IDR entity were to determine that additional permissible information demonstrated that the QPA is materially different from the appropriate out-of-network rate, or if the offers are equally distant from the QPA but in opposing directions. A key goal in facilitating consistency in the Federal IDR process through the October 2021 interim final rules was to ensure a level of predictability in outcomes in the Federal IDR process. In the Departments' view, greater predictability in the Federal IDR process would encourage parties to settle disputes through open negotiation or earlier through the offer and acceptance of an adequate initial payment, which would increase efficiencies in how disputes are handled and ultimately lead to lower administrative costs associated with health care. As articulated earlier in this preamble, in light of the *Texas Medical Association* and *LifeNet* decisions, and in response to comments received on these provisions, the Departments are finalizing standards for making payment determinations that are intended to lead to greater predictability and regularity in the Federal IDR process. Accordingly, these final rules require that, in determining which offer to select during the Federal IDR process, the certified IDR entity must consider the QPA for the applicable year for the same or similar item or service. The certified IDR entity must then consider all additional information submitted by a party to determine which offer best reflects the appropriate out-of-network rate, provided that the information relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination and does not include information that the certified IDR entity is prohibited from weighing in making the payment determination. In considering this additional information, the certified IDR entity should evaluate whether information that is offered is credible and should not give weight to information that is not credible. The appropriate out-of-network rate must be the offer that the certified IDR entity determines best represents the value of the qualified IDR item or service.

For non-air ambulance items and services, this information includes information related to the following factors: (1) the level of training, experience, and quality and outcomes measurements of the provider or facility that furnished the qualified IDR item or service (such as those endorsed by the consensus-based entity authorized in section 1890 of the Social Security Act); (2) the market share held by the provider or facility or that of the plan or issuer in the geographic region in which the qualified IDR item or service was provided; (3) the acuity of the participant, beneficiary, or enrollee receiving the qualified IDR item or service, or the complexity of furnishing the qualified IDR item or service to the participant, beneficiary, or enrollee; (4) the teaching status, case mix, and scope of services of the facility that furnished the qualified IDR item or service, if applicable; and (5) demonstration of good faith efforts (or lack thereof) made by the provider or facility or the plan or issuer to enter into network agreements with each other, and, if applicable, contracted rates between the provider or facility, as applicable, and the plan or issuer, as applicable, during the previous 4 plan years.

Under these final rules, the certified IDR entity must also consider information related to the offer provided in a response to a request from the certified IDR entity. The certified IDR entity must also consider additional information submitted by a party, provided the information relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination and does not include information that the certified IDR entity is prohibited from weighing in making the payment determination under section 9816(c)(5)(D) of the Code, section 716(c)(5)(D) of ERISA, and section 2799A–1(c)(5)(D) of the PHS Act. In considering either form of information, the certified IDR entity should evaluate whether the information is credible and should not give weight to information that is not credible.

When considering the additional credible information under 26 CFR 54.9816–8(c)(4)(iii), 29 CFR 2590.716–8(c)(4)(iii), and 45 CFR 149.510(c)(4)(iii), the certified IDR entity should evaluate whether the information is already accounted for by any of the other credible information submitted by the parties. Because the certified IDR entity must consider the QPA, the certified IDR entity should always consider whether the additional credible information is already accounted for by the QPA and should avoid giving weight to information related to a factor if the certified IDR entity determines the information was already accounted for in the calculation of the QPA, to avoid weighting the same information twice. In addition, if the parties submit credible information related to more than one of the additional factors, the certified IDR entity should also consider whether the information submitted regarding those factors is already accounted for by information submitted relating to other credible information already before the certified IDR entity in relation to another factor and, if so, should not weigh the information more than once.

Regarding air ambulance services, these final rules state that the certified IDR entity must consider the QPA for the applicable year for the same or similar service and then consider all additional permissible information to determine the appropriate out-of-network rate. In considering this additional information, the certified IDR entity should evaluate whether information that is offered is credible and should not give weight to information that is not credible. For air ambulance services, this information includes information related to the following factors: (1) quality and outcomes measurements of the provider that furnished the air ambulance services; (2) the acuity of the condition of the participant or beneficiary receiving the air ambulance service, or the complexity of furnishing the service to the participant or beneficiary; (3) training, experience, and quality of the medical personnel that furnished the air ambulance services; (4) ambulance vehicle type, including the clinical capability level of the vehicle; (5) population density of the point of pick-

up; and (6) demonstrations of good faith efforts (or lack thereof) by the disputing parties to enter into network agreements with each other, as well as, if applicable, contracted rates between the parties during the previous 4 plan years.

After the certified IDR entity has reviewed and selected the offer it determines best represents the value of the qualified IDR item or service as the out-of-network rate, the certified IDR entity must explain its determination in a written decision submitted to the parties and the Departments, in a form and manner specified by the Departments. These final rules require that the certified IDR entity's written decision must include an explanation of what information the certified IDR entity determined demonstrated that the offer selected as the out-of-network rate is the offer that best represents the value of the qualified IDR item or service, including the weight given to the QPA and any additional credible information submitted in accordance with these final rules. If the certified IDR entity relies on any additional information in selecting an offer, the written decision must include an explanation of why the certified IDR entity concluded that this information was not already reflected in the QPA.

iii. Summary of Impacts

Plans, issuers, third-party administrators (TPAs), Federal Employees Health Benefits (FEHB) Program carriers, health care providers, facilities, providers of air ambulance services, and certified IDR entities will incur costs to comply with the requirements in these final rules. However, these final rules will help ensure that the payment determination in the Federal IDR process is a more consistent process for providers, facilities, providers of air ambulance services, plans, and issuers. These final rules will improve transparency in the Federal IDR process. This increased transparency will aid in the open negotiation process, the decision whether to initiate the Federal IDR process, and the determination of the amount a provider, facility, or provider of air ambulance services submits as an offer. Therefore, the Departments have determined the benefits of these final rules justify the costs.

This regulatory action finalizes certain provisions in the July 2021 interim final rules and the October 2021 interim final rules, including changes to remove the language vacated by the District Court in *Texas Medical Association* and *LifeNet.* This cost-benefit analysis focuses on the incremental costs of complying with the requirements that are included in these final rules. One baseline assumption for this analysis is the existence of the requirements of the July 2021 and October 2021 interim final rules, with a second baseline assumption being the use of a comparison with a hypothetical state of the world absent those interim final rules. As discussed in the analysis of the July 2021 interim final rules, the total annualized cost associated with the July 2021 interim final rules is $2,252 million, using the 7 percent discount rate.[52] As discussed in the analysis of the October 2021 interim final rules, the total annualized cost associated with the October 2021 interim final rules is $517 million, using the 7 percent discount rate.[53] The Departments consider these cost estimates to be reflected in the analytic baseline of these final rules and to form a subset of total costs of these final rules for the purposes of this cost-benefit analysis relative to the hypothetical state of the world absent the July 2021 and October 2021 interim final rules.[54] As noted in Table 1 (Accounting Statement) the Departments estimate the additional total annualized cost associated with the parts these final rules to be $5.9 million, using the 7 percent discount rate.

To avoid repeating the analysis of the July 2021 and October 2021 interim final rules, only a short summary of the benefits and costs is provided, and readers are directed to the analysis in the July 2021 and October 2021 interim final rules for more detail. Numbers in this analysis may not match numbers in the analysis for the July 2021 and October 2021 interim final rules because the estimates have been updated with the most current data. However, the methodology remains the same, except for the calculation of the burden to prepare the certified IDR entity's written decision for payment determinations, as explained later in this section. The Departments also discuss the impacts of changes made by these final rules is this section.

In accordance with OMB Circular A–4, Table 1 depicts an accounting statement summarizing the Departments' assessment of the benefits, costs, and transfers associated with this regulatory action. The Departments are unable to quantify all benefits, costs, and transfers associated with this regulatory action, but have sought, where possible, to describe these non-quantified impacts. The effects in Table 1 reflect non-quantified impacts and estimated direct monetary costs resulting from the provisions of these final rules.

TABLE 1—ACCOUNTING STATEMENT

Benefits:

- These final rules will increase transparency in the Federal IDR process.
- These final rules will help a provider, facility, or provider of air ambulance services ascertain what information will demonstrate that the provider's, facility's, or provider of air ambulance services' offer best represents the value of the item or service and aid the certified IDR entity in selecting an offer that best represents the value of the item or service.
- These final rules will promote more consistent payment determinations in the Federal IDR process for providers, facilities, providers of air ambulance services, plans, and issuers.
- These final rules will promote transparency with respect to the certified IDR entity's payment determination and will help to ensure that the determination of a total payment amount for a particular item or service is based on the facts and circumstances of the dispute at issue in each case.

[52] As discussed in the analysis of the July 2021 interim final rules, the total annualized cost associated with the July 2021 interim final rules is $2,177 million, using the 3 percent discount rate. The Departments note that these cost estimates have not been updated.

[53] As discussed in the analysis of the October 2021 interim final rules, the total annualized cost associated with the October 2021 interim final rules is $491 million, using the 3 percent discount rate. The Departments note that these cost estimates have not been updated.

[54] The Departments are accounting for the additional costs associated with these final rules due to parts of the July 2021 interim final rules and October 2021 interim final rules being finalized. For those parts being finalized, the *Texas Medical Association* and *LifeNet* decisions do not impact the quantified costs.

TABLE 1—ACCOUNTING STATEMENT—Continued

Costs	Estimate	Year dollar	Discount rate (%)	Period covered
Annualized Monetized ($million/Year)	$5.9	2021	7	2022–2031
	5.9	2021	3	2022–2031

Quantified Costs: The Departments estimate the total annual cost associated with these final rules to be $5.9 million, with $4.3 million annually attributable to the additional information plans and issuers will be required to provide related to the QPAs, $1.2 million annually attributable to the preparation of IDR payment determination notices by certified IDR entities for nonparticipating providers or emergency facility claims, and $0.3 million annually attributable to the preparation of IDR payment determination notices by certified IDR entities for nonparticipating air ambulance providers' claims.

Transfers: These final rules make no changes that impact the transfers as described in the July 2021 and October 2021 interim final rules.

D. Affected Entities

These final rules will affect health care providers, health care facilities, providers of air ambulance services, group health plans, issuers, TPAs, FEHB carriers, and certified IDR entities.

Based on data from 2020, CMS estimated that there were 1,477 issuers in the U.S. health insurance market, of which 1,212 served the individual market, 6 served the student health insurance market, 623 served the small group market, and 784 served the large group market.[55] Further, of the plans that filed a Form 5500 in 2019, 30,181 plans were self-insured.[56] Additionally, in the October 2021 interim final rules, the Departments previously estimated that there are 205 TPAs.[57] The Departments also estimate that there are 44 FEHB carriers. While there is a significant amount of research that demonstrates the prevalence of surprise billing, the Departments do not have data on the percentage of surprise bills covered by health insurance issuers and self-insured plans. However, given the size of health insurance issuers and the scope of their activities, the Departments assume that all health insurance issuers, TPAs, and FEHB carriers will be affected by these final rules.

In 2019, 183 million individuals had employer-sponsored coverage and 33.2 million had other private insurance, including individual market insurance.[58] The Departments do not expect that these final rules will directly affect individuals with private health coverage who visit an emergency room, visit a health care facility,[59] or are transported by an air ambulance, as these final rules contain only provisions that affect the relationships among plans and issuers; providers, facilities, and providers of air ambulance services; and certified IDR entities. However, the Departments estimate that these final rules will indirectly affect covered individuals, as the outcomes of payment disputes will have implications for premiums.

In the October 2021 interim final rules, the Departments estimated that there are 16,992 emergency and other health care facilities, including 6,090 hospitals,[60] 29,227 diagnostic and medical laboratories,[61] 270 independent freestanding emergency departments,[62] 9,280 ambulatory surgical centers,[63] and 1,352 critical access hospitals.[64] These entities will also be affected by these final rules.

In the October 2021 interim final rules, the Departments also estimated that in 2018, the current year for which data are available, there were 1,114 air ambulance bases in the United States.[65] The Departments do not have data on the number of providers of air ambulance services that submit out-of-network claims; however, given the prevalence of out-of-network billing among providers of air ambulance services, the Departments assume that all businesses in the industry will be affected by these final rules.

Furthermore, in the October 2021 interim final rules, the Departments estimated that 140,270 physicians, on average, bill on an out-of-network basis and will be affected by these final rules.[66] These final rules are also expected to affect non-physician providers who bill on an out-of-network basis. The Departments lack data on the number of non-physician providers who would be impacted.

Finally, there are currently 11 certified IDR entities that will be affected by these final rules.[67] The number of certified IDR entities may increase or decrease due to new IDR entities applying for certification or the Departments revoking certification because of noncompliance with the certification requirements or a certified IDR entity's inability to handle its caseload.

E. Benefits

These final rules will require plans and issuers to provide additional information about the QPA with an initial payment or notice of denial of payment in cases involving downcoding, without the provider, facility, or provider of air ambulance services having to ask for this information. These final rules will be helpful to the provider, facility, or provider of air ambulance services in developing an offer or submitting information if it believes that the QPA

[55] Centers for Medicare and Medicaid Services. ''Medical Loss Ratio Data and System Resources'' (2020). *https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.*

[56] Employee Benefits Security Administration. ''Group Health Plans Report.'' (July 2021). *https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/annual-report-on-self-insured-group-health-plans-2022-appendix-a.pdf.*

[57] Non-issuer TPAs based on data derived from the 2016 Benefit Year reinsurance program contributions.

[58] Employee Benefits Security Administration. ''Health Insurance Coverage Bulletin.'' (March 2020). *https://www.dol.gov/sites/dolgov/files/EBSA/researchers/data/health-and-welfare/health-insurance-coverage-bulletin-2020.pdf.*

[59] Health care facility is defined in the July 2021 interim final rules. *See* 26 CFR 54.9816–3T; 29 CFR 2590.716–3; and 45 CFR 149.30.

[60] American Hospital Association. ''Fast Facts on U.S. Hospitals, 2021.'' (January 2021). *https://www.aha.org/statistics/fast-facts-us-hospitals.*

[61] IBIS World. Definitive Healthcare. ''Diagnostic & Medical Laboratories Industry in the US—Market Research Report?'' (May 2021). *https://www.ibisworld.com/industry-statistics/number-of-businesses/diagnostic-medical-laboratories-united-states/.*

[62] Emergency Medicine Network. ''2018 National Emergency Department Inventory.'' (2021). *https://www.emnet-usa.org/research/studies/nedi/nedi2018/.*

[63] Definitive Healthcare. ''How Many Ambulatory Surgery Centers are in the US?'' (April 2019). *https://www.definitivehc.com/blog/how-many-ascs-are-in-the-us.*

[64] Flex Monitoring Team. ''Historical CAH Data.'' *https://www.flexmonitoring.org*/historical-cah-data-

[65] Assistant Secretary for Planning and Evaluation (ASPE) Office of Health Policy. ''Air Ambulance Use and Surprise Billing'' (September 2021). *https://aspe.hhs.gov/sites/default/files/2021-09/aspe-air-ambulance-ib-09-10-2021.pdf.*

[66] Please see the October 2021 interim final rules for more information on how these estimates were obtained.

[67] As of July 31, 2022, there are 11 certified IDR entities. Center for Medicare and Medicaid Services. ''List of Certified Independent Dispute Resolution Entities.'' *https://www.cms.gov/nosurprises/Help-resolve-payment-disputes/certified-IDRE-list.*

calculated by the plan or issuer does not best represent the value of the item or service. Furthermore, the requirement to disclose this additional information will increase transparency in the Federal IDR process. This increased transparency will aid in the open negotiation process, the decision whether to initiate the Federal IDR process, and the determination of the amount a provider, facility, or provider of air ambulance services submits as an offer. Further, these final rules will help a provider, facility, or provider of air ambulance services ascertain what information will demonstrate that the provider's, facility's, or provider of air ambulance services' offer best represents the value of the item or service and aid the certified IDR entity in selecting an offer that best represents the value of the item or service.

In addition, these final rules require that certified IDR entities must consider the QPA and then must consider all additional permissible information submitted by a party to determine which offer best reflects the appropriate out-of-network rate, provided the information relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination and does not include information that the certified IDR entity is prohibited from weighing in making the payment determination under section 9816(c)(5)(D) of the Code, section 716(c)(5)(D) of ERISA, and section 2799A–1(c)(5)(D) of the PHS Act. In considering this additional information, the certified IDR entity should evaluate whether information that is offered is credible and should not give weight to information that is not credible. The appropriate out-of-network rate must be the offer that the certified IDR entity determines best represents the value of the qualified IDR item or service.

Because the certified IDR entity must consider the QPA, the certified IDR entity should always consider whether the additional credible information is already accounted for by the QPA and should not give weight to information related to a factor if the certified IDR entity determines the information was already accounted for in the calculation of the QPA, to avoid weighting the same information twice. In addition, if the parties submit credible information related to more than one of the additional factors, the certified IDR entity should also consider whether the information submitted regarding each of those factors is already accounted for by information submitted relating to other credible information already before the certified IDR entity in relation to another factor and, if so, should not weigh such information more than once. These final rules will help ensure that the payment determination in the Federal IDR process is a consistent process for providers, facilities, providers of air ambulance services, plans, and issuers.

The certified IDR entity's written decision must include an explanation of what information the certified IDR entity determined demonstrated that the offer selected as the out-of-network rate is the offer that best represents the value of the qualified IDR item or service, including the weight given to the QPA and any additional credible information submitted in accordance with these final rules. If the certified IDR entity relies on any additional information in selecting an offer, the written decision must include an explanation of why the certified IDR entity concluded that this information was not already reflected in the qualifying payment amount. These final rules will help ensure that certified IDR entities carefully evaluate all credible non-duplicative information. These final rules will also promote transparency with respect to the certified IDR entity's payment determination.

F. Costs

This regulatory action seeks to minimize costs to providers, facilities, providers of air ambulance services, plans, issuers, TPAs, and certified IDR entities.

i. Federal IDR Process for Nonparticipating Providers or Nonparticipating Emergency Facilities

As explained in the analysis provided in the October 2021 interim final rules, the Departments estimate that there will be approximately 17,435 claims submitted to the Federal IDR process each year.[68]

After the selected certified IDR entity has reviewed the offers, the certified IDR entity must notify the provider or facility and the plan, issuer, or FEHB carrier and the Departments of the payment determination and the reason for such determination, in a form and manner specified by the Departments.[69] The Departments estimate that the annual cost to prepare the notice of the certified IDR entity's determination is $1.2 million. For more information on this calculation, please refer to the Paperwork Reduction Act analysis, found in section V of this preamble.

In addition to the information already required to be provided with an initial payment or notice of denial of payment under the July 2021 interim final rules, including the QPA, these final rules require that a plan or issuer must provide, if applicable, an acknowledgement if all or any portion of the claim was downcoded; an explanation of why the claim was downcoded, including a description of which service codes were altered, if any, and a description of any modifiers that were altered, added, or removed, if any; and the amount that would have been the QPA had the service code or modifier not been downcoded. In the July 2021 interim final rules, the Departments estimated that plans and issuers will be required to provide documents related to the QPA along with the initial payment or notice of denial of payment for approximately 5,068,512 claims annually from nonparticipating providers or facilities.[70] The Departments assume that approximately 10 percent of those claims will involve downcoding and estimate that the annual cost to prepare the required documentation and attach it to each initial payment or notice of denial of payment sent to the nonparticipating provider or facility is $4.3 million. For more information on this calculation, please refer to the Paperwork Reduction Act analysis, found in section V of this preamble.

In total, the Departments estimate that certified IDR entities, TPAs, and issuers will incur costs of approximately $5.5 million annually to provide, as applicable, payment determination notifications and the additional QPA information required under these rules.

ii. Federal IDR Process for Nonparticipating Providers of Air Ambulance Services

As explained in the October 2021 interim final rules, the Departments assume that 10 percent of out-of-network claims for air ambulance services will be submitted to the Federal IDR process,[71] which would result in nearly 5,000 annual air ambulance payment determinations via the Federal IDR process.[72]

[68] For more details, please refer to the Paperwork Reduction Act analysis, found in section V of this preamble.

[69] IDR Payment Determination Notification (section 716(c)(5)(A) of ERISA).

[70] *See* 86 FR 36872 for more information on this estimate.

[71] The Departments utilize 10 percent as an assumption to estimate the overall number of providers of air ambulance services billing out-of-network at least once in a year.

[72] The Departments estimate that of the 216.2 million individuals with employer-sponsored and other private health coverage (183 million

Continued

After the certified IDR entity has reviewed and selected the offer, the certified IDR entity must notify the provider of air ambulance services and the plan, issuer, or FEHB carrier and the Departments of the payment determination and include the written decision explaining such determination.[73] The Departments estimate that the annual cost to prepare this notice of the certified IDR entity's determination for air ambulance claims is $0.3 million. For more details, please refer to the Paperwork Reduction Act analysis, found in section V of this document.

Similar to these final rules' provisions related to the disclosure of downcoded claims for nonparticipating providers and nonparticipating emergency facilities, these final rules require that a plan or issuer must provide, if applicable, an acknowledgement if all or any portion of the claim pertaining to air ambulance services was downcoded; an explanation of why the claim was downcoded, including a description of which service codes were altered, if any, and a description of any modifiers that were altered, added, or removed, if any; and the amount that would have been the QPA had the service code or modifier not been downcoded. The Departments estimate that plans and issuers will be required to provide these documents for approximately 49,676 claims annually from providers of air ambulance services.[74] The Departments assume that approximately 10 percent of those claims will involve downcoding and estimate that the annual cost to prepare the required documentation and attach it to each initial payment or notice of denial of payment sent to the providers of air ambulance service is approximately $42,000. For more details, please refer to the Paperwork Reduction Act analysis, found in section V of this preamble.

In total, the Departments estimate that certified IDR entities, TPAs, and issuers will incur costs of approximately $0.4 million annually to provide payment determination notifications and the additional QPA information required under these final rules.

iii. Summary

The Departments estimate the total annual cost associated with these final rules to be $5.9 million with $4.3 million annually attributable to the additional information related to the QPAs, $1.2 million annually attributable to the certified IDR entity's payment determination for nonparticipating provider and emergency facility claims, and $0.3 million annually attributable to the certified IDR entity's payment determination notification for nonparticipating provider of air ambulance service claims.

G. Transfers

These final rules make no changes that impact the transfers as described in the July 2021 and October 2021 interim final rules.

H. Uncertainty

These final rules make no changes that impact the uncertainties as described in the July 2021 and October 2021 interim final rules.

I. Regulatory Alternatives

Section 6(a)(3)(C)(iii) of Executive Order 12866 requires an economically significant regulation, and encourages other regulations, to include an assessment of the costs and benefits of potentially effective and reasonable alternatives to the planned regulation. A discussion of the regulatory alternatives is included in this section.

As described in Section I.E. of this preamble, the District Court in *Texas Medical Association* and *LifeNet* vacated provisions in the October 2021 interim final rules addressing how certified IDR entities were to weigh the QPA and the additional factors. The Departments considered the possibility of not replacing the provisions vacated by the District Court. However, in the Departments' view, this would have resulted in uncertainty regarding the Federal IDR process, because certain aspects of the process would be governed by the October 2021 interim final rules as published in the **Federal Register**, while others would not. This approach could result in confusion on the part of the public and certified IDR entities, likely making the decisions of certified IDR entities less predictable, adding to the uncertainty and the costs of the Federal IDR process. Therefore, the Departments are of the view that it is more appropriate to make changes to the Federal IDR process for both non-air ambulance and air ambulance items and services in these final rules.

The Departments considered finalizing the additional factors other than the QPA that a certified IDR entity may consider when submitted by one of the disputing parties without addressing the possibility that these factors may already have been accounted for in the QPA. Numerous comments received on the October 2021 interim final rules highlighted that in many cases, certain factors, such as patient acuity or the complexity of furnishing the qualified IDR item or service to the participant, beneficiary, or enrollee, will already be accounted for in the calculation of the QPA. Commenters acknowledged, however, that there could be instances in which the QPA would not adequately account for the acuity of the patient or complexity of the service: for example, if the complexity of a case is an outlier such that the time or intensity of care exceeds what is typical for the service code. The Departments are of the view that, in many cases, factors that a certified IDR entity may consider other than the QPA will already be reflected in the QPA. The QPA is generally calculated to include characteristics that can affect costs, including medical specialty, geographic region, and patient acuity and case severity, all captured in different billing codes or aspects of the methodology that plans and issuers are required to follow in calculating the QPA. Therefore, weighting additional information that is already taken into account in the calculation of the QPA would be redundant and in the Departments' view, would result in increased administrative burden to the certified IDR entity, potentially resulting in the selection of an offer that does not best reflect the most appropriate value insofar as additional weight would be given to information related to a factor that is already accounted for in the QPA, effectively weighting that information twice. Under these final rules, certified IDR entities must consider the QPA and then must consider all additional information submitted by the parties. To help ensure that the Federal IDR process results in determinations that accurately reflect the fair value of a given item or service, the certified IDR entity should consider all additional information submitted by the parties but should not give weight to information if it is already accounted for by any of the other information submitted by the parties.

J. Conclusion and Summary of Economic Impacts

The Departments are of the view that these final rules will promote

individuals with employer-sponsored health coverage and 33.2 million individuals with other private coverage), there are 33.3 air transports per 100,000 individuals, of which 69 percent result in out-of-network bills. The Departments assume that 10 percent of the out-of-network bills will end up in the Federal IDR process. This is calculated as: 216,200,000 individuals × 0.000333 air transports per individual × 69% × 10%= 4,968.

[73] IDR Payment Determination Notification (section 716(c)(5)(A) of ERISA).

[74] The Departments estimate that of the 216.2 million individuals with employer-sponsored and other private health coverage, there are 33.3 air transports per 100,000 individuals, of which 69 percent result in an out-of-network bill. The number of air ambulance claims is estimated as: 216,200,000 individuals × 0.000333 air transports per individual × 69% = 49,676.

transparency, consistency, and predictability in the Federal IDR process. These final rules provide a market-based approach that will help encourage plans and issuers, and providers, facilities, and providers of air ambulance services to arrive at reasonable payment rates.

The Departments estimate that these final rules will impose incremental annual costs of approximately $5.9 million. Over 10 years, the associated costs will be approximately $44.1 million with an annualized cost of $5.9 million, using a 7 percent discount rate.[75]

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), the Departments solicited comments concerning the information collection requirements (ICRs) included in the July 2021 and October 2021 interim final rules. At the same time, the Departments also submitted ICRs to OMB, in accordance with 44 U.S.C. 3507(d).

The Departments received comments that specifically addressed the paperwork burden analysis of the information collection requirements contained in the July 2021 and October 2021 interim final rules. The Departments reviewed these public comments in developing the paperwork burden analysis discussed here.

The changes made by these final rules affect the existing OMB control number, 1210–0169. A copy of the ICR for OMB Control Number 1210–0169 may be obtained by contacting the PRA addressee listed in the following sentence or at *www.RegInfo.gov.* For additional information, contact James Butikofer, Office of Research and Analysis, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210; or sent to *ebsa.opr@dol.gov.*

The OMB will consider all written comments that they receive on or before September 26, 2022. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Departments, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the Departments' estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility, and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Group health plans, health insurance issuers, FEHB carriers, and certified IDR entities are responsible for ensuring compliance with these final rules. Accordingly, the Departments refer to costs incurred by plans, issuers, FEHB carriers, and certified IDR entities. However, it is expected that most self-insured group health plans will work with a TPA to meet the requirements of these final rules. The Departments recognize the potential that some of the largest self-insured plans may seek to meet the requirements of these final rules in-house and not use a TPA or other third party. In these cases, those plans will incur the estimated hour burden and cost directly.

These final rules add additional burdens to the ICR presented in the October 2021 interim final rules. The following discussion covers the changes being made to the ICR and the additional burden these changes impose, followed by a summary of the ICR. Copies of the ICR may be obtained by contacting the PRA addressee.

A. ICRs Regarding Additional Information To Be Shared With the Initial Payment or Notice of Denial of Payment (26 CFR 54.9816–6(d), 29 CFR 2590.716–6(d), and 45 CFR 149.140(d); OMB Control Number: 1210–0169)

These final rules specify that where a QPA is calculated based on a downcoded service code, in addition to the information already required to be provided with an initial payment or notice of denial of payment under the July 2021 interim final rules, a plan or issuer must provide, if applicable, a statement that all or a portion of the claim was downcoded; an explanation of why the claim was downcoded, including a description of which service codes were altered, if any, and a description of any modifiers that were altered or added, if any; and the amount that would have been the QPA had the service codes or modifiers not been downcoded.

The Departments assume that TPAs will provide this information on behalf of self-insured plans. In addition, the Departments assume that issuers and TPAs will automate the process of preparing and providing this information in a format similar to an explanation of benefits as part of the system to calculate the QPA. The Departments estimate that a total of 1,477 issuers and 205 TPAs will incur a burden to comply with this provision.

In the July 2021 interim final rules, the Departments estimated that plans and issuers will be required to provide documents related to QPAs along with the initial payment or notice of denial of payment for approximately 5,068,512 claims annually from nonparticipating providers or facilities.[76] Additionally, the Departments estimated that plans and issuers will be required to provide these documents for approximately 49,676 claims annually from nonparticipating providers of air ambulance services.[77] In the absence of data, the Departments assume that approximately 10 percent, or 511,819, of claims from nonparticipating providers, facilities, and nonparticipating providers of air ambulance services will involve downcoding and that it will take a medical secretary 10 minutes (at an hourly rate of $50.76 [78]) to prepare the required documentation and include it with each initial payment or notice of denial of payment sent to the nonparticipating provider, facility, or provider of air ambulance services.

The Departments estimate the additional QPA information will be provided for approximately 506,851 claims from nonparticipating providers or facilities. The annual burden to prepare the required documentation and attach it to each initial payment or notice of denial of payment sent to the nonparticipating providers or facilities will be approximately 84,475 hours annually, with an associated equivalent

[75] The costs would be $51.5 million over 10-year period with an annualized cost of $5.9 million, applying a 3 percent discount rate.

[76] *See* 86 FR 36872 for more information on this estimate.

[77] The Departments estimate that of the 216.2 million individuals with employer-sponsored and other private health coverage, there are 33.3 air transports per 100,000 individuals, of which 69 percent result in an out-of-network bill. The number of air ambulance claims is estimated as: 216,200,000 individuals × 0.000333 air transports per individual × 0.69% = 49,676 claims.

[78] Internal DOL calculation based on 2021 labor cost data. For a description of DOL's methodology for calculating wage rates, see *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf*

cost of $4.3 million.[79] The Departments estimate that the additional QPA information will be provided for approximately 4,968 claims from providers of air ambulance services. The annual burden to prepare the required documentation and attach it to each initial payment or notice of denial of payment sent to providers of air ambulance services will be approximately 828 hours annually, with an associated equivalent cost of $42,029.[80] Thus, the total estimated burden to provide the additional QPA information with initial payments or notices of denial of payment sent to the nonparticipating providers, facilities, and providers of air ambulance services, for all issuers and TPAs, will be approximately 85,303 hours annually, with an associated equivalent cost of approximately $4.3 million.[81] As shown in Table 2, the Departments share jurisdiction, and it is estimated that 50 percent of the burden will be accounted for by HHS, 25 percent of the burden will be accounted for by DOL, and 25 percent will be accounted for by Department of the Treasury. Thus, HHS will account for approximately 42,652 hours with an equivalent cost of approximately $2,164,990. DOL and the Department of the Treasury will each account for approximately 21,326 hours with an equivalent cost of approximately $1,082,495.

TABLE 2—SUMMARY ANNUAL COST AND BURDEN REGARDING INFORMATION TO BE SHARED ABOUT QPA STARTING IN 2022

Department	Estimated number of responses	Total annual burden (hours)	Estimated dollar value of labor hours
HHS	255,910	42,652	$2,164,990
DOL	127,955	21,326	1,082,495
Treasury	127,955	21,326	1,082,495

B. ICRs Regarding the Certified IDR Entity's Payment Determination Written Decision in the Federal IDR Process for Nonparticipating Providers or Nonparticipating Emergency Facilities (26 CFR 54.9816–8T, 26 CFR 54.9816–8, 29 CFR 2590.716–8, and 45 CFR 149.510; OMB Control Number: 1210–0169)

The Departments estimate that 17,435 claims will be submitted as part of the Federal IDR process each year.[82] After the certified IDR entity has reviewed the offers and credible information submitted by the parties and selected an offer, the certified IDR entity must notify the provider, facility, or provider of air ambulance services and the plan, issuer, or FEHB carrier and the Departments of the payment determination and the reason for such determination, in a form and manner specified by the Departments.[83] The certified IDR entity's written decision must include an explanation of the additional non-prohibited information that the certified IDR entity determined demonstrated that the offer selected is the out-of-network rate that best represents the value of the qualified IDR item or service, including the weight given to the QPA and any additional credible information submitted in accordance with these final rules. If the certified IDR entity relies on any additional information in selecting an offer, the written decision must include an explanation of why the certified IDR entity concluded that this information was not already reflected in the qualifying payment amount.

The Departments estimate that, on average, it will take a physician and medical billing specialist 0.5 hours to prepare the notice at a composite hourly wage rate of $136.81.[84] The burden for each certified IDR entity will be 0.5 hours, with an equivalent cost of approximately $69.24. Thus, the total cost burden for all certified IDR entities to prepare this notice for Federal IDR claims will be $1.2 million.[85]

The total annual cost burden for certified IDR entities to provide the payment determination notices regarding Federal IDR claims will be $1,192,641. As shown in Table 3, the Departments and OPM share jurisdiction, and it is estimated that 45 percent of the burden will be accounted for by HHS, 25 percent will be accounted for by DOL, 25 percent of the burden will be accounted for by the Department of the Treasury, and 5 percent will be accounted for by OPM. Thus, HHS will account for a cost burden of $536,689. DOL and the Department of the Treasury will each account for a cost burden of $298,160. OPM will account for a cost burden of $59,632.

[79] This is calculated as: (5,068,512 documents for nonparticipating providers or facilities) × (10%) × (10 minutes) = 84,475 hours. 84,475 hours × $50.76 = $4,287,951.

[80] This is calculated as: (49,676 documents for nonparticipating providers of air ambulance services) × (10%) × (10 minutes) = 828 hours. 828 hours × $50.76 = $42,029.

[81] This is calculated as: (5,068,512 documents for nonparticipating providers or facilities + 49,676 documents for nonparticipating providers of air ambulance services) × (10%) × (10 minutes) = 85,303 hours. 85,303 hours × $50.76 = $4,329,980.

[82] In 2020, 10.7 million individuals had employer-sponsored coverage and 1.7 million individuals had other private coverage in New York State, while 183 million individuals had employer-sponsored coverage and 33.2 million individuals had other private coverage nationally. The Departments estimate that New York accounts for 5.7 percent of the private insurance market ((10.7 + 1.7)/(183 + 33.2) = 5.7 percent). (*See* Employee Benefits Security Administration. ''Health Insurance Coverage Bulletin.'' (March 2020).) In 2018, New York State had 1,014 IDR decisions, up from 650 in 2017 and 396 in 2016. (*See* Adler, Loren. ''Experience with New York's Arbitration Process for Surprise Out-of-Network Bills.'' U.S.C.-Brookings Schaeffer on Health Policy. (October 2019).) For purposes of this analysis, the Departments assume that, going forward, New York State will continue to see 1,000 IDR cases each year and that the number of Federal IDR cases will be proportional to that in New York State by share of covered individuals in the private health coverage market. The number of claims in the Federal IDR process is calculated in the following manner: 1,000/0.057= 17,435.

[83] IDR Payment Determination Notification (section 716(c)(5)(A) of ERISA).

[84] The Departments use a composite wage rate because different professionals will review different types of claims and groups of individuals. The wage rate of a physician is $192.37, and the wage rate of a medical billing specialist is $109.03. (Internal DOL calculation based on 2021 labor cost data. For a description of DOL's methodology for calculating wage rates, see *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf.*) The composite wage rate is estimated in the following manner: ($192.37 × (⅓) + $109.03 × (⅔) = $136.81).

[85] 17,453 claims × 0.5 hours × $136.81 as the composite wage rate for a physician and medical billing specialist = $1,192,641.

TABLE 3—SUMMARY ANNUAL COST AND BURDEN STARTING IN 2022 REGARDING CERTIFIED IDR ENTITY'S PAYMENT DETERMINATION WRITTEN DECISION IN THE FEDERAL IDR PROCESS FOR NONPARTICIPATING PROVIDERS OR NONPARTICIPATING EMERGENCY FACILITIES CLAIMS

Department	
HHS	$536,689
DOL	298,160
Treasury	298,160
OPM	59,632

C. ICRs Regarding the Certified IDR Entity's Payment Determination Written Decision in the Federal IDR Process for Nonparticipating Providers of Air Ambulance Services (26 CFR 54.9817–2T, 26 CFR 54.9817–2, 29 CFR 2590.717–2, and 45 CFR 149.520; OMB Control Number: 1210–0169)

The Departments estimate there will be 4,968 claims for air ambulance services submitted to the Federal IDR process each year.[86] After the certified IDR entity has reviewed the offers and any submitted credible information, and selected an offer, the certified IDR entity must notify the provider of air ambulance services and the plan, issuer, or FEHB carrier and the Departments of the payment determination and include the written decision explaining such determination.[87] The certified IDR entity's written decision must include an explanation of what information that the certified IDR entity determined demonstrated that the offer selected is the out-of-network rate that best represents the value of the qualified IDR service. This explanation must include the weight given to the QPA and any additional non-prohibited, credible information submitted in accordance with these final rules. If the certified IDR entity relies on any additional information in selecting an offer, the written decision must include an explanation of why the certified IDR entity concluded that this information was not already reflected in the qualifying payment amount.

[86] The Departments estimate that of the 183 million individuals with employment-related health insurance and 33.2 million individuals with other private coverage, there are 33.3 air transports per 100,000 individuals, of which 69 percent result in an out-of-network bill. The Departments assume that 10 percent of the out-of-network bills will end up in the Federal IDR process. The number of air ambulance service claims is calculated in the following manner: (183,000,000 individuals + 33,200,000 individuals) × 0.000333 air transports per individual × 69% × 10%= 4,968 claims.

[87] IDR Payment Determination Notification (section 716(c)(5)(A) of ERISA).

The Departments estimate that, on average, it will take a physician and medical billing specialist working for the certified IDR entity 0.5 hour to prepare the notice of the certified IDR entity's determination at a composite hourly wage rate of $136.81.[88] The burden for each certified IDR entity will be 0.5 hours, with an equivalent cost of approximately $69.24. Thus, the total cost burden for certified IDR entities to provide this notice for air ambulance claims will be $0.3 million.[89]

The total annual cost burden for the certified IDR entities to provide the payment determination notices regarding air ambulance claims will be $339,836. As shown in Table 4, the Departments and OPM share jurisdiction, and it is estimated that 45 percent of the burden will be accounted for by HHS, 25 percent will be accounted for by DOL, 25 percent of the burden will be accounted for by the Department of the Treasury, and 5 percent will be accounted for by OPM. Thus, HHS will account for a cost burden of $152,926. DOL and the Department of the Treasury will each account for a cost burden of $84,959. OPM will account for a cost burden of $16,992.

TABLE 4—SUMMARY ANNUAL COST AND BURDEN STARTING IN 2022 REGARDING CERTIFIED IDR ENTITY'S PAYMENT DETERMINATION WRITTEN DECISION IN THE FEDERAL IDR PROCESS FOR AIR AMBULANCE CLAIMS

Department	Estimated number of responses	Total estimated cost
HHS	2,235	$152,926
DOL	1,242	84,959
Treasury	1,242	84,959
OPM	248	16,992

Summary

The total annual cost burden for certified IDR entities to provide payment determination notices regarding non-air ambulance and air ambulance claims will be $1,532,477. As shown in Table 5, HHS will account for a cost burden of approximately $689,615. DOL and the Department of the Treasury will each account for a cost burden of approximately $383,119. OPM will account for a cost burden of approximately $76,624.

TABLE 5—SUMMARY ANNUAL COST AND BURDEN STARTING IN 2022 REGARDING CERTIFIED IDR ENTITY'S PAYMENT DETERMINATION WRITTEN DECISION IN THE FEDERAL IDR PROCESS FOR NON-AIR AMBULANCE AND AIR AMBULANCE CLAIMS

Department	Estimated number of responses	Total estimated cost
HHS	10,145	$689,615
DOL	5,636	383,119
Treasury	5,636	383,119
OPM	1,127	76,624

These paperwork burden estimates are summarized as follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Type of Review: Revision of existing collection.

Title: Requirements Related to Surprise Billing: Payment Determination.

OMB Control Number: 1210–0169.

Affected Public: Private Sector—Businesses or other for-profits; not-for-profit institutions.

Estimated Number of Respondents: 22,828

Estimated Number of Annual Responses: 163,542

Frequency of Response: Occasionally.

Estimated Total Annual Burden Hours: 89,521

Estimated Total Annual Burden Cost: $555,427

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [90] imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (APA) and are not likely to have a significant economic impact on a substantial number of small entities. Unless the head of an agency determines that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 [91] of the RFA requires the agency to present a final regulatory flexibility analysis of these final rules.

The Departments certify that these final rules would not have a significant

[88] The Departments use a composite wage rate because different professionals will review different types of claims and groups of individuals. The wage rate of a physician is $192.37, and the wage rate of a medical billing specialist is $109.03. (Internal DOL calculation based on 2021 labor cost data. For a description of DOL's methodology for calculating wage rates, see *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf.*) The composite wage rate is estimated in the following manner: ($192.37 × (⅓) + $109.03 × (⅔) = $136.81).

[89] 4,968 air ambulance claims × 0.5 hours × $136.81 as the composite wage rate for a physician and medical billing specialist = $339,836.

[90] 5 U.S.C. 601 *et seq.* (1980).

[91] 5 U.S.C. 604 (1980).

impact on a substantial number of small entities during the first year. The Departments have prepared a justification for this determination below.

A. Affected Small Entities

The Small Business Administration (SBA), pursuant to the Small Business Act,[92] defines small businesses and issues size standards by industry. These final rules will affect all health insurance issuers, TPAs, and certified IDR entities.

For purposes of analysis under the RFA, the Departments consider an employee benefit plan with fewer than 100 participants to be a small entity.[93] The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for plans that cover fewer than 100 participants. Under section 104(a)(3) of ERISA, the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), DOL has previously issued simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans, which cover fewer than 100 participants and satisfy certain requirements. See 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46, and 2520.104b–10. While some large employers have small plans, small plans are maintained generally by small employers. Thus, the Departments are of the view that assessing the impact of these final rules on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the SBA [94] pursuant to the Small Business Act.[95]

As discussed in the regulatory impact analysis, these final rules will affect health insurance issuers and TPAs. In 2020, there were 205 TPAs [96] and 1,477 issuers in the U.S. health insurance market.[97] Most TPAs would be classified under the North American Industry Classification System (NAICS) code 524292 (Third Party Administration of Insurance and Pension Funds). According to SBA size standards,[98] entities with average annual receipts of $40 million or less are considered small entities. By this standard, the Departments estimate that 63.5 percent of TPAs (130 TPAs) are small under the SBA's size standards.[99] Most health insurance issuers would be classified under the NAICS code 524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards,[100] entities with average annual receipts of $41.5 million or less are considered small entities. By this standard, the Departments estimate that 8.5 percent of issuers (125 issuers), are small under the SBA's size standards.[101]

This estimate may overstate the actual number of small health insurance issuers that may be affected. The Departments expect that few insurance issuers underwriting comprehensive health insurance coverage fall below these size thresholds. Based on data from medical loss ratio (MLR) annual report [102] submissions for the 2020 MLR reporting year, approximately 78 out of 481 issuers of health insurance coverage nationwide had total premium revenue of $41.5 million or less. This estimate may overstate the actual number of small health insurance issuers that may be affected, since over 72 percent of these small issuers belong to larger holding groups, and many, if not all, of these small issuers are likely to have non-health lines of business that will result in their revenues exceeding $41.5 million. However, to produce a conservative estimate, for the purposes of this analysis, the Departments assume 8.5 percent, (125 issuers) are considered small entities.

These final rules will also affect health care providers because the Departments assume that the cost of preparing and delivering the notice of the certified IDR entity's determination is included in the certified IDR entity fees paid by providers, facilities, providers of air ambulance services, plans, issuers, and FEHB carriers. The Departments estimate that 140,270 physicians, on average, bill on an out-of-network basis. The number of small physicians is estimated based on the SBA's size standards. The size standard applied for providers is NAICS 62111 (Offices of Physicians), for which a business with less than $14 million in receipts is considered to be small. By this standard, the Departments estimate that 45.8 percent (64,232 physicians) are considered small under the SBA's size standards.[103] These final rules are also expected to affect non-physician providers who bill on an out-of-network basis. The Departments lack data on the number of non-physician providers who would be impacted.

The Departments do not have the same level of data for the air ambulance sub-sector. In 2020, the total revenue of providers of air ambulance services is estimated to be $4.2 billion with 1,114 air ambulance bases.[104] This results in an industry average of $3.8 million per air ambulance base. Accordingly, the Departments are of the view that most providers of air ambulance services are likely to be small entities.

B. Impact of the Final Rules

In addition to the information already required to be provided with an initial payment or notice of denial of payment under the July 2021 interim final rules, including the QPA, these final rules require that a plan or issuer must provide, if applicable, an acknowledgement if all or any portion of the claim was downcoded; an explanation of why the claim was

[92] 15 U.S.C. 631 *et seq.*

[93] The Departments consulted with the Small Business Administration Office of Advocacy in making this determination, as required by 5 U.S.C. 603(c) and 13 CFR 121.903(c) in a memo dated June 4, 2020.

[94] 13 CFR 121.201 (2011).

[95] 15 U.S.C. 631 *et seq.* (2011).

[96] Non-issuer TPAs based on data derived from the 2016 Benefit Year reinsurance program contributions.

[97] Centers for Medicare and Medicaid Services. ''Medical Loss Ratio Data and System Resources'' (2020). *https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.*

[98] Available at *https://www.sba.gov/document/support—table-size-standards.*

[99] Based on data from the NAICS Association for NAICS code 524292, the Departments estimate the percent of businesses within the industry of Third Party Administration of Insurance and Pension Funds with less than $40 million in annual sales. (See NAICS Association. ''Market Analysis Profile: NAICS Code & Annual Sales.'' *https://www.naics.com/business-lists/counts-by-naics-code/.*)

[100] Available at *https://www.sba.gov/document/support—table-size-standards.*

[101] Based on data from the NAICS Association for NAICS code 524114, the Departments estimate the percent of businesses within the industry of Direct Health and Medical Insurer Carriers with less than $41.5 million in annual sales. (*See* NAICS Association. ''Market Analysis Profile: NAICS Code & Annual Sales.'' *https://www.naics.com/business-lists/counts-by-naics-code/.*)

[102] Available at *https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.html.*

[103] Based on data from the NAICS Association for NAICS code 62111, the Departments estimate the percent of businesses within the industry of Offices of Physicians with less than $14 million in annual sales. (*See* NAICS Association. ''Market Analysis Profile: NAICS Code & Annual Sales.'' *https://www.naics.com/business-lists/counts-by-naics-code/.*)

[104] ASPE Office of Health Policy. ''Air Ambulance Use and Surprise Billing'' (September 2021). *https://aspe.hhs.gov/sites/default/files/2021-09/aspe-air-ambulance-ib-09-10-2021.pdf.* U.S. Small Business Administration. ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes.'' *https://www.naics.com/business-lists/counts-by-naics-code/. https://www.sba.gov/sites/default/files/2022-05/Table%20of%20Size%20Standards_Effective%20May%202%202022_Final.pdf.*

downcoded, including a description of which service codes were altered, if any, and a description of any modifiers that were altered, added, or removed, if any; and the amount that would have been the QPA had the service code or modifier not been downcoded. The total annual burden for all issuers and TPAs for providing the additional information related to the QPA is estimated to be 85,303 hours with an equivalent cost of approximately $4.3 million. For more details, please refer to the Paperwork Reduction Act analysis, found in section VI of this preamble.

In addition, after the certified IDR entity has reviewed the offers and selected an offer, the certified IDR entity must explain its determination in a written decision submitted to the parties and the Departments, in a form and manner specified by the Departments. The certified IDR entity's written decision must include an explanation of what information the certified IDR entity determined demonstrated that the offer selected is the out-of-network rate that best represents the value of the qualified IDR item or service. This explanation must include the weight given to the QPA and any additional non-prohibited, credible information submitted in accordance with these final rules. If the certified IDR entity relies on any additional information in selecting an offer, the written decision must include an explanation of why the certified IDR entity concluded that this information was not already reflected in the qualifying payment amount. The total estimated annual cost burden for certified IDR entities to provide payment determination notices regarding non-air ambulance Federal IDR claims is estimated to be $1.2 million and the total estimated annual cost burden for certified IDR entities to provide payment determination notices regarding air ambulance Federal IDR claims is estimated to be $0.3 million. The Departments assume for this calculation that half of the cost will fall on the providers, providers of air ambulance services, and facilities and the remaining half will fall on plans, issuers, and FEHB carriers. For more details, please refer to the Paperwork Reduction Act analysis, found in section V of this preamble.

To estimate the proportion of the total costs that would fall onto small entities, the Departments assume that the proportion of costs is proportional to the industry receipts. The Departments are of the view that this assumption is reasonable because the number of providers, facilities, and providers of air ambulance services that receive initial and additional information about the QPA is likely to be proportional to the amount of business in which the entity is involved. Applying data from the Census Bureau of receipts by size for each industry, the Departments estimate that small issuers will incur 0.2 percent of the total costs incurred by all issuers and small providers will incur 37 percent of the total cost by all providers.[105]

Accordingly, the Departments estimate that small issuers and TPAs will incur an annual cost of $4,330 associated with disclosing additional information about the QPA.[106] For each small issuer and TPA, this results in an estimated annual cost of $16.98.[107]

For the payment determination notice regarding disputes involving non-air ambulance claims, the Departments estimate that the total annual cost for all small issuers will be $1,193 and the total annual cost for small providers will be $219,446.[108] This results in a per-entity annual cost of $9.54 for small issuers and a per-entity annual cost of $3.42 for small providers that are not providers of air ambulance services.[109]

For the payment determination notice regarding a dispute involving air ambulance claims, the Departments estimate that the total annual cost for small issuers will be $344 and the total annual cost for all small providers of air ambulance services will be $62,530.[110] This results in a per-entity annual cost of $2.72 for small issuers and a per-entity annual cost of $56.13 for small providers of air ambulance services.[111]

The number of impacted small health plans is not a significant number of plans compared to the total universe of 1.9 million small health plans. Assuming that 17,435 non-air ambulance claims and 4,968 air ambulance claims are submitted to the Federal IDR process each year, only one percent of small health plans will be impacted.[112] The number of impacted plans and issuers may be even smaller, if some plans and issuers have multiple disputes that are batched in the Federal IDR process. By batching qualified IDR items and services, there may be a reduction in the per-service cost of the Federal IDR process, and potentially the aggregate administrative costs, because the Federal IDR process is likely to exhibit at least some economies of scale.[113]

VII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed agency rule, or a finalization of such a proposal, that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.[114] In 2022, that threshold is approximately $165 million. For purposes of the UMRA, these final rules do not include any Federal mandate that the Departments expect to result in such expenditures by State, local, or tribal governments.

VIII. Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism and requires Federal agencies to adhere to specific criteria when formulating and implementing policies that have ''substantial direct effects'' on the States, the relationship between the National Government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to these final rules.

In the Departments' view, these final rules have federalism implications

[105] Census Bureau. ''2017 SUSB Annual Data Tables by Establishment Industry, Data by Enterprise Receipt Size.'' (May 2021). *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html.*

[106] The annual cost is estimated as: $4,329,980 × 0.5 × 0.2% = $4,330.

[107] The cost is estimated as: $4,330/(125 Issuers + 130 TPAs) = $16.98.

[108] The annual cost for issuers is estimated as: $1,192,641 × 0.5 × 0.2% = $1,193. The annual cost for small physicians is estimated as: $1,192,641 × 0.5 × 36.8% = $219,446.

[109] The annual per-claim cost for issuers is estimated as: $1,193/125 Issuers = $9.54. The annual per-claim cost for small physicians is estimated as: $219,446/64,232 small physicians = $3.42.

[110] The annual cost for issuers is estimated as: $339,836 × 0.5 × 0.2% = $340. The annual cost for small providers of air ambulance services is estimated as: $339,836 × 0.5 × 36.8% = $62,530.

[111] The annual per-claim cost for issuers is estimated as: $340/125 Issuers = $2.72. The annual per-claim cost for small providers of air ambulance services is estimated as: $62,530/1,114 providers of air ambulance services = $56.13.

[112] (17,435 claims + 4,968 air ambulance claims)/1,927,786 ERISA health plans = 1% (*Source:* 2020 Medical Expenditure Panel Survey-Insurance Component).

[113] Matthew Fiedler, Loren Adler, and Benedic Ippolito. ''Recommendations for Implementing the No Surprises Act.'' U.S.C.-Brookings Schaeffer on Health Policy. (March 2021). *https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2021/03/16/recommendations-for-implementing-the-no-surprises-act/.*

[114] 2 U.S.C. 1501 *et seq.* (1995).

because they have direct effects on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among various levels of government. State and local government providers, facilities, and health plans may be subject to the Federal IDR process or an All-Payer Model Agreement or a specified State law. Additionally, the No Surprises Act authorizes States to enforce the new requirements, including those related to balance billing, with respect to issuers, providers, facilities, and providers of air ambulance services, with HHS enforcing only in cases in which the State has notified HHS that the State does not have the authority to enforce or is otherwise not enforcing, or HHS has made a determination that a State has failed to substantially enforce the requirements. However, in the Departments' view, the federalism implications of these final rules are substantially mitigated because the Departments expect that some States will have their own process for determining the total amount payable under a plan or coverage. Where a State does not have an applicable All-Payer Model Agreement, but does have such a specified State law, the State law, rather than the Federal IDR process, will apply. The Departments anticipate that some States with their own IDR processes or other mechanism for determining the out-of-network rate may want to change their laws or adopt new laws in response to these final rules. The Departments anticipate that these States will incur a small incremental cost when making changes to their laws.

In general, section 514 of ERISA preempts state laws to the extent that they relate to any private covered employee benefit plan, including covered group health plans, and preserves State laws that regulate insurance, banking, or securities. While ERISA prohibits States from regulating a plan as an insurance or investment company or bank, the preemption provisions of section 731 of ERISA and section 2724 of the PHS Act (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that requirements of Part 7 of ERISA and title XXVII of the PHS Act (including those of the No Surprises Act) are not to be ''construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement'' of a Federal standard. The conference report accompanying the Health Insurance Portability and Accountability Act of 1996 (HIPAA) indicates that this is intended to be the ''narrowest'' preemption of State laws.[115] Additionally, the No Surprises Act requires that when a State law determines the total amount payable under such a plan, coverage, or issuer for emergency services or to nonparticipating providers related to patient visits to participating facilities for nonemergency services, the State law will apply, rather than the Federal IDR process specified in these final rules.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy-making discretion of the States, the Departments engaged in efforts to consult with and work cooperatively with affected States, including participating in conference calls with and attending conferences of the NAIC and consulting with State insurance officials on a state-by-state basis. In addition, the Departments consulted with the NAIC, as required by the No Surprises Act, to establish the geographic regions to be used in the methodology for calculating the QPA as detailed in the July 2021 interim final rules.

In developing these final rules, the Departments attempted to balance the States' interests in regulating health insurance issuers, providers, and facilities with the need to ensure at least the minimum Federal consumer protections in every State. By doing so, the Departments complied with the requirements of Executive Order 13132.

List of Subjects

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

45 CFR Part 149

Balance billing, Health care, Health insurance, Reporting and recordkeeping requirements, Surprise billing, State regulation of health insurance, Transparency in coverage.

[115] See House Conf. Rep. No. 104–736, at 205, reprinted in 1996 U.S. Code Cong. & Admin. News 2018.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Lily L. Batchelder,

Assistant Secretary of the Treasury (Tax Policy).

Ali Khawar,

Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

Xavier Becerra,

Secretary, Department of Health and Human Services.

Department of the Treasury

Internal Revenue Service

Adoption of the Amendments to the Regulations

Accordingly, the Treasury Department and the IRS adopts as final the temporary regulations adding 26 CFR 54.9816–6T and 54.9817–2T, published at 86 FR 36872 (July 13, 2021), and 26 CFR 54.9816–8T, published at 86 FR 55980 (October 7, 2021), with the following changes to 26 CFR part 54:

PART 54—PENSION EXCISE TAXES

■ 1. The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805, unless otherwise noted.

* * * * *

■ 2. Section 54.9816–6 is added to read as follows:

§ 54.9816–6 Methodology for calculating qualifying payment amount.

(a) For further guidance see § 54.9816–6T(a) introductory text through (a)(17).

(1)–(17) [Reserved]

(18) *Downcode* means the alteration by a plan or issuer of a service code to another service code, or the alteration, addition, or removal by a plan or issuer of a modifier, if the changed code or modifier is associated with a lower qualifying payment amount than the service code or modifier billed by the provider, facility, or provider of air ambulance services.

(b)–(c) For further guidance see § 54.9816–6T(b) and (c).

(d) For further guidance see § 54.9816–6T(d) introductory text through (d)(1)(i).

(1) [Reserved]

(i) [Reserved]

(ii) If the qualifying payment amount is based on a downcoded service code or modifier—

(A) A statement that the service code or modifier billed by the provider,

facility, or provider of air ambulance services was downcoded;

(B) An explanation of why the claim was downcoded, which must include a description of which service codes were altered, if any, and a description of which modifiers were altered, added, or removed, if any; and

(C) The amount that would have been the qualifying payment amount had the service code or modifier not been downcoded.

(iii)–(v) For further guidance see § 54.9816–6T(d)(1)(iii) through (v).

(2) For further guidance see § 54.9816–6T(d)(2).

(e)–(f) For further guidance see § 54.9816–6T(e) and (f).

(g) *Applicability date.* The provisions of this section are applicable for plan years beginning on or after January 1, 2022, except that paragraph (a)(18) of this section regarding the definition of the term ''downcode'' and paragraph (d)(1)(ii) of this section regarding additional information that must be provided if the qualifying payment amount is based on a downcoded service code or modifier are applicable with respect to items or services provided or furnished on or after October 25, 2022, for plan years beginning on or after January 1, 2022.

■ 3. Section 54.9816–6T is amended by:

■ a. Adding paragraph (a)(18);

■ b. Redesignating paragraphs (d)(1)(ii) through and (iv) as paragraphs (d)(1)(iii) through (v), respectively; and

■ c. Adding a new paragraph (d)(1)(ii).

The additions read as follows:

§ 54.9816–6T Methodology for calculating qualifying payment amount (temporary).

(a) * * *

(18) For further guidance see § 54.9816–6(a)(18).

* * * * *

(d) * * *

(1) * * *

(ii) For further guidance see § 54.9816–6(d)(1)(ii);

* * * * *

■ 4. Section 54.9816–8 is added to read as follows:

§ 54.9816–8 Independent dispute resolution process.

(a)–(b) For further guidance see § 54.9816–8T(a) and (b).

(c) For further guidance see § 54.9816–8T(c) introductory text through (c)(3).

(1)–(3) [Reserved]

(4) For further guidance see § 54.9816–8T(c)(4) introductory text through (c)(4)(ii) introductory text.

(i) [Reserved]

(ii) [Reserved]

(A) Select as the out-of-network rate for the qualified IDR item or service one of the offers submitted under § 54.9816–8T(c)(4)(i), weighing only the considerations specified in paragraph (c)(4)(iii) of this section (as applied to the information provided by the parties pursuant to § 54.9816–8T(c)(4)(i)). The certified IDR entity must select the offer that the certified IDR entity determines best represents the value of the qualified IDR item or service as the out-of-network rate.

(B) For further guidance see § 54.9816–8T(c)(4)(ii)(B).

(iii) *Considerations in determination.* In determining which offer to select:

(A) The certified IDR entity must consider the qualifying payment amount(s) for the applicable year for the same or similar item or service.

(B) The certified IDR entity must then consider information submitted by a party that relates to the following circumstances:

(*1*) The level of training, experience, and quality and outcomes measurements of the provider or facility that furnished the qualified IDR item or service (such as those endorsed by the consensus-based entity authorized in section 1890 of the Social Security Act).

(*2*) The market share held by the provider or facility or that of the plan or issuer in the geographic region in which the qualified IDR item or service was provided.

(*3*) The acuity of the participant or beneficiary receiving the qualified IDR item or service, or the complexity of furnishing the qualified IDR item or service to the participant or beneficiary.

(*4*) The teaching status, case mix, and scope of services of the facility that furnished the qualified IDR item or service, if applicable.

(*5*) Demonstration of good faith efforts (or lack thereof) made by the provider or facility or the plan or issuer to enter into network agreements with each other, and, if applicable, contracted rates between the provider or facility, as applicable, and the plan or issuer, as applicable, during the previous 4 plan years.

(C) The certified IDR entity must also consider information provided by a party in response to a request by the certified IDR entity under § 54.9816–8T(c)(4)(i)(A)(*2*) that relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination and that does not include information on factors described in § 54.9816–8T(c)(4)(v).

(D) The certified IDR entity must also consider additional information submitted by a party that relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination and that does not include information on factors described in § 54.9816–8T(c)(4)(v).

(E) In weighing the considerations described in paragraphs (c)(4)(iii)(B) through (D) of this section, the certified IDR entity should evaluate whether the information is credible and relates to the offer submitted by either party for the payment amount for the qualified IDR item or service that is the subject of the payment determination. The certified IDR entity should not give weight to information to the extent it is not credible, it does not relate to either party's offer for the payment amount for the qualified IDR item or service, or it is already accounted for by the qualifying payment amount under paragraph (c)(4)(iii)(A) of this section or other credible information under paragraphs (c)(4)(iii)(B) through (D) of this section.

(iv) *Examples.* The rules of paragraph (c)(4)(iii) of this section are illustrated in the following paragraphs. Each example assumes that the Federal IDR process applies for purposes of determining the out-of-network rate, that both parties have submitted the information parties are required to submit as part of the Federal IDR process, and that the submitted information does not include information on factors described in paragraph (c)(4)(v) of this section:

(A) *Example 1*—(*1*) *Facts.* A level 1 trauma center that is a nonparticipating emergency facility and an issuer are parties to a payment determination in the Federal IDR process. The facility submits an offer that is higher than the qualifying payment amount. The facility also submits additional written information showing that the scope of services available at the facility was critical to the delivery of care for the qualified IDR item or service provided, given the particular patient's acuity. This information is determined to be credible by the certified IDR entity. Further, the facility submits additional information showing the contracted rates used to calculate the qualifying payment amount for the qualified IDR item or service were based on a level of service that is typical in cases in which the services are delivered by a facility that is not a level 1 trauma center and that does not have the capability to provide the scope of services provided by a level 1 trauma center. This information is also determined to be credible by the certified IDR entity. The issuer submits an offer equal to the qualifying payment amount. No additional information is submitted by

either party. The certified IDR entity determines that all the information submitted by the nonparticipating emergency facility relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination.

(*2*) *Conclusion.* In this paragraph (c)(4)(iv)(A) (*Example 1*), the certified IDR entity must consider the qualifying payment amount. The certified IDR entity then must consider the additional information submitted by the nonparticipating emergency facility, provided the information relates to circumstances described in paragraphs (c)(4)(iii)(B) through (D) of this section and relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination. If the certified IDR entity determines that it is appropriate to give weight to the additional credible information submitted by the nonparticipating emergency facility and that the additional credible information submitted by the facility demonstrates that the facility's offer best represents the value of the qualified IDR item or service, the certified IDR entity should select the facility's offer.

(B) *Example 2*—(*1*) *Facts.* A nonparticipating provider and an issuer are parties to a payment determination in the Federal IDR process. The provider submits an offer that is higher than the qualifying payment amount. The provider also submits additional written information regarding the level of training and experience the provider possesses. This information is determined to be credible by the certified IDR entity, but the certified IDR entity finds that the information does not demonstrate that the provider's level of training and experience relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination (for example, the information does not show that the provider's level of training and experience was necessary for providing the qualified IDR service that is the subject of the payment determination to the particular patient, or that the training or experience made an impact on the care that was provided). The nonparticipating provider does not submit any additional information. The issuer submits an offer equal to the qualifying payment amount, with no additional information.

(*2*) *Conclusion.* In this paragraph (c)(4)(iv)(B) (*Example 2*), the certified IDR entity must consider the qualifying payment amount. The certified IDR entity must then consider the additional information submitted by the nonparticipating provider, provided the information relates to circumstances described in paragraphs (c)(4)(iii)(B) through (D) of this section and relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination. In addition, the certified IDR entity should not give weight to information to the extent it is already accounted for by the qualifying payment amount or other credible information under paragraphs (c)(4)(iii)(B) through (D) of this section. If the certified IDR entity determines that the additional information submitted by the provider is credible but does not relate to the offer for the payment amount for the qualified IDR service that is the subject of the payment determination, and determines that the issuer's offer best represents the value of the qualified IDR service, in the absence of any other credible information that relates to either party's offer, the certified IDR entity should select the issuer's offer.

(C) *Example 3*—(*1*) *Facts.* A nonparticipating provider and an issuer are parties to a payment determination in the Federal IDR process involving an emergency department visit for the evaluation and management of a patient. The provider submits an offer that is higher than the qualifying payment amount. The provider also submits additional written information showing that the acuity of the patient's condition and complexity of the qualified IDR service furnished required the taking of a comprehensive history, a comprehensive examination, and medical decision making of high complexity. This information is determined to be credible by the certified IDR entity. The issuer submits an offer equal to the qualifying payment amount for CPT code 99285, which is the CPT code for an emergency department visit for the evaluation and management of a patient requiring a comprehensive history, a comprehensive examination, and medical decision making of high complexity. The issuer also submits additional written information showing that this CPT code accounts for the acuity of the patient's condition. This information is determined to be credible by the certified IDR entity. The certified IDR entity determines that the information provided by the provider and issuer relates to the offer for the payment amount for the qualified IDR service that is the subject of the payment determination. Neither party submits any additional information.

(*2*) *Conclusion.* In this paragraph (c)(4)(iv)(C) (*Example 3*), the certified IDR entity must consider the qualifying payment amount. The certified IDR entity then must consider the additional information submitted by the parties, but the certified IDR entity should not give weight to information to the extent it is already accounted for by the qualifying payment amount or other credible information under paragraphs (c)(4)(iii)(B) through (D) of this section. If the certified IDR entity determines the additional information on the acuity of the patient and complexity of the service is already accounted for in the calculation of the qualifying payment amount, the certified IDR entity should not give weight to the additional information provided by the provider. If the certified IDR entity determines that the issuer's offer best represents the value of the qualified IDR service, the certified IDR entity should select the issuer's offer.

(D) *Example 4*—(*1*) *Facts.* A nonparticipating emergency facility and an issuer are parties to a payment determination in the Federal IDR process. Although the facility is not participating in the issuer's network during the relevant plan year, it was a participating facility in the issuer's network in the previous 4 plan years. The issuer submits an offer that is higher than the qualifying payment amount and that is equal to the facility's contracted rate (adjusted for inflation) for the previous year with the issuer for the qualified IDR service. The issuer also submits additional written information showing that the contracted rates between the facility and the issuer during the previous 4 plan years were higher than the qualifying payment amount submitted by the issuer, and that these prior contracted rates account for the case mix and scope of services typically furnished at the nonparticipating facility. The certified IDR entity determines this information is credible and that it relates to the offer submitted by the issuer for the payment amount for the qualified IDR service that is the subject of the payment determination. The facility submits an offer that is higher than both the qualifying payment amount and the contracted rate (adjusted for inflation) for the previous year with the issuer for the qualified IDR service. The facility also submits additional written information, with the intent to show that the case mix and scope of services available at the facility were integral to the service provided. The certified IDR entity determines this information is credible and that it relates to the offer submitted by the facility for the payment amount for the qualified IDR service that is the subject of the

payment determination. Neither party submits any additional information.

(*2*) *Conclusion.* In this paragraph (c)(4)(iv)(D) (*Example 4*), the certified IDR entity must consider the qualifying payment amount. The certified IDR entity then must consider the additional information submitted by the parties, but should not give weight to information to the extent it is already accounted for by the qualifying payment amount or other credible information under paragraphs (c)(4)(iii)(B) through (D) of this section. If the certified IDR entity determines that the information submitted by the facility regarding the case mix and scope of services available at the facility includes information that is also accounted for in the information the issuer submitted regarding prior contracted rates, then the certified IDR entity should give weight to that information only once. The certified IDR entity also should not give weight to the same information provided by the nonparticipating emergency facility in relation to any other factor. If the certified IDR entity determines that the issuer's offer best represents the value of the qualified IDR service, the certified IDR entity should select the issuer's offer.

(E) *Example 5*—(*1*) *Facts.* A nonparticipating provider and an issuer are parties to a payment determination in the Federal IDR process regarding a qualified IDR service for which the issuer downcoded the service code that the provider billed. The issuer submits an offer equal to the qualifying payment amount (which was calculated using the downcoded service code). The issuer also submits additional written information that includes the documentation disclosed to the nonparticipating provider under § 54.9816–6(d)(1)(ii) at the time of the initial payment (which describes why the service code was downcoded). The certified IDR entity determines this information is credible and that it relates to the offer for the payment amount for the qualified IDR service that is the subject of the payment determination. The provider submits an offer equal to the amount that would have been the qualifying payment amount had the service code not been downcoded. The provider also submits additional written information that includes the documentation disclosed to the nonparticipating provider under § 54.9816–6(d)(1)(ii) at the time of the initial payment. Further, the provider submits additional written information that explains why the billed service code was more appropriate than the downcoded service code, as evidence that the provider's offer, which is equal to the amount the qualifying payment amount would have been for the service code that the provider billed, best represents the value of the service furnished, given its complexity. The certified IDR entity determines this information to be credible and that it relates to the offer for the payment amount for the qualified IDR service that is the subject of the payment determination. Neither party submits any additional information.

(*2*) *Conclusion.* In this paragraph (c)(4)(iv)(E) (*Example 5*), the certified IDR entity must consider the qualifying payment amount, which is based on the downcoded service code. The certified IDR entity then must consider whether to give weight to additional information submitted by the parties. If the certified IDR entity determines that the additional credible information submitted by the provider demonstrates that the nonparticipating provider's offer, which is equal to the qualifying payment amount for the service code that the provider billed, best represents the value of the qualified IDR service, the certified IDR entity should select the nonparticipating provider's offer.

(v) For further guidance see § 54.9816–8T(c)(4)(v) through (c)(4)(vi)(A).

(vi) [Reserved]

(A) [Reserved]

(B) The certified IDR entity's written decision must include an explanation of their determination, including what information the certified IDR entity determined demonstrated that the offer selected as the out-of-network rate is the offer that best represents the value of the qualified IDR item or service, including the weight given to the qualifying payment amount and any additional credible information under paragraphs (c)(4)(iii)(B) through (D) of this section. If the certified IDR entity relies on information described under paragraphs (c)(4)(iii)(B) through (D) of this section in selecting an offer, the written decision must include an explanation of why the certified IDR entity concluded that this information was not already reflected in the qualifying payment amount.

(vii)–(ix) For further guidance see § 54.9816–8T(c)(4)(vii) through (ix).

(d)–(e) For further guidance see § 54.9816–8T(d) through (e).

(f) For further guidance see § 54.9816–8T(f) introductory text through (f)(1)(iv).

(1) [Reserved]

(i)–(iv) [Reserved]

(v) For further guidance see § 54.9816–8T(f)(1)(v) introductory text through (f)(1)(v)(E).

(A)–(E) [Reserved]

(F) The rationale for the certified IDR entity's decision, including the extent to which the decision relied on the criteria in paragraphs (c)(4)(iii)(B) through (D) of this section.

(G)–(I) For further guidance see § 54.9816–8T(f)(1)(v)(G) through (I).

(vi) For further guidance see § 54.9816–8T(f)(1)(vi).

(2) [Reserved]

(g) For further guidance see § 54.9816–8T(g).

(h) *Applicability date.* The provisions of this section are applicable with respect to plan years beginning on or after January 1, 2022, except that paragraphs (c)(4)(ii) through (iv) of this section regarding payment determinations, paragraph (c)(4)(vi)(B) of this section regarding written decisions, and paragraph (f)(1)(v)(F) of this section regarding reporting of information relating to the Federal IDR process are applicable with respect to items or services provided or furnished on or after October 25, 2022, for plan years beginning on or after January 1, 2022.

■ 5. Section 54.9816–8T is amended by:

■ a. Removing paragraph (a)(2)(viii);

■ b. Redesignating paragraphs (a)(2)(ix) through (xiii) as paragraphs (a)(2)(viii) through (xii), respectively; and

■ c. Revising paragraphs (c)(4)(ii)(A), (c)(4)(iii) and (iv), (c)(4)(vi)(B), (f)(1)(v)(F), and (h).

The revisions read as follows:

§ 54.9816–8T Independent dispute resolution process (temporary).

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(A) For further guidance see § 54.9816–8(c)(4)(ii)(A).

* * * * *

(iii) For further guidance see § 54.9816–8(c)(4)(iii).

(iv) For further guidance see § 54.9816–8(c)(4)(iv).

* * * * *

(vi) * * *

(B) For further guidance see § 54.9816–8(c)(4)(vi)(B).

* * * * *

(f) * * *

(1) * * *

(v) * * *

(F) For further guidance see § 54.9816–8(f)(1)(v)(F);

* * * * *

(h) *Applicability date.* The provisions of this section are applicable with respect to plan years beginning on or after January 1, 2022, except that the provisions regarding IDR entity certification at paragraphs (a) and (e) of

this section are applicable beginning on October 7, 2021; and paragraphs (c)(4)(ii) through (iv) of this section regarding payment determinations, paragraph (c)(4)(vi)(B) of this section regarding written decisions, and paragraph (f)(1)(v)(F) of this section regarding reporting of information relating to the Federal IDR process are applicable with respect to items or services provided or furnished on or after October 25, 2022, for plan years beginning on or after January 1, 2022.

■ 6. Section 54.9817–2 is added to read as follows:

§ 54.9817–2 Independent dispute resolution process for air ambulance services

(a) For further guidance see § 54.9817–2T(a).

(b) For further guidance see § 54.9817–2T(b) introductory text.

(1) *In general.* Except as provided in paragraphs (b)(2) and (3) of this section and § 54.9817–2T(b)(2) and (4), in determining the out-of-network rate to be paid by group health plans and health insurance issuers offering group health insurance coverage for out-of-network air ambulance services, plans and issuers must comply with the requirements of §§ 54.9816–8T and 54.9816–8, except that references in §§ 54.9816–8T and 54.9816–8 to the additional circumstances in § 54.9816–8(c)(4)(iii)(B) shall be understood to refer to paragraph (b)(2) of this section and § 54.9817–2T(b)(2).

(2) *Considerations for air ambulance services.* In determining which offer to select, in addition to considering the applicable qualifying payment amount(s), the certified IDR entity must consider information submitted by a party that relates to the following circumstances:

(i)–(vi) For further guidance see § 54.9817–2T(b)(2)(i) through (vi).

(3) *Weighing considerations.* In weighing the considerations described in paragraph (b)(2) of this section and § 54.9817–2T(b)(2), the certified IDR entity should evaluate whether the information is credible and relates to the offer submitted by either party for the payment amount for the qualified IDR service that is the subject of the payment determination. The certified IDR entity should not give weight to information to the extent it is not credible, it does not relate to either party's offer for the payment amount for the qualified IDR service, or it is already accounted for by the qualifying payment amount under § 54.9816–8(c)(4)(iii)(A) or other credible information under § 54.9816–8(c)(4)(iii)(B) through (D), except that the additional circumstances in § 54.9816–8(c)(4)(iii)(B) shall be understood to refer to paragraph (b)(2) of this section and § 54.9817–2T(b)(2).

(4) For further guidance see § 54.9817–2T(b)(4) introductory text through (b)(4)(iii).

(i)–(iii) [Reserved]

(iv) For further guidance see § 54.9817–2T(b)(4)(iv) introductory text through (b)(4)(iv)(E).

(A)–(E) [Reserved]

(F) The rationale for the certified IDR entity's decision, including the extent to which the decision relied on the criteria in paragraph (b)(2) of this section and § 54.9816–8(c)(4)(iii)(C) and (D).

(G)–(I) For further guidance see § 54.9817–2T(b)(4)(iv)(G) through (I).

(c) *Applicability date.* The provisions of this section are applicable with respect to plan years beginning on or after January 1, 2022, except that paragraphs (b)(1), (2), and (3) and (b)(4)(iv)(F) of this section regarding payment determinations are applicable with respect to services provided or furnished on or after October 25, 2022, for plan years beginning on or after January 1, 2022.

■ 7. Section 54.9817–2T is amended by:

■ a. Revising paragraphs (b)(1) and (2);

■ b. Redesignating paragraph (b)(3) as paragraph (b)(4);

■ c. Adding a new paragraph (b)(3); and

■ d. Revising newly redesignated paragraph (b)(4)(iv)(F) and paragraph (c).

The revisions and addition read as follows:

§ 54.9817–2T Independent dispute resolution process for air ambulance services (temporary).

* * * * *

(b) * * *

(1) For further guidance see § 54.9817–2(b)(1).

(2) For further guidance see § 54.9817–2(b)(2).

(3) For further guidance see § 54.9817–2(b)(3).

(4) * * *

(iv) * * *

(F) For further guidance see § 54.9817–2(b)(4)(iv)(F);

* * * * *

(c) *Applicability date.* The provisions of this section are applicable with respect to plan years beginning on or after January 1, 2022, except that paragraphs (b)(1), (2), and (3) and (b)(4)(iv)(F) of this section regarding payment determinations are applicable with respect to services provided or furnished on or after October 25, 2022, for plan years beginning on or after January 1, 2022.

Department of Labor

Employee Benefits Security Administration

29 CFR Chapter XXV

For the reasons set forth in the preamble, the Department of Labor adopts as final the interim rules adding 29 CFR 2590.716–6, published at 86 FR 36872 (July 13, 2021), and 29 CFR 2590.716–8 and 2590.717–2, published at 86 FR 55980 (October 7, 2021), with the following changes:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 8. The authority citation for part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a–n, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L.104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Division M, Pub. L. 113–235, 128 Stat. 2130; Pub. L. 116–260 134 Stat. 1182; Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012).

■ 9. Section 2590.716–6 is amended by:

■ a. Adding paragraph (a)(18);

■ b. Redesignating paragraphs (d)(1)(ii) through (iv) as paragraphs (d)(1)(iii) through (v), respectively;

■ c. Adding a new paragraph (d)(1)(ii); and

■ d. Revising paragraph (f).

The revisions and additions read as follows:

§ 2590.716–6 Methodology for calculating qualifying payment amount.

(a) * * *

(18) *Downcode* means the alteration by a plan or issuer of a service code to another service code, or the alteration, addition, or removal by a plan or issuer of a modifier, if the changed code or modifier is associated with a lower qualifying payment amount than the service code or modifier billed by the provider, facility, or provider of air ambulance services.

* * * * *

(d) * * *

(1) * * *

(ii) If the qualifying payment amount is based on a downcoded service code or modifier—

(A) A statement that the service code or modifier billed by the provider, facility, or provider of air ambulance services was downcoded;

(B) An explanation of why the claim was downcoded, which must include a

description of which service codes were altered, if any, and a description of which modifiers were altered, added, or removed, if any; and

(C) The amount that would have been the qualifying payment amount had the service code or modifier not been downcoded;

* * * * *

(f) *Applicability date.* The provisions of this section are applicable for plan years beginning on or after January 1, 2022, except that paragraph (a)(18) of this section regarding the definition of the term ''downcode'' and paragraph (d)(1)(ii) of this section regarding additional information that must be provided if the qualifying payment amount is based on a downcoded service code or modifier are applicable with respect to items or services provided or furnished on or after October 25, 2022, for plan years beginning on or after January 1, 2022.

■ 10. Section 2590.716–8 is amended by:

■ a. Removing paragraph (a)(2)(viii);

■ b. Redesignating paragraphs (a)(2)(ix) through (xiii) as paragraphs (a)(2)(viii) through (xii), respectively; and

■ c. Revising paragraphs (c)(4)(ii)(A), (c)(4)(iii) and (iv), (c)(4)(vi)(B), (f)(1)(v)(F), and (h).

The revisions read as follows:

§ 2590.716–8 Independent dispute resolution process.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(A) Select as the out-of-network rate for the qualified IDR item or service one of the offers submitted under paragraph (c)(4)(i) of this section, weighing only the considerations specified in paragraph (c)(4)(iii) of this section (as applied to the information provided by the parties pursuant to paragraph (c)(4)(i) of this section). The certified IDR entity must select the offer that the certified IDR entity determines best represents the value of the qualified IDR item or service as the out-of-network rate.

* * * * *

(iii) *Considerations in determination.* In determining which offer to select:

(A) The certified IDR entity must consider the qualifying payment amount(s) for the applicable year for the same or similar item or service.

(B) The certified IDR entity must then consider information submitted by a party that relates to the following circumstances:

(*1*) The level of training, experience, and quality and outcomes measurements of the provider or facility that furnished the qualified IDR item or service (such as those endorsed by the consensus-based entity authorized in section 1890 of the Social Security Act).

(*2*) The market share held by the provider or facility or that of the plan or issuer in the geographic region in which the qualified IDR item or service was provided.

(*3*) The acuity of the participant or beneficiary receiving the qualified IDR item or service, or the complexity of furnishing the qualified IDR item or service to the participant or beneficiary.

(*4*) The teaching status, case mix, and scope of services of the facility that furnished the qualified IDR item or service, if applicable.

(*5*) Demonstration of good faith efforts (or lack thereof) made by the provider or facility or the plan or issuer to enter into network agreements with each other, and, if applicable, contracted rates between the provider or facility, as applicable, and the plan or issuer, as applicable, during the previous 4 plan years.

(C) The certified IDR entity must also consider information provided by a party in response to a request by the certified IDR entity under paragraph (c)(4)(i)(A)(*2*) of this section that relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination and that does not include information on factors described in paragraph (c)(4)(v) of this section.

(D) The certified IDR entity must also consider additional information submitted by a party that relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination and that does not include information on factors described in paragraph (c)(4)(v) of this section.

(E) In weighing the considerations described in paragraphs (c)(4)(iii)(B) through (D) of this section, the certified IDR entity should evaluate whether the information is credible and relates to the offer submitted by either party for the payment amount for the qualified IDR item or service that is the subject of the payment determination. The certified IDR entity should not give weight to information to the extent it is not credible, it does not relate to either party's offer for the payment amount for the qualified IDR item or service, or it is already accounted for by the qualifying payment amount under paragraph (c)(4)(iii)(A) of this section or other credible information under paragraphs (c)(4)(iii)(B) through (D) of this section.

(iv) *Examples.* The rules of paragraph (c)(4)(iii) of this section are illustrated in the following paragraphs. Each example assumes that the Federal IDR process applies for purposes of determining the out-of-network rate, that both parties have submitted the information parties are required to submit as part of the Federal IDR process, and that the submitted information does not include information on factors described in paragraph (c)(4)(v) of this section:

(A) *Example 1*—(*1*) *Facts.* A level 1 trauma center that is a nonparticipating emergency facility and an issuer are parties to a payment determination in the Federal IDR process. The facility submits an offer that is higher than the qualifying payment amount. The facility also submits additional written information showing that the scope of services available at the facility was critical to the delivery of care for the qualified IDR item or service provided, given the particular patient's acuity. This information is determined to be credible by the certified IDR entity. Further, the facility submits additional information showing the contracted rates used to calculate the qualifying payment amount for the qualified IDR item or service were based on a level of service that is typical in cases in which the services are delivered by a facility that is not a level 1 trauma center and that does not have the capability to provide the scope of services provided by a level 1 trauma center. This information is also determined to be credible by the certified IDR entity. The issuer submits an offer equal to the qualifying payment amount. No additional information is submitted by either party. The certified IDR entity determines that all the information submitted by the nonparticipating emergency facility relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination.

(*2*) *Conclusion.* In this paragraph (c)(4)(iv)(A) (*Example 1*), the certified IDR entity must consider the qualifying payment amount. The certified IDR entity then must consider the additional information submitted by the nonparticipating emergency facility, provided the information relates to circumstances described in paragraphs (c)(4)(iii)(B) through (D) of this section and relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination. If the certified IDR entity determines that it is appropriate to give weight to the additional credible information submitted by the nonparticipating emergency facility and that the

additional credible information submitted by the facility demonstrates that the facility's offer best represents the value of the qualified IDR item or service, the certified IDR entity should select the facility's offer.

(B) *Example 2*—(*1*) *Facts.* A nonparticipating provider and an issuer are parties to a payment determination in the Federal IDR process. The provider submits an offer that is higher than the qualifying payment amount. The provider also submits additional written information regarding the level of training and experience the provider possesses. This information is determined to be credible by the certified IDR entity, but the certified IDR entity finds that the information does not demonstrate that the provider's level of training and experience relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination (for example, the information does not show that the provider's level of training and experience was necessary for providing the qualified IDR service that is the subject of the payment determination to the particular patient, or that the training or experience made an impact on the care that was provided). The nonparticipating provider does not submit any additional information. The issuer submits an offer equal to the qualifying payment amount, with no additional information.

(*2*) *Conclusion.* In this paragraph (c)(4)(iv)(B) (*Example 2*), the certified IDR entity must consider the qualifying payment amount. The certified IDR entity must then consider the additional information submitted by the nonparticipating provider, provided the information relates to circumstances described in paragraphs (c)(4)(iii)(B) through (D) of this section and relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination. In addition, the certified IDR entity should not give weight to information to the extent it is already accounted for by the qualifying payment amount or other credible information under paragraphs (c)(4)(iii)(B) through (D) of this section. If the certified IDR entity determines that the additional information submitted by the provider is credible but does not relate to the offer for the payment amount for the qualified IDR service that is the subject of the payment determination, and determines that the issuer's offer best represents the value of the qualified IDR service, in the absence of any other credible information that relates to either party's offer, the certified IDR entity should select the issuer's offer.

(C) *Example 3*—(*1*) *Facts.* A nonparticipating provider and an issuer are parties to a payment determination in the Federal IDR process involving an emergency department visit for the evaluation and management of a patient. The provider submits an offer that is higher than the qualifying payment amount. The provider also submits additional written information showing that the acuity of the patient's condition and complexity of the qualified IDR service furnished required the taking of a comprehensive history, a comprehensive examination, and medical decision making of high complexity. This information is determined to be credible by the certified IDR entity. The issuer submits an offer equal to the qualifying payment amount for CPT code 99285, which is the CPT code for an emergency department visit for the evaluation and management of a patient requiring a comprehensive history, a comprehensive examination, and medical decision making of high complexity. The issuer also submits additional written information showing that this CPT code accounts for the acuity of the patient's condition. This information is determined to be credible by the certified IDR entity. The certified IDR entity determines that the information provided by the provider and issuer relates to the offer for the payment amount for the qualified IDR service that is the subject of the payment determination. Neither party submits any additional information.

(*2*) *Conclusion.* In this paragraph (c)(4)(iv)(C) (*Example 3*), the certified IDR entity must consider the qualifying payment amount. The certified IDR entity then must consider the additional information submitted by the parties, but the certified IDR entity should not give weight to information to the extent it is already accounted for by the qualifying payment amount or other credible information under paragraphs (c)(4)(iii)(B) through (D) of this section. If the certified IDR entity determines the additional information on the acuity of the patient and complexity of the service is already accounted for in the calculation of the qualifying payment amount, the certified IDR entity should not give weight to the additional information provided by the provider. If the certified IDR entity determines that the issuer's offer best represents the value of the qualified IDR service, the certified IDR entity should select the issuer's offer.

(D) *Example 4*—(*1*) *Facts.* A nonparticipating emergency facility and an issuer are parties to a payment determination in the Federal IDR process. Although the facility is not participating in the issuer's network during the relevant plan year, it was a participating facility in the issuer's network in the previous 4 plan years. The issuer submits an offer that is higher than the qualifying payment amount and that is equal to the facility's contracted rate (adjusted for inflation) for the previous year with the issuer for the qualified IDR service. The issuer also submits additional written information showing that the contracted rates between the facility and the issuer during the previous 4 plan years were higher than the qualifying payment amount submitted by the issuer, and that these prior contracted rates account for the case mix and scope of services typically furnished at the nonparticipating facility. The certified IDR entity determines this information is credible and that it relates to the offer submitted by the issuer for the payment amount for the qualified IDR service that is the subject of the payment determination. The facility submits an offer that is higher than both the qualifying payment amount and the contracted rate (adjusted for inflation) for the previous year with the issuer for the qualified IDR service. The facility also submits additional written information, with the intent to show that the case mix and scope of services available at the facility were integral to the service provided. The certified IDR entity determines this information is credible and that it relates to the offer submitted by the facility for the payment amount for the qualified IDR service that is the subject of the payment determination. Neither party submits any additional information.

(*2*) *Conclusion.* In this paragraph (c)(4)(iv)(D) (*Example 4*), the certified IDR entity must consider the qualifying payment amount. The certified IDR entity then must consider the additional information submitted by the parties, but should not give weight to information to the extent it is already accounted for by the qualifying payment amount or other credible information under paragraphs (c)(4)(iii)(B) through (D) of this section. If the certified IDR entity determines that the information submitted by the facility regarding the case mix and scope of services available at the facility includes information that is also accounted for in the information the issuer submitted regarding prior contracted rates, then the certified IDR entity should give weight to that information only once. The certified IDR entity also should not give weight to the same information provided by the nonparticipating emergency facility in

relation to any other factor. If the certified IDR entity determines that the issuer's offer best represents the value of the qualified IDR service, the certified IDR entity should select the issuer's offer.

(E) *Example 5*—(*1*) *Facts.* A nonparticipating provider and an issuer are parties to a payment determination in the Federal IDR process regarding a qualified IDR service for which the issuer downcoded the service code that the provider billed. The issuer submits an offer equal to the qualifying payment amount (which was calculated using the downcoded service code). The issuer also submits additional written information that includes the documentation disclosed to the nonparticipating provider under § 2590.716–6(d)(1)(ii) at the time of the initial payment (which describes why the service code was downcoded). The certified IDR entity determines this information is credible and that it relates to the offer for the payment amount for the qualified IDR service that is the subject of the payment determination. The provider submits an offer equal to the amount that would have been the qualifying payment amount had the service code not been downcoded. The provider also submits additional written information that includes the documentation disclosed to the nonparticipating provider under § 2590.716–6(d)(1)(ii) at the time of the initial payment. Further, the provider submits additional written information that explains why the billed service code was more appropriate than the downcoded service code, as evidence that the provider's offer, which is equal to the amount the qualifying payment amount would have been for the service code that the provider billed, best represents the value of the service furnished, given its complexity. The certified IDR entity determines this information to be credible and that it relates to the offer for the payment amount for the qualified IDR service that is the subject of the payment determination. Neither party submits any additional information.

(*2*) *Conclusion.* In this paragraph (c)(4)(iv)(E) (*Example 5*), the certified IDR entity must consider the qualifying payment amount, which is based on the downcoded service code. The certified IDR entity then must consider whether to give weight to additional information submitted by the parties. If the certified IDR entity determines that the additional credible information submitted by the provider demonstrates that the nonparticipating provider's offer, which is equal to the qualifying payment amount for the service code that the provider billed, best represents the value of the qualified IDR service, the certified IDR entity should select the nonparticipating provider's offer.

* * * * *

(vi) * * *

(B) The certified IDR entity's written decision must include an explanation of their determination, including what information the certified IDR entity determined demonstrated that the offer selected as the out-of-network rate is the offer that best represents the value of the qualified IDR item or service, including the weight given to the qualifying payment amount and any additional credible information under paragraphs (c)(4)(iii)(B) through (D) of this section. If the certified IDR entity relies on information described under paragraphs (c)(4)(iii)(B) through (D) of this section in selecting an offer, the written decision must include an explanation of why the certified IDR entity concluded that this information was not already reflected in the qualifying payment amount.

* * * * *

(f) * * *

(1) * * *

(v) * * *

(F) The rationale for the certified IDR entity's decision, including the extent to which the decision relied on the criteria in paragraphs (c)(4)(iii)(B) through (D) of this section;

* * * * *

(h) *Applicability date.* The provisions of this section are applicable with respect to plan years beginning on or after January 1, 2022, except that the provisions regarding IDR entity certification at paragraphs (a) and (e) of this section are applicable beginning on October 7, 2021; and paragraphs (c)(4)(ii) through (iv) of this section regarding payment determinations, paragraph (c)(4)(vi)(B) of this section regarding written decisions, and paragraph (f)(1)(v)(F) of this section regarding reporting of information relating to the Federal IDR process are applicable with respect to items or services provided or furnished on or after October 25, 2022, for plan years beginning on or after January 1, 2022.

■ 11. Section 2590.717–2 is amended by:

■ a. Revising paragraphs (b)(1) and (b)(2) introductory text;

■ b. Redesignating paragraph (b)(3) as paragraph (b)(4);

■ c. Adding a new paragraph (b)(3); and

■ d. Revising newly redesignated paragraph (b)(4)(iv)(F) and paragraph (c).

The addition and revisions read as follows:

§ 2590.717–2 Independent dispute resolution process for air ambulance services.

* * * * *

(b) * * *

(1) *In general.* Except as provided in paragraphs (b)(2) and (3) of this section, in determining the out-of-network rate to be paid by group health plans and health insurance issuers offering group health insurance coverage for out-of-network air ambulance services, plans and issuers must comply with the requirements of § 2590.716–8, except that references in § 2590.716–8 to the additional circumstances in § 2590.716–8(c)(4)(iii)(B) shall be understood to refer to paragraph (b)(2) of this section.

(2) *Considerations for air ambulance services.* In determining which offer to select, in addition to considering the applicable qualifying payment amount(s), the certified IDR entity must consider information submitted by a party that relates to the following circumstances:

* * * * *

(3) *Weighing considerations.* In weighing the considerations described in paragraph (b)(2) of this section, the certified IDR entity should evaluate whether the information is credible and relates to the offer submitted by either party for the payment amount for the qualified IDR service that is the subject of the payment determination. The certified IDR entity should not give weight to information to the extent it is not credible, it does not relate to either party's offer for the payment amount for the qualified IDR service, or it is already accounted for by the qualifying payment amount under § 2590.716–8(c)(4)(iii)(A) or other credible information under § 2590.716–8(c)(4)(iii)(B) through (D), except that the additional circumstances in § 2590.716–8(c)(4)(iii)(B) shall be understood to refer to paragraph (b)(2) of this section.

(4) * * *

(iv) * * *

(F) The rationale for the certified IDR entity's decision, including the extent to which the decision relied on the criteria in paragraph (b)(2) of this section and § 2590.716–8(c)(4)(iii)(C) and (D);

* * * * *

(c) *Applicability date.* The provisions of this section are applicable with respect to plan years beginning on or after January 1, 2022, except that paragraphs (b)(1), (2), and (3) and (b)(4)(iv)(F) of this section regarding payment determinations are applicable with respect to services provided or furnished on or after October 25, 2022, for plan years beginning on or after January 1, 2022.

Department of Health and Human Services

45 CFR Subtitle A, Subchapter B

For the reasons set forth in the preamble, the Department of Health and Human Services adopts as final the interim rules adding 45 CFR 149.140, published at 86 FR 36872 (July 13, 2021), and 45 CFR 149.510 and 149.520, published at 86 FR 55980 (October 7, 2021), with the following changes to 45 CFR part 149:

PART 149—SURPRISE BILLING AND TRANSPARENCY REQUIREMENTS

■ 12. The authority citation for part 149 continues to read as follows:

Authority: 42 U.S.C. 300gg–92 and 300gg–111 through 300gg–139, as amended.

■ 13. Section 149.140 is amended by:
■ a. Adding paragraph (a)(18);
■ b. Redesignating paragraphs (d)(1)(ii) through (iv) as paragraphs (d)(1)(iii) through (v), respectively;
■ c. Adding a new paragraph (d)(1)(ii); and
■ d. Revising paragraph (g).

The revisions and additions read as follows:

§ 149.140 Methodology for calculating qualifying payment amount.

(a) * * *

(18) *Downcode* means the alteration by a plan or issuer of a service code to another service code, or the alteration, addition, or removal by a plan or issuer of a modifier, if the changed code or modifier is associated with a lower qualifying payment amount than the service code or modifier billed by the provider, facility, or provider of air ambulance services.

* * * * *

(d) * * *

(1) * * *

(ii) If the qualifying payment amount is based on a downcoded service code or modifier—

(A) A statement that the service code or modifier billed by the provider, facility, or provider of air ambulance services was downcoded;

(B) An explanation of why the claim was downcoded, which must include a description of which service codes were altered, if any, and a description of which modifiers were altered, added, or removed, if any; and

(C) The amount that would have been the qualifying payment amount had the service code or modifier not been downcoded;

* * * * *

(g) *Applicability date.* The provisions of this section are applicable for plan years or in the individual market, policy years beginning on or after January 1, 2022, except that paragraph (a)(18) of this section regarding the definition of the term ''downcode'' and paragraph (d)(1)(ii) of this section regarding additional information that must be provided if the qualifying payment amount is based on a downcoded service code or modifier are applicable with respect to items or services provided or furnished on or after October 25, 2022, for plan years or in the individual market, policy years beginning on or after January 1, 2022.

■ 14. Section 149.510 is amended by:
■ a. Removing paragraph (a)(2)(viii);
■ b. Redesignating paragraphs (a)(2)(ix) through (xiii) as paragraphs (a)(2)(viii) through (xii), respectively; and
■ c. Revising paragraphs (c)(4)(ii)(A), (c)(4)(iii) and (iv), (c)(4)(vi)(B), (f)(1)(v)(F), and (h).

The revisions read as follows:

§ 149.510 Independent dispute resolution process.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(A) Select as the out-of-network rate for the qualified IDR item or service one of the offers submitted under paragraph (c)(4)(i) of this section, weighing only the considerations specified in paragraph (c)(4)(iii) of this section (as applied to the information provided by the parties pursuant to paragraph (c)(4)(i) of this section). The certified IDR entity must select the offer that the certified IDR entity determines best represents the value of the qualified IDR item or service as the out-of-network rate.

* * * * *

(iii) *Considerations in determination.* In determining which offer to select:

(A) The certified IDR entity must consider the qualifying payment amount(s) for the applicable year for the same or similar item or service.

(B) The certified IDR entity must then consider information submitted by a party that relates to the following circumstances:

(*1*) The level of training, experience, and quality and outcomes measurements of the provider or facility that furnished the qualified IDR item or service (such as those endorsed by the consensus-based entity authorized in section 1890 of the Social Security Act).

(*2*) The market share held by the provider or facility or that of the plan or issuer in the geographic region in which the qualified IDR item or service was provided.

(*3*) The acuity of the participant, beneficiary, or enrollee receiving the qualified IDR item or service, or the complexity of furnishing the qualified IDR item or service to the participant, beneficiary, or enrollee.

(*4*) The teaching status, case mix, and scope of services of the facility that furnished the qualified IDR item or service, if applicable.

(*5*) Demonstration of good faith efforts (or lack thereof) made by the provider or facility or the plan or issuer to enter into network agreements with each other, and, if applicable, contracted rates between the provider or facility, as applicable, and the plan or issuer, as applicable, during the previous 4 plan years.

(C) The certified IDR entity must also consider information provided by a party in response to a request by the certified IDR entity under paragraph (c)(4)(i)(A)(*2*) of this section that relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination and that does not include information on factors described in paragraph (c)(4)(v) of this section.

(D) The certified IDR entity must also consider additional information submitted by a party that relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination and that does not include information on factors described in paragraph (c)(4)(v) of this section.

(E) In weighing the considerations described in paragraphs (c)(4)(iii)(B) through (D) of this section, the certified IDR entity should evaluate whether the information is credible and relates to the offer submitted by either party for the payment amount for the qualified IDR item or service that is the subject of the payment determination. The certified IDR entity should not give weight to information to the extent it is not credible, it does not relate to either party's offer for the payment amount for the qualified IDR item or service, or it is already accounted for by the qualifying payment amount under paragraph (c)(4)(iii)(A) of this section or other credible information under paragraphs (c)(4)(iii)(B) through (D) of this section.

(iv) *Examples.* The rules of paragraph (c)(4)(iii) of this section are illustrated in the following paragraphs. Each example assumes that the Federal IDR process applies for purposes of determining the out-of-network rate, that both parties have submitted the information parties are required to submit as part of the Federal IDR process, and that the submitted information does not include information on factors described in paragraph (c)(4)(v) of this section:

(A) *Example 1*—(*1*) *Facts.* A level 1 trauma center that is a nonparticipating emergency facility and an issuer are parties to a payment determination in the Federal IDR process. The facility submits an offer that is higher than the qualifying payment amount. The facility also submits additional written information showing that the scope of services available at the facility was critical to the delivery of care for the qualified IDR item or service provided, given the particular patient's acuity. This information is determined to be credible by the certified IDR entity. Further, the facility submits additional information showing the contracted rates used to calculate the qualifying payment amount for the qualified IDR item or service were based on a level of service that is typical in cases in which the services are delivered by a facility that is not a level 1 trauma center and that does not have the capability to provide the scope of services provided by a level 1 trauma center. This information is also determined to be credible by the certified IDR entity. The issuer submits an offer equal to the qualifying payment amount. No additional information is submitted by either party. The certified IDR entity determines that all the information submitted by the nonparticipating emergency facility relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination.

(*2*) *Conclusion.* In this paragraph (c)(4)(iv)(A) (*Example 1*), the certified IDR entity must consider the qualifying payment amount. The certified IDR entity then must consider the additional information submitted by the nonparticipating emergency facility, provided the information relates to circumstances described in paragraphs (c)(4)(iii)(B) through (D) of this section and relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination. If the certified IDR entity determines that it is appropriate to give weight to the additional credible information submitted by the nonparticipating emergency facility and that the additional credible information submitted by the facility demonstrates that the facility's offer best represents the value of the qualified IDR item or service, the certified IDR entity should select the facility's offer.

(B) *Example 2*—(*1*) *Facts.* A nonparticipating provider and an issuer are parties to a payment determination in the Federal IDR process. The provider submits an offer that is higher than the qualifying payment amount. The provider also submits additional written information regarding the level of training and experience the provider possesses. This information is determined to be credible by the certified IDR entity, but the certified IDR entity finds that the information does not demonstrate that the provider's level of training and experience relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination (for example, the information does not show that the provider's level of training and experience was necessary for providing the qualified IDR service that is the subject of the payment determination to the particular patient, or that the training or experience made an impact on the care that was provided). The nonparticipating provider does not submit any additional information. The issuer submits an offer equal to the qualifying payment amount, with no additional information.

(*2*) *Conclusion.* In this paragraph (c)(4)(iv)(B) (*Example 2*), the certified IDR entity must consider the qualifying payment amount. The certified IDR entity must then consider the additional information submitted by the nonparticipating provider, provided the information relates to circumstances described in paragraphs (c)(4)(iii)(B) through (D) of this section and relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination. In addition, the certified IDR entity should not give weight to information to the extent it is already accounted for by the qualifying payment amount or other credible information under paragraphs (c)(4)(iii)(B) through (D) of this section. If the certified IDR entity determines that the additional information submitted by the provider is credible but does not relate to the offer for the payment amount for the qualified IDR service that is the subject of the payment determination, and determines that the issuer's offer best represents the value of the qualified IDR service, in the absence of any other credible information that relates to either party's offer, the certified IDR entity should select the issuer's offer.

(C) *Example 3*—(*1*) *Facts.* A nonparticipating provider and an issuer are parties to a payment determination in the Federal IDR process involving an emergency department visit for the evaluation and management of a patient. The provider submits an offer that is higher than the qualifying payment amount. The provider also submits additional written information showing that the acuity of the patient's condition and complexity of the qualified IDR service furnished required the taking of a comprehensive history, a comprehensive examination, and medical decision making of high complexity. This information is determined to be credible by the certified IDR entity. The issuer submits an offer equal to the qualifying payment amount for CPT code 99285, which is the CPT code for an emergency department visit for the evaluation and management of a patient requiring a comprehensive history, a comprehensive examination, and medical decision making of high complexity. The issuer also submits additional written information showing that this CPT code accounts for the acuity of the patient's condition. This information is determined to be credible by the certified IDR entity. The certified IDR entity determines that the information provided by the provider and issuer relates to the offer for the payment amount for the qualified IDR service that is the subject of the payment determination. Neither party submits any additional information.

(*2*) *Conclusion.* In this paragraph (c)(4)(iv)(C) (*Example 3*), the certified IDR entity must consider the qualifying payment amount. The certified IDR entity then must consider the additional information submitted by the parties, but the certified IDR entity should not give weight to information to the extent it is already accounted for by the qualifying payment amount or other credible information under paragraphs (c)(4)(iii)(B) through (D) of this section. If the certified IDR entity determines the additional information on the acuity of the patient and complexity of the service is already accounted for in the calculation of the qualifying payment amount, the certified IDR entity should not give weight to the additional information provided by the provider. If the certified IDR entity determines that the issuer's offer best represents the value of the qualified IDR service, the certified IDR entity should select the issuer's offer.

(D) *Example 4*—(*1*) *Facts.* A nonparticipating emergency facility and an issuer are parties to a payment determination in the Federal IDR process. Although the facility is not participating in the issuer's network during the relevant plan year, it was a participating facility in the issuer's network in the previous 4 plan years. The issuer submits an offer that is higher than the qualifying payment amount and that is equal to the facility's contracted rate (adjusted for inflation) for the previous year with the issuer for the qualified IDR service. The issuer also submits additional written

information showing that the contracted rates between the facility and the issuer during the previous 4 plan years were higher than the qualifying payment amount submitted by the issuer, and that these prior contracted rates account for the case mix and scope of services typically furnished at the nonparticipating facility. The certified IDR entity determines this information is credible and that it relates to the offer submitted by the issuer for the payment amount for the qualified IDR service that is the subject of the payment determination. The facility submits an offer that is higher than both the qualifying payment amount and the contracted rate (adjusted for inflation) for the previous year with the issuer for the qualified IDR service. The facility also submits additional written information, with the intent to show that the case mix and scope of services available at the facility were integral to the service provided. The certified IDR entity determines this information is credible and that it relates to the offer submitted by the facility for the payment amount for the qualified IDR service that is the subject of the payment determination. Neither party submits any additional information.

(*2*) *Conclusion.* In this paragraph (c)(4)(iv)(D) (*Example 4*), the certified IDR entity must consider the qualifying payment amount. The certified IDR entity then must consider the additional information submitted by the parties, but should not give weight to information to the extent it is already accounted for by the qualifying payment amount or other credible information under paragraphs (c)(4)(iii)(B) through (D) of this section. If the certified IDR entity determines that the information submitted by the facility regarding the case mix and scope of services available at the facility includes information that is also accounted for in the information the issuer submitted regarding prior contracted rates, then the certified IDR entity should give weight to that information only once. The certified IDR entity also should not give weight to the same information provided by the nonparticipating emergency facility in relation to any other factor. If the certified IDR entity determines that the issuer's offer best represents the value of the qualified IDR service, the certified IDR entity should select the issuer's offer.

(E) *Example 5*—(*1*) *Facts.* A nonparticipating provider and an issuer are parties to a payment determination in the Federal IDR process regarding a qualified IDR service for which the issuer downcoded the service code that the provider billed. The issuer submits an offer equal to the qualifying payment amount (which was calculated using the downcoded service code). The issuer also submits additional written information that includes the documentation disclosed to the nonparticipating provider under § 149.140(d)(1)(ii) at the time of the initial payment (which describes why the service code was downcoded). The certified IDR entity determines this information is credible and that it relates to the offer for the payment amount for the qualified IDR service that is the subject of the payment determination. The provider submits an offer equal to the amount that would have been the qualifying payment amount had the service code not been downcoded. The provider also submits additional written information that includes the documentation disclosed to the nonparticipating provider under § 149.140(d)(1)(ii) at the time of the initial payment. Further, the provider submits additional written information that explains why the billed service code was more appropriate than the downcoded service code, as evidence that the provider's offer, which is equal to the amount the qualifying payment amount would have been for the service code that the provider billed, best represents the value of the service furnished, given its complexity. The certified IDR entity determines this information to be credible and that it relates to the offer for the payment amount for the qualified IDR service that is the subject of the payment determination. Neither party submits any additional information.

(*2*) *Conclusion.* In this paragraph (c)(4)(iv)(E) (*Example 5*), the certified IDR entity must consider the qualifying payment amount, which is based on the downcoded service code. The certified IDR entity then must consider whether to give weight to additional information submitted by the parties. If the certified IDR entity determines that the additional credible information submitted by the provider demonstrates that the nonparticipating provider's offer, which is equal to the qualifying payment amount for the service code that the provider billed, best represents the value of the qualified IDR service, the certified IDR entity should select the nonparticipating provider's offer.

* * * * *

(vi) * * *

(B) The certified IDR entity's written decision must include an explanation of their determination, including what information the certified IDR entity determined demonstrated that the offer selected as the out-of-network rate is the offer that best represents the value of the qualified IDR item or service, including the weight given to the qualifying payment amount and any additional credible information under paragraphs (c)(4)(iii)(B) through (D) of this section. If the certified IDR entity relies on information described under paragraphs (c)(4)(iii)(B) through (D) of this section in selecting an offer, the written decision must include an explanation of why the certified IDR entity concluded that this information was not already reflected in the qualifying payment amount.

* * * * *

(f) * * *

(1) * * *

(v) * * *

(F) The rationale for the certified IDR entity's decision, including the extent to which the decision relied on the criteria in paragraphs (c)(4)(iii)(B) through (D) of this section;

* * * * *

(h) *Applicability date.* The provisions of this section are applicable with respect to plan years or in the individual market policy years beginning on or after January 1, 2022, except that the provisions regarding IDR entity certification at paragraphs (a) and (e) of this section are applicable beginning on October 7, 2021; and paragraphs (c)(4)(ii) through (iv) of this section regarding payment determinations, paragraph (c)(4)(vi)(B) of this section regarding written decisions, and paragraph (f)(1)(v)(F) of this section regarding reporting of information relating to the Federal IDR process are applicable with respect to items or services provided or furnished on or after October 25, 2022, for plan years or in the individual market policy years beginning on or after January 1, 2022.

■ 15. Section 149.520 is amended by:

■ a. Revising paragraphs (b)(1) and (b)(2) introductory text;

■ b. Redesignating paragraph (b)(3) as paragraph (b)(4);

■ c. Adding a new paragraph (b)(3); and

■ d. Revising newly redesignated paragraph (b)(4)(iv)(F) and paragraph (c).

The addition and revisions read as follows:

§ 149.520 Independent dispute resolution process for air ambulance services.

* * * * *

(b) * * *

(1) *In general.* Except as provided in paragraphs (b)(2) and (3) of this section, in determining the out-of-network rate to be paid by group health plans and health insurance issuers offering group

or individual health insurance coverage for out-of-network air ambulance services, plans and issuers must comply with the requirements of § 149.510, except that references in § 149.510 to the additional circumstances in § 149.510(c)(4)(iii)(B) shall be understood to refer to paragraph (b)(2) of this section.

(2) *Considerations for air ambulance services.* In determining which offer to select, in addition to considering the applicable qualifying payment amount(s), the certified IDR entity must consider information submitted by a party that relates to the following circumstances:

* * * * *

(3) *Weighing considerations.* In weighing the considerations described in paragraph (b)(2) of this section, the certified IDR entity should evaluate whether the information is credible and relates to the offer submitted by either party for the payment amount for the qualified IDR service that is the subject of the payment determination. The certified IDR entity should not give weight to information to the extent it is not credible, it does not relate to either party's offer for the payment amount for the qualified IDR service, or it is already accounted for by the qualifying payment amount under § 149.510(c)(4)(iii)(A) or other credible information under § 149.510(c)(4)(iii)(B) through (D), except that the additional circumstances in § 149.510(c)(4)(iii)(B) shall be understood to refer to paragraph (b)(2) of this section.

(4) * * *

(iv) * * *

(F) The rationale for the certified IDR entity's decision, including the extent to which the decision relied on the criteria in paragraph (b)(2) of this section and § 149.510(c)(4)(iii)(C) and (D);

* * * * *

(c) *Applicability date.* The provisions of this section are applicable with respect to plan years, or in the individual market, policy years, beginning on or after January 1, 2022, except that paragraphs (b)(1), (2), and (3) and (b)(4)(iv)(F) of this section regarding payment determinations are applicable with respect to services provided or furnished on or after October 25, 2022, for plan years or in the individual market policy years beginning on or after January 1, 2022.

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FEDERAL REGISTER

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Part III

The President

Memorandum of August 19, 2022—Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

Federal Register
Vol. 87, No. 165
Friday, August 26, 2022

Presidential Documents

Title 3—

The President

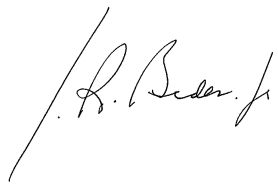
Memorandum of August 19, 2022

Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the FAA to direct the drawdown of up to $775 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, August 19, 2022

[FR Doc. 2022–18623
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